

Iowa (Terr) Laws, 1838-1846.

# THE STATUTE LAWS

OF THE

# TERRITORY OF IOWA,

ENACTED AT THE FIRST SESSION OF THE LEGISLATIVE  
ASSEMBLY OF SAID TERRITORY, HELD AT  
BURLINGTON, A. D. 1838-'39.

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**PUBLISHED BY AUTHORITY.**

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## CERTIFICATE.

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I, WILLIAM B. CONWAY, Secretary of the Territory of Iowa, having compared the following pages with the "engrossed bills" deposited in my office, do hereby certify, that they contain true and correct copies of the Statute Laws and Joint Resolutions passed at the first session of the Legislative Assembly of said Territory, 1838-'39.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, this 23d day of July, A. D. 1839.

WM. B. CONWAY,  
*Secretary of the Territory.*

## PREFATORY NOTE.

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The subject of reprinting the early laws of Iowa (Territorial and State), has been under discussion for several years. This has arisen from the fact that the very limited early editions have long been out of print and copies can only be obtained with much difficulty and at excessive prices. The matter was brought to the attention of the Legislature last winter, and while no specific plan was adopted, a sufficient sum was appropriated to make a beginning. The subject was carefully considered by the Trustees of the Historical Department, by whom it was referred, with full power to act, to Judges H. E. Deemer and Scott M. Ladd. They determined to reprint 1,000 copies of this first volume of Iowa Territorial Laws. A copy is now available for every public library in our State, leaving a supply for exchanges with other States, and for sale at the cost of production. There are excellent precedents for this enterprise in at least three States of the Middle West—Illinois, Michigan and Wisconsin—which long ago reprinted several volumes of their early laws. The republication of this volume will thus place the subject before the people of Iowa for such further legislative action as the public interests may demand.

CHARLES ALDRICH,

*Curator and Secretary.*

*Historical Department of Iowa, Des Moines, Sept. 19, 1900.*

FROM  
THE PRESS OF THE  
IOWA PRINTING COMPANY,  
DES MOINES,  
1900.

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# DECLARATION OF INDEPENDENCE.

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In Congress, July 4, 1776.

## THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the

Propriety of  
the declara-  
tion.

Unalienable  
rights of the  
people.

Absolute  
tyranny the  
object of the  
king of Great  
Britain.

Recitation of  
the injuries &  
usurpations on  
the part of the  
British crown.

necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies, at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harrass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others, to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

Recitation of  
the injuries &  
usurpations  
on the part of  
the British  
crown.

For quartering large bodies of armed troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us, without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose

known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions unavailing.

In every stage of these oppressions we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Appeal to the British people fruitless, &c.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war; in peace—friends.

Independence declared.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance

Allegiance absolved, &c.

Mutual pledge.

on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW HAMPSHIRE.  
Josiah Bartlett,

William Whipple,  
Matthew Thornton.

## MASSACHUSETTS BAY

Samuel Adams,  
John Adams,  
Robert Treat Pain,  
Elbridge Gerry.

## RHODE ISLAND. &amp;c.

Stephen Hopkins,  
William Ellery.

## CONNECTICUT.

Roger Sherman,  
Samuel Huntington,  
William Williams,  
Oliver Wolcott.

## NEW YORK.

William Floyd,  
Philip Livingston,  
Francis Lewis,  
Lewis Morris.

## NEW JERSEY.

Richard Stockton,  
John Witherspoon,  
Francis Hopkinson,  
John Hart,  
Abraham Clark.

## PENNSYLVANIA.

Robert Morris,  
Benjamin Rush,  
Benjamin Franklin,  
John Morton,  
George Clymer,  
James Smith,  
George Taylor,  
James Wilson,  
George Ross.

## DELAWARE.

Cesar Rodney,  
George Read,  
Thomas M'Kean.

## MARYLAND.

Samuel Chase,  
William Paca,  
Thomas Stone,  
Charles Carroll, of Car-  
rollton.

## VIRGINIA.

George Wythe,  
Richard Henry Lee,  
Thomas Jefferson,  
Benjamin Harrison,  
Thomas Nelson, jr.  
Francis Lightfoot Lee,  
Carter Braxton.

## NORTH CAROLINA.

William Hooper,  
Joseph Hewes,  
John Penn.

## SOUTH CAROLINA.

Edward Rutledge,  
Thomas Heyward, jr.  
Thomas Lynch, jr.  
Arthur Middleton.

## GEORGIA.

Button Gwinnett,  
Lyman Hall,  
George Walton.

# CONSTITUTION

## OF THE

# UNITED STATES.

---

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I.

#### SECTION 1.

Legislative  
power.

1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

#### SECTION 2.

House of Rep-  
resentatives  
and qualifica-  
tions of elec-  
tors.

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

and of Repre-  
sentatives.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Apportion-  
ment of Repre-  
sentatives.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.

Enumeration.

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of

ten years, in such manner as they shall by law direct. Ratio of representation.  
 The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative: and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. First apportionment.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies. Vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment. Speaker of the House.

### SECTION 3.

1. The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote. The Senate—each senator a vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes, the seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies. Senators classed. A third of the seats vacated every 2 years. Vacancies.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. Qualifications of senators.

4. The vice-president of the United States shall be president of the Senate; but shall have no vote, unless they be equally divided. President of the senate.

5. The Senate shall choose their other officers, and also a president, *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States. Officers.

- Impeachments.** 6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.
- And extent of judgment in cases.** 7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.
- Party liable according to law.**

## SECTION 4.

- Elections, how regulated.** 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State, by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.
- Meetings of Congress.** 2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

## SECTION 5.

- To judge of the election of its members. Quorum.** 1. Each house shall be the judge of the election, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.
- Rules.** 2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.
- Journals.** 3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.
- Adjournment.** 4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

## SECTION 6.

1. The senators and representatives shall receive Compensation. a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from Privilege. arrest, during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the Concerning the holding of offices. time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office.

## SECTION 7.

1. All bills for raising revenue shall originate in Revenue bills. the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House Power and duty of the president in relation to bills. of Representatives and the Senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two- Proceedings on bills returned by the president. thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case, it shall not be a law.

3. Every order, resolution, or vote, to which the Joint resolutions, except concurrence of the Senate and House of Represent-

for adjournment, to receive the same sanction as bills.

atives may be necessary; (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

## SECTION 8.

The Congress shall have power —

Powers of congress relative to taxes.

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

Loans.

2. To borrow money on the credit of the United States:

Commerce.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

Naturalization.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

Money.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

Counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

Post-offices.

7. To establish post offices and post roads:

Science.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

Tribunals.

9. To constitute tribunals inferior to the Supreme Court. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

War.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

Armies.

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

Navy.

12. To provide and maintain a navy:

Land and naval forces.

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions: Militia.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving, to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: — and Legislation over a district, &c.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. Laws necessary for the execution of their powers.

#### SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. Of the Importation of certain persons, &c.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Writ of habeas corpus.

3. No bill of attainder or ex post facto law, shall be passed. Attainder, &c.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. Direct taxes

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another. Of commerce from the States &c.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; Of expenditures.

and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No nobility created, and no presents accepted by U. S. officers, &c.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

#### SECTION 10.

Powers prohibited to the individual states.

1. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers which the States can exercise only under the sanction of congress.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

### ARTICLE II.

#### SECTION 1.

Executive power.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

Electors of president and vice president.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no senator or representative, or person

holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number is a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner choose the president. But in choosing the president, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the vice president.\*

Meeting of the electors.

Their proceedings.

[\* Annulled—see amendments, art. 12.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

Time of choosing electors.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications for president.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the con-

When his duties devolve on the vice president, &c.

gress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

**Compensation.** 7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive during that period any other emolument from the United States or any of them.

**Oath of the president.** 8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

## SECTION 2.

**Power of the president.** 1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

**His powers, with the advice and consent of the Senate.** 2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur: and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

**Of appointment of inferior officers.** 3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

**President may fill vacancies.**

## SECTION 3.

1. He shall from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

## SECTION 4.

1. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

## SECTION 1.

1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

## SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors; other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands

[\*Restriction by art 11, of amendments.] under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects.\*

Jurisdiction of Supreme Ct. 2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases, before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Trial of crimes 3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

### SECTION 3.

Treason 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Its punishment 2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

## ARTICLE IV.

### SECTION 1.

Faith to be given to the acts, &c. of States. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

### SECTION 2.

Reciprocity of citizenship. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Criminals to be delivered up. 2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of

the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor: but shall be delivered upon claim of the party to whom such service or labor may be due. Also runaway slaves, &c.

### SECTION 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress. Admission of new States.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State. Power of Congress over territory, &c.

### SECTION 4.

The United States shall guaranty to every State in this Union, a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence. Guarantee and protection of each State.

## ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. *Provided*, That no amendment, which may be made prior to the year

one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

- Debts assumed** 1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.
- The supreme law of the land.** 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby; any thing in the constitution or laws of any State to the contrary notwithstanding.
- Representatives, &c. to support this Constitution.** 3. The senators and representatives, before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.
- No religious test.**

## ARTICLE VII.

**Ratification of nine States sufficient.** The ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON, *President,*  
*and Deputy for Va.*

NEW HAMPSHIRE.  
John Langdon,  
Nicholas Gilman.  
MASSACHUSETTS.  
Nathaniel Gorham,  
Rufus King.

DELAWARE.  
George Reed,  
Gunning Bedford, jr.  
John Dickinson,  
Richard Bassett,  
Jacob Broom.

<p>CONNECTICUT. William Samuel Johnson, Roger Sherman.</p> <p>NEW YORK. Alexander Hamilton.</p> <p>NEW JERSEY. William Livingston, David Brearly, William Patterson, Jonathan Dayton.</p> <p>PENNSYLVANIA. Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.</p> <p>Attest,</p>	<p>MARYLAND. James M'Henry, Daniel of St. Tho. Jenifer, Daniel Carroll.</p> <p>VIRGINIA. John Blair, James Madison, jun.</p> <p>NORTH CAROLINA. William Blount, Richard Dobbs Spaight, Hugh Williamson.</p> <p>SOUTH CAROLINA. John Rutledge, Chas. Cotesworth Pinckney, Charles Pinckney, Pierce Butler.</p> <p>GEORGIA. William Few, Abraham Baldwin.</p> <p>WILLIAM JACKSON, <i>Secretary</i>.</p>
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## AMENDMENTS TO THE CONSTITUTION.

### ARTICLE I.

Congress shall make no law respecting an estab-  
lishment of religion, or prohibiting the free exercise  
thereof; or abridging the freedom of speech, or of  
the press; or the right of the people peaceably to  
assemble, and to petition the government for a  
redress of grievances.

Religion,  
speech, the  
press, and the  
right to peti-  
tion.

### ARTICLE II.

A well regulated militia being necessary to the  
security of a free State, the right of the people to  
keep and bear arms shall not be infringed.

People may  
keep arms.

### ARTICLE III.

No soldier shall, in time of peace, be quartered in  
any house without the consent of the owner; nor in  
time of war, but in a manner to be prescribed by law.

Quartering of  
soldiers.

### ARTICLE IV.

The right of the people to be secure in their per-  
sons, houses, papers, and effects, against unreasonable  
searches and seizures, shall not be violated; and no  
warrants shall issue, but upon probable cause,

Security a-  
gainst unrea-  
sonable search-  
es & seizures.

supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### ARTICLE V.

Presentment  
or indictment,  
in criminal  
cases.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use without just compensation.

Right of private property.

#### ARTICLE VI.

Rights of the  
accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

#### ARTICLE VII.

Right of trial  
by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

#### ARTICLE VIII.

Of bail, fines,  
and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

#### ARTICLE IX.

Rights enumerated not to disparage those retained.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

The powers not delegated to the United States by <sup>Reserved</sup> the Constitution, nor prohibited by it to the States, <sup>powers.</sup> are reserved to the States respectively, or to the people.

## ARTICLE XI.

The judicial power of the United States shall not <sup>Restriction of</sup> be construed to extend to any suit in law or equity, <sup>judicial pow-</sup> commenced or prosecuted against one of the United <sup>ers.</sup> States by citizens of another State, or by citizens or subjects of any foreign State.

## ARTICLE XII.

1. The electors shall meet in their respective <sup>Mode of elect-</sup> States, and vote by ballot for president and vice <sup>ing president</sup> president, one of whom, at least, shall not be an <sup>and vice presi-</sup> inhabitant of the same State with themselves; they <sup>dent of the U.</sup> shall name in their ballots the person voted for as <sup>States.</sup> president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the

death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the vice president: a quorum, for that purpose, shall consist of two-thirds of the whole number of senators and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

### ARTICLE XIII.

When citizenship shall be forfeited.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

## AN ORDINANCE,

FOR THE GOVERNMENT OF THE TERRITORY OF THE  
UNITED STATES, NORTH-WEST OF  
THE RIVER OHIO.

*Be it ordained, by the United States, in Congress* District.  
*assembled,* That the said Territory, for the purposes  
of temporary government, be one district; subject,  
however, to be divided into two districts, as future  
circumstances may, in the opinion of Congress, make  
it expedient.

*Be it ordained, by the authority aforesaid,* That the Rules of in-  
estates both of resident and non-resident proprietors heritance.  
in the said Territory, dying intestate, shall descend to  
and be distributed among their children, and the  
descendants of a deceased child, in equal parts; the  
descendants of a deceased child or grand child, to  
take a share of their deceased parent in equal parts  
among them; and where there shall be no children  
or descendants, then in equal parts to the next of  
kin, in equal degree; and among collaterals, the  
children of a deceased brother or sister of the intes-  
tate, shall have, in equal parts among them, their  
deceased parent's share; and there shall, in no case,  
be a distinction between kindred of the whole and  
half blood; saving, in all cases, to the widow of the  
intestate her third part of the real estate for life, and  
one third part of the personal estate; and this law  
relative to descents and dower shall remain in full  
force until altered by the Legislature of the District.  
And until the governor and judges shall adopt laws,  
as hereinafter mentioned, estates in the said Terri-  
tory may be devised or bequeathed by wills in writ-  
ing, signed and sealed by him or her, in whom the  
estate may be, (being of full age,) and attested by  
three witnesses; and real estates may be conveyed  
by lease and release, or bargain and sale, signed,  
sealed and delivered by the person, being of full age,  
in whom the estate may be, and attested by two  
witnesses, provided such wills be duly proved, such  
conveyances be acknowledged, or the execution  
thereof duly proved, and be recorded within one  
year after proper magistrates, courts, and registers

- Personal property. shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.
- Governor. *Be it ordained by the authority aforesaid,* That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.
- Secretary. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the Legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings every six months, to the secretary of Congress.
- Supreme court. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.
- Legislature. The governor and judges, or a majority of them, shall adopt and publish, in the District, such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.
- Officers of militia. The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of

general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of peace and good order in the same. After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the District, in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature.

So soon as there shall be five thousand free male inhabitants of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *Provided*, That for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which, the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the District three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided, also*, That a freehold in fifty acres of land in the District, having been a citizen of one of the States, and being resident in the District, or the like freehold, and two years residence in the District shall be necessary to qualify a man as an elector of a representative.

Term of service.  
Vacancies, how filled.

The representative thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Constitution of the legislative power.

The General Assembly, or Legislature, shall consist of the governor, Legislative Council, and a House of Representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum. And the members of the Council shall be nominated and appointed in the following manner, to-wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the House of Representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the Council five years, unless sooner removed. And the Governor, Legislative Council, and House of Representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the House, and by a majority in the Council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the General Assembly, when in his opinion it shall be expedient.

Vacancies, how filled.

Governor's assent to bills.

Oath of fidelity and of office to be taken.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidel-

ity and of office; the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government. Delegate to Congress.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of States, and permanent governments therein, and for their admission to a share in the federal councils, on an equal footing with the original States, at as early periods as may be consistent with the general interest:

*It is hereby ordained and declared, by the authority aforesaid,* That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to-wit: Articles of compact.

#### ARTICLE I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory. Religious worship.

#### ARTICLE II.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his par- The writ of habeas corpus and trial by jury secured; and judicial proceedings according to the common law. Bail. Fines, &c. Compensation for property taken for public service.

Laws not to affect private contracts. particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with or affect private contracts or engagements, bona fide, and without fraud previously formed.

### ARTICLE III.

Schools. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars, authorised by Congress; but laws, founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Indians.

### ARTICLE IV.

The territory to remain forever a part of the confederacy. The said Territory and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said Territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the Legislatures of the District or Districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The Legislatures of those Districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such

Taxes.

Federal debts.

Primary disposal of the soil to be by Congress.

soil to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said Territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

United States  
lands not to be  
taxed.

Navigable  
waters.

### ARTICLE V.

There shall be formed, in the said Territory, not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to-wit: The western State in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania and the said territorial line: *Provided, however,* and it is further understood and declared, That the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said Territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government. *Provided,* The constitution and government so to be formed shall be republican, and in conformity to the principles con-

States, how to  
be formed in  
the Territory.

Boundary of  
western State.

Middle State.

Eastern State.

States, when  
may be admit-  
ted into the  
Union.

Proviso.

tained in these articles; and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

### ARTICLE VI.

Slavery prohibited.

Proviso.

Resolutions repealed.

There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted. *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service, as aforesaid.

*Be it ordained by the authority aforesaid,* That the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States, in Congress assembled, the thirteenth day of July, in the year of our Lord, one thousand seven hundred and eighty-seven, and of their sovereignty and independence the twelfth.

WILLIAM GRAYSON, *Chairman.*

CHARLES THOMPSON, *Secretary.*

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AN ACT to divide the Territory of Wisconsin, and to establish the Territorial Government of Iowa.

What part of the present territory of Wisconsin, shall, after 3d July next, constitute the Territory of Iowa.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That, from and after the third day of July next, all that part of the present Territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the territorial line, shall, for the purposes of temporary government, be and constitute a separate territorial government, by the name of Iowa; and that, from and after the said third day of July next, the present territorial government of Wisconsin shall extend only to that

part of the present Territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the government of Wisconsin, in and over the territory hereby constituted, shall cease: *Provided*, That nothing in this act contained, shall be construed to impair the rights of person or property now appertaining to any Indians within the said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner, and at such times, as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

The authority of Wisconsin, over the territory hereby constituted, to cease after 3d July next. Proviso.

Proviso.

SEC. 2. *And be it further enacted*, That the Executive power and authority in and over the said Territory of Iowa, shall be vested in a Governor, who shall hold his office for three years, unless sooner removed by the President of the United States. The governor shall reside within the said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the Legislative Assembly, before they shall take effect; he may grant pardons for offences against the laws of the said Territory, and reprieves for offences against the law of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

Executive power vested in a Governor, to be appointed for three years, &c. Powers and duties of the Governor.

SEC. 3. *And be it further enacted*, That there shall be a secretary of the said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States;

A Sec. of the Terry. to be appointed for four years, &c.

Duties of the Secretary.

he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first Monday in December in each year, to the President of the United States; and, at the same time, two copies of the laws to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence of the governor from the Territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

The Secretary to act as Governor in case of a vacancy.

Legislative power vested in the Govr. and a legislative assembly. Legislative assembly to consist of a council and House of Reps. Council. House of Reps. Apportionment of representation.

SEC. 4. *And be it further enacted,* That the legislative power shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a Council and House of Representatives.

The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue one year. An apportionment shall be made, as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be.

Members to be inhabitants of the dist. for which elected. Previous to the first election the Govr. to have the census taken, unless, &c.

And the said members of the Council and House of Representatives shall reside in, and be inhabitants of the district for which they may be elected. Previous to the first election, the governor of the Territory shall cause the census or enumeration of the inhabitants of the several counties in the Territory, to be taken and made by the sheriffs of the said counties respectively, unless the same shall have been taken within three months previous to the third day of July next, and returns thereof made by said sheriffs to the governor. The first election shall be held at such time and place, and be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives to which

First election to be held, &c. as the Govr. shall direct, &c.

each of the counties or districts are entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties or districts for the Council, shall be declared by the said governor to be duly elected to the said Council; and the person or persons having the greatest number of votes for the House of Representatives, equal to the number to which each county may be entitled, shall also be declared by the governor to be duly elected: *Provided*, the governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as he shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and apportioning the representation in the several counties to the Council and House of Representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said legislative assembly; but no session, in any year, shall exceed the term of seventy-five days.

SEC. 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications, of voters, at all subsequent elections, shall be such as shall be determined by the legislative assembly; *Provided*, that the right of suffrage shall be exercised only by citizens of the United States.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and if disapproved by the Congress of the United States, the same shall be null and of no effect.

SEC. 7. *And be it further enacted*, That all town-ship officers, and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of

Govr. to declare the persons having the greatest number of votes to be elected.

Proviso.

Qualifications of voters, &c. at the first election.

At all subsequent elections Proviso.

Powers of the Legislature. Restrictions.

Laws to be submitted to Congress for approval.

Officers to be elected by the people.

Officers to be appointed by the Govr. with the advice and consent of the legislative council. Vacancies occurring in the recess of the Council, how filled.

courts, shall be elected by the people, in such manner as is now prescribed by the laws of the Territory of Wisconsin, or as may, after the first election, be provided by the governor and legislative assembly of Iowa Territory. The governor shall nominate, and, by and with the advice and consent of the legislative council, shall appoint all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the Council, shall be filled by appointments from the governor, which shall expire at the end of the next session of the legislative assembly; but the said governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said legislative assembly.

Disqualifications for office.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold, or be appointed to, any office created, or the salary or emoluments of which shall have been increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term, and no person holding a commission or appointment under the United States, or any of its officers, except as a militia officer, shall be a member of the said Council or House of Representatives, or shall hold any office under the government of the said Territory.

Judicial power vested in a supreme court, dist. courts, probate courts, and justices of the peace. Supreme court.

SEC. 9. *And be it further enacted*, That the judicial power of the said Territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of government of the said Territory annually; and they shall hold their offices during the term of four years. The said Territory shall be

District courts.

divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointment, respectively, reside in the districts which shall be assigned to them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided*,

Jurisdictions of the several courts. Proviso.

*however*, that justices of the peace shall not have

jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess a chancery as well as a common law jurisdiction.—Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk, happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case, removed to the supreme court, shall trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decision of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States.—And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the Territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district courts of Wisconsin Territory now receives for similar services.

SEC. 10. *And be it further enacted,* That there shall be an attorney for the said Territory appointed, who shall continue in office four years, unless sooner

An attorney to  
be appointed  
for four years,  
his fees, &c.

A marshal to be appointed for four years—his duties, fees, &c.

removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Wisconsin. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Wisconsin; and shall, in addition, be paid the sum of two hundred dollars annually as a compensation for extra services.

Officers to be appointed by the president with the advice and consent of the Senate.

SEC. 11. *And be it further enacted,* That the governor, secretary, chief justice and associate judges, attorney, and marshal, shall be nominated, and by and with the advice and consent of the Senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before some judge or justice of the peace in the existing Territory of Wisconsin, duly commissioned and qualified to administer an oath or affirmation, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said secretary among the executive proceedings. And, afterwards, the chief justice and associate judges, and all other civil officers in said Territory, before they act as such, shall take a like oath, or affirmation, before said governor, or secretary, or some judge or justice of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs. The said chief judge

Governor and secretary to take an oath, &c.

Chief justice and associate judges, and all other civil officers to take an oath, &c.

Salary of the governor.

and associate justices shall each receive an annual salary of fifteen hundred dollars. The secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarter yearly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day, during their attendance at the session thereof: and three dollars each for every twenty miles travel in going to, and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the governor to defray the contingent expenses of the Territory; and there shall also be appropriated annually, a sufficient sum, to be expended by the secretary of the Territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the Territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Salary of the chief judge and associate justices.  
Salary of the secretary.  
Salaries how paid.  
Pay of the members of the legislative assembly  
Contingent expenses of the Territory. &c.

SEC. 12. *And be it further enacted*, That the inhabitants of the said territory shall be entitled to all the rights, privileges, and immunities heretofore granted and secured to the Territory of Wisconsin, and to its inhabitants; and the existing laws of the Territory of Wisconsin shall be extended over said Territory, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified or repealed by the governor and legislative assembly of the said Territory of Iowa; and, further, the laws of the United States are hereby extended over, and shall be in force in said Territory, so far as the same, or any provisions thereof, may be applicable.

Rights, &c. the same as granted to Wisconsin.  
Existing laws of Wisconsin extended over Iowa, &c.  
Laws U. S. extended over Iowa, &c.

SEC. 13. *And be it further enacted*, That the legislative assembly of the Territory of Iowa shall hold its first session at such time and place, in said Territory, as the governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by

First session of the legislative assembly to be held when and where the gov shall direct.  
Governor and legislative assembly to locate and establish the seat of government.

§20,000 appropriated for the erection of public buildings at the seat of government. the governor and legislative assembly. And the sum of twenty thousand dollars, out of any money in the treasury, not otherwise appropriated, is hereby granted to the said Territory of Iowa, which shall be applied, by the governor and legislative assembly thereof, to defray the expenses of erecting public buildings at the seat of government

Delegate to the House of Reps. of the U. S.—how elected, &c.

SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the legislative assembly who shall be entitled to the same rights and privileges as have been granted to the delegates from the several territories of the United States to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner as the governor shall appoint and direct. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given to the person so elected.

Suits, &c. undetermined on 3d July next in the district courts of Wisconsin, west of the Mississippi shall be transferred to the district courts hereby established. Judicial officers, in office 3d July next, shall act temporarily until their places are filled by the government of Iowa.

SEC. 15. *And be it further enacted*, That all suits, process, and proceedings, and all indictments and informations, which shall be undetermined on the third day of July next, in the district courts of Wisconsin Territory, west of the Mississippi river, shall be transferred to be heard, tried, prosecuted and determined in the district courts hereby established, which may include the said counties.

SEC. 16. *And be it further enacted*, That all justices of the peace, constables, sheriffs, and all other executive and judicial officers, who shall be in office on the third day of July next, in that portion of the present Territory of Wisconsin, which will then, by this act, become the Territory of Iowa, shall be, and are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of the Territory of Iowa, temporarily, and until they or others shall be duly appointed to fill their places by the territorial government of Iowa, in the manner herein directed: *Provided*, That no officer shall hold or continue in office by virtue of this provision, over twelve months from the said third day of July next.

Proviso.

Causes removed from the courts of Wisconsin, west of the Mississippi

SEC. 17. *And be it further enacted*, That all causes which shall have been or may be removed from the courts held by the present Territory of Wisconsin, in the counties west of the Mississippi river, by appeal

or otherwise, into the supreme court for the Territory of Wisconsin, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said Territory of Iowa, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the Territory of Wisconsin.

SEC. 18. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended by, and under the direction of, the Governor of said Territory of Iowa, in the purchase of a library, to be kept at the seat of government, for the accommodation of the governor, legislative assembly, judges, secretary, marshal, and attorney of said Territory, and such other persons, as the governor and legislative assembly shall direct.

SEC. 19. *And be it further enacted*, That from and after the day named in this act for the organization of the Territory of Iowa, the term of the members of the Council and House of Representatives of the Territory of Wisconsin shall be deemed to have expired, and an entirely new organization of the Council and House of Representatives of the Territory of Wisconsin, as constituted by this act, shall take place as follows: As soon as practicable, after the passage of this act, the governor of the Territory of Wisconsin shall apportion the thirteen members of the Council, and twenty-six members of the House of Representatives among the several counties or districts comprised within said Territory, according to their population, as nearly as may be, (Indians excepted.) The first election shall be held at such time as the governor shall appoint and direct, and shall be conducted, and returns thereof made in all respects according to the provisions of the laws of said Territory, and the governor shall declare the person having the greatest number of votes to be elected, and shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. The persons thus elected shall meet at Madison, the seat of government, on such day as he shall appoint, but thereafter, the apportioning of the representation in the several counties, to the Council and House of Representatives, according to population, the day of their elec-

pl, into the supreme court of Wisconsin, undetermined on 3d July next transferred to the supreme court of Iowa.

\$5,000 appropriated for the purchase of a library to be kept at the seat of government, &c.

Term of the members of the Council and House of Reps. of Wisconsin to expire on 3d July next; and a new organization to take place.

Apportionment of the members of the Council and House of Reps.

First election, when held, how conducted &c.

Time and place of meeting.

tion, and the day for the commencement the session of the legislative assembly shall be prescribed by law.

**Govr. of Iowa** **SEC. 20.** *And be it further enacted,* That temporarily, and until otherwise provided by law of the legislative assembly, the governor of the Territory of Iowa may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory, to the several districts, and also appoint the time for holding courts in the several counties in each district, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times of holding the courts, or any of them.

APPROVED June 12, 1838.

# LAWS OF IOWA TERRITORY.

## ABATEMENT.

AN ACT relative to pleas in abatement, and the abatement of suits by the death of parties.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That no plea in abatement, other than a plea to the jurisdiction of the court, or where the truth of such plea appears of record, shall be admitted or received, unless the party offering the same file an affidavit of the truth thereof. And where a plea in abatement shall upon argument be determined insufficient, the plaintiff shall receive full costs to the time of overruling such plea.

Pleas in abatement not to be received unless the party file an affidavit.

If plea be insufficient, plaintiff to have costs.

SEC. 2. When one or more of the parties of a company or association of individuals shall be sued, and the person or persons so sued shall plead in abatement that all the parties were not joined in the suit, such suit for that cause shall not abate, if the plaintiff or plaintiffs sue out a summons against the other partners named in the plea of abatement, and on the return of the summons may insert in the declaration the names of the other partners named in such plea, and proceed in all respects thereafter as though such other partners named in said plea had been included in the original suit. And if such partners named in said plea cannot be found, the plaintiff or plaintiffs, upon the return of the said summons, may suggest in his declaration the names of those not found, and proceed as in other cases where service is only made on part of the defendants. And no other plea in abatement for non-joinder shall be allowed in the case.

Companies or associations.

Case in which suit shall not abate.

Plaintiff how to proceed.

Further proceedings by plaintiff, if parties named in the plea cannot be found.

No other plea for non-joinder allowed.

Suit by a single woman not to abate on account of marriage.

Proviso.

SEC. 3. No action commenced by a single woman, who intermarries during the pendency thereof, shall abate on account of such marriage: *Provided*, the husband shall appear in court, and cause such marriage to be suggested on the record, and the suit may then proceed in the same manner as if it had been commenced after such marriage.

SEC. 4. When any action shall be pending in any of the courts of this Territory, and the plaintiff, before final judgment, shall die, the same shall not abate, if

Suit not to abate by death of plaintiff.

- Executor, &c. how to proceed.** it might originally have been prosecuted by his executor or administrator; and in such cases the executor or administrator may suggest such death on the record, and enter his, her, or their names on the suit, and prosecute the same. And if the defendant, while the action shall be pending in court, and before final judgment, shall die, the same shall not abate if it might originally have been prosecuted against the executor or administrator. And his executor or administrator may suggest such death on the record, and have a summons against the executor or administrator of such deceased defendant requiring them to appear and defend the action. If the said executor or administrator of such deceased defendant shall appear and make him, her, or themselves defendants, or if they shall not appear and make themselves defendants (such summons being served on either the executor or administrator ten days before the sitting of the court) the action shall in either case proceed to final judgment according to law. And when a suit shall be commenced against an administrator, and before final judgment his letters of administration shall be revoked, and letters of administration be granted to another person, the suit shall not abate, but the plaintiff shall suggest such fact upon record, and after summons shall be served upon the last administrator, the suit shall proceed to final judgment as in other cases under this act.
- Suit not to abate by death of defendant.** In a suit against an administrator, if his letters of administration be revoked, plaintiff how to proceed.
- Defendant's executor, &c. to be summoned.** In a suit against an administrator, if his letters of administration be revoked, plaintiff how to proceed.
- Whether such executor &c appear or not, action to proceed to final judgment.** In a suit against an administrator, if his letters of administration be revoked, plaintiff how to proceed.
- 3d, 4th, & 5th sections applicable to appeals &c.** **SEC. 5.** In any action pending before any court, if there be two or more plaintiffs or defendants, and one or more of them die before final judgment, if the cause of action survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not abate, but such death being suggested on the record, the action shall proceed.
- Abbreviations not to prejudice or abate any writ or process.** **SEC. 6.** The third, fourth, and fifth sections of this act shall be applicable to all appeals and writs of error.
- Repealing clause.** **SEC. 7.** No writ or process whatsoever shall abate or be in anywise prejudiced by the use of abbreviations commonly used in the English language, or by the use of figures for numbers as they have been heretofore and are now used.
- SEC. 8.** The act entitled "An act to prevent the abatement of actions in certain cases," approved October 12, 1829, is hereby repealed.
- APPROVED December 5, 1838.

## AMENDMENTS AND JEOFAILS.

AN ACT Concerning Amendments and Jeofails.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That by the misprision of a clerk or other officer of the court in any place wheresoever it be, no record or process shall be annulled or discontinued by mistaking in writing one syllable or one letter too much or too little, but as soon as the thing is perceived by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challenges the same because of such misprision; and the court, before whom such plea or record is made, or shall be depending, as well by way of adjournment as by appeal or otherwise, shall have power and authority to amend such record and process as aforesaid, as well after judgment in any suit, plea, record, or process given, as before judgment, as long as the same record and process is before them.

Misprision of clerk &c. not to annul process or record.

Record and process may be amended before or after judgment.

SEC. 2. The court in which any record, plea, process, declaration, count, warrant of attorney, writ, or pannel, is or may be, while the same remains before them, shall have power to examine such records, processes, counts, pleas, warrants of attorney, declarations, writs, pannels, and returns, by them and their clerks, and amend (in affirmance of judgments of such records and processes) all that which, to them in their discretion, seemeth to be misprision of the clerks therein, so that by such misprision of the clerks no judgment shall be reversed or annulled. And if any declaration, process, record, count, plea, warrant of attorney, writ, pannel, or return, be certified defective, otherwise than according to the writing which thereof remaineth in the offices, courts, or places, from whence they are certified, the parties, in affirmance of the judgments of such records and processes, shall have advantage to allege that the same writing is variant from the said certificates; and that being found and certified, the same variance shall be, by the said court, reformed and amended according to the first writing.

Power of court to examine record, plea, &c. and amend misprision of clerks.

Declaration, process &c. certified defective.

Variance to be reformed by the court.

SEC. 3. The courts before whom any misprision or default is or shall be found in any record or process

Court may correct misprision

of sheriff and others,

which, or hereafter, shall be depending before them, as well by way of appeal or error, as otherwise, or in the returns (the same made by sheriffs, coroners, or any other) by misprision of the clerk of any of the said courts, or by misprision of the sheriffs, deputy sheriffs, or coroners, or their clerks or other officers, clerks or other ministers whatsoever, shall have power to amend such defaults or misprisions according to their discretion, and by examination thereof by the said courts to be taken where they shall think needful; and all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

As well after judgment, as on matter of law pleaded.

Decree, record, or judgment not to be reversed for erasures or interlineations.

SEC. 4. For errors assigned, or to be assigned, in any record, process, warrant of attorney, writ, original or judicial, pannel, or return, for that in any places of the same there be erasures or interlineations, or that there be any addition, subtraction, or diminution of words, letters, or titles, or parts of letters, found in any such record, process, warrant of attorney, writ, pannel, or return, no judgment, record, or decree, shall be reversed or annulled.

New entries by clerks in no wise to impair pleas, &c.

SEC. 5. Record or process real, personal, or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall in no wise be impaired or amended by new entering of the clerks, either by record of things certified in no term subsequent to that in which such judgment or decree is or shall be given and enrolled.

After verdict, judgment not to be stayed by jeofail or other default or negligence.

SEC. 6. If any issue hath been or shall be tried by any court or jury, and be found for either party, in any court of record, then the court, by whom judgment ought to be given, shall proceed and give judgment in the same, any misleading, lack of color, insufficient pleading, or jeofail, or any miscontinuance or discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, counsellors, or attorneys to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force to all intents and purposes according to the said verdict or finding, without any undoing the same by appeal, writ of error, or false judgment, in like form as though no such default or negligence had ever been had or committed.

Such judgment to be valid.

SEC. 7. If a verdict of a court or jury shall hereafter be given for either party in any court of record, the judgment thereupon shall not be stayed or reversed by any default in form, or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit, or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of warrant of attorney, or by reason of any manner of default in process, upon or after any aid-prayer, or voucher; nor shall any such record or judgment after verdict, to be given hereafter, be reversed for any of the defects or causes aforesaid.

After verdict,  
judgment not  
to be reversed  
for lack of form  
&c.

SEC. 8. If any verdict be rendered by the court or jury for either party in any court of record, the judgment thereupon shall not be stayed or reversed by reason of variance, in form only, between the original writ or process and the declaration, petition, or demand, or for lack of any averment of any life or lives of any person, so as upon examination the said person be found to be in life, or by reason that any of the persons in whose favor the verdict is rendered, is an infant and appeared by attorney.

Or by reason  
of any variance  
in form, or lack  
of averment,

SEC. 9. If any judgment shall hereafter be given by a court or jury for either party in a court of record, judgment thereon shall not be stayed or reversed for any default in form, or lack of form, as because the name of the sheriff is not returned upon the original writ or process, or for default of entering pledges upon any petition or declaration, or for default of alleging the bringing into court any bond, bill, indenture, or other deed or writing, mentioned in the declaration or other pleading, for default of allegation of bringing into court letters testamentary or of administration, or by reason of the omission of the words "*with force and arms,*" or "*against the peace,*" or for or by reason of mistaking the christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month, or year, by the clerk, in any bill, petition, declaration, or pleading, when the right name, sum, day, month, or year, in any writ, record, or proceeding, or on the same record where the mistake is committed, is or are once correctly alleged, whereunto the party might have demurred and shown the same for cause, nor for the want of the averment or words, "*and this he is ready to verify,*" or "*and this he is ready to verify by the record,*" or for not alleging "*as appears by the*

Or for default  
in form or enter-  
ing pledges,  
for misnomer,  
error in the  
sum or time,  
or for want of  
certain allega-  
tions, aver-  
ments, and en-  
tries.

*record,*" or that there was no right venue, so as the cause was tried by a jury of the proper county or place where the action is laid; nor shall any judgment after any verdict be reversed for want of entering that the person against whom such judgment is given, "*be in mercy,*" or "*be taken,*" or by reason that the words "*be taken*" are entered for "*be in mercy,*" or that the words "*be in mercy*" for "*be taken,*" nor for that in the judgment "*it is granted,*" or "*it is adjudged,*" are entered for "*it is considered,*" nor for that the increase of costs after the verdict are not entered at the request of the party for whom judgment is given, nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but all such omission, variance, defects, and other matters of like nature, not being against the right of the matters of the suit, nor whereby the issue or the trial is altered, shall be amended by the courts where such judgments are or shall be given, or whereunto the record is or shall be removed by appeal or writ of error.

Demurrers.

Court to decide only the causes set forth by the party demurring.

Certain omissions and defects not causes of demurrer.

SEC. 10. Where any demurrer shall be joined and entered in any action or suit in any court of record, the judges shall proceed and give judgment, according as the very right of the matter in law shall appear unto them, without regarding any imperfection, omission, or defect, for want of form in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as cause of the same, notwithstanding such omission, cause, or defect, might heretofore have been taken as matter of substance, so as sufficient matter appears on the said pleadings on which the court may give judgment according to the very right of the cause; and and therefore no advantage or exception shall be taken of or for an immaterial traverse, or of or for default of entering pledge upon any petition or declaration, for the default of alleging the bringing into court any bond, bill, indenture, or writing, mentioned in the declaration or other pleadings, or of or for the default of alleging the bringing into court letters testamentary or of administration, or of or for the omission of the words "*with force and arms,*" and "*against the peace,*" or either of them, or of or for the want of the averment or words, "*and this he is ready to verify,*" or "*and this he is ready to*

verify by the record," or of or for not alleging "as appears by the record," but the court shall give judgment to the very right of the cause as aforesaid, without regarding any such omission, imperfection or defects, or other matter of like nature, except the same be specially and particularly set down and shown for cause of demurrer: And no judgment shall be reversed for any such imperfection, omission, or defect, or want of form, except such only as are before excepted. And after demurrer joined, the court, before whom the same shall be pending, may, from time to time, amend all and every such imperfection, omission, and defect, and want of form, as before mentioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer, as aforesaid.

Except specially set forth.

Other omissions and defects may be amended after demurrer joined.

SEC. 11. Every thing hereinbefore contained shall extend to all judgments which shall be entered upon confession, *nihil dicit*, or *non sum informatus*, in any court of record, and no such judgment shall be reversed, nor any judgment upon any writ of inquiry of damages executed thereon shall be stayed or reversed for or by reason of any imperfection, omission, defect, matter or thing, which would have been aided and cured by this act in case a verdict had been given in such action or suit, so there be an original writ duly issued according to law.

Judgments on confession &c. not to be reversed for defects which would have been cured by verdict.

SEC. 12. This act shall extend to all writs of *mandamus*, and informations of the nature of *quo warranto*, and proceedings thereon.

Act to embrace writs of *mandamus* and *quo warranto*.

SEC. 13. All writs of error, wherein there shall be any variance from the original record, or any other defect, may and shall be amended and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

Courts may amend writs of error.

SEC. 14. No part of this act shall extend to any indictment or presentment for any criminal matter or process upon the same; nor to any writ, action, or information upon any penal statute; nor to any outlaw or process thereupon in order thereunto.

This act not to extend to criminal matters or *qui tam* cases.

APPROVED, January 24, 1839.

## APPRENTICES, &amp;c.

AN ACT concerning Apprentices and Servants.

Persons ap-  
prenticed, with  
consent of pa-  
rent or guard-  
ian, to serve  
for the speci-  
fied term.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any person bound by indenture of his or her own free will, and with the consent of his or her father (or, he being dead, of the mother or guardian) to be expressed in such indenture, and signified by such parent or guardian sealing and signing the same indenture, and not otherwise, or by any two justices of the peace of the county as hereinafter directed, to serve as a clerk, apprentice, or servant, in any profession, trade, or employment, until the age of twenty-one years, or for any shorter time, although such clerk, apprentice, or servant, shall be within the age of twenty-one years at the making of any such indenture, shall be bounden to serve for the term in the indenture specified as fully as if the same clerk, apprentice, or servant, was of full age at the making of the same: *Provided, always,* that it shall be lawful for any male infant under the age of twenty-one years, or any female infant under the age of eighteen years, and who shall have no parent living, nor any guardian, by and with the approbation of two justices of the peace of the county in which he or she may reside, to bind himself or herself apprentice as aforesaid, until such infant or male shall arrive at the age of twenty-one years, and if a female to the age of eighteen years, which approbation shall be endorsed on the indenture, and every such indenture shall be valid and binding.

Infants, hav-  
ing no parent  
or guardian,  
may bind  
themselves  
with the ap-  
probation of  
justices.

If the father be  
incapacitated,  
the mother  
may give con-  
sent.

SEC. 2. That when the father of any child is not in legal capacity to give the consent aforesaid, the mother of such child shall have the same power to give such consent as if the father was dead.

Complaint to  
be made to a  
justice of the  
peace by mas-  
ter or mistress.

SEC. 3. That if any person who shall be bound as aforesaid, shall refuse to serve as an apprentice or servant, according to the terms of indenture made as aforesaid, then upon the complaint of the master or mistress, to whom such servant or apprentice shall be bound, to any justice of the peace of the county wherein the said refusal shall be made, said justice of the peace shall have power and authority by this act, by warrant under his hand, or otherwise, to send

for the person so refusing, and if the said person refuse to serve as an apprentice or servant, to commit him or her to the jail of the proper county, there to remain until he or she be contented and will serve as an apprentice or servant according to the intent and meaning of this act. And to the end that the time of the continuance of the service of such apprentice or servant may the more plainly and certainly appear, the age of every such infant so to be bound apprentice or servant shall be inserted in his or her indenture, and the age of such infant, so inserted in the said indenture (in relation to the continuance of his or her services) shall be taken to be *prima facie* evidence of his or her true age.

SEC. 4. That it shall and may be lawful for any two or more justices of the peace in any county, upon any complaint or application by any apprentice or servant touching or concerning any misuseage, refusal of any necessary provisions or clothing, cruelty, or other ill-treatment of or towards such apprentice or servant, by his or her master or mistress, by precept under their hands, to summon such master or mistress to appear before such justices, at a reasonable time and place to be named in such summons, and such justices shall and may examine into the matter of such complaint, and upon proof thereof made upon oath to their satisfaction (whether the master or mistress be present or not, if service of the summons be also upon oath proved) the said justices may discharge such apprentice or servant by warrant or certificate under their hands, for which warrant or certificate no fees shall be paid.

SEC. 5. That if any person shall think himself aggrieved by such determination, order, or warrant of such justices as aforesaid, (except an order of commitment) such person may appeal to the next district court, to be holden in and for the county where such determination or order shall be made, such person giving six days notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justices of the peace and the parties concerned, and entering into recognizance within three days after such notice before some justice of the peace of such county, with sufficient surety, conditioned to try such appeal at, and abide the order and judgment of, and pay such costs as shall be awarded by the judge of, said district court; which said court, upon due proof, upon oath, of such notice

Apprentice may be committed to jail.

Age to be inserted in the indenture.

Complaint to be made to two justices by apprentice.

Master or mistress to appear before them.

If the facts stated in the complaint be proved, apprentice may be discharged.

Party aggrieved may appeal to the district court.

Notice and  
recognizance.  
Court to hear  
and determine  
the matter, and  
award costs.

Its judgment to  
be final.  
If apprentice  
be delinquent,  
court to extend  
the term of ser-  
vice.

being given, and of entering into such recognizance as aforesaid, shall and are hereby directed to proceed in, and hear, and finally determine the causes and matters of all such appeals, and give and award such costs to any of the respective parties as they in their discretion shall judge proper and reasonable, not exceeding twelve dollars; the same to be levied by distress and sale of the goods and chattels of such person against whom such determination shall be made, and that their judgments therein shall be final and conclusive to all parties concerned; and if the servant or apprentice shall be found to be delinquent, he or she shall be sentenced by the said court to serve, at its discretion, so much longer time as the court shall deem proper.

APPROVED, January 18, 1839.

## ARBITRATORS AND REFEREES.

AN ACT concerning reference to Arbitration, by agreement before a Justice of the Peace; or to Referees, by agreement before the District Court.

Controversies  
may be submit-  
ted to arbitra-  
tion.

Parties to sign  
an agreement  
before a justice  
of the peace.  
Form of the  
agreement.

SEC. 1. All controversies which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators in the manner provided in this act.

SEC. 2. The parties shall appear in person, or by their lawful agents or attornies, before any justice of the peace, and shall there sign and acknowledge an agreement, in substance as follows: Know all men, that \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ have agreed to submit the demand, a statement whereof is hereto annexed, [and all other demands between them, as the case may be,] to the determination of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the award of whom, or the greater part of whom, being made and reported within one year from this day to the district court for the county of \_\_\_\_\_, the judgment thereon shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_. And the justice shall subjoin to the said agreement his certificate, in substance as follows:

Justices certi-  
ficate.

\_\_\_\_\_ ss \_\_\_\_\_, \_\_\_\_\_ Then the above named \_\_\_\_\_ and \_\_\_\_\_ personally appeared (or the above named

— personally, and the said —, by the said —, his attorney, appeared, as the case may be) and acknowledged the above instrument, by them signed, to be their free act, before me — — justice of the peace.

SEC. 3. If any specific demand is submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other; or the submission may be varied in this respect in any other manner, according to the agreement of the parties.

Submission of all demands between the parties, or of any specific demand.

SEC. 4. No such agreement to submit all demands shall include any demands but such as might be the subject of a personal action at law, or of a suit in equity.

What demands shall be included in the agreement to submit.

SEC. 5. Neither party shall have power to revoke a submission, made as herein provided, without the consent of the other; and if either of them shall neglect to appear before the arbitrators, after due notice, the arbitrators may nevertheless proceed to hear and determine the cause, upon the evidence produced by the other party, as provided in the agreement of submission.

Submission not to be revoked by either party, without consent of the other.

If either party neglect to appear, arbitrators may proceed.

SEC. 6. The time within which the award shall be made and reported, may be varied, according to the agreement of the parties; and no award made after that time shall have any legal effect or operation, unless made upon a recommitment of the award by the court to which it is reported.

When the award shall be reported.

SEC. 7. The award shall be delivered by one of the arbitrators to the court designated in the agreement, or shall be enclosed and sealed by them and transmitted to the court, and shall remain sealed until opened by the clerk.

Delivery or transmission of the award.

SEC. 8. The court to which the award is returned shall have cognizance thereof in like manner, and like proceedings shall be had thereon, as if it had been made by referees appointed by a rule of the same court.

Court to have cognizance thereof

SEC. 9. The award may be accepted or rejected by the court for any legal and sufficient reason, or it may be recommitted to the same arbitrators for a re-hearing by them; and when an award is accepted

Court may accept or reject award, or recommit to the arbitrators.

If confirmed, judgment to be rendered. and confirmed by the court, judgment shall be rendered thereon in like manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly.

Award may be returned at any session within the time limited. Parties to attend. SEC. 10. The award may be returned at any term or session of the court that shall be held within the time limited in the submission, and the parties shall attend at every such term or session without any express notice for that purpose, in like manner as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceed to act upon the award.

Majority of arbitrators may make award. SEC. 11. All the arbitrators shall meet and hear the parties, but an award by a majority of them shall be valid, unless the concurrence of the whole be expressly required in the submission.

Award for costs, including compensation to arbitrators. Court may reduce compensation. SEC. 12. If there is no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators if it shall appear to them unreasonable.

Appeal from district court not allowed, but the aggrieved party may bring writ of error. SEC. 13. No appeal shall be allowed from any order or judgment of the district court, upon any award made under this act, but any party aggrieved by such judgment may bring a writ of error, for any error in law or fact, as in other cases, and the supreme court shall thereupon render such judgment as the district court ought to have rendered.

Fees to justice of the peace, and in district court. SEC. 14. The fees of the justice of the peace for making out the agreement of submission, and certifying the acknowledgment thereof, shall be fifty cents; and the fees payable in the district court shall equal those for the like services with respect to an award made under a rule of that court.

Court, on application, may permit litigants to refer the cause to three persons. SEC. 15. *Be it further enacted.* That whenever it shall appear in any cause pending in any district court, by the oath of either party, or otherwise, that the trial of the same will require the examination of a long account on either side, such court may, on application, and by and with the consent of both parties, permit them to enter into an agreement before the court to refer such cause to three persons, naming them in said agreement, which shall be

certified by the clerk, and filed in his office: *Provided*, Provido, touching the third person. that if the parties cannot agree on the third person, the court may name him.

SEC. 16. The like course shall be had with the award of such referees, as herein directed for arbitrators awards, and both referees and arbitrators shall have power to adjourn, from time to time, on good cause shown, and any one of them may administer the necessary oaths to witnesses. Subpœnas for witnesses before referees shall issue from the district court as in other cases; before arbitrators from a justice of the peace. The costs of reference shall be taxed as other costs of suit, and, if not otherwise provided for, may be determined by the district court.

APPROVED, January 25, 1839.

## ATTACHMENTS.

AN ACT allowing and regulating writs of attachment.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That when any action founded on contract shall have been commenced, or shall be about to be commenced, in the district court in any county in this Territory, either by summons or *capias*, a writ of attachment shall be issued by the clerk of said court upon an affidavit being filed in his office containing the following requisites.

1st. It must state that something is due from the defendant to the plaintiff, and as nearly as practicable the exact amount.

2nd. It must state that (as deponent verily believes) the said debtor is a non-resident of the Territory, or that he is in some manner about to dispose of or remove his property with intent to defraud his creditors, or that he has absconded so that the ordinary process cannot be served upon him.

SEC. 2. The said writ may also be issued in actions *ex delicto* in cases where bail has been ordered and a *capias* issued thereon, provided an affidavit shall be filed in the manner above directed stating the truth of one of the three requisites specified under the second head of the preceding section.

SEC. 3. In such cases the amount in which the defendant is to be held to bail shall be substituted in every instance for the amount sworn to be due, as required in section first. In other respects the pro-

Awards of referees to take the course herein directed for those of arbitrators.

Adjournments. Oaths. Subpœnas. Costs of reference.

Writ of attachment to issue upon affidavit filed containing certain requisites.

Other cases in which the writ may issue.

Amount of bail to be substituted for the sum due.

ceedings shall be the same as in actions founded on contract.

Bond to be filed before writ shall issue in any case.

SEC. 4. Such writs of attachment however shall not issue in any case until there shall also be filed in the office of said clerk a bond, with sufficient sureties, to be by him approved, conditioned that the plaintiff shall pay any damages and costs which may be awarded to the defendant in any suit which said defendant may bring on said bond for damages sustained by a wrongful suing out of such writ of attachment.

To be quashed at costs of clerk if issued without affidavit and bond. Service of the writ.

SEC. 5. If any clerk shall issue a writ of attachment without such affidavit and bond filed as aforesaid, such writ shall be quashed at the costs of said clerk.

Property attached.

SEC. 6. The officer to whom the writ of attachment is directed shall, by virtue thereof, in presence of two citizens of the Territory possessing the qualifications of jurors, attach any of the lands, tenements, goods, chattels, rights, credits, moneys, or effects of the said debtor which may be found in his county, in whose hands soever the same may be, or so much thereof as shall be sufficient to pay the debt sworn to as aforesaid, together with the interest and costs of suit.

Inventory and appraisement.

SEC. 7. The said officer, together with the two citizens aforesaid, (who shall be under oath or affirmation to be by him administered) shall make a true inventory and appraisement of all the property so by him attached, which inventory and appraisement shall be signed by the officer and citizens aforesaid, and shall be annexed to and returned with said writ. The property attached shall be bound from the time of serving the writ as aforesaid.

Right of any claimant to be tested by a jury.

SEC. 8. Where the property attached shall be claimed by some person other than the defendant, the right of such claimant shall be tested by a jury, summoned by a justice of the peace in the same manner as is prescribed in like cases where property taken in execution is claimed by some stranger to the suit.

Officer may release or retain according to verdict. Verdict not conclusive against the parties.

SEC. 9. The officer may relinquish or retain said property according as the jury find for or against the title of said claimant thereto. Such verdict however shall not be conclusive against either of the parties interested, but the same proceedings may be instituted to obtain the property, or a compensation

therefor, as though the trial above provided for had not taken place.

SEC. 10. The property attached shall remain in the hands or care of the officer who served the writ to abide the judgment of the court, unless the defendant, or some other person, wishing to replevy the same, shall give bond in double the appraised value of said property, with two sufficient sureties, residents of said county, made payable to the plaintiff in the suit, and conditioned that said property or its appraised value shall be forthcoming to answer the judgment of the court in said suit. Property may be replevied.

SEC. 11. Such bond shall be filed in the office of the clerk who issued the said writ of attachment, and upon a breach of the condition thereof the plaintiff may bring his action of debt thereon for his own benefit. Bond to be filed.

SEC. 12. Should the property attached, or any portion thereof, be lost or destroyed by unavoidable accident, or without negligence, the condition of said bond shall not be deemed to have been broken. No infraction of the condition, if property lost by accident, &c.

SEC. 13. If the sheriff release the property without taking a sufficient bond, he shall be liable to the plaintiff (in case judgment be rendered against the defendant) for the appraised value of the property attached, or so much thereof as will satisfy said judgment. Sheriff liable, if he fail to take sufficient bond.

SEC. 14. Whenever goods are attached which, in the opinion of the officer having possession thereof, are in danger of immediate waste or decay, such officer shall summon three inhabitants of the county, having the qualifications of jurors, to examine the same. If these persons shall certify that in their opinion such goods are of a perishable nature, they shall specify a certain day beyond which they would not deem it prudent for such goods to remain in the custody of said officer. And thereupon immediately such officer shall post up notices at the court house and two other public places in his county, stating that, at the time so fixed and at a place to be named in said notices, he will sell said goods at public auction, which sale shall take place accordingly. When the property attached shall be of a perishable nature.

SEC. 15. The money arising from such sale shall remain in the hands of the sheriff, there to abide the event of the suit, for which money he shall be accountable. Authority to sell.

SEC. 16. Upon affidavit filed in the office of the clerk who issued the writ of attachment aforesaid, at Sheriff accountable for the proceeds.

Garnishee to be summoned.

any time before the return day of said writ, stating that, as deponent verily believes, a certain person (naming him) has property of the defendant in his possession, or that he is indebted to the said defendant, provided such indebtedness is not for daily labor, said clerk shall issue a summons to said garnishee reciting the above facts, and requiring him to appear at the time and place when and where said writ of attachment is to be returned, which summons shall be issued and returned in the ordinary manner.

May be examined on oath touching the sum due, &c.

SEC. 17. If the said garnishee appears as required, he may be examined under oath as to the amount due from him to the said defendant, or as to the property and credits of the defendant in his hands or possession, and from the day of the service of the summons mentioned in the preceding section such garnishee shall stand accountable to the plaintiff for the property or credits in his hands, or which shall come into his hands after the service of said writ, or the debts due from the said defendant as aforesaid.

Failing to appear, may be proceeded against by attachment. When declaration must be filed.

SEC. 18. If said garnishee do not appear in court in compliance with the summons aforesaid, he may be proceeded against by attachment as for a contempt.

SEC. 19. The writ of attachment authorized by this act being merely auxiliary to the original writ by which the suit was commenced, only one declaration shall be necessary in the whole proceedings, which must be filed within ten days after the writ is issued, and before the return day thereof.

If defendant do not appear, clerk to prepare advertisement.

SEC. 20. If the process by which the suit is commenced should not be served upon the defendant, and a voluntary appearance be not made by him before the end of the term at which the writ of attachment aforesaid was made returnable, immediately after such term the clerk who issued said writ shall make out an advertisement in which he shall state the names of the parties, the time when, from what court, and for what sum, said writ of attachment issued, and that unless the defendant appear and plead before the next term of the court, judgment will be entered and the property so attached will be sold to satisfy the same.

Plaintiff shall cause same to be published.

SEC. 21. Such advertisement shall be delivered to the plaintiff, or his attorney, on demand, who within thirty days thereafter shall cause the same to be published in some newspaper printed in the territory,

most convenient to the place where the court is held, and such publication shall be continued successively for four weeks at least.

SEC. 22. If the plaintiff fail to have such notice so published, his attachment shall be dismissed with costs. Falling to do so, attachment to be dismissed.

SEC. 23. Although the defendant may not have been served with the original process by which the suit was commenced, he may nevertheless appear and plead to the declaration at any time before judgment shall have passed against him by default, after which plea the proceedings to final judgment shall be the same as in ordinary cases. Defendant may plead at any time before judgment

SEC. 24. If after the publication prescribed in section twenty-one the defendant do not appear as therein required, the final judgment thereupon entered shall be conclusive so far as regards the property attached, or the amount obtained from garnishees in the same manner hereinafter provided. If defendant fail to appear after public notice, judgment to be conclusive

SEC. 25. After judgment in such cases, the property attached shall be advertised and sold in the same manner as is provided for property levied on by writ of *fiери facias*, or if such property shall have been replevied, as provided for in section eight, the plaintiff may forthwith bring his action on the bond, unless the condition thereof be fulfilled. Property to be sold; or, if replevied, plaintiff may sue on the bond.

SEC. 26. If the sum thus realized, together with that obtained from garnishees in the manner hereinafter provided, shall be insufficient to satisfy the demand proved, the plaintiff may at any time thereafter bring another suit thereon in the same manner as though the proceedings above authorized had not been instituted, in which said second suit the amount recovered as aforesaid shall be regarded merely as a credit to that extent in favor of the defendant. If plaintiff's demand be not satisfied, a second suit may be instituted.

SEC. 27. Where a summons shall have been served upon any garnishee in the manner prescribed in section sixteenth, if he shall appear and answer as required, the court (after judgment in said action shall have been rendered against defendant) may enter up judgment and award execution against said garnishee to the amount of the defendant's property or credits in his hands, together with debts due by him to said defendant, or so much thereof as shall be necessary to satisfy said judgment, but no prior lien of such garnishee on said property shall be thereby affected. Judgment against garnishee.

If garnishee fail to appear conditional judgment to be given, and *scire facias* to issue.

SEC. 28. Where such garnishee, having been **duly** summoned, shall fail to appear and answer in **the** manner provided in section seventeenth, the **court** shall direct a conditional judgment to be entered **up** against him to the full amount of the plaintiff's **law-**ful demand against the defendant, together with costs of suit. Thereupon a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to show cause why final judgment should not be entered against him. Upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear, or if he cannot be found in the county, or if, having appeared, he shall fail to show sufficient cause as aforesaid, the court shall confirm the judgment against him and award execution accordingly.

Set off.

SEC. 29. The defendant, against whom an attachment has been issued under the provisions of this act, may avail himself of any set off properly pleadable in other respects although not due when the suit was commenced, provided such set off be due at the time of trial. And any claim, due or not due, may be set off by the garnishee, whether it exist against the plaintiff or defendant in the suit.

Writ may issue and be served on Sunday.

SEC. 30. The writ of attachment as authorized by this act may be issued and served on Sunday, *provided*, in addition to the requisites prescribed in section one, the affidavit shall state that it would be unsafe to delay proceedings till Monday.

Remedies for parties aggrieved.

SEC. 31. Any person feeling himself aggrieved by the judgment of the court, made under the authority of any of the provisions of this act, shall be entitled to the same remedies as are allowed under similar circumstances in ordinary cases.

Attachment not to be quashed for insufficiency of affidavit, &c.

SEC. 32. No writ of attachment shall be quashed, nor the subsequent proceedings deemed invalid, on account of any defect in the writ which would not have been fatal in a summons, nor on account of any insufficiency in the affidavit or attachment bond, provided a sufficient affidavit or bond shall be filed within a reasonable time after objections have been taken to those originally filed.

May issue against separate or joint estates, or both.

SEC. 33. When two or more are jointly bound or indebted, the writ of attachment provided for by this act may be issued against the separate or joint estates, or both, of such joint debtors, or any of them, in the same manner as provided for in other cases.

SEC. 34. The act of the Legislative Council of the Territory of Michigan, approved April 12th, 1827, entitled "An act allowing and regulating writs of attachment" is hereby repealed: *Provided*, that nothing in this act contained shall be so construed as to affect any suit of attachment already commenced in this Territory. This act to take effect, and be in force, from and after the first day of June next.

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## FORMS.

The following, or other equivalent forms, shall be deemed sufficient in cases to which they apply:

### WRIT OF ATTACHMENT.

County } 88

To the sheriff of said county:—Whereas, A. B. has stated on affidavit that J. S. is justly indebted to him [*or the plaintiff whoever he may be*] in an amount not less than — dollars. [If the writ is issued in an action *ex delicto* it should state that] Whereas, in an action of (*here state the action*) brought by A. B. against J. S., an order has been duly obtained directing the said defendant to be held to bail in the sum of — dollars: and whereas, an affidavit has been filed according to law, stating that, as deponent verily believes, the said J. S. is a non-resident, &c. (*the same as above*) and also that, as deponent verily believes, said J. S. is a non-resident of this Territory [or that he has absconded, or is about to dispose of his property, &c. according to the requirements of section first.]

These are therefore, in the name of the United States, to command you to attach the lands, tenements, goods, chattels, rights, credits, moneys, and effects of the said J. S., wherever the same may be found within your county, or so much thereof as may be necessary to satisfy the amount above stated, together with interest and costs of suit, and safely to preserve said property to be dealt with according to law. And you are also required to make due return of your doings in the premises to the district

court of said county, on the first day of the next term thereof, and have you then and there this writ. Witness, &c.

## SUMMONS TO GARNISHEES.

County. } s s.

To the sheriff of said county:—Whereas A. B. has sued out a writ of attachment against J. S. and whereas the said A. B. (*or whosoever was the deponent*) has stated on affidavit that K. S. and M. N. have property or credits in their hands or care belonging to the said J. S. and that R. H. is indebted to the said J. S. These are therefore, in the name of the United States, to command you to summon the said K. S., M. N., and R. H., to appear before the district court of said county, on the first day of the next term thereof, to answer such questions in the premises as may be propounded to them by the said court, or under its direction. Hereof fail not, and have you then and there this writ, with a return of your doings thereon. Witness, &c.

APPROVED, January 7, 1839.

## BAIL.

## AN ACT concerning Bail.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That in all actions founded on contract a *capias* may be the first process, provided the affidavit of the plaintiff, or some credible person, containing the following particulars, be first filed with the clerk who is to issue the same. 1st, It must state (either absolutely, or as deponent has been credibly informed and verily believes) that there is an indebtedness of the defendant to the plaintiff, and that at least a certain amount (*numing it*) is due. 2d, Also that the defendant has removed his property (or a portion thereof) from the Territory, or concealed or otherwise disposed of the same with intent (*in either case*) to defraud his creditors. Or, that he has within this Territory, money, or other property or things in action, which cannot

In actions on contract *capias* to be the first process.

Particulars to be stated in plaintiff's affidavit.

be reached by writ of attachment, and that he is about to abscond, with intent to defraud his creditors, as deponent verily believes.

SEC. 2. A *capias* may also issue in actions of trespass for taking personal property, and in actions for trespass upon lands. Actions of trespass.

SEC. 3. But in such case an affidavit of the plaintiff, or some credible person, must have been filed as aforesaid, stating positively the fact of the trespass having been committed, and specifying, as nearly as practicable, the amount of damages thereby sustained by the plaintiff in action. Trespass and damages to be stated in the affidavit.

SEC. 4. In all other actions, *ex delicti*, a *capias* shall not issue without the order of a judge of the supreme court. Other actions. Order of judge of sup. court.

SEC. 5. The application for such order must be founded on an affidavit, stating the nature of the injury for which reparation is sought, and also the other circumstances which are relied upon for obtaining such order. Affidavit to state the nature of the injury, &c.

SEC. 6. Except for intentional injuries, no such order shall be made, nor then unless it shall be rendered probable that the plaintiff will be otherwise without adequate remedy. Order not to be made except for intentional injuries.

SEC. 7. The judge granting such order shall insert therein the amount in which the defendant shall be held to bail, and the clerk issuing the *capias* shall endorse thereon the same amount. Amount of bail to be inserted in the order, and endorsed on *capias*.

SEC. 8. In other cases he shall thus endorse upon the *capias* double the amount stated in the affidavit on which the writ is founded as aforesaid, but this in no case need be the same as the amount of debt or damages inserted in the body of the writ. In other cases what shall be endorsed.

SEC. 9. Where the name of the defendant shall be unknown to the plaintiff, none of the proceedings in the case shall be deemed defective on account thereof, provided said defendant be therein described with such accuracy as to leave no probable grounds for mistake. In what case proceedings shall not be deemed defective.

SEC. 10. A *capias* shall be served by arresting the defendant, and keeping him in custody until discharged according to law. How *capias* to be served.

SEC. 11. Every defendant so arrested shall be discharged upon executing to the sheriff of the county a bond, with sufficient security, in a penal sum equal to the amount numbered in the writ as aforesaid, conditioned that the said defendant will appear at the return day of said writ, and not depart without Defendant to be discharged on giving bond to sheriff.

permission of the court, which bond shall be filed with the clerk who issued the writ.

If def't be committed, the fact to be stated in the return. Def't may be discharged, and securities released, upon filing special bail.

SEC. 12. Whenever a defendant is committed to prison for want of bail, that fact shall be specially stated in the return of the writ.

SEC. 13. When the action shall have been commenced by *capias*, if the defendant appear agreeably to the conditions of the bail bond, he may at any time thereafter, on motion, be discharged from custody, and the securities in his bail bond released from liability, upon the filing of special bail in the manner hereinafter mentioned, either by the defendant, the sheriff, or the securities in the said bail bond.

What persons shall not be permitted to be special bail.

SEC. 14. No person shall be permitted to be special bail as aforesaid, unless he be a householder, and resident within this Territory, or unless he possesses real estate of sufficient value within the same, and no counsellor or attorney at law, sheriff, or other person concerned in the execution of process, shall be permitted to be special bail in any action.

Bail to be by recognizance.

SEC. 15. Such bail shall be by recognizance, in a penalty equal to the amount endorsed on the *capias* as aforesaid, conditioned that, if judgment in the action be rendered against said defendant, he shall pay the amount thereof, or surrender himself on the issuing of a writ of execution against his body.

In open court, or before a justice of the peace.

SEC. 16. Such recognizance may be entered into in open court in the usual manner, or it may be taken by any justice of the peace of the county, in which case it shall be made in writing, signed by the parties to be thereby charged, and filed with the clerk of the court in which the cause is pending.

Course to be pursued if bail be excepted to as insufficient.

SEC. 17. If such bail be excepted to as insufficient, before the third day of the term to which the writ was returnable, they shall either justify, or new bail shall be put in and justify, before the defendant shall be discharged, or the securities in his bail bond released from their liability. And in all cases where the recognizance of bail shall be entered into before a justice of the peace as aforesaid, such bail shall justify in the first instance.

In what the justification of bail shall consist.

SEC. 18. The justification of bail shall consist in stating on oath, or affirmation, that over and above all just demands against them, they are severally worth an amount equal to that stated in the recognizance as aforesaid.

SEC. 19. Where such justification shall not take place in open court, it shall be made by affidavit, which shall be filed with the clerk of the court aforesaid.

If not in open court, justification to be made by affidavit.

SEC. 20. If the defendant do not appear as aforesaid, the cause notwithstanding may progress in the ordinary manner, the sheriff and the security in the bail bond (if one shall have been taken) may be admitted to defend the action; and if judgment therein be rendered for the plaintiff, it shall be jointly against the defendant, the sheriff, and the security aforesaid, or merely against the defendant and sheriff, if no bail bond shall have been taken.

Def't failing to appear, sheriff and security may defend.

Judgment.

SEC. 21. In such case the sheriff, on motion, may have judgment for the same amount against the defendant, or (if a bail bond shall have been given) against the defendant and the security therein jointly. In the latter event, such security may also, on motion, have judgment for the like amount against the said defendant.

Remedy to sheriff

To security.

SEC. 22. The judgments aforesaid, in favor of the sheriff and security on the bail bond, being merely intended for their indemnification, execution shall only be issued thereon for the amount collected of such parties respectively on the antecedent judgment as aforesaid; which amount shall appear from the return of the officer in whose hands the execution on such antecedent judgment shall have been placed.

For what am't execution shall issue.

SEC. 23. Where judgment shall have been rendered jointly against the defendant, the sheriff, and the security, the officer, to whom the *feri fencias* thereon shall have been directed, shall levy in the first instance on the property of the defendant, if any such be found.

To be levied on defendant's property, if any.

SEC. 24. If such property be sufficient to satisfy the said judgment and costs, or if, before a levy upon the property of the said sheriff or security, the said defendant be arrested by, or surrendered to, said sheriff, both the sheriff and the security aforesaid shall be released from all liability by reason of said judgment.

Arrest or surrender of def't to discharge sheriff and security.

SEC. 25. The defendant in such case shall be considered as having been arrested by execution against his body (where indeed such was not the fact) and shall remain in the custody of the sheriff until the payment of the judgment, or until he be discharged by due course of law.

To remain in custody of sheriff.

**Bail may surrender principal, or def't may surrender himself.** SEC. 26. The bail of any defendant (whether bound by bail bond, or by recognizance as aforesaid) may surrender their principal, or such defendant may surrender himself in exoneration of his bail; which surrender must be to the sheriff, either in open court, or in vacation.

**Surrender to be certified, and bail discharged.** SEC. 27. Where such surrender shall be made to the sheriff in vacation, he shall thereupon certify the fact, in writing, that the defendant is in his custody. Upon such certificate being filed with the clerk of the court, he shall enter on the record of the court an order of course that the bail be discharged, and shall also, on demand, deliver up the bail bond, or the written recognizance (if such shall have been filed with him as aforesaid) to be cancelled.

**Surrender made before filing special bail.** SEC. 28. Where such surrender shall have been made previous to the time for filing special bail as aforesaid, the sheriff shall again release the defendant upon the same terms and conditions as after the original arrest; and if such surrender shall be made after the filing of special bail as aforesaid, the defendant may give such bail anew in the same manner and with like effect as hereinbefore provided.

**After.** SEC. 29. In all cases where a recognizance and affidavit of justification, as aforesaid, shall be filed with the clerk, he shall enter on the records of the court an order of course that the defendant be discharged from custody, and shall, on demand, furnish the agent or attorney of the defendant an exemplified copy thereof.

**Order for discharge of def't on filing recog. and affidavit.** SEC. 30. The sheriff, upon being served with said copy, shall forthwith discharge the said defendant.

**Copy of order to be served on sheriff. Bail may arrest defendant.** SEC. 31. Any one of the bail aforesaid, upon application to the said clerk of the court, may obtain a *capias* to him, directing and authorizing him to arrest the defendant wherever he may be found in this Territory, and bring him forthwith to be surrendered to the sheriff of the proper county.

**Copy of bail bond must accompany *capias*, to render it valid in other counties.** SEC. 32. Such *capias*, to be valid in any other county than that in which it shall have been issued, must be accompanied by a copy of the bail bond or recognizance aforesaid, certified by the clerk under the seal of the court.

**Defendant may be arrested by bail in any part of the Territory.** SEC. 33. Subject to the qualification contained in the last preceding section, said bail, by virtue of the *capias* aforesaid, shall in any county in this Territory possess all the powers of the sheriff of such county to arrest the defendant, and may use all needful

means to secure said defendant for a reasonable time until he can be surrendered to the sheriff of the proper county.

SEC. 34. All costs and expenses incident to the surrendering of the defendant, and giving new bail as aforesaid, shall be paid eventually by the defendant.

Costs on surrender and new bail.

SEC. 35. The plaintiff in the action shall not be entitled to bring any suit on the recognizance of bail until,

When plaintiff entitled to bring suit on recog. of bail.

1st, An execution against the property of the defendant shall have been issued to the sheriff of the proper county, and the same returned unsatisfied in whole or in part. And,

2d, An execution against the body of the defendant, at least fifteen days between the test and the return day thereof, shall have been issued to said sheriff, and by him returned that the defendant could not be found in his county.

SEC. 36. In such action against bail, they may plead that the plaintiff has not pursued the above directions, or that any collusive or fraudulent means were used to prevent the service of either of said writs; and if any such defense be established, it shall entitle the said bail to a verdict.

What the bail may plead in such action.

SEC. 37. Where the defendant in a suit shall die before the rendering of judgment against his bail, or where, being alive, he shall have been surrendered previous to such judgment, such bail shall be released from further liability upon paying the costs of the proceedings against them, if any shall have been had.

Death or surrender of def't before judgment against bail, to release them from liability.

SEC. 38. Where judgment shall be obtained against the special bail in an action, such bail may, on motion, have judgment for like amount against the said defendant, but execution thereon shall only issue for such amount as by the sheriff's return shall appear to have been collected from such bail on the original judgment.

Special bail may have judgment against defendant.

APPROVED, January 25, 1839.

## BANKING ASSOCIATIONS.

AN ACT to restrain unincorporated Banking Associations.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, That no per-*

To issue notes, or bank bills, authority of law required.	son, unauthorized by law, in expressed words, shall subscribe to, or become a member of, any association, institution, or company, for the purpose of issuing notes or bank bills, which incorporated banks may or do by virtue of their respective acts of incorporation. And if any person, unauthorized by law as aforesaid, shall hereafter subscribe to, or become a member as aforesaid, he shall forfeit and pay, for every such offence, the sum of one thousand dollars, to be recovered, by any person who shall sue for the
Penalty.	same, in an action of debt, one half thereof to his own use, and the other half to the use of the county in which such suit may be prosecuted.
Who may sue.	
Form of action.	

APPROVED, January 24, 1839.

## BILLS OF EXCHANGE.

### AN ACT concerning Bills of Exchange.

**SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any foreign bill of exchange, which may be drawn for any sum of money, and expressed that the value has been received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest, from the time such bill ought to have been paid, until paid, together with the costs and charges of protest.

**SEC. 2.** If any bill of exchange drawn upon any person, or body politic or corporate, out of this Territory, but within the United States or their Territories, for the payment of money, and expressed to be for value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest, from the time such bill ought to have been paid, until paid, and five per cent. damages in addition, together with cost and charges of protest.

APPROVED, January 24, 1839.

## BLACKS AND MULATTOES.

AN ACT to regulate Blacks and Mulattoes.

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 April next, no black or mulatto person shall be permitted to settle or reside in this Territory, unless he or she shall produce a fair certificate, from some court within the United States, of his or her actual freedom, which certificate shall be attested by the clerk of said court, and the seal thereof annexed thereto by the said court, and give bond, with good and sufficient security, to be approved of by the board of county commissioners of the proper county in which such person of color may reside, payable to the United States, in the penal sum of five hundred dollars, conditioned that such person shall not at any time become a charge to the said county in which the said bond shall be given, nor to any other county in this Territory, as also for such person's good behaviour, which bond shall be filed in the clerk's office of the county where the same may be taken. And a conviction of such negro or mulatto, of any crime or misdemeanor against the penal laws of this Territory, shall amount to a forfeiture of the condition of such bond.

SEC. 2. If any negro or mulatto, coming into this Territory as aforesaid, shall fail to comply with the provisions of the first section of this act, it shall be and is hereby made the duty of the county commissioners, in any county where such negro or mulatto may be found, to summon him, her, or them, to appear before some justice of the peace to show cause why he, she, or they shall not comply with the provisions of this act; which summons shall be issued by a justice of the peace, on the application of any county commissioner in this Territory, and shall be executed by the proper constable. And if such negro or mulatto shall still fail to give the bond and security required by the first section of this act, after being brought before such justice as aforesaid, it shall be the duty of the county commissioners of such county to hire out such negro or mulatto, for six months, for the best price in cash that can be had. The proceeds arising from such hiring shall be paid into the county treasury of the

Certificate of freedom required under seal.

Bond and security required, and by whom approved. In what sum. Condition.

Forfeiture.

On failure to comply with this act, proceedings to be instituted.

Failing to give bond, negro or mulatto to be hired out.

Proceeds of hiring, how disposed of.

proper county, for the use of such negro or mulatto, in such manner as shall be directed by the board of county commissioners aforesaid.

Penalty for committing to prison, without authority of law.

SEC. 3. Any sheriff, or jailer, who shall hereafter commit, or suffer to be committed, to prison, any negro or mulatto, without a lawful *mittimus*, or being otherwise authorized by law for that purpose, or under the provisions of this act, such person or persons, so offending, shall pay a fine of not less than fifty, nor more than one hundred dollars.

Penalty for hiring, &c., any negro before giving bond.

SEC. 4. Should any person or persons knowingly engage, or hire, or harbor, such negro or mulatto, hereafter coming, or being brought into this Territory, without such colored person first complying with the provisions of this act, such person or persons, so offending, shall pay a fine of not less than five, nor more than one hundred dollars, to be recovered by presentment or indictment.

How recovered.

Servants of travellers and visitors exempt.

SEC. 5. That the right of any person or persons to pass through this Territory with his, her, or their negroes or mulattoes, servant or servants, when emigrating or travelling to any other State, or Territory, or country, or on a visit, is hereby declared and secured.

To whom application shall be made by persons claiming negroes or mulattoes.

SEC. 6. That in case any person or persons, his or their agent or agents, claiming any black or mulatto person that now is or hereafter may be in this Territory, shall apply to any judge of the district court, or justice of the peace, and shall make satisfactory proof that such black or mulatto person or persons is or are the property of him or her who applies, or for whom application is made. the said judge or justice is hereby empowered and required, by his precept, to direct the sheriff or constable to arrest such black or mulatto person or persons, and deliver the same to the claimant or claimants, his or their agent or agents, for which service the sheriff or constable shall receive such compensation as they are entitled to receive in other cases for similar services.

Arrest by sheriff or constable.

Compensation to officer.

District attorneys to prosecute.

Compensation.

SEC. 7. That it shall be the duty of the district attorneys, of the respective counties, to prosecute all violations of this act, when thereunto required, and they shall be entitled to the same compensation in the manner provided for in other cases of offence against the laws of this Territory.

APPROVED, January 21, 1839.

## BOATS AND VESSELS.

AN ACT to provide for the collection of demands against Boats and Vessels.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That every boat or vessel used in navigating the waters of this Territory shall be liable, Cases in which boats or vessels shall be liable.

First, For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel, on account of work done or services rendered on board of such boat or vessel, or on account of labor done or materials furnished by mechanical tradesmen or others in and for building, repairing, fitting out, furnishing, or equipping such boat or vessel.

Second, For all sums due for wharfage or anchorage of such boat or vessel within this Territory.

Third, For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract touching the transportation of persons or property entered into by the master, owner, agent, or consignee of the boat or vessel on which such contract is to be performed. And,

Fourth, For all injuries done to persons or property by such boat or vessel.

SEC. 2. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent, or consignee of a boat or vessel, may, at his option, institute suit against such boat or vessel by name. Suit may be instituted against boat, &c., by name.

SEC. 3. Any plaintiff, wishing to institute suit against a boat or vessel, shall file his complaint against such boat or vessel, by name, with the clerk of the district court of the county in which such boat or vessel may lie. Complaint to be filed with clerk of district court.

SEC. 4. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued. It shall be verified by the affidavit of the plaintiff, or some credible person or persons for him, and shall stand in lieu of a declaration. And to set forth particulars of demand. Affidavit.

SEC. 5. Whenever any complaint, as aforesaid, shall be filed in the office of the clerk of the district court, it shall be his duty to issue a warrant, return- Warrant to issue.

- able as a summons, directing and authorizing the sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody, together with its tackle, apparel, and furniture, until discharged from such custody by due course of law.
- Proceedings in district court.** SEC. 6. Upon the return of any warrant issued by virtue of the preceding section, proceedings shall be had in the district court against the boat or vessel sued, in the same manner as if suit had been instituted against the person on whose account the demand accrued.
- The master, owner, &c., may plead to the action. Time and manner of pleading, &c.** SEC. 7. The master, owner, agent, or consignee of the boat or vessel may appear on behalf of such boat or vessel, and plead to the action.
- Bond being executed to the plaintiff, boat or vessel to be discharged.** SEC. 8. The district court may by rule prescribe the time and manner of pleading, of exhibiting or filing papers, or taking any needful step in any suit to be commenced under this act, when the time and manner are not prescribed by this law.
- Boat or vessel to be sold to satisfy judgment and costs.** SEC. 9. If the master, owner, agent, or consignee shall, before final judgment in any suit instituted by virtue of this act, give bond to the plaintiff with sufficient security to be approved of by the court, or the judge or clerk thereof in vacation, conditioned to satisfy the amount which shall be judged to be owing and due to the plaintiff in the determination of the suit, together with all costs accruing, such boat or vessel with the tackle, apparel, and furniture belonging thereto shall be discharged from further detention by the sheriff.
- If bond given, execution to issue against principal and security.** SEC. 10. If judgment shall be rendered against any boat or vessel in favor of the plaintiff, the court shall make an order directed to the sheriff commanding him to sell such boat or vessel, together with its tackle, apparel, and furniture, to satisfy the judgment and all costs that may have accrued in the cause, which order shall be executed and returned in the same manner as executions.
- Cases in which justices of the peace may** SEC. 11. If bond and security shall have been entered into according to the provisions of the ninth section of this act, and judgment shall have been rendered in favor of the plaintiff, execution shall be issued for the amount of judgment and costs in favor of the plaintiff against the principal and security in such bond.
- SEC. 12. Justices of the peace within their respective counties shall have cognizance of all cases arising under this act, wherein the demand claimed

shall not exceed the jurisdiction of a justice of the peace. have cognizance.

SEC. 13. In all their proceedings justices of the peace shall conform to the provisions of the law governing justices courts, and as near as may be to the provisions of this act as apply in the district court. Proceedings before justice of the peace.

SEC. 14. Each warrant issued by a justice of the peace under this act shall be returnable forthwith, and upon the return of such warrant it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner. On return of warrant, justice to hear and determine complaint.

SEC. 15. All warrants issued by this act shall be served and returned as writs of attachment are served and returned. Warrants to be served, &c., as writs of attachment.

SEC. 16. Whenever an order of sale shall be made for the sale of a boat or vessel, with its tackle, apparel, and furniture, the sheriff or constable shall have power to sell such part thereof, or such interest therein, as shall be necessary to satisfy the amount of the judgment rendered in favor of the plaintiff, and all the costs that may have accrued. Such part or interest in boat &c., to be sold as will satisfy judgment and costs.

SEC. 17. Upon good and sufficient cause shown by the master, owner, agent, or consignee of any boat or vessel sued under this act, the court, or justice of the peace, may grant continuance of the cause, but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable. On good cause shown by master, owner, &c., court may grant continuance. Not to operate as a discharge.

SEC. 18. No continuance of a cause under this act shall be granted to the plaintiff. No continuance to be granted to plaintiff.

SEC. 19. Sheriffs, constables, and other officers, shall receive the same fees and compensation for their services under this act as are allowed them in cases of suits of attachment. Officers' fees.

SEC. 20. In all cases arising under this act, if judgment shall have been rendered in favor of the plaintiff, the master, owner, agent, or consignee of the boat or vessel, or other person interested, may appeal from the judgment by giving bond and security in double the amount sued for, or sue out a writ of error as if they or either of them had been sued. Master, owner, &c., may appeal, or sue out writ of error.

SEC. 21. All actions against a boat or vessel, under the provisions of this act, shall be commenced and sued within one year after the cause of such action shall have accrued. To take effect and be in force from and after its passage. Limitation of actions.

APPROVED, December 20, 1838.

## BONDS, &amp;c.

AN ACT in relation to Bonds and other securities.

- SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any instrument under seal, fully and freely executed and delivered, shall be deemed valid and binding, according to the fair intent and meaning thereof, in all cases not otherwise declared by express statute, unless the execution or delivery of such instrument shall have been obtained by fraud or for an unlawful purpose.
- What instruments shall be deemed valid and binding.
- SEC. 2.** Where a statute requires security to be given for any purpose whatever, such security, unless otherwise directed, may be by bond, with sufficient sureties, made payable to the clerk of the district court of the county where the same shall be executed, for the use of the persons intended to be thereby secured, and shall be filed in the office of said clerk.
- Security may be by bond, unless otherwise directed.
- SEC. 3.** Where not otherwise provided, any person, for whose benefit or security a bond or other instrument shall have been executed, may, upon a breach of any of the covenants or conditions thereof, maintain an action at law to recover the damages he may have sustained in the premises.
- Action for damages on breach of covenant, &c.
- SEC. 4.** If such instrument shall have been intended for the security of the public in its corporate or political capacity, the county commissioners of the county where the same shall have been filed as aforesaid may maintain said action for the use of their county.
- County commissioner may maintain action.
- SEC. 5.** In any of the above mentioned cases, the action may be prosecuted in the name of the person to whom the said bond shall have been made payable, and for the use of the actual party in interest.
- In what name action may be prosecuted.
- SEC. 6.** The said clerk of the district court shall furnish a certified copy of said bond to any person applying therefor, upon his paying for such copy at the rate of twenty cents for every folio of one hundred words therein contained.
- Clerk to furnish certified copy of bond.
- SEC. 7.** Although cases may present themselves wherein some particulars herein contained may be contravened by statutory enactments, still in other respects, even under such circumstances, the above directions may as far as practicable be pursued.
- Provisions of this act to be pursued as far as practicable.
- SEC. 8.** Nothing herein contained shall be construed to render invalid any instrument which would otherwise have been of binding efficacy, nor to prohibit
- Rights saved.

any course of proceeding which would have been allowed had this act not taken effect.

APPROVED, January 25, 1839.

## BURLINGTON.

AN ACT to improve the Police of the City of Burlington.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the regularly elected or appointed constables, residing within the corporate limits of the city of Burlington, shall at all times be vigilant in maintaining or preserving the peace, order, and quiet of said city, and shall aid and assist the mayor of said city to maintain and preserve the same, subject to punishment for omission of duty as for a misdemeanor.

Constables to be always vigilant.

Shall aid the mayor in maintaining peace. Omission of duty, a misdemeanor.

SEC. 2. The mayor and aldermen shall allow such constables, for their services, such compensation out of the funds of said city treasury as shall be suitable and proper.

Compensation for services to be suitable and proper.

SEC. 3. It shall be lawful for the mayor and aldermen, at any of their sessions, to direct the recorder of said city to make out a list of all the tax due and unpaid in any particular year, and add and transfer the same to the tax roll for the succeeding year; and it is hereby made the duty of the marshal to collect the same in the manner as other taxes are now collected, agreeably to the act entitled "An act to incorporate the city of Burlington," approved January nineteenth, one thousand eight hundred and thirty-eight.

Unpaid taxes,

To be added and transferred from one year to another. Duty of city marshal.

APPROVED, January 24, 1839.

## CONSTABLES.

AN ACT for the Election of Constables, and defining their duties.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be elected, at each annual election in each organized county in this Territory, a number of constables equal to the number of magistrates appointed in each county in this Territory, who shall continue in office one year and until their successors are

Election of constables to be annual. Their number in each county.

- Proviso.** elected and duly qualified: *Provided*, that if a vacancy shall happen, the county commissioners may fill such vacancy by appointment.
- Oath to be taken by constable.** SEC. 2. Every constable, before he enters upon the discharge of the duties of his said office, shall take the following oath or affirmation: "I do solemnly swear (or affirm as the case may be) that I will faithfully discharge the duties of constable within the county of \_\_\_\_\_ according to the best of my abilities, and that I will well and truly pay over to the proper person all monies which may come into my hands as such constable," which oath or affirmation shall be taken before any clerk or judge of the district court, or before a justice of the peace of said county, and the person administering such oath shall make out a certificate thereof and cause it to be filed in the office of the clerk of the board of county commissioners of the proper county.
- Before whom taken.**
- Certificate of oath to be filed.**
- Constable's bond.** SEC. 3. It shall be the duty of every constable previous to taking the oath aforesaid to execute to the acceptance of the board of county commissioners a bond with good and sufficient freehold security payable to the county treasurer, and his successors in office in the penal sum of five hundred dollars conditioned for the faithful performance and discharge of the duties of his office as constable, and for the safe keeping and paying over, according to law, to the proper person all sums of money that may come into his hands by virtue of his said office, which bond shall be filed by the clerk of the board of county commissioners as aforesaid, for the benefit of each and every person, or persons, bodies politic or corporate, who may sustain injury by reason of the official conduct of such constable, which bond shall not be void on the first vacancy, but may be put in suit from time to time, at the instance, and for the benefit of any party injured, as often as the condition thereof may be broken.
- Bond to be filed.**
- For whose benefit.**
- May be put in suit from time to time.**
- Constable failing to give bond and qualify within twenty days, office to be vacated.** SEC. 4. If any constable shall not within twenty days after receiving his certificate of election take the oath, and give bond as aforesaid, the said constable shall not be permitted after that time to be qualified or to take his said office, but the said office shall be considered as vacant, and shall be filled by the board of county commissioners as in this act provided.
- How such vacancy to be filled.**
- Duties of constables.** SEC. 5. It shall be the duty of every constable to apprehend and bring to justice all felons and dis-

turbors of the peace; to suppress all riots and unlawful assemblies and in other respects to keep the peace in the county wherein he shall have been elected, and also to serve and execute all warrants, writs, precepts and other process to him lawfully directed and in all respects to do and perform all things appertaining to the office of constable within this Territory.

APPROVED, January 24th, 1839.

## CONSTRUCTION OF STATUTES.

AN ACT concerning the Construction of Statutes.

- SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all laws shall be promulgated by being printed and published under the authority of the governor and legislative assembly in such manner as they shall direct. Laws to be printed and published by authority.
- SEC. 2.** All acts of incorporation shall be deemed public acts and as such may be declared on, and given in evidence, without specially pleading the same. Acts of incorporation. Pleadings and evidence.
- SEC. 3.** Every statute shall take effect at the same time throughout the Territory. Statutes to take effect at the same time, throughout the Territory.
- SEC. 4.** Every statute, which does not expressly prescribe the time when it shall go into operation, shall take effect on the thirtieth day next after the day on which it shall have been approved by the governor, or otherwise passed and approved conformably to the provisions of the constitution. And in 30 days after their approval, unless otherwise prescribed.
- SEC. 5.** In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, or repugnant to the context of the same statute; that is to say—
- First.* All words and phrases shall be construed and understood according to the connection and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning. Rules for the construction of statutes. Intent of the Legislature. Approved usage. Technical phrases. Construction.
- Second.* Every word importing the singular number only, may extend and be applied to several persons or things as well as to one person or thing, and every Number. Persons.

Things.	word importing the plural number only, may extend and be applied to one person or thing, as well as to several persons or things, and every word importing the masculine gender only, may extend and be applied to females as well as males.
Gender.	
Joint authority.	<i>Third.</i> All words purporting to give a joint authority to three or more public officers, or other persons, shall be construed as giving such authority to a majority of such officers, or other persons unless it shall be otherwise expressly declared in the law giving the authority.
Grantor, how construed.	<i>Fourth.</i> The word "grantor" may be construed as including every person from or by whom, any freehold estate or interest passes in or by any deed, and the word grantee as including every person to whom any such estate, or interest, passes in like manner.
Grantee.	
Highway, how construed.	<i>Fifth.</i> The word "highway" may be construed to include county bridges, and it shall be equivalent to the words "county way," "county road," "common road" and "territorial road."
Inhabitant, who is meant.	<i>Sixth.</i> The word "inhabitant" may be construed to mean a resident in any city or town.
Insane person, who may be included.	<i>Seventh.</i> The words "insane person" shall be construed to include every idiot, non-compos, lunatic and distracted person.
Issue, who it includes.	<i>Eighth.</i> The word "issue," as applied to the descent of estates shall be construed to include all the lawful lineal descendants of the ancestor.
Lands, what is included.	<i>Ninth.</i> The words "land" or "lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto, and interest therein.
Month and year, construction of.	<i>Tenth.</i> The word "month" shall be construed to mean a calender month, unless otherwise expressed and the word "year" alone shall be equivalent to the expression "year of our Lord."
Oath and affirmation.	<i>Eleventh.</i> The word "oath" shall be construed to include affirmations in all cases, where, by law, an affirmation may be substituted for an oath; and in like cases the word "sworn" shall be construed to include the word "affirm."
Sworn and affirm.	
Corporations and individuals.	<i>Twelfth.</i> The word "person" may extend and be applied to bodies politic and corporate as well as to individuals.
Seal of court or office.	<i>Thirteenth.</i> In all cases, in which the seal of any court, or public office, shall be required by law to be affixed to any paper issuing from such court, or office, the word "seal" shall be construed to include an
Impression of seal.	

impression of such official seal made upon the paper alone, as well as an impression made by means of a wafer or of wax affixed thereto.

*Fourteenth.* The word "State" when applied to the different parts of the United States shall be construed to extend to, and include the District of Columbia, and the several Territories so called; and the words "United States" shall be construed to include the said District and Territories.

State, United States, District of Columbia, and territories.

*Fifteenth.* The word "town" may be construed to include all cities and districts unless such construction would be repugnant to the provisions of any act specially relating to such cities or districts.

Towns, cities and districts. Exception.

*Sixteenth.* The term "will" shall be construed to include codicils as well as wills.

Will to include codicil.

*Seventeenth.* The words "written" and "in writing" may be construed to include printing, engraving, lithography and any other mode of representing words and letters.

Writing to include printing, engraving, &c.

*Provided, however,* That in all cases where the written signature of any person is required by law it shall be the proper hand writing of such person, or, in case he is unable to write, his proper mark.

Proviso, with regard to signatures.

APPROVED, January 19, 1839.

## COSTS AND FEES.

AN ACT to provide for the Compensation of Judges of Probate.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the several judges of probate in this Territory, for all services required to be performed by them by the existing laws of this Territory, and not provided for in the "act concerning costs and fees," be allowed the same fees that are allowed to the clerks of the district courts for similar services.

Same fees for certain services as to clerks of district court in like cases.

APPROVED, January 21, 1839.

## COSTS AND FEES.

AN ACT concerning Costs and Fees.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That in all civil cases at law, unless otherwise provided, the party

Costs to follow judgment in all civil cases not

otherwise provided for. Discretion of judges and justices herein. Costs in prosecutions, where judgment is against defendant.

in whose favor judgment is given shall recover costs, and the supreme court, district, and justices courts, respectively, may give or refuse costs at their discretion upon all motions

SEC. 2. In all prosecutions in the name of the United States, or of an individual, for the breach of any law of this Territory, where judgment is rendered against the defendant, such defendant shall be liable for the costs.

SEC. 3. From and after the passage of this act, the fees and compensation to the several officers and other persons hereinafter mentioned shall be as follows, and no more, viz:

In the Supreme Court, and in the District Courts of the Territory, the clerks fees in cases to which the same apply, respectively.

Clerk's fees in supreme and district courts, in civil cases,

For issuing and sealing every writ, not comprising more than three hundred words, - -	62½
For each additional folio of 100 words, - -	12½
Docketing a case first time, - - - -	18½
Docketing a case thereafter, - - - -	12½
Entering suit without process, - - - -	31½
Filing every paper in any one suit, each - -	6½
Entering an appearance, to be charged but once against each party to a suit, - -	12½
Issuing bail peace when required, - - - -	25
Entering special bail, - - - - - - - -	25
Swearing and empannelling a jury, - - - -	50
All entries relative to the trial not herein specially provided for, - - - - - - - -	25
Administering an oath or affirmation to each witness on trial, - - - - - - - - - -	6½
Recording a verdict, - - - - - - - - - -	18½
Entering every judgment, - - - - - - - -	50
Recording a special verdict, for every sheet of one hundred words, - - - - - - - -	12½
Attending on striking a special jury, and delivering copies, - - - - - - - - - -	50
Entering satisfaction on the record, - - - -	12½
Entering issue joined, - - - - - - - - - -	12½
Issuing writ of execution, - - - - - - - -	25
Taxing costs, - - - - - - - - - - - - - -	37½
Entering <i>exoneretur</i> , - - - - - - - - - -	12½
Entering surrender, - - - - - - - - - - - -	12½
Copy of a rule of reference, - - - - - - - -	31½
Signing the final record in each case, - - - -	12½

A commission to take depositions, - - - §	37½
All the motions in one suit, - - -	18½
All the rules in any one suit, - - -	18½
Each continuance, - - - - -	6½
The <i>venire facias</i> , - - - - -	37½
Entering every motion distinct from an action, not to include the ordinary motions in a suit,	12½
Making a complete record in each cause, for every one hundred words, - - -	18½
Copy of a record when required, for every one hundred words, - - - - -	12½
Every certificate, - - - - -	25
The seal when required, - - - - -	12½
Every subpoena for one or more witnesses, -	18½
A search of the records, if a copy be not required. (suits and officers of the court excepted) - - - - -	12½
Filing the record upon an appeal, writ of error, <i>superedeas</i> , <i>certiorari</i> , or <i>habeas corpus</i> ,	18½
Taking security upon writ of error, <i>super-</i> <i>edeas</i> , or appeal, - - - - -	18½
Entering a writ of <i>habeas corpus</i> , writ of error, or <i>certiorari</i> , and for the return thereof, -	50
For assessment of damages on any reference made to him, - - - - -	37½
A subpoena in chancery, - - - - -	50
Filing each bill, answer, replication, or other pleading in chancery, - - - - -	6½
An order to advertise, - - - - -	37½
Copy of a paper not herein otherwise pro- vided for, for every one hundred words, -	12½
For services in naturalization cases, - - -	12½
Administering oath, - - - - -	6½
Filing papers, each, - - - - -	6½
Certificate of application, - - - - -	50
Certificate of naturalization, - - - - -	75
Taking a recognizance, - - - - -	25
Entering transcript of a justice's judgment,	25
Entering an appeal from justice or justices,	37½
Administering each oath, other than on the trial of a cause, - - - - -	12½
Certificate for jurors or constables pay, to be paid by the county, each - - - -	12½
Filing all election returns at each general election, to be paid by the county, - - -	1 00
Calling recognizance and entering forfeiture,	18½
Respite or discharging forfeited recogni- zance and motion thereto, - - - -	12½

Entering discharge by proclamation, - - -	\$ 12½
Filing petition and order thereon, - - -	25
Issuing and recording marriage licence, - - -	1 50

*Fees in Criminal Cases.*

In criminal cases.	Issuing process, - - - - -	75
	Entering defendant's appearance, - - -	12½
	Entering a plea, - - - - -	12½
	Discharge of bail, - - - - -	25
	For entering each suit, civil and criminal, on the court calendar, - - - - -	12½

For other services the same fees as in civil cases: *Provided*, that nothing herein contained shall entitle the clerks of the several district courts to exact any fee from grand jurors, petit jurors, or witnesses, upon the issuing of any certificate entitling them to their fees as such.

*Sheriff's Fees.*

Sheriff's fees.	For the service of any writ and the return thereof, (subpœnas excepted), for one defendant, - - - - -	1 00
	Each additional defendant, - - - - -	50
	Every commitment to prison, - - - - -	50
	Discharging a person from prison, - - - - -	25
	Attending with a person before a judge or court when required, - - - - -	25
	Attending on a witness brought before a court, on a writ of <i>habeas corpus</i> , or <i>satisfaciendum</i> , - - - - -	50
	Serving a writ of possession, - - - - -	1 00
	Serving a writ with the aid of the <i>posse comitatus</i> , - - - - -	2 50
	The copy of any writ or process necessary to complete a record, for every one hundred words, - - - - -	12½
	Serving and returning a subpœna for each person named therein and actually summoned, - - - - -	18½
	Summoning a grand jury in the district court, to be paid from the county treasury, - - -	10 00
	Summoning a petit jury in the district court, to be paid from the county treasury, - - -	5 00
	Making out a list of a struck or special jury, and delivering the same, - - - - -	25
	Summoning and returning a special jury, to be paid by the party putting off or losing the cause, and travelling fees, - - - - -	1 00

Travelling fees upon all writs, precepts, and subpœnas, not herein otherwise provided for (and not to extend to jurors) to be computed from the place of service to the place of return, per mile, - - - - -	\$ 8
Selling of land upon execution, and mileage,	1 50
Collecting and paying into the territorial or county treasury any fine or forfeiture, the same per centage as allowed in civil cases. But the per centage on all executions shall be taken only for the sum received and paid over.	
Making and executing a deed for land sold or set off on execution, to be paid by the purchaser or creditor, - - - - -	1 00
Serving any person with an order of court, and mileage, and making return, - - -	12½
Bringing up a person on a writ of <i>habeas corpus</i> in civil cases, and mileage, - - -	25
Summoning a jury in cases of forcible entry and detainer, - - - - -	2 00
Serving a writ of restitution with the power of the county, - - - - -	2 00
Serving a writ without the power of the county, - - - - -	1 50
Serving an execution for partition of real estate, or assigning dower, and mileage, -	2 00
Each appraiser of real and personal estate per diem, and mileage, - - - - -	1 00
Each bail bond, replevin bond, or attachment bond, - - - - -	50
Collecting and paying over all sums, without sale, under two hundred dollars, four per cent; with sale, seven per cent.	
Collecting and paying over all sums above two hundred dollars, with sale, five per cent; without sale, three per cent.	
On each action, for opening the court, to be charged once every term, and to be paid by the plaintiff, and taxed against the defendant if plaintiff recover, - - - - -	12½
The appearance of the plaintiff or defendant, to be paid by the party appearing, and taxed in favor of the party recovering, -	12½
Returning a writ "not served," for every defendant, - - - - -	6½
Actual travelling in such case, for every mile, going and returning, - - - - -	6½

And for journeying out of his county into attached counties eight cents per mile.	
All copies of summons when required, for every one hundred words, - - - -	\$ 12½
Attending on the district court, to be paid out of the territorial treasury, per day, -	1 50
Attendance of as many of his deputies on the district court as may be required by the court, to be paid out of the county treasury, per day, - - - -	1 50
Taking bond for the prison limits, and procuring the approval of the justices thereto,	75
Drawing a petition for a poor debtor to two justices, and giving notice thereof to the plaintiff, with mileage, - - - -	25
Serving notice of the order of the justices to the plaintiff, with mileage, - - - -	25
Bringing prisoner before the justices to take the benefit of the poor debtors' law, -	25
Receiving a prisoner on surrender by the bail,	25
Taking a new bail and giving a bail piece, -	50
For keeping and providing for a criminal in jail, or any other person committed for a criminal offence, to be paid out of the treasury of the county where the offence may be committed, per day, - - - -	50
The sheriff shall receive for collecting county revenue seven per cent. And in no case shall travelling fees be charged by any officer, except for the number of miles actually travelled, going and returning only, as is provided by this act.	

#### *Coroner's Fees.*

Coroner's fees. For the view of each body, and for taking and returning the inquisition, - - - -	3 00
Every subpoena and warrant, - - - -	25
Travelling, each mile, to and from the place of view, - - - -	6½
Issuing <i>venire</i> , - - - -	25
Swearing each witness, not to exceed in any one case 37½ cents, - - - -	6½
Taking recognizance, - - - -	25

The fees of the coroner and constable for taking inquest shall be paid out of the county treasury, and in other cases the coroner shall receive the same fees as are allowed to the sheriffs in similar cases.

*Fees of Masters in Chancery.*

For attending and hearing every argument on any subject referred to him, and reporting thereon, - - - - -	\$3 00	Fees of masters in chancery.
Reporting when the proceedings are <i>ex parte</i> ,	37½	
Drawing every report, for every one hundred words, - - - - -	18¼	
Copies of any papers, for every 100 words, -	12½	
Swearing a complainant to a bill, defendant to an answer, taking an affidavit, or swearing a witness, - - - - -	12½	
Every advertisement for a public sale, - -	50	
Attending at the time and place of sale of property, and adjourning it at the request of parties for good cause, or by order of the court, - - - - -	1 50	
Every deed of real estate sold by him under a decree or order, when prepared by him at the request of the parties, - - - -	5 00	
Signing and acknowledging a deed when prepared by any other person, - - - -	75	
And to the clerk of the supreme court, and to the clerk of the district court, respectively, the fees herein allowed to the master in chancery, when the services are rendered by such clerks.		

*Fees of Commissioners of Bail.*

For taking bail, - - - - -	50	Fees of commissioners of bail.
Issuing bail piece, - - - - -	25	
Administering an oath or affirmation, - -	6¼	
Taking a surrender, - - - - -	25	
A commitment, - - - - -	50	

*Fees of District Attorneys.*

For every indictment, - - - - -	2 00	District attorney's fees.
Arguing the matter when the defendant shall submit, - - - - -	2 00	
Every trial, arguing a demurrer, or in opposition in arrest of judgment, or for a new trial, -	2 00	
Which fees shall be paid out of the county treasury.		

*Fees of Justices of the Peace.  
(In Civil Cases.)*

For docketing a suit, each, - - - - -	12½	Fees of justices of the peace, in civil cases.
For a summons or a warrant, - - - - -	25	
Precept to summon a jury, - - - - -	37½	

Every subpoena, in which any number of witnesses may be inserted, - - - - §	12½
Swearing a jury, - - - - -	25
Hearing a matter concerning which a jury is summoned, - - - - -	50
Receiving and entering their verdict, - - -	12½
Endorsing any warrant issued from another county, - - - - -	12½
For taking and certifying the acknowledgment of any instrument which is required to be acknowledged before a justice, -	25
Administering an oath out of court, - - -	12½
Administering an oath and certifying the same, - - - - -	25
For swearing each witness, - - - - -	6¼
Entering judgment on trial, - - - - -	25
Every other judgment, - - - - -	12½
Granting and issuing execution, - - - - -	37½
Every rule of reference, - - - - -	37½
Every continuance or adjournment at the request of a party, - - - - -	12½
Rule to take depositions where the witness is out of the territory, - - - - -	50
Taking bail, recognizance or security, - - -	37½
Copy of the proceedings in any case when demanded for an appeal or any other purpose, per folio of one hundred words, -	12½
Taking an examination, deposition, or confession, per folio 100 words, - - - - -	25
Granting certificate thereof, - - - - -	12½
Entering discontinuance or satisfaction, -	12½
Entering amicable suit, - - - - -	25
Transfer of judgment, - - - - -	25
Opening judgment after default, - - - - -	12½
Marrying, and making return thereof, - -	2 00
For filing every paper required to be filed with him, each, - - - - -	6¼
For taxing a bill of costs, - - - - -	12½
Issuing writ of attachment, - - - - -	50
For holding inquisition in case of forcible entry and detainer, in addition to other fees, per day, - - - - -	2 00
Writ of restitution, including execution for costs, - - - - -	37½
Recording the proceedings in such case, per folio of one hundred words, - - - - -	12½

*Fees of Justices of the Peace.*  
(*In Criminal Cases.*)

For a warrant, - - - - -	\$ 25	In criminal cases.
Taking a recognizance, - - - - -	25	
Commitment to jail, - - - - -	25	
A search warrant, - - - - -	37½	
Entering judgment for fine or imprisonment,	25	
Discharging a prisoner, - - - - -	12½	
Warrant for punishment, - - - - -	18½	
Order of discharge to the jailer, - - - - -	25	
And in all cases mileage (circular) - - - - -	6½	
For other services the same fees as in civil cases.		

*Constables' Fees.*  
(*In Civil and Criminal Cases.*)

For serving a warrant or other writ not herein provided for, on each person named therein,	37½	Constable's fees, in civil and criminal cases.
For a copy of every summons delivered on request, or left at the place of abode of defendant, - - - - -	12½	
Travelling for the service of process, computing from the place of service to the place of return, per mile, - - - - -	8	
And when two or more persons are named in such process, and the travelling is in the same direction, mileage to be allowed only from the most remote place of service.		
Serving a subpoena on each person named therein, and mileage, - - - - -	12½	
Serving a summons on each person, and mileage, - - - - -	25	
Serving an attachment, and mileage, - - - - -	50	
Posting up copy of attachment, for each copy, and mileage, - - - - -	25	
For serving execution on body or goods, and mileage, - - - - -	25	
Commitment to prison, and mileage, - - - - -	37½	
Summoning a jury, - - - - -	50	
Attending upon a jury, - - - - -	50	
On all sums made on execution and paid over, to be charged upon the defendant, four per centum.		
Advertising and selling property, - - - - -	1 00	
Attending the district court when thereunto warned, to be paid out of the territorial treasury, each day, - - - - -	1 00	

The services, herein required to be performed by the constable, when done by the sheriff, the same fees that are allowed to the constable shall be allowed the sheriff, and no more.

For notifying a plaintiff of the service of a warrant, and mileage, - - - - \$ 12½

*Witnesses Fees.*

<b>Witnesses fees.</b>	For each witness for every day's attendance,	1 00
	Attendance before a justice of the peace, for every half day, - - - -	50
	And for travelling each mile, coming only from his or her place of residence to the place of trial, - - - -	8

*Jurors' Fees.*

<b>Jurors' fees.</b>	Grand jurors per day, - - -	1 50
	Travelling from and to court, per mile, -	8
	Petit jurors, in all cases, per day, - -	1 50

*Fees of Notaries Public.*

<b>Fees of notaries public.</b>	For every protest of a bill of exchange or promissory note, registering, seal, and other service, - - - -	1 00
	Attesting letters of attorney, and seal, -	50
	Notarial affidavit to an account under seal,	25
	Registering protest of a bill of exchange or promissory note for non-acceptance or non-payment, - - - -	75
	Noting a bill of exchange, note, or other thing properly protestable, either for non-acceptance or non-payment, - -	50
	Drawing and taking the proof of acknowledgement of a bill of sale, bottomry, mortgage, hypothecation of a vessel, or charter party, - - - -	1 50
	Certifying power of attorney for transferring and selling stock or other securities, -	37½
	Drawing and certifying affidavit, - -	1 00
	Each oath or affirmation, - - -	12½
	Being present at demand, tender, or deposit, and noting the same, - - -	75
	Every certificate with seal annexed, -	50

Other services, the same fees as are allowed to other officers in similar cases.

*Fees of the Judges of Probate.*

	Fees of judges of probate.
For granting letters of administration when there is no litigation, - - - -	\$ 75
When contested, - - - -	1 75
Hearing complaint against spendthrift or lunatic, - - - -	1 00
Appointing a guardian to minor, lunatic, or spendthrift, - - - -	50
And when one guardian is appointed to more than one minor, lunatic, or spendthrift, the judge shall receive for each minor, lunatic, or spendthrift, after the first, - -	25
Decree for the probate of a will when not contested, - - - -	75
The same when contested, - - - -	1 75
Decree for settling the estate of an intestate, - - - -	75
Partition of real estate, - - - -	75
Order of distribution, - - - -	75
Examining and allowing an inventory, for the first page - - - -	25
For each additional page, - - - -	12½
Administering an oath to executor, administrator, or other person, - - - -	12½
Examining and allowing accounts of executors or administrators, not exceeding one page, - - - -	50
For each additional page of the same, - - - -	12½
A citation summons or process, - - - -	25
A <i>quietus</i> , - - - -	50
Warrant to appraise or divide estates, - - - -	37½
Issuing commission to receive and examine claims of creditors when an estate is represented to be insolvent, - - - -	50
Granting an appeal, - - - -	50
Approving securities of an executor or administrator, - - - -	25
Assignment of dower in real estate, - - - -	25
Assignment of personal estate to widows, - - - -	37½
Appointment of trustees on partition of real estate, - - - -	25
Order for sale of personal estate, - - - -	25
Certificate of necessity for sale of real estate, - - - -	37½
Extending letters of administration, - - - -	50
Granting a reference of executors or administrators account, or allowing report thereon, - - - -	50

Disallowing application for letters of administration or probate of will, to be taxed against the party failing to sustain the application, - - - - -	§ 50
Every continuance, - - - - -	12½
For the bonds upon letters of administration, or the appointment of a guardian, -	50
Probate of will and letters testamentary thereon, or letters of administration, -	50
Seal for the same, - - - - -	25
Drawing a decree respecting the probate of a will or codicil, - - - - -	50
Bond for the execution, - - - - -	50
A warrant to divide an intestate estate among the heirs, a warrant to set off the widow's dower, or a warrant to receive and examine the claims on an insolvent estate, -	37½
Drawing a decree on the settlement or partition of an estate, - - - - -	50
A citation or summons for the first person named therein, - - - - -	25
Each other person named therein, - - - - -	12½
Drawing an order of distribution, - - - - -	37½
Drawing a <i>quietus</i> , - - - - -	50
Entering and filing a <i>caveat</i> , - - - - -	12½
Proportioning an insolvent estate among the creditors, - - - - -	75
Filing an inventory, - - - - -	12½
Entering the account of an executor, administrator, or guardian, for every hundred words, - - - - -	12½
Entering an oath of an executor or administrator, - - - - -	12½
Copies of papers when required, for every one hundred words, - - - - -	12½
Seal to an exemplification, - - - - -	25
Recording wills, codicils, and the proof thereof, letters of administration, of guardianship, deeds, and other matters, for every one hundred words, - - - - -	12½
And where any will, deed, or other matter, is in any other than the English language, then for every sheet containing 100 words, in addition, - - - - -	6½
And when a translation of any such will, deed, or other writing, is required, he shall be entitled to receive, for every one hundred words, - - - - -	25

Appeal bond, - - - - - § 50

But no fee shall be demanded for taking from the files in his office, or transferring to the place of the sitting of the probate court such papers as are necessary in the settlement of any estate or account in said court. And no fee shall be taken by the judge of probate in any case where it shall appear, by the oath or affirmation of any person applying for letters testamentary or of administration, that the goods, chattels, and credits of the testator or intestate do not exceed the value of forty dollars.

*County Surveyors' Fees.*

For surveying each forty acres, - - -	2 00	Fees of county surveyors.
For surveying each eighty acres, - - -	2 50	
For surveying each one hundred and sixty, - - -	3 00	
For surveying each three hundred and twenty, - - -	4 00	
For surveying town lots under twenty-five, - - -	50	
For surveying over twenty-five and under 75, - - -	37½	
For surveying over one hundred and under 200, - - - - -	25	
For surveying all over two hundred, - - -	20	
Territorial and county roads, per day, - - -	3 00	
While engaged in dividing land by an order of court on petition, per day, - - -	3 00	
Mileage, going and returning, per mile - - -	5	
Certified copy of survey, - - - - -	25	
Certified plat of survey, - - - - -	25	
For going to, returning from, and attending court, per day, - - - - -	1 50	

SEC. 4. All fees shall be paid by the party requiring the services, on the same being rendered, and the bill of particulars presented, if required. Fees, when to be paid and by whom. Bill of particulars.

SEC. 5. In all cases where an officer in the execution of his office shall be required to write or set up an advertisement, such officer shall be allowed therefor (if not otherwise provided for) twenty-five cents each; and if any advertisement is required to be published in a newspaper, the money therefor shall be paid by the party, and taxed in the bill of costs. Written advertisements. Advertisements in newspapers.

SEC. 6. For all services required to be performed by law, and not herein enumerated, the officer performing the same shall be allowed such reasonable fees as the supreme or district courts may tax therefor. Fees not enumerated in this act.

SEC. 7. When any prosecution, instituted in the name of the United States for breaking any law of this Territory, shall fail, or where the defendant shall What fees are to be paid out of the territorial treasury.

prove insolvent, or escape, or be unable to pay the fees when convicted, the fees shall be paid out of the territorial treasury.

Fair tables of fees to be set up in public offices.

SEC. 8. Every officer, whose fees are hereinbefore ascertained, limited, and appointed, shall publish and set up in his office fair tables of his fees, according to this act, within six months after the passage thereof, in some conspicuous part, for the inspection of all persons who have business in such office, upon pain of forfeiting, for each day the same shall be missing through such officer's neglect, a sum not exceeding two dollars, which may be recovered by action of debt in the name of any person, before any justice of the peace of the proper county.

Penalty.

Form of action, and before whom recoverable.

Taking more than lawful fees.

SEC. 9. If any officer shall wilfully or corruptly take greater fees than are hereinbefore expressed and limited for any service to be done by him in his office, or if any person shall charge or demand and take any of the fees hereinbefore ascertained, where the business for which such fees are chargeable shall not have been actually done and performed, such officer, for every such offence, shall, on conviction thereof before any justice of the peace of the proper county, forfeit and pay a sum not exceeding fifty dollars: *Provided*, that nothing herein contained shall be so construed as to prevent clerks from taxing in the bill of costs, to be recovered by the successful party, the fee for making up records.

Penalty.

Proviso.

Bill of particulars and receipt, to be given, if required.

SEC. 10. It shall be lawful for any person to refuse payment of fees to any officer who shall not have made out and presented a bill of the particulars signed by him, and on payment such officer shall, if required, give a receipt therefor.

When, and to whom, fees to be paid in advance.

SEC. 11. The travelling fee to a witness, together with the fee for one day's attendance, shall, in all civil cases, be paid to him, if required, before he shall be liable to any penalty for non-attendance; and after he shall have attended two days, the fees for one day's attendance shall be paid to him, if required, on or before the succeeding day, and so from day to day for as many days as he may be required to attend.

Limitation of fees to clerk & sheriff, in certain cases.

SEC. 12. In cases where there is a confession of judgment at the first term, or where the cause is settled by the parties before or during the first term, the whole fees to the clerk, after the return of the writ, shall not exceed one dollar and fifty cents, and

the whole fees to the sheriff, after the return of the writ, shall not exceed fifty cents.

SEC. 13. Every citizen of this Territory shall have free access to all public records, without being taxed any fee therefor.

SEC. 14. The judges of probate and county clerks shall procure good and well bound books, to be approved of by the judges of the supreme court, the judges of probate, and the judges of district courts, respectively, which books shall be the property of the Territory in the case of the books of the supreme court, the expence of which to be paid out of the territorial treasury; and of the county in the case of the books of the probate and district courts, the expence of which to be paid out of the county treasury.

SEC. 15. No officer, witness, or other person shall hereafter have any claim upon the territorial treasury for services rendered in any other court than the supreme and district courts of the Territory of Iowa, which officer and persons are designated in the succeeding section.

SEC. 16. The sheriff shall be allowed two dollars and fifty cents per diem for every day he shall actually attend upon the supreme court, and one deputy sheriff, in the absence of the sheriff, shall be allowed two dollars per day, which compensation shall be paid from the territorial treasury.

SEC. 17. The sheriffs in the several counties in this Territory shall be allowed, for every day such sheriff shall attend the district court, one dollar and fifty cents per day; and in the absence of the sheriff, one deputy sheriff shall be allowed one dollar and fifty cents per day, for the days which such officers shall actually attend, to be paid out of the county treasury of the proper county: *Provided, always*, that, if the district court shall deem it expedient, such court may make an order to command any number of constables to attend said court, not exceeding three, to be entitled to a per diem allowance of one dollar and fifty cents per day each, for every day such constables shall actually attend, if the court shall think that number necessary, as shall appear by their records.

SEC. 18. Hereafter the fees for recording any deed, mortgage, or other instrument required to be recorded, shall be paid at the time of presentment for record, if required by the recorder.

Citizens to have free access to public records.

Who shall procure record books; by whom approved.

Whose property they shall be and how paid for. County records.

Who shall receive costs and fees out of the territorial treasury.

Sheriff's per diem in supreme court. Deputy sheriff. Where paid.

Sheriff's per diem in the district courts.

Deputy Sheriff.

Where paid. Proviso.

Constables. in district courts.

Fees for recording deeds, mortgages, &c. When paid.

Discretion of judge, concerning costs, in certain cases.

SEC. 19. When any prosecution, instituted in the name of the United States or of individuals, for breaking any laws of this Territory, shall fail, the judge shall determine from the circumstances of the case whether the prosecutor, the county, or the Territory, shall pay the costs.

APPROVED, January 23, 1839.

## COUNTIES AND COUNTY SEATS.

AN ACT to establish the boundaries of Louisa county, and to locate the seat of Justice of the said county, and for other purposes.

Boundaries.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the boundaries of Louisa county shall be as follows, to wit: beginning at the main channel of the Mississippi river on the line dividing township seventy-two and seventy three north, thence west on said township line to the line dividing Des Moines and Henry counties, thence north on said line to the line dividing township seventy-three and seventy-four north, thence west on said township line to the range line between five and six west, thence north with said line to the township line dividing townships seventy-six and seventy-seven north, thence east with said line to the line of Muscatine county, thence south with said county line to the line dividing townships seventy-five and seventy-six north, thence east on said township line to the Mississippi river, thence down the main channel of said river to the place of beginning.

Seat of justice to be permanently fixed by a vote of the citizens.

SEC. 2. That for the purpose of permanently establishing the seat of justice for said county of Louisa, a poll shall be opened at the usual places of election in said county, on the first Monday of March next, for the purpose of receiving ballots for such places as may be voted for as the seat of justice of said county, and said ballots shall be deposited in a separate box from the other ballots which may be received at said election, and separate poll books kept.

Persons entitled to vote.

SEC. 3. Any person shall be entitled to vote for the seat of justice of said county, at said election, who is a free white male citizen above the age of twenty-one years, and who has resided in the county at least thirty days next preceding the election.

SEC. 4. That returns of said election, with the ballots and poll lists, shall, within twenty days after the election, be made to the sheriff of the county of Louisa, to be by him canvassed and examined in presence of two justices of the peace of said county, and if upon examination it shall be found that any one of the places voted for has a majority of all the votes polled for a county seat, that place shall from thenceforward be the seat of justice for Louisa county; but if it should be found that no one of the places voted for has such a majority, then in that case a new election shall be held on the day of the next annual election thereafter, to be conducted in the same way, and by the same officers who may conduct said annual or general election in said Louisa county, at which said election the votes shall be confined to one or the other of the two points which may have received the highest number of votes at the first election.

Returns of election to be made to sheriff.

Place having majority of all the votes to be the seat of justice.

If not decided, new election to be held.

Places to which the votes shall be confined.

SEC. 5. It shall be the duty of the sheriff to give at least ten days notice of said second election by written or printed hand bills, put up at each precinct, specifying the two points to be voted for, and the day of holding such election.

Sheriff to give notice.

SEC. 6. Returns of the second election shall be made as is provided for in regard to the returns of the first election, and the place having the highest number of votes at said second election shall be the county seat of Louisa county: *Provided*, that the spring term of the district court of said county, for the year eighteen hundred and thirty-nine, shall be held at Lower Wapello.

Returns of election.

Spring term of district court at Lower Wapello.

SEC. 7. *And be it further enacted*, That on the said first Monday of March next there shall be three county commissioners elected in said county of Louisa, whose term of service and whose proceedings shall be governed by the law of this Territory organizing a board of county commissioners, &c: *Provided, however*, that the time from this special election until the time of the next general election shall be considered one year.

County com. to be elected.

APPROVED, January 12, 1839.

## COUNTIES, &amp;c.

AN ACT to organize the county of *Linn*, and establish the seat of Justice thereof.

**SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the county of *Linn* be and the same is hereby organized from and after the first day of June next, and the inhabitants of said county be entitled to all the rights and privileges to which by law the inhabitants of other organized counties of this Territory are entitled, and the said county shall be a part of the third judicial district, and the district court shall be held at the seat of justice of said county, or such other place as may be provided until the seat of justice is established.

County organized from 1st June next.

To be part of 3d judicial district.

Commissioners to locate seat of justice.

**SEC. 2.** That Richard Knott, Lyman Dillon, and Benjamin Nye, be and they are hereby appointed commissioners to locate the seat of justice in said county, and shall meet at the house of William Abby, on the first Monday of March next, in said county, and shall proceed forthwith to examine and locate a suitable place for the seat of justice of said county, having particular reference to the convenience of the county and healthfulness of the location.

Commissioners, within ten days, to certify to the governor.

**SEC. 3.** The commissioners, or a majority of them, shall, within ten days after their meeting at the aforesaid place, make out and certify to the governor of this Territory, under their hands and seals, a certificate containing a particular description of the situation of the location selected for the aforesaid county seat, and on the receipt of such certificate the governor shall issue his proclamation affirming and declaring the said location to be the seat of justice of said county of *Linn*.

Governor to issue his proclamation.

Oath to be taken by commissioners.

**SEC. 4.** The commissioners aforesaid shall, before they enter upon their duties, severally take and subscribe an oath before some person legally authorized to administer the same, viz: I ——— do solemnly swear (or affirm) that I am not, either directly or indirectly, interested in the location of the seat of justice of *Linn* county, nor do I own any property in lands, or any claims, within the said county of *Linn*. So help me God.

Signed,

A. B.  
C. D. &c.

SEC. 5. If at any time within one year thereafter it shall be shown that the said commissioners, or any of them, received any present, gratuity, fee, or reward, in any form other than that allowed by law, or before the expiration of six months after the governor's proclamation declaring the said seat of justice permanent, become interested in said town, or any lands in its immediate vicinity, the commissioner or commissioners shall, upon conviction thereof, by indictment in the district court of the county in which he or they may reside, be guilty of a high misdemeanor, and be forever after disqualified to vote at any election, or to hold any office of trust or profit within this Territory.

Under what circumstances commissioners made liable to indictment.

SEC. 6. The commissioners aforesaid shall receive, upon making out their certificate of the location of the seat of justice of said county, each two dollars per day, and also three dollars for every twenty miles, going and returning from their respective homes.

Compensation to commissioners for their services.

APPROVED, January 15, 1839.

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## COUNTIES, &c.

AN ACT to divide the County of *Henry*, and establish the County of *Jefferson*.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all that tract of country lying west and attached to the county of *Henry*, viz: beginning at the south-east corner of township number seventy-one north, range eight west, thence north with said line to the line dividing townships seventy-three and seventy-four, thence west with said line to the Indian boundary line, thence south with said line to the line dividing townships seventy and seventy-one, thence east with said line to the place of beginning, be and the same is hereby constituted a separate county to be called *Jefferson*.

Boundaries of the county to be called Jefferson.

SEC. 2. That the said county of *Jefferson* shall, to all intents and purposes, be and remain an organized county, and invested with full power and authority to do and transact all county business which any regularly organized county may of right do.

Invested with authority to transact county business.

- Commissioners to locate seat of justice of Jefferson county.** SEC. 3. That Samuel Hutton of the county of Henry, and Joshua Owens of the county of Lee, and Roger N. Crissup of the county of Van Buren, are hereby appointed commissioners to locate and establish the seat of justice of Jefferson county. The said commissioners shall meet in the town of Lockridge, on the first Monday in March next, to proceed to the duties required of them, or may meet on any other day they may agree on within one month thereafter, being first sworn by any judge or justice of the peace faithfully and impartially to examine the situation of said county, taking into consideration the future as well as the present population of said county, also to pay strict regard to the geographical centre, and to locate the seat of justice as near the centre as an eligible situation can be obtained; and so soon as they have come to a determination of the place where they shall locate it, it shall be the duty of said commissioners to name the place, so located by them, by such name as they may think proper, and shall commit the same to writing, signed by the commissioners, and filed with the clerk of the district court of the present county of *Henry*, whose duty it shall be to record the same, and deliver over the same to the clerk of the county of *Jefferson* whenever he shall be appointed, whose duty it shall be to record the same and forever keep it on file in his office, and the place thus designated shall be considered the seat of justice of said county.
- Oath to be taken.**
- Commissioners to name the place.**
- Location to be recorded by clerk of Henry county. Also by clerk of Jefferson co. when appointed.**
- In what case the temporary seat of justice may be at Sylvanus Harrington's.** SEC. 4. Provided, that in the event of said commissioners being prevented from any cause whatever from performing the duties required of them, or if a majority of said commissioners shall not be able to agree upon any place for the establishment of said seat of justice, then in that case the seat of justice is temporarily established at the house of Sylvanus Harrington.
- Compensation to comm'rs.** SEC. 5. That the said commissioners shall receive, as a compensation for performing the duties required of them, the sum of three dollars per day, to be paid out of the first moneys that may come into the treasury of said county of *Jefferson*.
- Election for county officers.** SEC. 6. That there shall be an election held on the first Monday in April next, for the purpose of electing all county officers that may be elective, the same as in other organized counties.
- Sheriff to give notice.** SEC. 7. That it shall be the duty of the sheriff of said county to cause written notices to be put up at

three of the most public places in each of the old precincts in said county of *Jefferson*, stating the time, place, and officers to be elected.

SEC. 8. That the county of *Jefferson* shall remain attached to the original county of *Henry* for judicial purposes until its officers are appointed and elected, and until said county is properly organized according to law in such cases made and provided.

SEC. 9. That this act shall be in force from and after its passage.

APPROVED, January 21, 1839.

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## COUNTIES, &c.

AN ACT to establish the boundaries of Lee county.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the boundaries of the county of Lee shall be as follows, to wit: beginning at the main channel of the Mississippi river, due east from the entrance of Skunk river into the same, thence up the main channel of the said Skunk river to where the township line, dividing township sixty-nine and seventy north, crosses the same, thence west with said township line to the range line between ranges seven and eight west, thence south with said line to the Des Moines river, thence down the main channel of said river to the middle of the main channel of the Mississippi river, thence up the main channel of the same to the place of beginning; and all that part of Lee county, lying north of Skunk river, is hereby attached to and shall form a part of the county of Des Moines.

SEC. 2. *And be it further enacted*, That it shall be lawful for the sheriff of Des Moines county to collect the tax due for the year eighteen hundred and thirty-eight, from all persons detached from the county of Des Moines, and attached to the county of Lee, by the provisions of this act; and all laws, coming within the purview and meaning of this law, be and the same are hereby repealed.

APPROVED, January 23, 1839.

## COUNTIES, &amp;c.

AN ACT to organize the County of *Jones*, and establish the seat of justice thereof.

**Jones co. organized from 1st June next.** **To be part of 3d judicial district.** **Comm'rs to locate seat of justice.**

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the county of *Jones* be, and the same is, hereby organized, from and after the first day of June next, and the inhabitants of said county be entitled to all the rights and privileges to which by law the inhabitants of other organized counties of this Territory are entitled; and the said county shall be a part of the third judicial district, and the district court shall be held at the seat of justice of said county, or such other place as may be provided until the seat of justice is established.

**Comm'rs to locate seat of justice.**

SEC. 2. That Simeon Gardner of Clinton county, Israel Mitchell of Linn county, and William H. Whitesides of Du Buque county, be and they are hereby appointed commissioners to locate the seat of justice in said county, and shall meet at the house of Thomas Dixon, on the second Monday of March next, in said county, and shall proceed forthwith to examine and locate a suitable place for the seat of justice of said county, having particular reference to the convenience of the county and healthfulness of the location.

**Commissioners to certify to the governor.** **Governor to issue his proclamation.**

SEC. 3. The commissioners, or a majority of them, shall, within ten days after their meeting at the aforesaid place, make out and certify to the governor of this Territory, under their hands and seals, a certificate containing a particular description of the location selected for the aforesaid county seat; and, on the receipt of such certificate, the governor shall issue his proclamation affirming and declaring the said location to be the seat of justice of said county of *Jones*.

**Oath to be taken and subscribed by commissioners.**

SEC. 4. The commissioners aforesaid shall, before they enter upon their duties, severally take and subscribe an oath before some person legally authorized to administer the same, viz:

I, A. B. do solemnly swear (or affirm) that I am not, either directly or indirectly, interested in the location of the seat of justice of *Jones* county, nor do I own any property in lands, or any claims, within the said county of *Jones*. So help me God.

Signed,

A. B.

SEC. 5. If at any time within one year thereafter it shall be shown that the said commissioners, or any of them, received any present, gratuity, fee, or reward, in any form other than that allowed by law, or before the expiration of six months after the governor's proclamation declaring the said seat of justice permanent, become interested in said town, or any lands in its immediate vicinity, the commissioner or commissioners shall, upon conviction thereof, by indictment in the district court of the county in which he or they may reside, be guilty of a high misdemeanor, and be forever after disqualified to vote at any election, or to hold any office of trust or profit within this Territory.

Under what circumstances commissioners made liable to indictment.

SEC. 6. The commissioners aforesaid shall receive, upon making out their certificate of the location of the seat of justice of said county, each three dollars per day, and also three dollars for every twenty miles, going to and returning from their respective homes.

Compensation to comm'rs for their services.

SEC. 7. Upon presentation of the certificate aforesaid to the treasurer of Jones county, the treasurer is hereby authorized and required to pay the respective sums allowed by this act, out of any monies in the treasury not otherwise appropriated.

To be paid by the treasurer of Jones county.

APPROVED, January 24, 1839.

## COUNTIES, &c.

AN ACT to re-locate the county seat of Van Buren county, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Benjamin F. Chastain of Jefferson county, Michael H. Walker of Lee county, and Stephen Gearhart of Des Moines county, be and they are hereby appointed commissioners to re-locate the county seat of Van Buren county, whose duty it shall be to meet (or a majority of them) at the town of Keosauqua, in said county, on the first Monday of May next, and proceed forthwith to locate a suitable place for the seat of justice of said county, having reference to the geographical centre, convenience, and welfare of said county.

Commissioners appointed to relocate seat of justice.

SEC. 2. The commissioners, or a majority of them, shall, within ten days after their meeting at the aforesaid place, make out and certify to the clerk of the county commissioners for the county of Van Buren,

To certify to the clerk of the board of com. for Van Buren co.

under their hands and seals, a certificate containing a particular description of the situation of the location selected for the aforesaid county seat, together with the deed or deeds of any grant of land or lands, or bond or bonds for the payment of money, that may have been made by any individual or individuals for the benefit of the county.

With any deed or bond for the benefit of the co.

Oath to be taken by the comm'rs.

SEC. 3. The commissioners aforesaid shall, before they enter upon their duties, severally take and subscribe an oath before some person legally authorized to administer the same, viz: I, A. B. do solemnly swear (or affirm) that I am not, either directly or indirectly, interested in the location of the seat of justice of Van Buren county, nor do I own any property in lands or claims within the said county of Van Buren. So help me God.

[Signed.]

A. B.

Under what circumstances commiss'rs made liable to indictment.

SEC. 4. If it shall be shown at any time within one year that the said commissioners, or any of them, received any present, gratuity, fee, or reward, in any form other than that allowed by law, or, before the expiration of six months from the time said location was made, becomes interested in said town, or in any lands in its immediate vicinity, the commissioner or commissioners shall, upon conviction thereof, by indictment in the district court of the county in which he or they may reside, be guilty of a high misdemeanor, and be forever after disqualified to vote at any election, or of holding any office of profit or trust within this Territory.

Commissioners to receive any bond or deed in relation to public buildings.

SEC. 5. It shall be the duty of the commissioners aforesaid to receive, in the name of the board of county commissioners for the county of Van Buren, for the use of the county, any bond for the payment of money, or deed of land that may be made by any individual or individuals for the purpose of building public buildings at the said seat of justice. And they shall receive the sum of three dollars per day for their services during the time they may be necessarily employed in making said location, and also the sum of three dollars for every twenty miles, going from and returning to their respective homes.

Compensation to comm'rs.

Where district court to be held.

SEC. 6. The district court of the county of Van Buren shall be held, for the first term after the passage of this act, at the town of Keosauqua, but forever thereafter at the place selected as the seat of justice for said county by the provisions of this act.

**SEC. 7.** The commissioners created by this act shall receive pay for their services, upon a presentation of a certificate to the county commissioners of their services, signed by said commissioners, out of any money in the county treasury not otherwise appropriated. Comm'rs to be paid out of co. treasury.

**SEC. 8.** *Be it further enacted,* That if the proprietors of the town of Keosauqua shall, on or before the first day of April next, enter into good and sufficient bonds, with security to be approved of by the county commissioners, to the county treasurer, for the benefit of the said county, for the sum of five thousand dollars, payable in town lots in said town of Keosauqua, or other real estate, at a fair cash value, or cash, or such other materials as the county commissioners may deem proper to receive, for the purpose of carrying on or completing the public buildings in said county. Bonds by proprietors of Keosauqua.

**SEC. 9.** The payments to be divided into three equal parts, and paid annually in one, two, and three years. When payments to be made.

**SEC. 10.** *Be it further enacted,* That if the said proprietors shall enter into bonds, as provided for in the eighth section of this act, then this act to be null and void, otherwise to remain in full force and value. If said proprietors enter into bonds, this act to be void.

APPROVED, January 25, 1839.

## COUNTIES, &c.

AN ACT to provide for the sale of land located upon by the County Commissioners of Henry county, for the benefit of said county in erecting public buildings.

**SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all the right and title that has accrued, or may hereafter accrue, to the quarter section of land located upon by the county commissioners of Henry county, and for the use of said county, and which may hereafter be pre-empted by virtue of an act of Congress entitled "An act granting to the counties and parishes of each State and Territory of the United States, in which the public lands are situated, the right of pre-emption to a quarter section of land, the proceeds of the sale of which to be applied to the erection of public buildings in said county, approved May the The right of the county to a certain tract of land to be sold.

20th, 1824," shall be sold and conveyed by a county agent as hereinafter described.

County agent  
to be elected.

SEC. 2. There shall be elected on the first Monday of May next, if necessary, a county agent, and thereafter at the annual election annually as long as the county commissioners shall deem such agent useful.

Power to sell  
and convey.

SEC. 3. The county agent, elected as aforesaid, is hereby authorized and empowered to sell, dispose of, and convey all the right, title, and interest said county may have in said quarter section of land, by deed, under his hand and seal, to any purchaser or purchasers.

SEC. 4. Said agent may sell and dispose of said quarter section in any manner that will best promote the interest of said county.

Proceeds of  
sale.

SEC. 5. All moneys arising from the sale of said quarter section shall be deposited in the county treasury, and be appropriated by the board of county commissioners of said county for the erection of county buildings.

Agent to enter  
into bonds.

SEC. 6. When any person shall be elected as aforesaid, he shall enter into bonds of ten thousand dollars, with good and sufficient security, to be approved by the board of county commissioners, payable to the treasurer of said county, conditioned to pay over all moneys, by him received from the sale or disposal of said quarter section of land, to the county treasurer.

Agent's com-  
pensation.

SEC. 7. The county agent shall receive for his services the sum of two dollars per day, for every day he may be employed in selling and disposing of said quarter section of land, to be paid by the treasurer of said county, and shall, before he enters upon the duties of his office, take the following oath before the clerk of the district court: I do solemnly swear, or affirm, (as the case may be) that I will, to the best of my abilities, discharge the duties of county agent, without favor, fear, affection, or reward, and that I am not now, nor will be hereafter, interested in the sale or disposal of the quarter section of land, further than a citizen of said county.

Oath to be  
taken.

Election and  
returns, &c.

SEC. 8. The election or elections, mentioned in the preceding sections of this act, shall be regulated and conducted in every respect according to the law concerning and regulating general elections, returns made, and votes canvassed in the same manner.

APPROVED, January 25, 1839.

## COUNTIES, &amp;c.

AN ACT to establish the boundary lines of Washington county, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the county heretofore known and designated as the county of *Slaughter*, shall hereafter be called the county of *Washington* and that the boundary lines of said county are hereby established as follows: Beginning on the range line between ranges five and six west, where the township line dividing townships seventy-three and seventy-four north intersects said line, thence west with said township line to the line dividing ranges nine and ten west, thence north on the said line to the line dividing townships seventy-seven and seventy-eight north, thence east with said line to the range line between ranges five and six west, thence south with said line to the place of beginning.

Name changed from Slaughter to Washington.

Boundary lines.

SEC. 2. That the said county of Washington shall, to all intents and purposes, be and remain an organized county, and invested with full power and authority to do and transact all county business which any regularly organized county may of right do.

Power to transact county business.

SEC. 3. That John Gilleland of the county of Louisa, and Thomas Richey of the county of Henry, and William Chambers of the county of Muscatine, are hereby appointed commissioners to locate and establish the seat of justice of said county of Washington, being first sworn by any judge or justice of the peace faithfully and impartially to locate the seat of justice of said county, taking into consideration the future as well as the present population of said county.

Commiss'rs appointed to establish seat of justice.

Oath to be taken.

SEC. 4. The said commissioners, or a majority of them, shall meet at the town of Astoria, on the first day of June next, in pursuance of their duties under this act, and proceed as soon thereafter as may be to locate said seat of justice, and so soon as they have come to a determination, the same shall be committed to writing, signed by the commissioners, and filed with the clerk of the district court of said county, whose duty it shall be to record the same and forever keep it on file in his office, and the place thus designated shall be the seat of justice of said

Duties of commissioners.

Astoria temporary seat of justice.

county: *Provided*, that the seat of justice of said county is hereby temporarily established at the town of Astoria, until the said commissioners shall have located the seat of justice agreeably to the provisions of this act.

Compensation to comm'rs.

SEC. 5. That the said commissioners shall receive, as a compensation for their services, the sum of three dollars per day, to be paid out of the treasury of said county of Washington.

Territory attached to Washington.

SEC. 6. That the territory west of the county of Washington is hereby attached to said county for judicial purposes.

SEC. 7. This act to take effect and be in force from and after its passage.

APPROVED, January 25, 1839.

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## COUNTY COMMISSIONERS.

AN ACT organizing a Board of County Commissioners in each county in the Territory of Iowa.

Board of county commiss'rs established in each county.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be and hereby is organized in each county in this Territory, a board of county commissioners for transacting county business, to consist of three qualified electors, any two of whom shall be competent to do business, to be elected by the qualified electors of the several counties respectively. The election shall be at the time and places of the general election of each county.

Terms of service of the persons first elected.

SEC. 2. At the first election in pursuance of this act, the person having the highest number of votes shall serve three years, the person having the next highest number of votes shall serve two years, and the person having the next highest number of votes shall serve one year, and thereafter annually one commissioner shall be elected, who shall serve three years, and each commissioner elected according to the provisions of this act shall continue in office until his successor is elected and qualified. But if two or more persons shall have an equal number of votes as above, their grade shall be determined by lot, by the clerk, in the presence and under the direction of the sheriff of their respective counties.

One comm'r to be elected annually.

In what case grade to be determined by lot.

Oath to be taken by commissioners.

SEC. 3. Each person elected as a commissioner shall, on receiving a certificate of his election, take

an oath faithfully and impartially to discharge the duties of his office as such commissioner, before some person legally authorized to administer the same, which oath being certified on the back of such certificate, under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with and act as a member of the board during the time for which he was elected.

SEC. 4. The county commissioners thus elected and qualified shall be considered a body corporate and politic, by and under the name and style of "The Board of Commissioners of the County of \_\_\_\_\_" (naming the county) and as such, by and under such name and style, may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court either in law or equity, and do and transact all business on behalf of their respective counties that may be assigned them from time to time by law. And in all cases where their respective counties may have been injured, or may hereafter be injured, in their goods, chattels, lands, tenements, rights, credits, effects, or contracts, such commissioners shall and may, by and under their corporate name and style, without setting out their individual names, bring any suit or suits, action or actions, either in law or equity, which may be best calculated to obtain redress for any such injury, in the same way and manner that private individuals might or could do; and may in like way and manner, by and under their corporate name and style, be sued by any person or persons having any manner of claims against such county.

Their style or title.

May sue and be sued, &c. and transact all county business assigned them by law.

SEC. 5. The board of commissioners shall meet at the court house in each and every county, or at the usual place of holding the district court in such county, for the purpose aforesaid, on the first Mondays in April, July, October, and January, in each and every year, and may sit six days at each term if the business of the county shall require it: *Provided, however*, if the district court shall meet on any of the beforementioned days, the commissioners shall meet on the Monday preceding.

Regular sessions of the board, and where to be held.

SEC. 6. The said board of commissioners shall appoint a clerk, who shall attend the meeting of the board of commissioners and keep a record of their proceedings, and do such other business as he shall be required by law to do. And the sheriff of the

Comm'rs to appoint a clerk,

Sheriff to attend.

county shall also, by himself or deputy, attend said board and execute their orders.

Money advanced by clerk or other county officer to be first paid

SEC. 7. When money has been advanced by any clerk or other county officer for the use and benefit of his county, pursuant to the requisitions of law, the board of commissioners shall order such money so advanced to be first paid; and when there is any judgment or judgments against any county in the Territory, the board may in their discretion order when and in what manner such judgment shall be discharged, not inconsistent with the Constitution of the United States, any law to the contrary notwithstanding.

Discretionary power in discharging judgments.

In what case a question to be continued

SEC. 8. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be continued until the next meeting before it shall be finally determined. When any vacancy shall happen in the office of commissioner, the clerk, being notified of the same, shall immediately direct the sheriff of the county, whose duty it shall be to order an election to be holden for the purpose of filling such vacancy, thirty days previous notice of such election being first given, either by publishing the same in the county newspaper, or putting up notices in three different public places in said county.

Elections to be held to fill vacancies.

When assessors books to be inspected and tax levied.

SEC. 9. It shall be the duty of the board of commissioners, at their April session in each year, to receive and inspect the assessors books and levy a county tax according to law, and cause their clerk to make out a duplicate for collection accordingly.

Common seal.

SEC. 10. The commissioners of each county respectively shall have and use a common seal for the purpose of sealing their proceedings, and copies of the same, when signed and sealed by said commissioners and attested by their clerk, shall be good evidence of such proceedings on the trial of any cause in any court in this Territory. The commissioners aforesaid at their session in January, or when the district term prevents their meeting in January, then at their first meeting thereafter, in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and have the same set up at the court house door and at two other public places in their county respectively, and published in some newspaper in their county, if there be any. And if the said commissioners, or either of them, after accepting their appointment, shall neg-

When board to publish statement of receipts and expenditures.

Comm'rs may be fined for neglect of duty.

lect or refuse to do his or their duty in office, he or they so offending shall on conviction, by indictment before the district court of the proper county, be fined in any sum not exceeding two hundred dollars.

SEC. 11. The commissioners so elected and qualified shall each receive three dollars per day, for each and every day that they may necessarily be employed in transacting the county business; and said board of commissioners when organized shall possess the powers and authority heretofore given to the county board of supervisors.

Compensation to commiss'rs.

Powers.

SEC. 12. All suits, pleas, complaints, prosecutions, and proceedings which may be pending in any court, to be tried for or against any board of county commissioners, previous to the taking effect of this act, shall be prosecuted to final judgment and execution in the same name and manner as the same might have been done had this law not been passed; and all contracts, either written or verbal, made by such board of county commissioners previous to the taking effect of this act, shall remain valid in law and equity, and suit may be thereupon brought in the same way and manner as the same might have been, had this act not been passed.

What suits shall not be affected by the passage of this act.

What contracts shall remain valid.

SEC. 13. It shall be the duty of the clerks of the several boards of commissioners to keep fair books wherein shall be kept the accounts of the county, to attest all orders issued by the board for the payment of money, and enter the same in numerical order in a book to be kept for that purpose, and shall copy into their said books the reports of the treasurer of the receipts and disbursements of their respective counties, and whenever the duplicate shall be put into the hands of the collector it shall be the duty of the said clerks to send a statement of the sum, wherewith such collector stands charged, to the county treasurer.

Duties of the clerks of the several boards of commissioners.

SEC. 14. When the holder of an attested county order in his own name of a larger amount than his county tax, is desirous of appropriating a part of such order to the payment of such tax, he is hereby authorized to apply to the clerk of the board of commissioners, whose duty it shall be to give to the holder of such order, and in exchange therefor, two or more attested county orders, making together the same amount with the original order which shall be thereupon cancelled. And such clerk shall insert in every such order that the same with others were

County orders, and the payment of taxes.

so given in exchange to (naming the person) for such original order, together with the number and amount of such original order, one of which orders shall be for the amount of his tax and shall appear on its face to have been intended for the payment thereof.

Collectors to receive county orders.

SEC. 15. Every collector of county taxes is hereby required to receive any regularly attested county order made by the board of commissioners, when the same may be tendered to him by any person in payment of such person's taxes due such county.

Certain officers not to purchase or receive county orders, &c., for less than the sum therein expressed.

SEC. 16. No collector or other person doing county business shall, either directly or indirectly, purchase or receive in payment, exchange, or in any way whatever, any demand against his county, or any county order for a claim allowed by the board of commissioners, at any time during the period for which he may be elected, for a less amount than that expressed on the face of such order or demand against the county; and every person elected or appointed to do county business, before entering upon the duties of his office, shall take an oath not to violate the provisions of this section. And any collector, or other person doing county business, offending against the provisions of this section, on conviction thereof, upon indictment or presentment, shall be fined for every such offence in any sum not exceeding five hundred dollars.

Oath.

Penalty for infringing provisions of this section.

Compensation to the clerk and sheriff.

SEC. 17. The boards of commissioners shall annually allow their clerk such compensation per day as they may deem reasonable, not to exceed three dollars, while in session, and likewise to the sheriff one dollar and fifty cents per day for his attendance upon the board, and further that the board of commissioners may allow the clerk and sheriff such amount as is actually then due for extra services at each regular meeting of the board, by said clerk or sheriff filing a bill of items which shall be regulated by the act concerning costs and fees.

Persons aggrieved may appeal to the district court.

SEC. 18. From all decisions of the several boards of commissioners there shall be allowed an appeal to the district court by any person or persons aggrieved, and the person or persons appealing shall take the same within thirty days after such decision by giving bond, with security to the acceptance of the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of costs already accrued and which may thereafter accrue if the same

shall be adjudged by the said court to be paid by such appellant, and the clerk shall record such appeal with the cases pending in the district court within twenty days after the taking of such appeal.

SEC. 19. In any county where there is no court house provided, it shall be the duty of the board of commissioners to provide suitable rooms for the holding of the district court of said county.

Board to provide rooms for district court.

SEC. 20. It shall be the duty of the board of commissioners to provide all books and stationary necessary for the use of said board, all books and stationary necessary for the use of the register of deeds, and all books and stationary necessary for the use of the clerk of the district court, the probate court, and treasurer.

Books and stationary to be provided.

SEC. 21. The said board of commissioners are hereby authorized to hold extra sessions in case they may think the business of the county requires the same, and notice from any two of the said commissioners to the third shall be considered a sufficient call for said extra session, due notice thereof being given, and that no such extra session shall exceed three days.

Authority to hold extra sessions.

SEC. 22. Nothing in this act contained shall be so construed as to vitiate or vacate the elections already held for commissioners, but they shall continue in office until the next general election to be holden in each of the organized counties.

This act not to vitiate the late elections.

APPROVED, December 14th, 1838.

## COUNTY COMMISSIONERS.

AN ACT to district the several Counties in this Territory for the Election of County Commissioners.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the counties of Des Moines and Lee shall be divided into three districts each, for the purpose of electing county commissioners.

Des Moines and Lee three districts each.

SEC. 2. That part of the county of Des Moines lying south of Flint creek shall form the first district; that portion of said county north of Flint creek shall form the second; and the city of Burlington shall compose the third district.

Limits of the several districts in Des Moines.

SEC. 3. At the next annual election there shall be elected one county commissioner from each district; and at the next annual election thereafter there shall

Special provisions for the election of commissioners.

be elected one county commissioner from the said first district, resident therein, by the qualified voters of the county; at the next annual election thereafter there shall be elected by the qualified voters of said county one commissioner, resident in the second district; and at the next annual election thereafter there shall be elected by the qualified voters of said county one county commissioner, resident in the third district; and so on, alternately, so long as this act shall remain in force.

Limits of the several districts in Lee.

Special provisions for the election of comm'rs.

Van Buren co. to be divided into 3 districts by county commissioners.

Numbers and boundaries to be published.

Special provisions touching the election and term of service.

SEC. 4. That part of Lee county, lying east of the range line dividing ranges four and five, shall form the first district; the Half-Breed Tract shall form the second district; and the balance of the county shall form the third district.

SEC. 5. At the next annual election there shall be elected one county commissioner from each district; and at the next annual election thereafter there shall be elected one county commissioner from the said first district, resident therein, by the qualified voters in said county; at the next annual election thereafter there shall be elected one county commissioner, resident in the second district; and at the next annual election thereafter there shall be elected one county commissioner resident in the third district; and so on alternately, so long as this act shall remain in force.

SEC. 6. *Be it further enacted*, that the county commissioners of Van Buren county shall, at least three months previous to the next annual election, divide the said county into three districts, dividing the population as near as the nature of the case will admit, and shall number the said districts and publish the same, together with the boundaries of each district, in some newspaper printed within the Territory, or by posting up printed or written notices at three of the most public places in each of the several districts, at least one month previous to the next annual election.

SEC. 7. And there shall be elected by the qualified voters of each district one commissioner, who shall be a resident therein, and who shall hold their office as follows, to wit: the one elected in the first district, three years; the one elected in the second, two years; and the one elected in the third district, one year; and thereafter to be elected in their several districts as their terms of office shall expire.

APPROVED, January 25, 1839.

## 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.

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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.

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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. Affidavit. Warrant.

*Proceedings to prevent the Commission of Offences.*

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 recognizance 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.

Commitment of prisoner.

But he may be afterwards bailed by a judge of the supreme court.

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.

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.

Limitation of indictments.

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* 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 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 below and its officers to act in the premises.

SEC. 83. Arrests of judgment and new trials, when 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 practicable.

SEC. 84. No judgment shall be arrested, revised, 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 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 indictment 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 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 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 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 entitled 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 the county. The witnesses in these cases shall prove their attendance, and obtain from the clerk of the court a certificate thereof, and the amount of compensation due them, which shall be allowed by the county commissioners. Where, from inadvertence, a point material to the prosecution or

If reversed.

Arrests of judgment and new trials.

Judgment not to be arrested for defect in indictment.

Certified copy of proceedings to be evidence.

Where a fine is part of the sentence.

In what cases jury to fix amount of punishment.

Jury allowed to take refreshment.

Offenders liable for costs.

Compensation of witnesses.

When costs to be paid by co.

Attendance of witnesses to be certified by clerk.

Omissions from inadvertence.

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.*

**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.

**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.

**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.

**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.

**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.

**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.

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

What certain words in legislative acts shall be deemed to include.

What the term "felony" shall be understood to mean.

In what case process shall not be deemed void. Proviso.

Failing to enter into recognizance, delinquent to be committed.

May be discharged upon entering into such recognizance.

What the *mittimus* shall state.

Bail in capital cases.

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.

## SUBPENA.

**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.

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\*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 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.
- Process.**
- 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.**
- Appeal or writ of error to district court.**
- Writs of error from district court to supreme court.**
- Appointments to be made by the governor during the recess of the assembly.** 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.
- Fees and compensation.** 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.
- Temporary seal.** SEC. 7. That, until proper seals are provided, by the commissioners, a temporary seal may be used as a seal of said court.

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.

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

Van Buren.

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.  
Chief justice Mason.

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.

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.

Criminal or civil causes.  
 Notice to sheriff.  
 Duty of sheriff.  
 Notice when to be given.  
 Proviso.  
 Jurors how chosen and notified.  
 When this act to take effect.

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

APPROVED, January 21st, 1839.

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## 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.

Chancery jurisdiction granted to district courts.

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.

Special chancery terms may be appointed.

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.

Judges may establish rules of proceeding.

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.

Applications by petition.

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.

Summons to issue to defendants.

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 def'ts 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, 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.

If def't fail to file his plea, &c., court may make decree.

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

Complainant may reply to defendant's plea and take issue.

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, the complainant shall pay costs; and if overruled, the defendant shall pay them.

Costs.

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

**When answer shall be taken to be true on all points.** **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.

**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.

**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.

**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.

**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.

**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 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.

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## 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.**
- Malice implied.** 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.

## 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. Instances.

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 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.

If death ensue,  
offender deemed  
guilty of  
murder.

## 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.

Larceny.

Punishment.

## 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.

Horse stealing.

Punishment.

## HOG STEALING.

**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.

Hog stealing,  
altering marks,  
&c.

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, &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.

terfeited 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.

Making or  
having apparatus  
for counter-  
feiting.

Punishment.

**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.

## COUNTERFEITING PUBLIC SEALS.

Defacing or  
counterfeiting  
public seals.

Punishment.

**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.

## TESTIMONY.

In trials for for-  
gery proof by  
charter not ne-  
cessary.

Competent  
witnesses.

**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.

## 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, procure the conviction of any innocent person charged ing conviction with murder, he, she, or they, so offending, shall be of innocent deemed guilty of murder, and upon conviction there- persons to be of, shall suffer the punishment of death. deemed murder.

## 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, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal, any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgement, certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatsoever, of or belonging to any public office within this Territory, the person so offending, 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 discretion of the court.

#### JAILOR WHEN GUILTY OF OPPRESSION.

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

#### OBSTRUCTING EXECUTION OF PROCESS.

SEC. 62. If any person or persons shall knowingly Resisting officer in discharge of his duty. and wilfully obstruct, resist, or oppose any officer of this Territory in serving or attempting to serve or 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 whatsoever, or shall assault, beat, or wound any officer or other person, duly authorized, in serving or executing any writ, rule, order, process, or warrant aforesaid, every person so offending in the premises shall, on conviction thereof, be imprisoned Punishment. not exceeding two years, and fined not exceeding three hundred dollars: *Provided,* Proviso. If any officer or person whomsoever shall assault or beat any individual under color of his commission or authority, without lawful necessity 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. Punishment.

#### 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. Punishment.

#### 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. Fine. Proviso.

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. Punishment.

### 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. Menaces with intent to extort money, &c. Punishment.

### 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. Disturbing the peace at night. Punishment.

### 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 Persons meeting for an unlawful purpose. &c.

**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 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 guiltless.

Aid if necessary.

If death or injury ensue officers to be held guiltless.

## LIBEL.

SEC. 82. If any person shall attempt by malicious 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 five hundred dollars, or imprisoned not exceeding two years, or both, at the discretion of the court.

Malicious defamation.

Punishment.

## SEVENTH DIVISION.

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

## BIGAMY.

SEC. 83. If any person or persons within this 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 than five hundred dollars, nor less than one hundred

Bigamy.

Punishment.

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  
indecencies.

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 imprisoned 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. 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. Fine. 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  
more 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., fraudulently  
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 cut down, break down, level, demolish, or otherwise 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,

Fine for firing woods, prairies, &c.

**Provisoes.** 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: *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.

**Proviso.**

### 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.

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### 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

Compensation  
to witnesses.

When deposi-  
tions to be re-  
jected as infor-  
mal.

Seals not to be  
broken.

Proviso.

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

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.

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.

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.

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.

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.

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,

at which meeting they may proceed, by ballot, to elect three trustees, one clerk, one treasurer, one assessor, and one collector, who shall severally take an oath of office faithfully to discharge their respective duties.

Duties of the trustees.

SEC. 4. It shall be the duty of the trustees to superintend the schools within their respective districts; to examine and employ teachers; to lease all land belonging to the district; to call meetings of the voters whenever they shall deem it expedient, or at any time, when requested so to do by ten legal voters residing within said district, by giving at least ten days' notice of the same, by putting up written or printed notices at three of the most public places in the district; to make an annual report to the county commissioner's court in the proper county, of the number of children living within the bounds of such district, between the ages of four and twenty-one years, and what number of them are actually sent to school, with a certificate of the actual time a school is kept up in the district, with the probable expense of the same.

School district constituted a body corporate.

SEC. 5. Each and every school district, when established and organized as a free school shall be and they are constituted a body corporate and politic, so far as to commence and maintain an action on any agreement made with any person or persons for the non-performance thereof, or for any damage done their school house, or any other property that may belong to, or be in the possession of, such school, and be liable to an action brought and maintained against them for the non-performance of any contract by them made.

Trustees to prosecute and defend suits, &c.

SEC. 6. It shall be the duty of the trustees to prosecute and defend all such suits, in the name of the trustees for the benefit of the school district, giving it its proper name, and that it shall be lawful for the said trustees, in the name and for said district, to purchase, or receive as a donation, and hold in fee simple, any property, real or personal, for the use of the said school district; and they may prosecute, or defend, any suit or suits relative to the same; and it shall be the duty of the trustees to give orders on the treasurer of the said district for all sums appropriated in paying teachers, and all other expenditures necessarily incurred in establishing, carrying on, and supporting all schools within their respective districts; and at the regular annual meeting of the

To give orders on the treasurer.

inhabitants of the district, the said trustees shall, together with the other officers, settle all accounts which shall have accrued during the year for which they were elected.

SEC. 7. That it shall be the duty of the clerk of each district to keep a book, in which he shall make true entries of the votes and proceedings of each meeting of the voters of the district, and of the trustees, which shall be held according to law, and to give attested copies thereof, which shall be legal evidence in all courts of this Territory.

Clerk to keep  
a record of pro-  
ceedings.

SEC. 8. That it shall be the duty of the treasurer of each school district to receive all moneys belonging to the same, and pay them over, for the use of the school, to the order of a majority of all the legal voters, by vote in general meeting, or the order of the trustees, requiring at all times a written voucher for such payment, stating the purpose for which it is made.

Duty of the  
treasurer.

SEC. 9. That it shall be the duty of the collector of each school district to collect all the moneys belonging to, or due to the same, when directed so to do, and to collect such taxes as, by the vote of the district, shall be levied, and to pay over all moneys, when collected, to the treasurer of said district, within twenty days after such collection, except five per cent. which he shall retain for his services, taking his receipt for the same.

Of the collec-  
tor.

SEC. 10. That it shall be the duty of the assessor of each school district to assess all such property, lying within and belonging to the inhabitants of said district, as he may be directed to assess by a majority of the voters in such district, and to make return of the same, within thirty days after such assessment, to the trustees of said district.

Of the assessor.

SEC. 11. That when any legal voter, living within any school district, shall be duly selected or appointed, according to the second section of this act, trustee, clerk, treasurer, collector, assessor, or to serve a notice, and shall refuse or neglect to discharge the duties of the same, he shall, if a trustee, be fined in the sum of ten dollars, if a clerk, in the sum of eight dollars, if a treasurer, in the sum of five dollars, if an assessor, in the sum of five dollars, and if a person appointed to serve a notice of any meeting, the sum of five dollars; and for a neglect to settle all of their respective accounts at the end of the year for which they were elected, the trustees, clerk,

Fines for non-  
performance of  
duties.

and treasurer shall be fined in the sum of twenty dollars, which, together with all other fines imposed in this act, shall be collected by suit before any justice of the peace within the proper county, and when collected shall be paid over to the treasurer of the district for the use of the school, or schools, within the same.

Powers of voters when legally assembled.

SEC. 12. That the legal voters within any school district, lawfully assembled, shall have the powers, to wit: To appoint a time and a place for annual meeting, to select a place within the district, to build a school house, to levy a tax, in conformity with the provision of the tenth section of this act, either in cash, or good merchantable produce at cash price, upon the inhabitants of their respective districts, not exceeding one half per centum, nor amounting to more than ten dollars per annum on any one person, to do all and every thing necessary to the establishment and support of schools within the same.

One of the trustees to preside at meetings.

SEC. 13. That one of the trustees shall preside at all meetings of the voters, who shall put all questions upon which a vote is to be taken, and when the vote is taken upon levying a tax upon the district, each of the voters present may propose a sum to be levied, and the vote shall be taken on the highest sum proposed, and in case of a disagreement, upon the next highest, and so on down, until a majority of all the legal voters within the district, so taxed, shall agree.

Trustees to furnish collector with a warrant.

SEC. 14. That it shall be the duty of the trustees, or a majority of them, to furnish the collector with a sufficient warrant to collect such taxes as may be so levied, which warrant shall be his authority for collecting the same.

Treasurer and collector to give bond and security.

SEC. 15. That the treasurer of each district shall, before he enters on his duties, give bond, with good and sufficient security, to the trustees of said district, in any sum agreed upon by said trustees, for the true and faithful performance of his duties. And the collector shall give bond in like manner.

APPROVED, January 1, 1839.

## EDUCATION.

AN ACT confirming Grants of property made for the encouragement of Education, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That all gifts and grants heretofore made of land for the erection of a school house, a house for divine worship, and for burying the dead, where such gift or grant of land shall not exceed ten acres for a church or burying ground, shall be held valid in law to the use of the person or persons, or religious society, therein named, for the purpose of education, for divine worship, or for the interment of the dead, and none other: *Provided*, That such gifts and grants shall be recorded in the county where such lands may lie, within twelve months from the passage of this act.

Gifts and grants of land for certain purposes.

To be recorded.

SEC. 2. When any person shall hereafter deem it proper to make a donation or grant of land for the purpose of erecting a house for divine worship, a house for education, or for the interment of the dead, such deed, or gift, or grant, shall be made and executed to the county commissioners of the proper county, and their successors in office, in trust and for the use of the persons, society, or collection of people, therein named, which shall be held and used by such society, persons, or body of people, as therein directed, for the sole use of education, divine worship, and interment of the dead, and none other; which deed shall be recorded, in the recorder's office of the proper county, within twelve months after the execution of the same: *Provided*, That in no case shall such grant for the erection of a house for divine worship exceed in quantity ten acres of land: *Provided* always, That no such gift or grant, as aforesaid, shall be considered good or valid when made to defraud creditors.

Conveyances to be executed to county commissioners.

To be recorded.

Proviso.

Proviso.

SEC. 3. If any person or persons shall commit any trespass upon the premises so granted, such trespasser shall be liable to pay all damages so committed, to be recovered in the name of any person who will sue for the same, and when recovered shall be paid over to those persons or societies interested in the premises, to be expended by them in repairing such damages, or making any improvement thereon that they may think fit.

Trespassers liable for damages.

SEC. 4. When any gift or grant, as aforesaid, shall be perverted or used for any other purpose than

Grants perverted or abandoned.

done, to vest in county, unless otherwise directed by donor.

contemplated by this act, or shall be abandoned by the donees, such gift or grant shall become vested in the county where such lands may lie, unless otherwise directed in such gift or grant by the donor, and shall be sold by the order of the county commissioners of such county, and the proceeds thereof applied for the use of education in such county.

APPROVED, January 15, 1839.

## ELECTIONS.

AN ACT providing for and regulating General Elections in this Territory.

- SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That an election for members of the House of Representatives, and for county officers, shall take place on the first Monday in August next, and on the same day in every year thereafter. An election for delegate to Congress, for members of the Council, and County Recorder, shall take place on the first Monday in August, eighteen hundred and forty, and on the same day in every second year thereafter. And all general and special elections for delegate to Congress, members of Council and House of Representatives, and all county, town, and district officers shall be conducted in the manner hereinafter prescribed.
- SEC. 2.** That the county commissioners shall respectively, at their regular annual session in April, preceding the general election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at any election precinct, and for each of the polls of election as provided for in the act setting off and establishing towns or districts (as the case may be), and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judge so appointed, and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notice, to serve said notice upon each of the said judges of election. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges of election shall be and continue judges of all elections of
- Representatives and county officers.
- Delegate to Congress, members of Council, county Recorder.
- County Commissioners to appoint judges of election.
- Notice of the appointment to be served upon each.
- Clerks to be chosen by judges.

civil officers, to be held at their respective precincts, until other judges shall be appointed as herein before directed, and the said clerks of elections may continue to act as such during the pleasure of the judges of election. And the county commissioners shall, Vacancies in the office of judge. from time to time, fill all vacancies which may take place in the office of judge of election at any election precinct within their respective counties.

SEC. 3. That the clerks of the several boards of county commissioners shall, at least fifty days previous to any special election, make out and deliver to the sheriff of his county three written notices thereof for each election precinct, said notices to be as nearly as circumstances will admit as follows, to wit:

Notice is hereby given, that on the ——— Monday Form of notice. the ——— day of ——— next ——— at the house of ——— in the town or district of ——— in the county of ——— an election will be held for Territorial, county, and town or district officers (naming the offices to be filled as the case may be), which election will be opened at nine o'clock in the morning, and continue open until six o'clock in the afternoon of the same day. Dated at ——— this ——— day of ——— A. D. (as the case may be) signed A. B. Clerk of the board of county commissioners. And it also Poll books, &c., to be furnished by county commissioners' clerk. shall be the duty of the clerks of the several boards of county commissioners to furnish one of the judges of every election precinct in the county, with two poll books, and a copy of the several duties to be performed by the judges and clerks.

SEC. 4. And the sheriff aforesaid, to whom such notice shall be delivered as aforesaid, shall post up, Notices to be posted by sheriff. in three of the most public places in each town or district, the notices referring to such town, at least thirty days before the time of holding any general election, and at least eight days before the holding of any special election, and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted up by the sheriff as follows, one at the house where the election is authorized to be held, and the two others at two of the most public and suitable places in that vicinity or settlement.

SEC. 5. If any persons appointed to act as judges of the election as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by any justice of the peace residing within the county, town, or district, Judge refusing to act, justice of the peace or other person to be nominated.

to be nominated by the other judge or judges of the election, and if there be no justice present to act as judge, the other judge or judges of election shall nominate one or more capable and discreet electors, residing within the county, town, or district, to fill such vacancy or vacancies, and if there be no judge of the election present to fill such vacancy or vacancies by nomination, then such vacancy or vacancies shall be filled by the votes of such qualified electors residing within the county, town, or district, as may then be present at the place of election, and the justice or justices, person or persons, so elected or nominated to fill such vacancy or vacancies, shall be and are hereby vested with the same power as if appointed by the board of county commissioners.

Or voters may elect.

Oath to be taken by judges and clerks.

SEC. 6. Previous to votes being taken, the judges and clerks of the election shall severally take an oath or affirmation in the following form, to wit: I, A. B., do solemnly swear or affirm (as the case may be), that I will perform the duties of judge (or clerk) of the election according to law, and the best of my ability, that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.

By whom it may be administered.

SEC. 7. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oaths or affirmations to each other, and to the clerks of the election, and the person administering such oaths or affirmations shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Entry thereof.

When polls to be opened and closed.

SEC. 8. At all elections to be held under this act, the polls shall be opened at the hour of nine o'clock in the morning, and continue open until six o'clock in the afternoon of the same day, at which time the poll shall be closed: *Provided*, however, That if no judge shall attend at the hour of nine o'clock in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election as hereinbefore prescribed, the election may in that case commence at any hour before the time for closing the poll shall arrive, as the case may require: *And*

Proviso.

Proviso.

*provided*, also, That the judges of the election may, if they shall deem it necessary for the purpose of receiving the votes of all the electors wishing to vote,

postpone the closing of the polls until nine o'clock at night. Upon opening the poll, one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the poll, proclamation shall be made in like manner that the poll will be closed in half an hour.

SEC. 9. The clerks of the election shall furnish the necessary poll books and stationery in conducting the same.

SEC. 10. The manner of voting shall be by the electors approaching the bar in the election room, at any time when the poll is opened, and by presenting a ticket, folded in such a manner that no names on said ticket are visible to the judges, who shall deposit the same immediately into a general ballot box prepared for that purpose, and the clerks shall take down the names of all such voters.

SEC. 11. It shall be lawful for any elector to vote for delegate to Congress at any place of holding an election within this Territory; for members of the Council and House of Representatives at any place of holding an election in the county or district in which he may reside; for coroner, county commissioner, or county officers, at any place of holding an election in the county in which he resides; but for constables and other town officers he shall not vote out of the town or district in which he resides. And if any elector shall vote more than once, at any election held under the authority of this act, he shall be fined in the sum of one hundred dollars, to be recovered by indictment, before any court of competent jurisdiction, and the whole of such fine shall be appropriated to the use of the county in which the offence may have been committed.

SEC. 12. No person shall be entitled to vote at any election in this Territory who has not attained the age of twenty-one years, who is not a free white male citizen, or foreigner duly naturalized according to the acts of Congress on that subject, and who has not resided in this Territory for at least six months immediately previous to his application to vote. And when any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector, or if his vote shall be challenged by any elector who has previously given his vote at such election, the judges of such election shall tender to

Proclamation to be made.

Poll books, &c.

Manner of voting.

Where electors may vote for Delegate to Congress.

For members of Legislature, Coroner, county commissioner, &c.

Constables and other town officers.

Fine for voting more than once at any election.

Qualifications of electors.

Vote may be challenged.

such person an oath or affirmation in the following form, to wit: I, A. B., do solemnly swear or affirm (as the case may be) that I am a resident of the county of ———, in the Territory of Iowa, a citizen of the United States, that I have resided in this Territory for the period of six months immediately preceding this election, that I have to the best of my knowledge and belief, attained the age of twenty-one years, and that I have not voted at this election. And if the person so offering to vote shall take such oath or affirmation, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges, that said oath or affirmation is false; and if such person refuse to take such oath or affirmation, his vote shall be rejected; and if any person shall take the said oath or affirmation, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury, and shall on conviction suffer such punishment as is now or shall hereafter be prescribed by law for persons guilty of perjury. And if any person shall vote at any election who is not a qualified voter, he shall forfeit and pay any sum, not exceeding fifty dollars, nor less than twenty-five, to be recovered in the same manner as other penalties under this act are: *Provided*, however, That if such person shall have been considered by the judges of the election a legal voter, then such person shall not be so fined.

**Oath to be tendered.**

**Punishment for taking false oath.**

**Fine for voting without the requisite qualifications.**

**Proviso.**

**Constables to attend at elections.**

**Special constables.**

**Fine or imprisonment for disorderly conduct.**

SEC. 13. For the preservation of order, as well as the security of the judges and clerks of the election from insult and abuse, it shall be the duty of the constable or constables residing within the town or district, who shall be designated for the purpose by the judges of the election, to attend at all elections within such town or district, and should no constable attend at such election, the judges are hereby authorized and empowered to appoint one or more special constables, to assist in preserving order during the election. And any person who shall conduct in a disorderly or riotous manner at such election, and persist in such conduct after being warned of the consequences, shall be subject to a fine, not exceeding twenty dollars, to be recovered, for the use of the county, before any justice of the peace therein, and if the fine be not immediately paid, be liable to be imprisoned by such justice in the common jail for a term not exceeding six days, or until the fine be paid.



clerk of the board of commissioners, how to be punished. or neglect to deliver such poll book to the said clerk within the time prescribed by law, safe with the seal unbroken, he shall for every such offence forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered, in the name of the commissioners of the county, by an action of debt in the district court.

When returns to be opened. SEC. 15. On the seventh day after the close of the election, or sooner if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of his county, shall proceed to open said returns, and make

Abstracts. abstracts of the votes in the following manner: The abstract for the votes for Congress shall be on one sheet, the abstract of the votes for members of the Legislative Assembly shall be on one sheet, the abstract of the votes for county officers shall be on another sheet; and it shall be the duty of the said clerk of county commissioners immediately to make

Certificates of election. out a certificate of election to each of the persons having the highest number of votes for members of the Legislative Assembly and county officers respectively, and to deliver such certificate to the person entitled to it, on his making application for that purpose to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons, for the

For council or H. of R. if a tie exist, new election to be held. Council or House of Representatives, the clerk of the board of commissioners shall give notice thereof to the sheriff of the county, who shall advertise another election, giving at least ten days notice. And it shall be the duty of the clerk of the board of county commissioners of each county, on the receipt

Clerk's certificate touching compensation to judges, &c. of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

Equal and highest number of votes for same office in the county. SEC. 16. If the requisite number of county officers shall not be elected, by reason of any two or more persons having an equal and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons, so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk,

who shall then and there proceed publicly to decide by lot which of the persons, so having an equal number of votes, shall be declared duly elected; and the said clerk shall make out and deliver to the person thus declared duly elected, a certificate of his election as herein before provided.

SEC. 17. The clerk of the board of commissioners, immediately after making out abstracts of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the office of the Secretary of the Territory, and it shall be the duty of the Secretary of the Territory, with the Marshal of the Territory, or his deputy, in presence of the Governor, to proceed, within fifty days after the election, and sooner if all the returns be received, to canvass the votes given for delegate to Congress, and the Governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice, by reason of any two or more persons having an equal number of votes, the Governor shall order a new election.

SEC. 18. If the returns of the election of any county in this Territory shall not be received at the office of the Secretary of the Territory within thirty days after the day of election, the said Secretary shall forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns, and the said messenger shall be paid, out of the contingent fund of said Territory, the sum of ten cents for each mile he shall necessarily travel in going to and returning from the office of the said clerk.

SEC. 19. Any person who shall receive a certificate of his election, as member of the Council or House of Representatives of the Legislative Assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of his duties, or have taken the requisite oath of office. And when any vacancy shall happen in the office of members of the Council or House of Representatives of the Legislative Assembly by death, resignation, or otherwise, the Governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges of elections, in his county or district,

Question to be decided by lot.

Returns to be made to Secretary of the Territory.

Votes to be canvassed for Delegate to Congress.

Certificate and proclamation by the Governor.

In what case a new election may be ordered.

Secretary may employ a messenger.

Compensation.

Liberty to resign.

Members of Council or Representatives. Vacancies how filled.

to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the Governor: *Provided*, That if there be no session of the general assembly between the happening of such vacancy and the time of the general election, it shall not be necessary to order a special election to fill such vacancy. And when any vacancy shall happen in the office of sheriff, either by death, resignation, or otherwise, the clerk of the board of county commissioners, in which such vacancy shall happen, shall immediately notify the Governor, that he may appoint some suitable person to fill such vacancy. And when any vacancy shall happen in the office of Delegate to Congress from this Territory, it shall be the duty of the Governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

Proviso.

Vacancy in the office of sheriff, how filled.

Vacancy in the office of Delegate, how filled.

Contested elections for Council or House of Representatives. How the parties shall proceed in such cases.

SEC. 20. If any candidate of the proper county or district shall desire to contest the validity of any election, or the right of any person, declared to be duly elected, to hold his seat in the Council or House of Representatives of the Legislative Assembly, such candidate shall give notice of his intention, in writing, to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty-five days after the day of election, expressing the points on which the same will be contested, the name of one of the justices of the peace who shall attend at the taking of the depositions, the place where, and the time when the said depositions will be taken, which time, so fixed upon for the taking of the deposition, shall not exceed forty days from the day of election; and the party, whose election is contested, shall have a right to select another justice of the peace, and the two justices, so selected, shall make choice of a third justice, and if they fail to agree on a third justice to act with them, they shall proceed to select, by lot, a justice of the peace, who shall preside with them at the taking of such testimony; and the three justices thus selected, or a majority of them, shall have power, and they are hereby authorized, to issue subpoenas to all persons whose testimony may be required by either of the parties, commanding such person or persons to appear and give testimony, at the time and place therein mentioned, under the penalty of fifty dollars, to be levied on each and every delinquent who has been duly served with process: *Pro-*

*vided*, however, That should the person, whose election is contested, fail to nominate a justice as aforesaid, it shall be the duty of the justice, nominated by the person contesting the election as aforesaid, to select a justice of the peace, who shall proceed as above stated; and if any witness or witnesses, summoned as aforesaid, shall fail or refuse to appear at the time specified in said notice, it shall be lawful for said justices, or either of them, to issue an attachment against such witness or witnesses, and the testimony of him, her, or them, so failing or refusing to appear, may be taken at any time before the next session of the Legislature thereafter, by giving five days notice to the party whose election is so contested, and the party contesting the same. And if any justice of the peace, selected as aforesaid to attend at the taking of the depositions, shall, without reasonable excuse, fail or refuse to attend at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, to be paid into the county treasury. And the said justices, when met, shall hear, and certify under seal, all testimony, relative to the said contested election, to the President of the Council, or Speaker of the House of Representatives, as the case may require; and no testimony shall be heard by the said justices, on the part of the person contesting the election, which does not relate to the points specified in the notice. A copy of said notice shall be attested, either before or at the trial, by the person who served or delivered the same, or its service proved, and a certificate of such proof endorsed thereon by said justices, and the notice transmitted, with the other documents, to the President of the Council, or Speaker of the House of Representatives, to whichever body the person, whose election is contested, belongs.

SEC. 21. When any candidate shall desire to con- In the case of  
test the validity of any election, or the right of any coroner, coun-  
person, declared to be duly elected, to hold and exer- ty commission-  
cise the office of coroner, or county commissioner, er, or any coun-  
or any county office, such candidate, so contesting ty officer.  
the election as aforesaid, shall proceed in all respects  
in the manner prescribed in the foregoing section,  
except that said justices before named, after hearing  
and examining all testimony produced, as provided  
in the foregoing section, and having summed up the

same, shall decide which of the said candidates shall in their opinion have been duly elected, and said decision shall be final, and certify the same to the clerk of the board of county commissioners of the proper county, who shall thereupon make out and deliver to the successful party a certificate of his election; and all necessary costs, accruing in any contested election, shall be paid by the unsuccessful party, to be recovered by action of debt as in other cases.

If two or more counties united, votes to be compared in senior county.

SEC. 22. That when two or more counties are united in one Council or Representative district, the clerk of the board of county commissioners, of the county last established, shall, within twelve days after the day of election, attend at the office of the clerk of the board of commissioners of the senior county, and there, in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties composing such council or representative district; and said clerks shall immediately make out a certificate of the election of the person or persons, having the highest number of votes in such counties, for member of the Council or House of Representatives of the Legislative Assembly, which certificate shall be delivered to the person entitled to it, on his application, by himself or agent, to the clerk of the board of county commissioners of the senior county at his office.

Neglect, delay, or refusal to perform duties.

SEC. 23. If any judge of the election, or clerk, or any other officer or person in any manner concerned in conducting the election, shall wilfully neglect, improperly delay, or refuse to perform, any of the duties required by this act, after having undertaken to perform such duties, he shall forfeit and pay to the county the sum of forty dollars. And if such judge of election, clerk, or other officer or person in anywise concerned in conducting the election, shall knowingly admit any person to vote, not qualified according to law, or shall knowingly receive and count more than one vote from one person, at the same election, for one office, or shall be guilty of

Fine.

Admitting to vote persons not qualified.

Fraud, corruption, or partiality.

fraud, corruption, or partiality, in any matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in this Territory, in the name of the board of commissioners of the proper county, for the use of their county, in an action of debt, with costs of suit, or at the suit of any person who may sue for

the same, the amount recovered to be paid into the county treasury, and every such person, so offending as aforesaid, shall moreover, on conviction, be rendered incapable of holding any office within this Territory for the term of ten years thereafter. If any judges of election shall wilfully refuse to receive the vote of any elector, who has a right according to the laws of this Territory to vote at the polls where such judges preside, and who, being challenged, shall offer to take the oath prescribed in such cases by this act, such judges of election, so refusing, shall be liable to the penalty of fifty dollars, to be recovered by action of debt, in the name of the Territory, or of any person who may sue for the same, the amount recovered to be paid into the county treasury: *Provided*, That nothing in this act shall be so construed as to prevent the judges from refusing to receive the vote of any person, when it shall be proved, to the satisfaction of a majority of them, that in taking the said oath he shall have sworn falsely. And if any judge of election shall order to be received the vote of any person who, being challenged, shall not take the oath or affirmation prescribed by law, such judge of election, so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, in the name of the Territory, or of any person suing therefor, the amount recovered to be paid into the county treasury.

SEC. 24. When any vacancy shall happen in the office of member of the Council or House of Representatives of the Legislative Assembly, by death, resignation, or otherwise, it shall be the duty of the clerk of the board of county commissioners of the county, if one county only compose the council or representative district, as soon as he shall be informed thereof, to notify the Governor of such vacancy, and if there be more than one county comprised within the limits of such council or representative district, it shall be the duty of the clerk of the board of county commissioners of the senior county, in such district, so to notify the Governor, and the Governor, immediately upon his receiving such notification, shall proceed in the same manner as is prescribed for other cases in the nineteenth section of this act.

SEC. 25. There shall be allowed out of the county treasury of each county to the several judges and

Fine and disqualification.

Refusing votes of electors.

Fine.

Proviso.

Receiving votes of persons challenged but not sworn.

Fine.

Vacancy in the office of member of Council or Representative.

Compensation to judges and clerks.

clerks of election, as a compensation for their services, one dollar per day, and the person carrying the polls, from the place of election to the clerk's office, the sum of five cents per mile for going and returning.

When county or district divided before election to fill a vacancy.

SEC. 26. If a vacancy should occur in the Council or House of Representatives of this Territory, from any cause, and if the county or counties, composing the district in which the vacancy may have occurred, should have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated, but no person shall be permitted to vote at any such election who does not, at the time, reside within the limits of the original county or district in which such vacancy may have occurred: *Provided*, That nothing herein contained shall be so construed to permit any person to vote, so residing within the said limits, who has not the other qualifications of a voter.

When and where returns to be made.

SEC. 27. In cases of elections to fill vacancies, as provided for in the preceding section, the returns shall be made by the clerks of the board of county commissioners of the different counties, within twelve days, to the office of the clerk of the board of county commissioners of the original county composing the district, and certificates of election shall be made out and signed by the clerks of the boards of county commissioners of the different counties in which such election may have been held.

Elections by the legislative Assembly.

SEC. 28. In all elections by the Council and House of Representatives of this Territory, or by either house, the members shall vote by ballot. Elections, by joint vote of the two houses, shall be made in the hall of the House of Representatives, at such time as shall have been previously appointed by joint resolution of the two houses, and at all such joint meetings the Speaker of the House of Representatives shall preside. The Speaker of the house shall appoint a member of each house to act as tellers. No person shall be declared duly elected by the Council and House of Representatives, or either house thereof, until he shall have received a majority of all the votes given, blank votes included.

APPROVED, January 25, 1839.

## EXECUTIONS.

AN ACT subjecting real and personal estate to execution.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the personal and real estate of every individual, company, body politic or corporate, including his, her, or their goods, chattels, lands, tenements and hereditaments, and any title or equitable right to lands whether under a certificate from any land office, or a title bond from any person for a warranty deed, or any right whatever to the possession of lands be and the same are hereby made subject to execution to be taken and sold according to the provisions of this act, excepting that necessary wearing apparel shall not be considered as any part of the estate of any defendant, or defendants, in execution.

What property or interest in lands, &c., may be taken in execution.

Exception.

SEC. 2. That when hereafter any writ of execution may issue against the goods, chattels, lands, tenements and hereditaments of any defendant, or defendants, it shall be the duty of the sheriff, or other officer, to levy such execution upon such part of the estate of such defendant, or defendants as he, she, or they may direct, but if no such direction shall be given, the message, lands or tenements on which such defendant or defendants may be chiefly situated, shall not be levied upon unless a sufficiency of other property, to satisfy the execution or executions, in the hands of the officers cannot be found; and in all cases the real estate of execution defendants shall be exempt from levy and sale until the personal estate of such defendant shall be first levied upon and sold, unless such defendants voluntarily authorize the sale upon execution of their real estate: *Provided*, That nothing herein enacted shall be so construed as to make it the duty of any sheriff, or other officer, to levy upon and sell on execution property selected for that purpose by any execution defendant or defendants, if there exist any reasonable doubt whether such defendant or defendants is or are the bona fide owners of such property so selected.

Duty of officer, in making a levy.

Defendant may direct. Residence of defendant regarded.

Real estate exempt from levy until after the sale of personal property.

Proviso, as to the direction of defendant, and doubts concerning title.

SEC. 3. That real and personal estate taken in execution shall sell for the best price the same will bring at public out-cry, and a deed in fee simple conveying the real estate shall be made to the purchasers, executed by the officer selling the same: *Provided*, that the owner of any real estate sold under the provisions of this act may redeem the same at any time

The best price.

Deeds for real estate, by whom and to whom made. Redemption within one year.

within one year from such day of sale, by paying the purchase money, together with twenty-five per centum interest on the same.

What articles shall be exempt from execution and sale.

SEC. 4. That, hereafter, when any execution shall issue to any sheriff, or other officer, against the goods and chattels, lands and tenements of any defendant, or defendants, if he, she, or they, have families, it shall be lawful for such defendant, or defendants, to claim, as exempt from execution, the following property, to wit: one bible, one cow and calf, one horse or yoke of cattle, five sheep, five head of hogs, household and kitchen furniture, not to exceed in value thirty dollars, one stove fixed up in the house, one bed, and the necessary bedding therefor for every two in family, farming utensils not exceeding in value fifty dollars, one month's provisions for the support of the family, and all mechanics' necessary tools, all private libraries: *Provided*, None of said libraries shall contain more than one hundred dollars worth of books, and it shall be the duty of the said officer not to execute any of the above exempt property.

Notice of the sale of real estate.

SEC. 5. That any sheriff, or other officer, levying an execution upon any real estate, shall, previous to offering the same for sale, give at least six weeks notice of the time and place of such sale, by posting up written advertisements thereof, in three of the most public places in the county in which such real estate may be situated, and also by advertising the same for three weeks successively in the newspaper printed nearest such real estate: And, previous to selling any personal estate on execution, the sheriff or other officer levying thereon shall give at least fifteen days notice of the time and place of such sale, by posting up written notices of the same at three of the most public places in the township, in which such sale may be made.

Of personal estate.

When the estate sold does not fully satisfy the execution.

SEC. 6. That if the estate of any execution defendant or defendants taken and sold on execution, by virtue of the provisions of this act, should fail to sell for a sum sufficient to satisfy the debt, damages and costs due and accruing upon such execution, the officer returning such execution shall make return of his doings thereon accordingly, and another writ of execution shall issue to be credited by endorsement made by the clerk, or justice, with the sum or sums previously paid or made on any previous execution, upon which writ of execution the proper officer shall

Return, and new execution, and credits thereon.

proceed to levy and sell in the manner herein before prescribed, making return of his doings thereon as **Return.**  
in other cases.

SEC. 7. That when any sheriff or other officer, who may have sold any real estate under the provisions of this act shall previous to making a deed therefor to the purchaser go out of office by death, resignation, removal, or otherwise, it shall be the duty of the successor in office of such officers to make the necessary deeds to such purchaser: *Provided*, The purchase money has been duly paid.

Death, or removal of sheriff, or other officer.

Duties of his successor, as to deeds.  
Proviso.

SEC. 8. That, if it shall appear upon the face of any writ of execution, or by endorsement thereon, made by the officer issuing the same, that any one of the persons against whom the same may be issued is or are only security, for any one or more of the persons against whom such execution may have been issued, the officer executing the same shall first sell so much of the estate of the principal defendant or defendants named in such execution, as he may be able to find, before he shall sell any of the estate of such security or securities, unless such officer may be otherwise directed by such security or securities.

Duty of sheriff, as regards the property of principal defendants, and their securities.

Exception.

SEC. 9. When any person or persons, other than the defendant or defendants, by himself, herself, or themselves, his, her, or their agent or attorney, shall file a claim, in writing, with the officer holding such execution, setting forth that such person or persons is or are the owner, or owners, of and have just claim to any personal property levied upon by such officer, by virtue of such execution, specifying the article, or articles, item, or items, of property so alleged to be owned and claimed, it shall be the duty of such officer, having levied on such property as aforesaid, forthwith to summon six disinterested householders to determine the question raised by such claim, and the trial of the right of such property shall be held before some justice of the peace of the proper county, in which such property may be found, which justice shall attend upon the summons of the officer executing such execution and shall preside at such trial swearing the said householders summoned to try the right to the property aforesaid and witnesses introduced by the parties, and if any person or persons parties to such proceeding should consider himself, herself, or themselves aggrieved by the determination of such trial before such justice, it shall be the duty of such justice, upon the application of such

Proceedings when property is claimed by a person, or persons, not named in the execution.

How, and before whom, the right of property to be determined.

Appeal to the district court.

- person or persons to certify to the district court a true transcript of the proceedings had before him in the premises under such limitations and restrictions as are prescribed in regard to other cases of appeals from judgments of justices of the peace; and furthermore to take from the person or persons retaining the possession of the property in controversy a bond with sufficient security conditioned for the delivery of the same to whomsoever it may be determined to belong by the judgment of the court on said appeal, and if the claimant should fail to establish his or her right to such property on the trial of such appeal in the district court, it shall be the duty of such court trying the appeal to assess in favor of such execution plaintiff six per centum on the amount of such execution if the amount of such execution shall be less than the value of the property claimed, or in case the sum due on such execution shall be more than the property claimed, then six per centum on the value of the said property claimed, in case the court trying the case shall be of the opinion that the appeal was taken for delay, or vexation, and in all cases where a trial of the right of property has been had the decision thereon shall be conclusive between the parties to such trial, so long as the same remains unreversed: *Provided*, That no officer shall be liable to any prosecution for taking any goods in execution in the possession of the defendant or defendants, unless notified or informed of the ownership therein, previous to his sale of such goods under execution.
- Bond and security.**     **Condition.**     **Proviso.**     **When, by whom, to whom and under what regulations, executions may be directed into any county of this Territory.**     **May be returned by mail.**
- SEC. 10.** That the clerks of the district court may upon request issue executions directed to the proper officer of any county within this Territory, whose duty it shall be to obey and execute the same and make due return thereof to the officer who issued the same, according to the provisions of this act, and whenever an execution shall be issued, in any county in this Territory, or from the supreme court directed to the sheriff or coroner of any other county, it shall be lawful for such sheriff or coroner, having received such execution and discharged all the duties required therein by law to enclose such execution and forward the same by mail to the clerk of the court who issued the same and on proof being made by such sheriff or coroner that such execution was mailed a reasonable and sufficient time to reach the office from whence it issued, within the time prescribed by law, such sheriff shall not be liable to any amercement

or penalty for any failure of the safe arrival of such execution, anything in this act to the contrary notwithstanding: *Provided*, That no sheriff or coroner shall send by mail any money made on such execution unless he be especially instructed so to do, by the plaintiff or his agent. Proviso.

SEC. 11. That, when any personal estate may be taken on execution by virtue of the provisions of this act, the officer taking the same may release such property by the defendant or defendants entering into bond with sufficient security, in double the amount of the value of such property, conditioned for the delivery of the same at such time and place as may be named in such bond to such officer, to be sold according to law, which bond shall be by such officer returned into the office from whence the execution, by virtue of which such property may have been taken issued, and such bond shall be valid in law, and an action may be had thereon whenever the conditions thereof may have been violated, and on recovery being had thereon the amount due on such execution shall be assessed in favor of the plaintiff: *Provided*, That property so taken be of sufficient value to satisfy the same, and if not then the value of the property so taken together with twelve per centum thereon: And on the judgment obtained on such bond there shall be no stay of execution and no delivery bond shall be taken by the officer executing the same. Release of personal property how to be effected.  
Bond and security.  
Bond to be returned, and action maintained thereon.  
Proviso.

SEC. 12. That any person, against whom any judgment may be obtained in any of the district courts of this Territory, may have a stay of execution thereon as follows: on all sums over one hundred dollars, a stay of six months; on all sums less than one hundred dollars and over fifty dollars, a stay of four months; and on all sums less than fifty dollars the same stay that would have been allowed had such judgment been obtained before a justice of the peace, by procuring one or more sufficient securities to enter on the record of the court rendering such judgment acknowledging himself or themselves bail for the payment of such judgment together with the interest and costs of suit which recognizance may be entered in open court or before the clerk of such court and the same shall be taken as judgment confessed against the person or persons acknowledging the same, and execution shall issue as well against the principal as security or securities. Stay of execution on judgments in district courts.  
Kind of security required, and liability thereby incurred.

**Execution, when issued, may be stayed.** **SEC. 13.** That when execution of any kind may issue upon any judgment, upon which no stay of execution may have been taken under the provisions of the twelfth section of this act, the officer issuing the same shall endorse thereon that the same is repleviable, and also the date of the rendition of such judgment, and the person or persons against whom such execution may have been issued, may replevy the same for the space of time specified in the said twelfth section of this act, from and after the date of the rendition of such judgment, as the same may be endorsed on such execution as aforesaid, by tendering to the officer having such execution in his hands, a bond with one or more good securities made payable to the plaintiff in a penalty in at least double the amount demanded by such execution, and conditioned for the full payment of the amount demanded by such execution, together with interest and costs of suit, to the end of such stay, which bond shall be returned by the officer returning the execution as a part of his doing thereon to the officer who issued such execution, and such bond shall be taken, as a judgment confessed against the person or persons who executed the same, and against their estates, and execution may issue thereon accordingly.

**By giving bond.**

**Condition, and effect of said bond.**

**Judgments against certain officers, as such.** **SEC. 14.** That upon judgments obtained against any justice of the peace, clerk, sheriff, coroner, county treasurer, county agent, trustee of the county academy, or seminary fund, collector of the revenue, or attorney at law, or their securities for moneys by them collected or received, in trust for others by virtue of their office, against any individual, or individuals, company, or corporation, for money deposited with him, or them, no stay or replevy of execution shall be allowed; and on executions issuing on such judgments the court rendering the same shall order an endorsement to be made that such judgment is not repleviable, and such court shall also order that no stay of execution shall be allowed, and executions issuing on such judgment, shall be returnable in thirty days from the date thereof.

**No stay of execution allowed thereon. When returnable.**

**Replevy bonds, &c., to be entered on docket.** **SEC. 15.** That replevy bonds, and bonds for the delivery of property taken on execution shall, when returned to the officer who issued such execution, be entered on the judgment docket of such officer, but the entering of security by recognizance of record for the payment of any judgment, and the replevy-

ing of an execution in the hands of an officer, and the giving of a bond for the delivery of property on execution, shall neither nor all operate as a satisfaction of the original judgment, upon which such proceedings shall or may be had, so as to extinguish the lien created by such original judgment upon the estate of any defendant.

But not to satisfy judgment, or extinguish lien.

SEC. 16. That no real estate, of any testator or intestate, shall be subject to execution upon any judgment against the executor or administrator of such testator or intestate until the devisees of such testator and the terretenants of such real estate be first made parties to such judgment in the following manner, to wit: where any judgment shall be obtained against any executor or administrator to be levied of the goods and chattels of the deceased and execution issued thereon, shall remain unsatisfied in whole or part, for want of personal estate and there is real estate in this Territory, it shall be lawful for the plaintiff in such judgment to file in the proper court where such judgment is obtained, a petition against the executors or administrators and heirs and devisees if any of the deceased, setting forth the facts of the judgments, and the want of personal property, and that there is real estate in the Territory of Iowa, describing the same, and setting forth in what county or counties the same is situated, and praying said court to award the proper writ, or writs, of execution against the same, and the clerk of said court shall upon filing such petition notify the persons against whom it is filed of the pendency thereof, requiring them to appear, on the first day of the next term of said court, and shew cause, if any they can, why the proper writ or writs of execution shall not be awarded; which said notice shall be given to residents by summons served by the proper officer, and to non-residents by publishing the same in the nearest newspaper for four weeks successively, and if a summons it shall be served on residents ten days before the sitting of the court and be published to non-residents as aforesaid, the court shall at the first term award the proper writ or writs of execution directed to the proper officer of the proper county, unless good cause to the contrary be shown, and the nonage of heirs, or devisees, shall not in any case be good cause to suspend execution.

Proceedings in executions against the estate of testators and intestates.

Notice to heirs and devisees.

Residents and non-residents.

SEC. 17. That when default or defaults shall be made or suffered by any mortgager or mortgagers

Proceedings on the sale of

mortgaged estates.

of land, tenements, or hereditaments, or by his, her or their heirs, devisees, executors, administrators or assigns, of, or in the payment of the mortgage money, or performance of the condition, or conditions, which they, or any of them should have paid, or performed, or ought to pay or perform, in such manner and form and according to the tenor, purport and effect of the respective provisions, conditions, or covenants, comprised in the deeds of mortgage, or defeasance, and at the days, times and places in the same deeds respectively mentioned and contained, in any purchase it shall and may be lawful for the mortgagee, or mortgagees who may hold the said deed or defeasance, his, her, or their heirs, administrators or assigns, at any time after the expiration of the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to file his, her, or their bill in the proper district court, according to the course of the common law, praying such court to foreclose the equity of redemption, of the mortgager, or mortgagers to such mortgaged premises, and the said court having jurisdiction thereof shall make such equitable decree in the premises between the parties as may be right and just, and the said mortgaged premises if ordered to be sold by such court shall be sold, as other lands are sold, on other execution to the highest bidder at public vendue, and the sheriff selling the same shall make a proper deed of conveyance to the purchaser or purchasers thereof, as in case of other land sold on execution, and when such lands, tenements and hereditaments shall be sold as aforesaid, the person or persons to whom the same may be sold shall and may hold and enjoy the same with their appurtenances, and such estate or estates shall be discharged from all equity and benefit of redemption, and all other incumbrances made and suffered by the mortgager or mortgagers, his, her or their heirs and assigns, and such sales shall be available in law and the respective vendees, mortgagees and creditors, their heirs and assigns, shall hold and enjoy the same; but before such sale be made notice thereof shall be given in manner and form hereinbefore prescribed, concerning the sale of lands upon execution.

Equity of redemption foreclosed by decree of district court.

Notice of sale.

Overplus to be returned to defendant.

SEC. 18. That whenever any goods, chattels, lands, tenements or hereditaments shall be sold on execution by virtue of any of the provisions of this act, and the same will sell for more than will satisfy such

execution the interest and costs accruing thereon, the sheriff or other officer making sale of the same shall render the overplus to the defendant or defendants, and then, and not till then, shall such officer be discharged thereof upon the records of the same court to which he shall make return of his proceedings concerning such sales.

SEC. 19. That no sale of property on execution by virtue of the seventeenth section of this act shall be construed to create any further term or estate in the vendees, mortgagees or creditors to whom the same may be sold, or delivered, than the estate so sold and delivered shall appear to have been sold or mortgaged for, by the said respective mortgages or defeasible deeds.

Sales under sec. 17, and what interest passes thereby.

SEC. 20. That if any estate shall be sold upon execution, issued under and in accordance with the provisions of this act, upon any judgment or decree rendered by a court having jurisdiction of the matter of controversy, which may have resulted in such judgment and such judgment or decree shall be afterwards reversed for error or errors none of such estate so sold on execution shall be restored in consequence of such reversal.

Judgments reversed for error, not to affect the sale of estate.

SEC. 21. That when mutual judgments are existing in any county of this Territory that it shall be the duty of the officer or officers in whose hands the execution may be to set off one execution or judgment against the other, so far as the same shall extend and executions may be certified from one county to another for the purpose of allowing such set offs; and it shall be the duty of the officers when any such executions shall come to their hands to allow the same.

Mutual judgments may be set off against each other.

SEC. 22. The innocent purchaser shall be entitled to his suit against the judgment creditor either in law or equity for the recovery of the money paid for such estate.

Remedy of innocent purchaser.

SEC. 23. This act to be in force from and after the first day of May next.

This act, when to take effect.

APPROVED, January 25, 1839.

## FERRIES.

AN ACT to authorize Timothy Fanning to establish and keep a Ferry across the Mississippi river, at the town of Du Buque.

**SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Timothy Fanning, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river at the town of Du Buque, in the county of Du Buque, and to depart from and land at any place on the public landing of said town, which was set apart for public purposes by the act of Congress, approved 3d day of July, A. D. 1836, for the term of twenty years from the passage of this act: *Provided,* That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by the laws of this Territory, fixing the rate of toll, and prescribing the manner in which licensed ferries shall be kept and regulated.

Ferry at Du Buque chartered for twenty years.

Proviso.

No court, &c., to authorize a ferry to be kept at Du Buque. Conditions of the grant.

Penalty for violation thereof.

**SEC. 2.** *And be it further enacted,* That no court, or board of county commissioners, shall authorize any person (unless as hereinafter provided for by this act) to keep a ferry within the limits of the town of Du Buque: *Provided,* That the said Timothy Fanning, his heirs or assigns, shall, within two years from the passage of this act, procure for said ferry a good and sufficient steam ferry boat, which shall be kept at said ferry for the transportation of all persons and their property across said river, without delay; and until said ferry boat shall be provided as aforesaid, the said Timothy Fanning shall keep at said ferry a good and sufficient number of flat boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river (when passable), without delay. And should the law regulating ferries now prescribed, or hereafter to be prescribed, be violated by the said Timothy Fanning, his heirs or assigns, or if no good and sufficient steam ferry boat be provided at the time required by this charter, upon proof thereof, to be made to the satisfaction of the board of county commissioners, or to the county court (as the case may be), of the county of Du Buque, the above charter, if so violated, shall be declared void, and said ferry shall thereafter be disposed of as other ferries

are under the laws regulating ferries. This act to be in force from and after its passage.

N. B. As far as this act may be construed to interfere with private rights —to vest in the county commissioners judicial powers—or to conflict with the provisions of the act of Congress referred to in the first section—I consider it will be void: in other respects valid. With this note of explanation, I give to it my assent. Note by the Governor.

APPROVED, December 14, 1838.

## FERRIES.

AN ACT to authorize Joseph Williams and Charles Alexander Warfield to keep a ferry.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Joseph Williams and Charles Alexander Warfield, their heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at Bloomington, in Muscatine county, and for one mile above and one mile below said town, to the east bank of said river, for the term of twenty years, from and after the passage of this act: *Provided*, Said Williams and Warfield shall, within two years from the passage of this act, establish and keep, or cause to be kept, a good and sufficient horse or steam ferry boat at the place aforesaid, for the safe conveyance of passengers and their property across said stream, without delay: *And provided* also, That said ferry, when so established, shall be subject to the same laws, and under the same restrictions, as other ferries are or may hereafter be by laws enacted, or to be enacted, in this Territory (or State as the case may be), fixing the rates of toll, and prescribing the manner in which licensed ferries are or shall be hereafter established and attended to. And should the law regulating ferries in any way be violated, and proof be made to the satisfaction of any court of competent jurisdiction, then the above charter, so violated, shall be declared void, and said ferry shall thereafter be disposed of as other ferries are under the laws regulating ferries: *Provided* also, That nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river. *Provided*, nevertheless, That the owners of said ferry, before they shall occupy and use the landing on the said river,

Ferry at Bloomington chartered for twenty years.

Conditions of the grant.

Penalty for violating the act to regulate ferries.

Rights saved.

which shall or may belong of right to any other individual or individuals, shall first obtain the consent of said individual or individuals to use and occupy the same.

APPROVED, December 14, 1838.

## FERRIES.

AN ACT to authorize John H. Sullivan and Adrian H. Davenport to establish and keep a ferry across the Mississippi river, at the town of Rockingham.

*SEC. 1. Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That John H. Sullivan and Adrian H. Davenport, their heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Rockingham, in the county of Scott, within the following limits: commencing at a point in said town at the junction of Wapello street with said river, and extending from said point, up and down said river, one mile each way; and that said Sullivan and Davenport have the exclusive privilege of ferrying within the above limits for the term of twelve years: *Provided,* That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are or may hereafter be by the laws of this Territory, fixing the rates of toll, and prescribing the manner in which licensed ferries shall be kept and regulated.

Ferry established at Rockingham.

Limits.

Exclusive privilege for twelve years.

Horse or steam ferry boat to be procured.

*SEC. 2. And be it further enacted,* That the said John H. Sullivan and Adrian H. Davenport, their heirs and assigns, shall, within two years from the passage of this act, procure for said ferry a good and sufficient horse or steam ferry boat, which shall be kept at said ferry for the transportation of all persons and their property across said river, without delay; and until said ferry boat shall be provided as aforesaid, the said Sullivan and Davenport shall keep at said ferry a good and sufficient flat boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river, when passable, without delay.

*SEC. 3.* This act to take effect from and after its passage.

Note by the Governor.

N. B. As far as this act may be construed to interfere with private rights, or the property of the United States, I consider it will be void; in other respects valid. With this note of explanation, I give to it my assent.

APPROVED, December 17, 1838.

## FERRIES.

AN ACT to authorize J. S. Kirkpatrick to establish and keep a Ferry across the Mississippi river, at Belleview.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That J. S. Kirkpatrick, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Belleview, in the county of Jackson, for the term of twenty years, from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are or may hereafter be by the laws of this Territory, fixing the rate of toll, and prescribing the manner in which licensed ferries shall be kept and regulated.

Ferry at Belleview chartered for twenty years.

Under same regulations and restrictions as other ferries.

SEC. 2. *And be it further enacted*, That said J. S. Kirkpatrick, his heirs and assigns, shall, within two years from the passage of this act, procure for said ferry a good and sufficient horse or steam ferry boat, which shall be kept at said ferry for the transportation of all persons, and their property across said river, without delay; and until said ferry boat shall be provided as aforesaid, the said J. S. Kirkpatrick shall keep at said ferry a good and sufficient number of flat boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river, when passable, without delay.

Horse or steam ferry boat to be procured.

SEC. 3. This act to take effect and be in force from and after its passage.

N. B. As far as this act may be construed to interfere with private rights, or the property of the United States, I consider it will be void; in other respects valid. With this note of explanation, I give to it my assent.

Note by the Governor.

APPROVED, December 17, 1838.

## FERRIES.

AN ACT to regulate Ferries.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That no person shall be permitted to keep a ferry across any stream, except the Mississippi river, running through or bounding on any county in this Territory, without having first obtained a license, from the county commissioners' court of the proper county, for the purpose, as hereinafter provided.

License to be obtained from com. court.

Notice to be given by applicant.

SEC. 2. That the person applying for such license shall produce satisfactory evidence to the court, by the affidavit of the applicant, or otherwise, of his having given notice, by advertisement, set up in at least three public places in the township or neighborhood where the ferry is proposed to be kept, twenty days prior to the sitting of the court, of his intention to apply to such court for a license to keep a ferry.

Court authorized to grant license.

SEC. 3. That the court being satisfied that the notice hereby required has been given, that a ferry is needed at such place, and that the applicant is a suitable person to keep the same, are hereby authorized to grant to the applicant a license to keep the same for any term of time, not exceeding five years, on the applicant's paying into the county treasury of the proper county a sum to be fixed by the court, not less than two, nor more than fifty dollars annually; and on the applicant's producing the county treasurer's receipt for the payment of the sum so fixed, he or she shall receive from the clerk of the court a license, under the seal of the court, for a time not exceeding the term aforesaid, for which he or she shall pay the clerk the sum of fifty cents: *Provided*, That all ferries so established shall not be nearer than one mile of each other.

Proviso.

Rights of parties as to ferry license.

SEC. 4. That the person owning or possessing land on both sides of any stream, where a ferry is proposed to be established, shall have exclusive right of a license for a ferry at such place, and when the opposite banks are owned by different persons, the rights to the ferry shall be mutual, but if the owner does not apply, the court shall grant a license to any person applying for the same, except where either of the landings are not in a public highway, the consent of the owner of the ground shall first be had in writing: *Provided*, When any person shall apply for a renewal of his license at the same place where he has kept the preceding year, the same may be granted or renewed without notice or petition.

Renewal.

Duties of ferry keepers.

SEC. 5. That every person obtaining a license to keep a ferry shall provide, and keep in complete repair, a good and sufficient boat for the safe conveyance of persons and property, and when the river or creek, over which the ferry is kept, is passable, shall, with a sufficient number of hands to work and manage the boat, give due attendance from daylight in the morning until dark in the evening; and shall

moreover at any hour in the night or day (that the creek or river can be passed), when called upon for that purpose, convey the United States mail, or other public express, across said ferry. And if any person, having obtained a license as aforesaid, shall fail or neglect to perform the duties herein enjoined, or any of them, the person so offending shall forfeit and pay for every such offence a sum, not exceeding twenty dollars, to be recovered before any justice of the peace of the proper county, at the suit of any person prosecuting for, and making due proof of such failure or neglect. And if any keeper of a ferry, as aforesaid, shall demand and receive a higher rate or sum for ferriages than shall be allowed by law regulating ferries, the person so offending shall forfeit and pay for every such offence a sum, not exceeding ten dollars, recoverable before any justice of the peace of the proper county, by any person making due proof thereof, to be disposed of as hereinafter provided.

Penalty for non-performance.

And for receiving higher rates than allowed by law.

SEC. 6. That the court of county commissioners, at the same time they grant a license to keep a ferry, shall also fix the rate of ferriages which the ferry-keeper may demand and receive for the transportation of persons and property, and it shall be the duty of the clerk of said court to furnish every person, on taking out a license to keep a ferry, with a list of the rate of ferriages, which list the ferry-keeper shall post up at the door of his ferry house, or some conspicuous place convenient to said ferry.

Court to fix the rates of ferriage.

Rates to be posted up.

SEC. 7. That if any person shall keep a ferry without being duly authorized, the person so offending shall forfeit and pay a sum, not exceeding thirty dollars, to be recovered by any person suing for the same before any justice of the peace having jurisdiction thereof.

Penalty for keeping ferry without authority.

SEC. 8. That all actions or suits brought under the provisions of this act shall be in the name of the United States, and the court taking cognizance thereof, shall keep a record of all fines and forfeitures recovered under the same, and sheriffs, constables, and other officers shall pay all moneys, within thirty days after receiving the same, into the county treasury, and justices of the peace and clerks of courts, before whom any fine is recovered, shall present an accurate account thereof to the county treasurer, on or before the first day of June annually, and the clerks of courts shall in like manner return

Suits under the provisions of this act.

a list of all licenses by them issued, and to whom, and the price of each respectively, and it shall be the duty of the county treasurer to inform and prosecute all offenders against this act.

To take effect from 1st March. SEC. 9. This act to be in force and take effect from and after the first day of March next.

APPROVED, December 20, 1838.

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## FERRIES.

AN ACT to authorize Aaron Usher and Thomas M. Groom to establish a ferry across the Mississippi river.

Ferry in Muscatine county chartered for twenty years. Conditions of the grant. Forfeiture in case of non-performance.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Aaron Usher and Thomas M. Groom, their heirs and assigns, be and they are hereby authorized to establish and keep, or cause to be established and kept, a ferry across the Mississippi river, between the northwest bank of said river, opposite the town of Wyoming, in Muscatine county, and the lower landing for Illinois City on the southeast side of said river, or as near as practicable, for the term of twenty years, from and after the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by law in this Territory, fixing the rates of tolls, and prescribing the manner in which licensed ferries shall be kept and attended to: *And further provided*, That nothing in this act contained shall be so construed as to interfere with any other ferry, which has already been established by law across the said Mississippi river: *Provided* further, That the said Aaron Usher, and Thomas M. Groom, their heirs or assigns, shall within two years, from the passage of this act, procure a good and sufficient steam or horse ferry boat, which shall be kept at said ferry for the transportation of all persons and their property across said river, when passable, without delay; and until said ferry boat shall be provided as aforesaid, the said Usher and Groom shall keep, or cause to be kept, at said ferry, a good and sufficient flat boat or boats, with a sufficient number of hands to work the same, for the transportation of all persons as aforesaid across said river. And should the law regulating ferries now prescribed, or hereafter to

be prescribed, be violated by the said Usher and Groom, their heirs or assigns, or if no good or sufficient steam or horse ferry boat be provided at the time and place required by this charter, upon proof thereof, to be made to the satisfaction of the district court of the proper county, this act shall be deemed and declared void, and said ferry shall thereafter be disposed of as other ferries are under the laws regulating ferries.

N. B. As far as this act may be construed to interfere with private rights, or the property of the United States, it will be considered void: in other respects valid. With this note of explanation, I yield to it my assent. Governor.

APPROVED, December 29, 1838.

## FERRIES.

AN ACT to authorize Ralph Letton to establish and keep a ferry across the Mississippi river, at the town of Parkhurst.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Ralph Letton, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Parkhurst, in the county of Scott, within the following limits: commencing at a point in said town known as the Public Landing, and extending from said point up and down said river, one mile each way; and that said Letton have the exclusive right or privilege of ferrying, within the above limits, for the term of ten years: *Provided,* That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by the laws of this Territory (or state as the case may be), fixing the rates of toll, and prescribing the manner in which licensed ferries shall be kept and regulated.

Authority to keep a ferry at Parkhurst.

Limits.

Exclusive right for ten years.

SEC. 2. *And be it further enacted,* That the said Ralph Letton, his heirs and assigns, shall, within four years from the passage of this act, procure for said ferry a good and sufficient horse or steam ferry boat, which shall be kept at said ferry for the transportation of all persons and their property across said river, without delay; and until said ferry boat shall be provided as aforesaid, the said Letton, his heirs and assigns, shall keep at said ferry a good and sufficient flat boat, with a sufficient number of hands to work the same, for the transportation of all persons

Horse or steam ferry boat to be procured.

and their property across said river, when passable, without delay.

**To take effect from 1st April.** SEC. 3. This act to take effect and be in force from and after the first day of April next.

**Note by the Governor.**

N. B. As far as this act may be construed to interfere with the property of the United States, or individual rights, it will be considered void: in other respects valid. With this note of explanation, I yield to it my assent.  
APPROVED, January 4, 1839.

## FERRIES.

AN ACT to authorize David W. Kilbourn to keep a ferry across the Mississippi river, at the town of Montrose.

**Authority to keep a ferry at Montrose.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That David W. Kilbourn, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at Montrose, in Lee county, with the exclusive privilege to the same, for one mile above, and one mile below said town, for the term of ten years.

**Exclusive privilege for ten years.**

SEC. 2. *Provided,* always, Said ferry, when so established, shall be subject to the same regulations and restrictions as other ferries are, or may be, by law, fixing the rate of toll, and prescribing the manner in which licensed ferries shall be kept and attended to: *And provided further,* That said Kilbourn shall put, or cause to be put, in complete operation a good steam or horse ferry boat, within the term of fifteen months, from and after the passage of this act: *Provided* also, That nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river.

**Steam or horse ferry boat to be put in operation.**

**Rights saved.**

SEC. 3. This act to take effect from and after its passage.

APPROVED, January, 19, 1839.

## FERRIES.

AN ACT to authorize John Gaines, Otis Reynolds, and Company, to keep a ferry across the Mississippi river, above the Round Mound, at the Upper Mouth of Des Moines river.

**Ferry in Lee county.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That John Gaines, Otis Reynolds, and Company, their heirs and

assigns, be and they are hereby authorized to keep a ferry across the Mississippi river, opposite the Round Mounds, at the upper mouth of the Des Moines river, in the county of Lee, within the following limits: commencing at the upper mouth of said river, above the town of Warsaw, in the State of Illinois, extending up the Mississippi for the distance of two miles; and that the said John Gaines, Otis Reynolds, and Company, shall have exclusive privilege of ferrying within the above limits, for the term of fifteen years: *Provided*, That said ferry when so established, shall be subject to the same regulations, and under the same restrictions, as all other ferries are, or may be, by the laws of this Territory, fixing the rates of toll, and prescribing the manner in which licensed ferries shall be kept and regulated: *Provided* also, That nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river.

SEC. 2. *And be it further enacted*, That the said John Gaines, Otis Reynolds, and Company, their heirs and assigns, shall, within two years, from the passage of this act, procure for said ferry a good and sufficient horse or steam ferry boat, which shall be kept at said ferry for the transportation of all persons and their property across the said river, without delay; and until said ferry boat shall be provided, the said John Gaines, Otis Reynolds, and Company, shall keep at said ferry a good and sufficient flat boat, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river, when passable, without delay.

APPROVED, January 21, 1839.

## FERRIES.

AN ACT to authorize James Leonard, Oliver A. Crary, William H. Brown, and Charles Swan, to establish and keep a ferry across the Mississippi river, at the town of Charleston.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That James Leonard, Oliver A. Crary, William H. Brown, and Charles Swan, their heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Charleston, in the county of Jackson, for the term of twenty

Regulations  
and restric-  
tions.

years, from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by the laws of this Territory, fixing the rates of toll, and prescribing the manner in which licensed ferries shall be kept and regulated: *Provided* also, That nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river.

Rights saved.

Horse or steam  
ferry boat to  
be procured.

SEC. 2. *And be it further enacted*, That said Leonard, Crary, Brown, and Swan, their heirs and assigns, shall, within two years from the passage of this act, procure for said ferry a good and sufficient horse or steam ferry boat, which shall be kept at said ferry for the transportation of all persons and their property across the said river, without delay; and until said ferry boat shall be provided as aforesaid, the said Leonard, Crary, Brown, and Swan, shall keep at said ferry a good and sufficient number of flat boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river, when passable, without delay.

No ferry to be  
kept within  
half a mile.

SEC. 3. *And be it further enacted*, That no person shall be permitted to establish a ferry within one half mile, either above or below the ferry hereby established.

SEC. 4 This act to take effect and be in force from and after its passage.

APPROVED, January 21, 1839.

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## FERRIES.

AN ACT to authorize Francis P. Blevings to establish and keep a ferry across the Mississippi river, at the town of Nashville.

Ferry at Nash-  
ville granted  
for fifteen  
years.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Francis P. Blevings and Company, their heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Nashville, in the county of Lee, for the term of fifteen years, from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations, and under the same restrictions, as other ferries are, or may hereafter be, by the

laws of this Territory, fixing the rates of toll, and prescribing the manner in which licensed ferries shall be kept and regulated: *Provided* also, That this act shall not be so construed as to interfere with the rights that any individual may have to the lands on either side of said river. Rights saved.

SEC. 2. No court, or board of county commissioners, shall authorize any person or persons to keep a ferry within the limits of the town of Nashville, one mile above and one mile below said town: *Provided*, That the said Francis P. Blevings and Company, their heirs and assigns, shall keep at said ferry a good and sufficient number of flat boats, with a sufficient number of hands to work the same, for the transportation of all persons and their property across said river, when passable, without delay; and that the said Francis P. Blevings shall, at the expiration of five years, procure a good and sufficient steam or horse ferry boat; and if no such steam or horse boat shall be procured at the end of five years, this act to be null and void. No ferry to be kept within certain limits. Conditions of the grant. Penalty for not procuring steam or horse boat.

APPROVED, January 21, 1839.

## FERRIES.

AN ACT to authorize Aaron White to keep a ferry across the Mississippi river, at the town of Fort Madison.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Aaron White, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Fort Madison, commencing at the west line of the street west of Broadway, and extending up the Mississippi river two miles, and that said White, his heirs and assigns, have the exclusive privilege of ferrying within said limits for the term of twelve years. Ferry at Fort Madison. Exclusive privilege for twelve years.

SEC. 2. *Provided*, however, That said ferry, when so established, shall be subject to the same restrictions and regulations as other ferries are, or may hereafter be, by law in this Territory, fixing the rates of tolls, and prescribing the manner in which ferries shall be kept and attended to: *And provided further*, That the said White shall put in full and complete operation, at said ferry, a good steam or horse ferry Steam or horse ferry boat to be put in operation.

boat, within the term of twelve months, from and after the passage of this act.

Rights saved. SEC. 3. *Provided* also, That nothing in this act shall be so construed as to interfere with the right that any individual may have to the lands on either side of said river.

APPROVED, January 25, 1839.

## FERRIES.

AN ACT to establish a ferry across the Mississippi river, at Fort Madison.

Ferry at Fort Madison. SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Joseph Webster, his heirs and assigns, be and they are hereby authorized to establish and keep a ferry across the Mississippi river, at the town of Fort Madison, within the following limits, viz: commencing on the west side of the street below Elm street, and with the course of said river two miles down the same; and that the said Webster, his heirs and assigns, have the exclusive privilege of ferrying within the above limits for the term of ten years, from and after the passage of this act: *Provided*, That said ferry shall be subject to the same regulations and restrictions as other ferries are, or may be hereafter, by law in this Territory, fixing the rates of tolls, and prescribing the manner in which licensed ferries shall be kept.

Limits.

Exclusive privilege for ten years.

Horse or steam ferry boat to be kept. SEC. 2. *And be it further enacted*, That the said Joseph Webster, his heirs or assigns, shall keep, or cause to be kept, within the term of one year, at the place aforesaid, a good and sufficient boat or boats, to be propelled by horse or steam power, for the safe conveyance of persons and their property across said river, without delay; and until said steam or horse ferry boat shall be provided as aforesaid, there shall be kept at said ferry a good and sufficient flat boat or boats, with a sufficient number of hands to work the same, for the conveyance of all persons and their property across said river as aforesaid.

For any violation of the act to regulate ferries, charter to be void. SEC. 3. *And be it further enacted*, That should the law regulating ferries in any way be violated, and proof be made to the satisfaction of any court of competent jurisdiction, then the above charter, so violated, shall be declared void, and said ferry shall

thereafter be disposed of as other ferries are under the laws regulating ferries: *Provided*, That nothing in this act shall be so construed as to interfere with the right that any individual may have on either side of said river. Rights saved.

APPROVED, January 25, 1839.

## FORCIBLE ENTRY AND DETAINER.

AN ACT to prevent forcible entry and detainer.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That no person or persons shall hereafter make any entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases not with strong hand, nor with multitude of people, but only in a peaceable and easy manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine. Fine for forcible entry.

SEC. 2. If any person shall enter upon or into any land, tenements, or other possessions, and detain and hold the same with force or strong hand, or with weapons, or breaking open the doors or windows, or other part of a house, whether any person be in or not, or by threatening to kill, maim, or beat the party in possession, or by such words or actions as have a natural tendency to excite fear, or apprehension of danger, or by putting out of door, or conveying away the goods of the party in possession, or by entering peaceably and then turning out by force, or frightening by threats or other circumstances of terror, or in any other way that would be a forcible entry or detainer at common law, the party out of possession, in such case every person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act. Forcible entry and detainer within the meaning of this act.

SEC. 3. That a justice of the peace shall have authority to enquire by jury, as hereafter directed, as well against those who make unlawful and forcible entry into lands, tenements, or other possessions, and with strong hand detain the same, as against those who, having lawful and peaceable entry into lands, tenements, and other possessions, unlawfully and by force detain the same, and if it be found Authority to enquire by jury.

Restitution.

Mode of proceeding in cases of forcible entry and detainer.

upon such enquiry that an unlawful and forcible entry hath been made, and that the same lands, tenements, and other possessions are held and detained by force and strong hand, or that the same, after a lawful entry, are held unlawfully and with force and with strong hand, then such justice shall cause the party complaining to have restitution thereof.

SEC. 4. That when any complaint shall be formally made, in writing, to any justice of the peace of the proper county, signed by the party aggrieved, his agent or attorney, specifying the lands, tenements, or other possessions so forcibly entered and detained, by whom and when done, it shall be the duty of the said justice to issue his summons, directed to the sheriff or any constable of his county, commanding him to summon the person or persons, against whom the complaint is made, to appear before such justice, at a time and place to be stated in such summons, not more than twelve, nor less than six days from the time of issuing such summons, and which shall be served at least five days before the return day thereof, by reading the same to the defendant, or leaving a copy at his place of abode, and the said justice shall also issue a precept to the sheriff, or any constable, commanding him to cause to come before him, the said justice, twelve discreet men of lawful age, and who shall be qualified to serve as jurors on trials in the district courts of the vicinity, at the same time and place appointed for the trial or hearing of the said complaint, and if a sufficient number of persons summoned do not appear, the said justice may order the sheriff or constable to complete the number by returning others forthwith, and the jury empaneled shall be sworn well and truly to try the forcible entry or detainer complained of, and to return a true verdict thereof. And if the jury, after a full hearing, find the person, against whom the complaint is made, guilty of the forcible entry or detainer complained of, they shall all sign their verdict, and deliver the same to the said justice, who shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine, not exceeding fifty dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may commit the person, against whom judgment is so entered, until the fine and costs be paid, and the said justice shall award a writ of restitution. But if the jury find

that the person complained of is not guilty, the complaint in their opinion not being supported, the said justice shall tax the costs against the complainant, and issue execution accordingly.

SEC. 5. And if the jury, summoned and empaneled as aforesaid, cannot agree upon a verdict, the justice, before whom the trial is pending, may discharge the same, if in his opinion they are not likely to agree upon a verdict, and issue a summons, returnable forthwith, for the purpose of empaneling a new jury.

SEC. 6. The sheriff or constable shall return to the said justice the summons and precept, as aforesaid, on the day assigned for trial, and shall state on the back of said summons how the same was served, and on the back of said precept a list of the names of the jurors. And if the defendant do not appear, the justice shall proceed to try the said cause *ex parte*, or may in his discretion postpone the trial for a time not exceeding ten days. And the said justice shall also issue subpoenas for witnesses, and proceed in the trial of said cause as in other cases of trial by jury.

SEC. 7. That the complainant of any forcible entry or detainer as aforesaid, who shall recover against the person complained of as aforesaid, shall also be entitled to recover treble damages, with costs of suit, by an action of trespass against the offender or offenders, to be brought before the court having jurisdiction thereof: *Provided* always, That nothing in the foregoing part of this act shall be construed to extend to any person or persons who have had the quiet, peaceable, and uninterrupted occupation of any lands, tenements, or other possessions, otherwise than by demise or lease, for the period of three whole years next before the entering of such complaint, anything in this act to the contrary notwithstanding.

SEC. 8. That when any person shall wilfully and with force hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to him or her, or to the person under whom he or she claims, or contrary to the conditions or covenant of the lease or agreement under which he, she, or they hold or holds; or when any person wrongfully, or without force, by disseizing, shall obtain and continue in possession of any lands, tenements, or other possessions, and after demand made in writing for the delivery of the possession thereof, by the person having the legal right of such possession, his agent or attorney, shall refuse

When jury may be discharged.

Return of process.

If defendant do not appear, trial *ex parte*.

Treble damages by action of trespass.

To what case foregoing provisions shall not extend.

Proceedings against persons holding over.

or neglect to quit such possession, upon complaint thereof to a justice of the peace, said justice shall proceed to hear, try, and determine the same in like manner as in cases of forcible entry and detainer, and issue a writ of restitution accordingly: *Provided* always, That the justice shall have no power to assess a fine on the party complained of.

Proviso.

Cases to which the preceding section is not to extend.

SEC. 9. That the preceding section shall not extend to any person who has or shall have continued in possession three years, after the termination of the time for which the premises were demised or let to him, or her, or those under whom he or she claims; or to any person who continues in possession three years, quietly and peaceably, by disseizure, anything therein contained to the contrary notwithstanding.

Action of trespass.

SEC. 10. That the complainant shall be entitled to an action of trespass against the person complained of, and who shall be found guilty on the trial, and may recover treble damages from the time of notice given to quit the premises, and until that time damages only.

Party aggrieved may appeal to district court.

SEC. 11. If either party shall feel aggrieved by the verdict of the jury, or the decision of the question, on any trial had under this act, such party, within twenty days thereof, may have an appeal to the district court, to be obtained in the same manner, and tried in the same way, as appeals from justices of the peace in other cases: *Provided*, however, That in no case shall an appeal operate as a *supersedeas* to any writ of restitution that may be issued by said justice; and the district court, on giving judgment for the appellant, shall award a writ of restitution, and execution for costs, including the costs before the justice; and if judgment be for the defendant, he shall recover costs in like manner, and have execution for the same.

Proviso.

APPROVED, January 25, 1839.

## GAMING.

AN ACT to prevent and punish gambling.

Gambling debts collectable.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That all promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, or entered into,

or executed by any person or persons whomsoever, for the whole or any part, or shall be for any money, property, or any valuable thing won by gambling or playing at cards, dice, or other games of hazard whatsoever, or by betting on the side or hand or hands with any person or persons playing or gaming as aforesaid, or for the reimbursing or paying any money or other valuable thing lent or advanced at the time of such playing, knowing the intention of the borrower so to bet or hazard the same, shall be good and valid in all courts of law and equity in this Territory, and collectable as provided in the second section of this act.

SEC. 2. If any person who shall at any time by playing or betting at cards, dice, or any other game or games of hazard whatsoever, or by betting on the side or hand of such as do bet or game, lose any money or other valuable thing, and shall pay or deliver the same, it shall be lawful for any person or persons to sue for and recover, in the name of the board of county commissioners of the county in which such money or other valuable thing was lost, for the use of such county from the respective winner or winners with costs of suit in any court having competent jurisdiction, in which action it shall be sufficient for the plaintiff to declare generally as in actions of debt or assumpsit for money had and received by the defendant to the use of the plaintiff, or as in actions of detinue or trover upon a supposed finding and detaining or converting the money or property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff according to the form of this act, without setting forth the special matter, and the testimony of the person losing in the absence of other testimony, shall be received in any action brought as aforesaid.

Money, &c., paid or delivered may be recovered for the use of the county.

Testimony of losing party to be received.

SEC. 3. Every person who shall set up or keep any table or gambling device commonly called faro bank, E. O., roulette, equality or any kind of gambling device adapted, devised and designed for the purpose of playing any game of chance for money or property, and shall induce, entice or permit any person to bet or play at or upon any such gaming table or gambling device, or at or upon any game played at or by any means of such table or gambling device, or on the side or against the keeper thereof, shall on conviction be adjudged guilty of a misdemeanor and punished by fine not exceeding five hundred dollars and not

Keepers of gaming tables, &c., punished by fine or imprisonment.

less than twenty-five dollars, or by imprisonment not exceeding three months nor less than ten days, or by both such fine and imprisonment.

Fine to be imposed on persons who bet or play.

SEC. 4. Every person who shall bet any money or property or play at or upon any gaming table, bank or device prohibited by the preceding section or who shall bet upon or play at any game played at or by means of any such gaming table or bank or other device or on the side or against the keeper thereof, shall on conviction thereof be adjudged guilty of a misdemeanor and punished by fine not exceeding five hundred dollars and not less than ten dollars.

Persons permitting gaming table, &c., to be set up or used, how punished.

SEC. 5. Every person who shall suffer or permit any gaming table, bank or device prohibited by the preceding provisions to be set up or used for the purpose of gaming in any house, building, shed, lot, or out house, yard, garden, out lot, or other premises to him belonging or by him occupied or of which he hath at the time the possession or control, shall on conviction be adjudged guilty of a misdemeanor and punished by fine not exceeding five hundred dollars nor less than one hundred dollars for every such offence or by imprisonment not exceeding three months nor less than ten days, or by both such fine and imprisonment at the discretion of the court.

Keeping a gaming house.

Fine.

Imprisonment.

SEC. 6. Every person who shall set up or keep a gaming house, shall on conviction, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding five hundred dollars nor less than two hundred dollars, or by imprisonment not exceeding ninety days nor less than ten days, or by both such fine and imprisonment at the discretion of the court.

Leasing any building for gaming purposes.

Fine.

SEC. 7. Every person who shall knowingly lease or let to another any house or other building for the purpose of setting up or keeping therein any of the gaming tables, banks or other devices prohibited by the preceding provisions or for the purpose of being used or kept as a gaming house, shall on conviction be adjudged guilty of a misdemeanor and punished by fine not exceeding two hundred and fifty dollars and not less than fifty dollars.

Who to be deemed keepers of gaming tables and gaming houses.

SEC. 8. Every person appearing or acting as master or mistress or having the care, use or management for the time being of any prohibited gaming table, bank or device, shall be deemed a keeper thereof, and every person who shall appear or act as master or mistress or have the care, use or management of any house or building in which any gaming table,

bank or device is set up or kept, or of any house in which any gaming table, bank or device is in any way used, shall be deemed a keeper thereof.

SEC. 9. Whenever any lessee of any house or building shall be convicted of knowingly suffering or permitting any prohibited gaming table, bank or device to be set up, kept or used therein for the purpose of gaming or common gaming house, the lease or agreement for letting such house or building shall become void and the lessor may enter upon the premises so let and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term.

SEC. 10. No person shall be incapacitated or excused from testifying touching any offence committed by another against any of the foregoing provisions relating to gaming by reason of his having bet or played at the prohibited games or gaming devices, but the testimony which may be given by any person in such case shall in no case be used against such witness.

SEC. 11. If any justice of the peace have knowledge or shall be informed satisfactorily that there is any prohibited gaming table or gambling device kept or used within his county, it shall be his duty forthwith to issue his warrant directed to the sheriff or any constable of the county to seize and bring before said justice such gaming table or other device.

SEC. 12. The officer who shall be charged with the execution of any warrant specified in the above section shall have power if necessary to break open doors for the purpose of executing the same and for that purpose may summon to his aid the power of the county.

SEC. 13. It shall be the duty of every justice of the peace before whom any such gaming table or other device shall be brought, to cause the same to be publicly destroyed.

SEC. 14. The presiding judge of each district at each and every court shall give this act in special charge to the grand jury.

SEC. 15. It shall be the duty of all sheriffs, deputy sheriffs, justices of the peace and constables in their proper counties, and mayors, aldermen and marshals of cities to complain and give information of any breaches of this act and if any of the above named officers shall fail, neglect or refuse to complain and give information of any and every breach of this act

When lease to be void.

Accomplices not incapacitated as witnesses.

Gaming tables, &c., to be seized.

Authority to break open doors.

Gaming tables and other devices to be destroyed.

This act to be given in charge to grand jury.

Duty of officers touching any breaches of this act.

Forfeiture of office and fine for non-performance of this duty.

that shall come to their knowledge he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office and be fined in any sum not exceeding one hundred dollars, to be recovered by action of debt with costs before any court having jurisdiction thereof for the use of the county in which such suit is brought.

This act to take effect from and after its passage.  
APPROVED, December 25, 1838.

## HALF BREED TRACT.

AN ACT to provide for the collection of Taxes off the Half Breed Lands, in Lee county.

County com. to furnish assessment book of the Half Breed Lands.

Duties of the assessor.

Clerk to make list of lands, and deliver same to sheriff.

Authority to sheriff to sell lands not claimed, &c.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That it shall be the duty of the board of county commissioners, for the county of Lee, at their April term, to make, or cause to be made, a complete assessment book of the Half Breed Lands in said county, and furnish the assessor with the same, whose duty it shall be to assess and enter the same in his assessment book, by quarter sections, lots, or parcels, as the same may be claimed.

SEC. 2. That it shall be the duty of the assessor to take down the names of all persons who are residing on, or claiming, any portion of said land, together with the numbers, and particular share, or shares, or parts of shares, as the claimants or owners may give in, and make an entry of the same in his assessment book, noting as near as may be the number of acres claimed, and the amount of tax required to be paid on the same, and make a return of his doings to the clerk of the board of county commissioners of said county.

SEC. 3. That it shall be the duty of said clerk, forthwith, on the receipt of the same, to make out a complete list of all the lands that have been given in, and also a list of all that have not been claimed or given in to the assessor, and give the said lists to the sheriff of said county, for the collection of the taxes on the same.

SEC. 4. That the said sheriff shall proceed to collect the taxes so assessed and unpaid; and if it shall appear that any of said lands have not been claimed and given in to the assessor, the said sheriff shall

proceed to sell the same by quarter sections, or fractional quarter sections, agreeably to law in such cases made and provided, or so much thereof as may be necessary to satisfy the taxes, and costs of the same.

APPROVED, January 24, 1839.

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## HALF BREED TRACT.

AN ACT to repeal an act of the Wisconsin Legislature, entitled "An Act for the partition of the Half Breed Lands, and for other purposes," and an act supplementary thereto, approved June 22, 1838.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That an act, Acts repealed. entitled "An Act for the partition of the Half Breed Lands, and for other purposes," and An Act supplementary thereto, approved June 22, 1838, be, and the same are hereby repealed.

SEC. 2. That the several commissioners, appointed by and under that act to sit and take testimony, may immediately, or as soon as convenient, commence actions, before the district court of Lee county, for their several accounts against the owners of the said "Half Breed Lands," and give eight weeks notice, in the Iowa Territorial Gazette, to said owners of such suits; and the judge of said district court, upon the trial of said suits before it, at its next term, shall, if said accounts are deemed correct, order judgment for the amounts, and costs, to be entered up against said owners, and said judgment shall be a lien on said lands, and a right of redemption thereto. Said judgment, when entered, shall draw interest at the rate of twelve per cent. per annum.

SEC. 3. The words, "Owners of the Half Breed Lands, lying in Lee county," shall be a sufficient designation and specification of the defendants in said suits.

SEC. 4. All the expenses, necessarily incurred by said commissioners in the discharge of their duties under the above named acts, shall be included in their accounts.

SEC. 5. The trial of said suit, or suits, shall be before the court, and not a jury; and this act shall receive a liberal construction, such as will carry out the spirit and intention thereof.

APPROVED, January 25, 1839.

## HORSES.

AN ACT for the improvement of the breed of Horses.

- SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That it shall and may be lawful for any person to take up and geld, at the risk of the owner, any stud horse, of the age of two years and upwards, that may be found running at large, out of the enclosed grounds of the owner or keeper; and if the said horse shall die, the owner shall have no recourse against the person or persons who shall have taken up and gelded, or caused to be gelded, the said horse, if the same has been done by a person professing his knowledge as a gelder, and the owner shall pay the price of so gelding.
- SEC. 2.** It shall not be lawful for any person or persons to geld any horse above fourteen and a half hands high, that is known to be kept for covering mares; but if any owner or keeper of the covering horse shall wilfully and negligently suffer said horse to run at large, out of the enclosed grounds of the owner or keeper, any person may take up said horse and convey him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence, double the sum; and for a third offence, said horse may be taken up and gelded, as provided in the preceding section of this act.
- SEC. 3.** It shall be the duty of any person, who shall take up and geld any stud horse according to the provisions of the preceding sections, to take all reasonable care of said horse until his wounds shall be healed, and the taker up shall receive from the owner a reasonable compensation for the care and trouble he may have about the said horse. Such allowance shall be settled by some justice of the peace, who shall take into consideration the trouble and expense of the taker up, if the parties cannot otherwise agree. And the party, so taking up and altering, shall have a lien, until paid, upon said horse for his necessary trouble and attention in altering and taking care of him.
- APPROVED.** January 17, 1839.
- Stud horses running at large may be taken up.
- Gelded horses dying.
- Charge to be paid by owner.
- Covering horses may be taken up and conveyed to owners or keepers.
- All reasonable care to be used.
- Compensation to the taker up.
- Lien upon the horse.

## INCORPORATIONS.

AN ACT to provide for the incorporation of Agricultural Societies.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That hereafter, when any twenty or more citizens of any county shall see proper to meet, at their county seat, in conformity to this act, it shall be lawful for them to organize themselves and become an agricultural society, with corporate and politic powers, as hereinafter provided by this act. Agricultural Societies may be formed.

SEC. 2. Public notice shall be given, by advertisements signed by at least three citizens of the county, and put up at three public places in said county, three weeks previous to said meeting, or published three weeks in a newspaper printed in the county, of the intended meetings, setting forth that the object thereof is the formation of an agricultural society under the provisions of this act. Notice of meeting.

SEC. 3. When twenty or more citizens of any county shall have so met, at the county seat, it shall be lawful for them to choose a chairman and secretary for said meeting, who shall be sworn or affirmed, faithfully to discharge their respective duties as chairman and secretary of such meeting, by any person legally authorized to administer oaths, and then to proceed to take a vote whether they will or will not incorporate themselves under the provisions of this act; and if there be twenty present who shall so agree, they shall forthwith hold an election, by ballot, for officers, at which election the chairman and secretary shall officiate as judges. Vote on question of incorporation.

SEC. 4. The officers of each society shall be a president, vice president, treasurer, secretary, and seven directors, and such subordinate officers as the president and directors shall from time to time appoint, for the purpose of determining between competitors for prizes and awarding the same. All prizes shall be paid for by said society by the president's warrant, drawn on the treasurer, and signed by the president, and countersigned by the secretary. Officers of each society. How prizes to be paid.

SEC. 5. The treasurer shall give bond, in such sum, with such security, as the president and directors may approve. conditioned for the payment of all moneys, entrusted to him, to such person or persons as may be by law entitled to the same, and for the faithful discharge of his duty as treasurer; which bond shall be recorded, in the recorder's office of the Treasurer to give bond. Same to be recorded.

county, and filed in the office of the clerk of the district court of said county.

**When tax on each member to be determined.** SEC. 6. Before any election is held for officers at the first meeting, it shall be determined, by voice, what shall be the tax for the first year on each member; and at every annual meeting the amount of the succeeding yearly tax shall be determined, by voice, which shall never exceed five dollars, or be less than one dollar, in any year, on each member.

**Certificate of election to be recorded.** SEC. 7. So soon as a certificate, signed by the chairman and secretary, that a meeting and election of a president, vice president, secretary, treasurer, and seven directors, has been had in conformity to this act, is recorded in the recorder's office (whose duty it shall be to record the same for a fee of twelve and a half cents), they and their successors shall be in law and in fact, a body corporate and politic, to have continuance forever, by the name and style of "The Agricultural Society of ——— County." And by such corporate name and style shall be forever able and capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all manner of suits, actions, complaints, pleas, causes, matters, and demands, of whatever kind and nature they may be, in as full and effectual a manner as any person or persons, bodies corporate and politic, may or can do.

**Corporate style**

**Capacity.**

**Special powers of President and Directors.** SEC. 8. Said president and directors shall have power to make and alter by-laws (a majority being necessary to form a quorum); to determine on what articles, animals, mode of husbandry, or other improvements of any kind connected with agriculture or domestic mechanism, they will confer prizes, and the amount thereof; to fix the days of exhibition; to fill vacancies in their own body, or in any office pertaining to the society, between the times of holding annual elections; to provide for the admission of other members; and to direct, by a by-law, the mode of holding future elections, of the time and place of which election there shall be at least ten days' notice, by advertisement in three public places in the county: *Provided*, No by-law shall be contrary to this act, or to the laws of this Territory.

**Common seal.** SEC. 9. Said president and directors shall have a common seal, with which they shall seal all their official acts; which seal they may alter and revoke at pleasure, and institute another in lieu thereof.

SEC. 10. Such corporation may receive donations Limitation of real estate. of land, or other property, for the use of said society: *Provided*, That no such corporation shall hold any greater amount of real estate than the value of one thousand dollars, for any greater length of time than six months.

SEC. 11. The president, or in his absence the vice president, shall preside at the meeting of the directors, and have a casting vote on all questions; and in case of absence of both those officers, the directors, at any meeting, may choose a president, *pro tem.* from their own body. When a President *pro tem.* may be chosen.

SEC. 12. No money shall be appropriated for any other purpose than the payment of prizes that relate to agriculture and domestic manufactures, and for publications on the same subjects, and the necessary contingent expenses of the society. For what purposes money to be appropriated.

SEC. 13. Nothing in this act shall be so construed as to prevent any member of any agricultural society from withdrawing therefrom, on his giving notice thereof to the treasurer, and paying up all dues. Members may withdraw on giving notice, &c.

SEC. 14. This act to take effect and be in force from and after its passage.

APPROVED, December 19, 1838.

## INCORPORATIONS.

AN ACT to establish a Seminary of Learning at Wapello, in Louisa county.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be established at the town of Wapello, in Louisa county, a seminary of learning, for the instruction of young persons of both sexes in science and literature, to be called "The Wapello Seminary;" and that John Gilleland, Samuel Kirkpatrick, Hiram Smith, William Milligan, S. S. Gourley, Daniel Brewer, James M. Clark, John Eagen, Thomas England, Thomas Stoddard, Robert Williams, Wilson Isett, Joel Bronson, Veasey Bunnel, Mason Wilson, William H. R. Thomas, R. S. Searls, John Ronalds, W. L. Toole, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of "The Wapello Seminary." The Wapello Seminary established. Certain persons declared a body politic and corporate.

SEC. 2. And the corporation before named shall have perpetual succession, and power to acquire, Powers of the corporation.

possess, and retain and enjoy property, real, personal and mixed, and the same to sell, grant, convey, rent, or otherwise dispose of at pleasure; and they shall have power to contract and be contracted with, sue and be sued, plead and be impleaded, in all courts of justice; and they shall have and use a common seal, with power to alter it at pleasure.

Stock of the  
Seminary to be  
deemed personal  
property  
and transfer-  
able.  
Proviso.

SEC. 3. That the stock of said seminary shall consist of shares of ten dollars each, which shall be deemed personal property, and shall be transferable on the books of said corporation in such manner as may be prescribed by the board of trustees: *Provided*, That the annual income of the said corporation (not including tuition however) shall not exceed the sum of two thousand dollars, and that its funds, privileges, and immunities, shall be used for no other purpose than that of education.

Board of trustees to manage  
the corporate  
concerns.  
To be elected  
annually.

SEC. 4. The corporate concerns of said seminary shall be managed by a board of trustees, consisting of seven members, four of whom shall constitute a quorum for the transaction of business. They shall be elected by the stockholders on the first Monday in April annually, and shall hold their offices for the term of one year, and until their successors are duly elected. The election of trustees shall be by ballot, and each stockholder shall be entitled to one vote for every share by him owned to the amount of ten shares, and then to one vote for every five shares over and above that amount. Any stockholder may vote in person, or by proxy. Said trustees shall elect one of their number to be president of their board, and they shall have power to fill vacancies in their own body. If any election shall not be made on the day designated by this act, such election may be held on any other day, provided a notice of the time and place of holding such election, signed by three of the stockholders, be affixed to the door of the court house in said county at least twenty days before said election.

President of  
the board.

Powers of the  
trustees.

SEC. 5. The board of trustees shall have power to appoint subordinate officers and agents, to make, ordain, and establish such ordinances, rules, and regulations as they may deem necessary for the good government of said seminary, its officers, teachers, and pupils, and for the management of the property and affairs of the said corporation to the best advantage: *Provided*, That they shall not contravene the laws of the United States, or of this Territory.

SEC. 6. That all deeds and other instruments of conveyance shall be made by order of the trustees, sealed with the seal of the corporation, signed by the president, and be by him acknowledged in his official capacity, in order to insure their validity.

Deeds, &c., to be executed by the President.

SEC. 7. That any future legislature shall have power to alter or amend this act. This act to be in force and take effect from and after its passage.

This act may be amended by a future legislature.

APPROVED, December 29, 1838.

## INCORPORATIONS.

AN ACT to incorporate the Bloomington and Cedar river canal Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all such persons as shall become stockholders, agreeably to the provisions of this act, in the corporation hereby created, shall be a body politic and corporate, by the name and style of "The Bloomington and Cedar River Canal Company," and by that name may have succession, may sue and be sued, complain and defend in any court of law or equity, may purchase, hold, and convey real, personal, or mixed estate, may make and use a common seal and alter the same at pleasure, may make by-laws, rules, and regulations for the management of its property, the regulation of its affairs, and for the transfer of its stock, not inconsistent with the laws of this Territory and of the United States, and may moreover appoint such subordinate agents, officers, and servants, as the business of said corporation may require, and allow them a suitable compensation, prescribe their duties, and require bonds for the faithful performance thereof in such penal sum, and with such sureties, as they may choose, who shall hold their offices during the pleasure of a majority of the directors of said corporation.

The canal company made a body politic and corporate.

Their style and powers.

SEC. 2. That the capital stock of said corporation shall be two hundred thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each.

Capital stock.

SEC. 3. That Joseph Williams, John Vannatter, Adam Oglevie, Charles Alexander Warfield, Suel Foster, William Gordon, Hervey Gillet, William D. Velie, Stephen Tony, James W. Talman, and John G. Foy, shall be commissioners for receiving subscriptions to the capital stock of said corporation,

Commissioners to receive subscriptions.

who shall give notice, within twelve months after the passage of this act, of the time and place where books will be opened, at Bloomington and such other places as they may deem necessary, in some public newspaper, at least ten days previous to the opening of such books of subscription. A majority of said commissioners shall appoint one or more of their number, who shall attend at the time and place appointed by such notice for the opening of said books, and shall continue such subscriptions to the capital stock of said corporation, from all persons who shall subscribe thereto, until at least thirty-five thousand dollars shall have been subscribed, whereupon said books may be closed by the said commissioners and transferred to the board of directors hereinafter provided. Each subscriber, at the time of subscribing, shall pay to the commissioners one dollar on each share of the stock by him subscribed, and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount of money received on the subscription of stock.

When notice to be given of meeting for the choice of directors.

SEC. 4. That the affairs of said corporation shall be managed by a board of seven directors, to be annually chosen by the stockholders from among themselves. As soon as may be, after thirty-five thousand dollars of the capital stock shall have been subscribed, the commissioners shall give notice of the time and place at which a meeting of the stockholders will be held for the choice of directors, and at such time and place appointed for that purpose the commissioners, or a majority of them, shall attend and act as inspectors of said election and the stockholders present shall proceed to elect their directors, by ballot, and the commissioners present shall certify the result of such election under their hands, which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors therein named. All elections thereafter shall be held at the time, and in the manner, prescribed by the by-laws and regulations of said corporation. Each stockholder shall be allowed as many votes as he owns shares at the commencement of such election, and a plurality of votes shall determine the choice. The said directors shall hold their offices for one year, and until their successors are elected, and they shall elect one of their number as president of said board.

Subsequent elections.

Term of service.

SEC. 5. That the capital stock of said corporation may hereafter be extended to a sum not exceeding five hundred thousand dollars, if the same shall be judged necessary to the completion of the work, and the same, as well as any portion of the capital stock which shall not have been subscribed for and taken, under the direction of the directors of said corporation, whenever they shall direct one or more books to be opened for such purpose, shall be subscribed and taken in such manner as the said directors for the purpose shall order and appoint. The said directors shall have power to collect, under such regulations as they may deem proper, the amount subscribed by each stockholder, in instalments not exceeding ten dollars on each share, after giving thirty days notice, in some public newspaper published in the Territory of Iowa, of the time at which such instalment will be required, and in case any stockholder shall neglect or refuse to pay the amount of his subscription when so required, the said directors shall have power to sue for and collect the same in an action of assumpsit in any court having cognizance thereof.

Capital stock  
may be extended.

Power of the  
directors to collect instalments.

SEC. 6. That the said corporation shall have the right to construct, maintain and continue a navigable canal or slackwater navigation from the town of Bloomington to Cedar river, as near as practicable to the mouth of Rock creek, on such route, and of such dimensions, and to terminate at such point, as shall be determined on by said corporation, and to construct such navigable feeders for said canal as shall be found necessary.

Right to construct canal.

SEC. 7. That it shall be lawful for said corporation, by themselves, and by any and every superintendent, agent, engineer, employed by them, to enter upon and take possession of and use all and singular any lands, water and streams, necessary for the prosecution of the improvements authorized by this act, and to make all such feeders, dykes, locks, dams, and other works and devices, as they may think proper for making said improvements, doing nevertheless no unnecessary damage, and that in case any lands, waters, streams, taken or appropriated for any of the purposes aforesaid, shall not be given or granted to said corporation, and in case said corporation shall not be able to acquire the title to the same by agreement with the parties concerned, a board of appraisers shall be appointed, consisting of three persons,

Authority to enter upon lands, &c.

Appraisers may be appointed.

one of whom shall be appointed by the directors of the company hereby incorporated, one by the claimants applying for damage, and one by the commissioners or supervisors of the county in which said lands, waters, streams, shall be, who shall, before they enter upon the duties of their office, severally take an oath or affirmation before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act.

**Their duty.** And it shall be the duty of said appraisers, or a majority of them, to make a just and equitable estimate and appraisal of the loss or damage, if any, to the respective owners and proprietors, or parties interested in the lands, waters, or streams so taken for the purpose aforesaid. And the said appraisers, or a majority of them, shall make regular entries of their determination and appraisal, with an apt and sufficient description of the several premises taken and appropriated for the purposes aforesaid, in a book or books to be provided and kept by the directors of said corporation, and certify and sign their names to such entries and appraisal. And the said corporation shall pay the damages so assessed and appraised, and the fee simple of the premises, so taken and appropriated, shall thereupon vest in the said corporation: *Provided*, however, That if the owner or owners of the lands, waters, and streams, so taken and appropriated, shall not make application to said corporation, for the payment of damages by them sustained, within two years after such lands, waters, or streams shall have been taken possession of by the corporation, he, she, or they shall thenceforth be barred from the collection of any damages from said corporation for the lands, waters, or streams so used: *Provided*, however, That if either of the parties shall feel aggrieved by any decision of said board of appraisers, he, she, or they shall have the right of appeal to the district court within the county where the damages in question may have been sustained: *Provided* also, That this act shall confer no power upon this company to take any water from any stream, so as to interfere with the supply of water of any mill or mills already erected, excepting with the consent of the owner or owners of such mill or mills.

**Owners barred from the collection of damages after two years.**

**Either party may appeal to district court.**

**Proviso as to mills.**

**When toll houses may be erected.**

**SEC. 8.** That it shall be lawful for the said corporation to commence the construction of said canal at such points on any part of the aforesaid route as in

their judgment may appear expedient and proper; and so soon as any portion of said canal shall be completed, it shall be lawful for said corporation to erect toll houses thereon, and collect such tolls as shall from time to time be prescribed by the Legislature of this Territory, or any State that may be formed out of the same. And said corporation is hereby authorized to borrow any sum of money which may in their discretion be deemed necessary, for the proper and efficient prosecution of the works authorized by this act.

SEC. 9. That it shall be lawful for the directors of said corporation to make from time to time such rules and regulations, not inconsistent with the laws of this Territory and of the United States, in respect to the size and structure of boats, rafts, and other floats on the waters of said canal, and the weighing and inspecting of boats and their loading, and in respect to all matters in relation to the navigation of the canals, and the collection of tolls and water rents, and impose such forfeitures of money for the breach of such regulations as they may judge reasonable, subject however to the restrictions which the future legislature of Iowa may impose, and to provide for the detention and sale of any such boats, rafts, and other floats, as shall or may contravene such rules and regulations, in cases where the owner or owners of such boats, rafts, or other floats shall neglect or refuse to pay such forfeiture: *Provided*, That no forfeiture so imposed shall for a single offence exceed the amount of actual damages more than fifty dollars, and that nothing in this section shall be so construed as to prevent said forfeitures being recovered by action of debt as hereinafter provided.

SEC. 10. That any person who shall drive any horse, ox, mule, or other animal, upon the towing path, or bank opposite the towing path, of the canal hereby authorized to be constructed, except for the purpose of towing boats or other floating things upon the waters thereof, or for the purpose of conveying articles to and from said canal in order to their transportation on the waters of the same, or their delivery at their place of destination, shall forfeit, for every such offence, the sum of five dollars, and shall pay all damages consequent upon such offence over and above the said forfeiture.

For obstruct-  
ing navigation.

SEC. 11. That if any boat or other floating thing shall be so moored in any of the canals as to obstruct the navigation thereof, or if any person or persons shall obstruct the navigation of said canal, or cause the same to be done, by means of loading, unloading, misplacing, or otherwise misconducting any boat or other floating thing, and shall not immediately upon being requested thereto by an engineer, or superintendent, or agent of said corporation, employed on said canal, or by any person incommoded by such obstruction, remove the same, the boatman or person who caused the obstruction shall forfeit, for every such offence, the sum of twenty-five dollars, over and above the expense of removing said obstruction.

SEC. 12. That if any person or persons shall wilfully obstruct the navigation of said canal, or its feeders, by sinking any vessel, timber, stone, earth, or other things in the same, or by placing any obstruction on the towing path thereof, or on the banks opposite the towing path, such person or persons shall forfeit, for every such offence, the sum of twenty-five dollars, over and above the expense of removing said obstruction.

Opening, &c.,  
lock-gates, or  
destroying  
bridges.

SEC. 13. That if any person shall wantonly or unnecessarily open or cause to be opened or shut any lock-gate, or paddle-gate, or any waste-gate, or drive any nails, spikes, pins, or wedges into either of said gates, or take any other mode of preventing the free use of either of said gates, or shall wantonly or maliciously break, throw down, or destroy any bridge on said canal, such person or persons shall, for every such offence, forfeit the sum of fifty dollars, and pay all damages consequent upon such offence, over and above such forfeiture.

Breaking or  
destroying lock  
gates, aque-  
ducts, &c.

SEC. 14. That if any person shall wilfully and maliciously break, throw down, or destroy any lock-gate, bank, waste-wier, aqueduct, or culvert belonging to the canals authorized by this act, such person or persons shall, for every such offence, be deemed guilty of a misdemeanor, and on conviction thereof, before the proper court, shall be sentenced to imprisonment at hard labor, for any time not less than three, nor more than five years, at the discretion of the court, and shall moreover be liable to pay all damages sustained in consequence of such offence.

Signing or de-  
livering false  
bill of lading.

SEC. 15. That every person, who shall knowingly sign or deliver to any collector a false bill of lading,

with the design of avoiding the payment of tolls, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any court of competent jurisdiction, shall be fined not less than three times the value of the property omitted or falsely stated in such bill.

SEC. 16. That every collector of tolls, on the canal Collector may require oath. herein authorized, may require the master of any boat, upon exhibiting his bill of lading, to verify it by his oath, which oath the collector is hereby authorized to administer, and any person who shall testify falsely before any collector shall be deemed guilty of perjury.

SEC. 17. That for all damages done to the said canal, the offenders shall be proceeded against by How offenders to be proceeded against. indictment in the proper courts, and on complaint being made to any judge or justice of the peace of the proper county, against any person or persons doing any such damage as is mentioned in the preceding sections of this act, it shall be the duty of such judge, or justice, forthwith to issue a warrant to the proper officers to arrest and bring before him such offender or offenders, and if upon the return of such warrant it shall appear to the satisfaction of such judge, or justice, that such complaint is true, he shall commit such offender or offenders, if he or they shall refuse to give security for their appearance at the proper court to answer to said complaint: *Provided*, however, That if the offender or offenders Proviso. shall pay to such judge, or justice of the peace, the penalties, forfeitures, and expenses, which he or they may have incurred, together with the costs of prosecution, such offender or offenders shall be discharged.

SEC. 18. That the captain or master, and the owner, Masters, owners, and boats, liable for penalties, &c. of any boat or other float on the canal herein authorized, and likewise the boat or float itself, shall severally be liable for the payment of any penalty or forfeiture, and likewise of all damages which may accrue in consequence of the violation of any of the provisions of this act, or of any order of the board of directors, duly made and published, relating to the canal, or the navigation thereof, or the collection of tolls thereon, by any person navigating such boat, or assisting in the navigation or management thereof at the time of such violation, and any such boat or other float may, at the discretion of the agents of the corporation hereby created, be prevented from navigating said canal until such penalty, forfeiture, and

damages, and costs accrued in prosecuting thereof, shall be fully paid.

Materials subject to the lien of the corporation.

SEC. 19. That all materials that shall have been procured by any contractor for the construction of any part of said canal, or any work therewith connected, shall, from the time they are prepared for transportation to the place where they are to be used, be subject to the lien of the corporation, for all moneys that may have been or shall be advanced by the said corporation during the performance of said contract, and for all damages that may be sustained in consequence of the non-performance thereof; and no sale made by said contractor, or under any execution issued upon any judgment or decree, shall in anywise affect said lien.

Corporation to erect bridges.

SEC. 20. That said corporation shall be bound to erect bridges over said canal at all places where it shall cross any public highway which shall have been, or may hereafter be, regularly laid out and recorded, and where the location of the canal shall interfere with any road which shall be in use, and said corporation is hereby authorized to change the location of said road: *Provided*, That before so doing, the said corporation shall cause the new road to be opened and put in good repair for the convenience of travel, as the road vacated was at the time of such vacation.

Works to be commenced within three years.

SEC. 21. That said corporation shall commence the construction of the works authorized by this act within three years from the first day of May next, and, in default of said commencement being made within said three years, all the privileges herein and hereby granted shall be forfeited by said corporation, and this act shall be null and of no effect; and the right to construct so much of said works which are by this act authorized, as shall not be completed within ten years from the passage of this act, shall be forfeited by said corporation, and the legislature shall have the right to dispose of such part or parts in such manner as to them may seem best calculated to promote the public interest.

Company empowered to loan money.

SEC. 22. That the said company, for the purpose of enabling it to construct, maintain, and carry on the business of the said canal, shall be hereby authorized and empowered to loan money on bonds, notes, drafts, and bills of exchange, and other securities, at any rate of interest not exceeding twelve per cent. per annum on its loans and discounts: *Provided*, That the whole amount loaned at any time by said

Limitations.

corporation shall not exceed two hundred thousand dollars, which privilege of loaning money shall continue ten years from the passage of this act: *And provided*, That nothing herein contained shall be so construed as to give to the said company banking powers in issuing bank notes or bills: *And provided also*, That the judge or judges of the county or district court of the county of Muscatine shall appoint, in each and every year, three commissioners, whose duty it shall be to examine into the affairs and business of the said company, and make report thereof, under oath, in the month of October of each year aforesaid, to the Secretary of the Territory.

Proviso.

Annual report.

SEC. 23. That the future State of Iowa, at any time after its admission into the Union, shall have the right to purchase and hold, for the use of the State, the canal herein authorized to be constructed, together with all its branches and other improvements, by paying to said corporation the amount actually expended in the construction and repairs of the same, together with such reasonable interest, not more than seven per centum per annum, as may be agreed upon by and between said State and corporation: *Provided*, however, That in case the Congress of the United States shall make any appropriation or donation, either in land or money, in aid of the construction of the work by this act authorized, the right to the same shall vest in said State whenever the said transfer of the canal shall be made; and the nett proceeds of all sales of land, and the amount of all money so appropriated or donated, shall be deducted from the amount to be paid to the said corporation for the transfer of said works to the state, and the said corporation are hereby authorized to apply to Congress for such an appropriation in money or lands, to aid in the construction of the works authorized by this act, as Congress in its wisdom shall see proper to grant.

Terms on which future State of Iowa may purchase the canal.

SEC. 24. That the said canal shall not be less than forty feet wide at the top water line, and four feet deep; the locks and other structures to be constructed of cut stone, or water proof brick, and in a neat, permanent, and workmanlike manner, at least eighty-five feet long in chamber, between the upper and lower gates, and fifteen feet wide between the walls, and all culverts, aqueducts, dams, and other fixtures to be constructed in like permanent manner of such

How the works authorized by this act to be constructed.

materials and dimensions as the circumstances of the case may require.

Right of pre-emption secured to settlers.

SEC. 25. That in case the Congress of the United States should make a donation of lands to the aforesaid corporation, for the purpose of aid in the construction of the beforenamed canal, and the lands so donated, or any part thereof, shall be actually improved and settled upon by any persons at the time such lands were donated to said corporation, the said corporation shall sell to such settler or settlers the lands so settled upon, one quarter of a section, or one hundred and sixty acres each (comprehending the improvements of such settlers) at one dollar and twenty-five cents per acre: *Provided*, That the settler, as before named, shall pay the said corporation for the same within ninety days from the time that said corporation shall make a demand for said payment; and a failure to comply with the foregoing provision of this section, on the part of said corporation, shall be considered as a forfeiture of their charter, and the same shall be null and void.

Charter may be amended, &c.

SEC. 26. The foregoing charter can at any time hereafter be altered, amended, or annulled by the legislative assembly of the Territory (or state) of Iowa, upon proof of any of its provisions being violated or evaded.

APPROVED, January 12, 1839.

## INCORPORATIONS.

AN ACT to incorporate the Des Moines Mill Company, and for other purposes.

Company incorporated.

Name and corporate powers.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That William Duncan and such other persons as may associate with him, are hereby incorporated, and to be known by the name of "The Des Moines Mill Company," with perpetual succession; and by that name shall be capable in law of purchasing, holding, selling, leasing, and conveying estate, either real, personal, or mixed, so far as the same may be necessary for the purposes hereinafter mentioned, and no further; and in their corporate name may sue and be sued, may have a common seal, which they may alter or renew at pleasure, and shall have, enjoy, and may exercise, all of the powers, rights, and privileges which may

appertain to corporate bodies, for the purposes mentioned in this act.

SEC. 2. That said William Duncan and his associates, their heirs and assigns, be and they are hereby authorized to construct a dam across the Des Moines river, at or within two hundred yards of the mills on section No. 36, in township No. 69, north, of range ten, west, in Van Buren county; which dam shall not exceed three feet in height, above common low water mark, and shall contain a convenient lock, not less than 130 feet in length, and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts, and other water craft, provided said water craft will bear two tons burthen.

Authority  
construct a  
dam across Des  
Moines River.

SEC. 3. It shall be the duty of the persons, authorized in the preceding section of this act to build said dam, at all times to keep the lock in the same in good repair; and they shall at all times, on the arrival of any boat or other water craft as before specified, pass the same through, free of toll, without any unnecessary delay; and any person who shall be unnecessarily detained, shall be entitled to recover of said owners double the amount of damages they shall have sustained by reason of such detention.

Lock to be  
kept in repair,  
and boats pass-  
ed through  
without delay.

SEC. 4. Any person who shall destroy, or in anywise injure, either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly; and any person, who shall wilfully or maliciously destroy or injure said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owners may have sustained, or be imprisoned, at the discretion of the court.

If lock or dam  
destroyed or  
injured, parties  
may be fined  
or imprisoned.

SEC. 5. Nothing herein contained shall authorize the individuals in this act, their heirs or assigns, to enter upon or flow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the citizens in its vicinity.

Not to enter or  
flow lands of  
any person.

Nuisances to  
be removed.

SEC. 6. The Legislature of this Territory (or State) may at any time hereafter alter or amend this act, so as to provide for the navigation of the said river.

This act may  
be amended.

SEC. 7. The foregoing act shall cease and determine at the expiration of fifty years, from its date, unless a future legislature, having the control of the same, should otherwise determine: *And provided*

Limitation of  
the act.

Completion of the dam and lock. Meeting may be called within one year.

*further*, That said dam and lock shall be completed within the term of four years, from its passage.

SEC. 8. *And be it further enacted*, That the said Wm. Duncan may, at any time within one year from the passage of this act, call a meeting of said company, by giving at least ninety days notice in some newspaper printed within the Territory, or by posting up written or printed notices in three of the most public places in said county.

By-laws, rules, &c.

SEC. 9. And said company, when so convened, may call one of their members to preside, and may proceed to enact such by-laws, rules, and regulations, for the government of said company, as a majority of them may deem right and proper: *Provided*, Said by-laws do not conflict with the laws of the United States, or this Territory.

Subsequent meetings.

SEC. 10. All subsequent meetings shall be in such manner, and at such time and place, as a majority of said company shall direct.

APPROVED, January 15, 1839.

## INCORPORATIONS.

AN ACT to incorporate the Plymouth Mill and Manufacturing Company, and for other purposes.

Company declared a body corporate.

Style and corporate powers.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That E. B. Kimbrell, Henry King, Lewis R. Bissell, Martin A. Britton, and E. A. M. Swasey, and such other persons as may associate with them, are hereby declared a body corporate and politic, to be known by the name of "The Plymouth Mill and Manufacturing Company," with perpetual succession; and by that name shall be capable in law of purchasing, holding, selling, leasing, and conveying estate, either real, personal, or mixed, so far as the same may be necessary for the purpose hereinafter mentioned, and no further; and in their corporate name may sue and be sued, plead and be impleaded, defend and be defended, may have a common seal, which they may alter or renew at pleasure, and shall have, enjoy, and may exercise, all the powers, rights, and privileges which appertain to corporate bodies, for the purposes mentioned in this act.

Authority to construct a

SEC. 2 The said E. B. Kimbrell, H. King, Lewis R. Bissell, Martin A. Britton, and E. A. M. Swasey,

and their associates, their heirs and assigns, be and they are hereby authorized to construct a dam across the Des Moines river, within the limits of the southwest quarter of section twenty-six, in township sixty-eight, north, of range eight, west, in Van Buren county; which dam shall not exceed three feet in height, above common low water mark, and shall contain a convenient lock, not less than one hundred and thirty feet in length, and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts, and other water crafts: *Provided*, Said water crafts will bear two tons burthen.

SEC. 3. It shall be the duty of the persons, authorized in the preceding section of this act to build said dam, at all times to keep the lock in the same in good repair; and they shall at all times, on the arrival of any boat or other water craft as before specified, pass the same through, free of toll, without any unnecessary delay; and any person who shall be unnecessarily detained, shall be entitled to recover of said owners double the amount of damages they shall have sustained by reason of such detention.

SEC. 4. Any person who shall destroy, or in anywise injure, either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly; and any person, who shall wilfully or maliciously destroy or injure said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owners may have sustained, or be imprisoned, at the discretion of the court.

SEC. 5. Nothing herein contained shall authorize the individuals in this act, their heirs or assigns, to enter upon or flow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erecting of said dam, which may endanger the health of the citizens in its vicinity.

SEC. 6. The legislature of this Territory (or State) may at any time hereafter alter or amend this act, so as to provide for the navigation of the said river.

SEC. 7. The said dam and lock, specified in this act, shall be completed within five years, from the first day of May next.

SEC. 8. *Be it further enacted*, That any member of said company may, at any time within one year from the passage of this act, call a meeting of said company, by giving at least thirty days notice, in some

dam across the  
Des Moines  
river.

Lock to be kept  
in repair, and  
boats passed  
through with-  
out delay.

If lock or dam  
destroyed or  
injured, parties  
may be fined  
or imprisoned.

Not to enter or  
flow lands of  
any person.

Nuisance to  
be removed.

This act may  
be amended.

Limitation as  
to dam and  
lock.

First meeting  
of the compa-  
ny.

newspaper printed within the Territory, or by posting up written or printed notices in three of the most public places in the county; and said company, when convened, shall call one of their number to preside, and may proceed to enact such by-laws, rules, and regulations, for the government of said company, as a majority of them may deem right and proper: *Provided*, Said by-laws do not conflict with the laws of the United States, or of this Territory.

By-laws, rules,  
&c.

Subsequent  
meetings.

SEC. 9. All subsequent meetings shall be in such way and manner, and at such time and place, as a majority of said company shall direct.

Capital stock  
may be in-  
creased.

SEC. 10. The capital stock of said company shall be divided into twenty-five shares, of two hundred dollars each, which sums may be increased from time to time, at a proper meeting holden for that purpose by the respective members, a majority concurring therein, to any amount, not exceeding one hundred thousand dollars.

SEC. 11. This act to take effect from and after its passage.

APPROVED, January 19, 1839.

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## INCORPORATIONS.

AN ACT to incorporate the Burlington Steam Mill Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Enos Lowe, Peter Wagoner, Jesse B. Webber, John S. David, Arthur Bridgman, and their associates, be and they are hereby declared a body corporate and politic, under the name of "The Burlington Steam Mill Company," and by that name shall have succession, and shall have all corporate powers, sue and be sued, and use a common seal.

Company de-  
clared a body  
corporate.

Style and cor-  
porate powers.

Capital stock.

SEC. 2. The capital stock of said corporation shall be ten thousand dollars, to be increased, at will, by a majority of the stockholders, to one hundred thousand dollars.

Shares.

SEC. 3. Said capital stock shall be divided into shares of fifty dollars each.

Estate not to  
exceed stock  
paid in.

SEC. 4. Said corporation may purchase, hold, and convey, any estate, personal, real, or mixed, for their own benefit: *Provided*, Such estate does not exceed in value the capital stock paid in.

SEC. 5. The corporation shall have power to erect mills, ware-houses, and other necessary buildings and improvements, on lands purchased and owned by said company, and to erect and establish all kinds of machinery. Power to erect mills, &c.

SEC. 6. The before mentioned persons are hereby appointed commissioners, and are hereby required to open books, at the counting room of Webber and Remey, in the City of Burlington, on the first day of March next, for receiving subscriptions to the capital stock of said company, and to keep the same open until the whole amount is subscribed. Books to be opened for subscriptions.

SEC. 7. The said commissioners are authorized, at their option, to receive subscriptions to said work to be paid in labor, for the benefit of said company, which labor shall be appraised by said commissioners, and the value thereof credited to the persons subscribing for such shares. Subscriptions may be paid in labor.

SEC. 8. Said corporation shall have lien on such shares for any balance due thereon. Lien.

SEC. 9. One dollar shall be paid in on each share at the time of subscribing. First payment.

SEC. 10. Said company shall, on the first Monday in April annually, choose a president, secretary, and treasurer, and such other officers as the company may think proper. Officers to be chosen annually.

SEC. 11. The company shall have power to make all proper and needful by-laws. And cause their treasurer to enter into bonds, upon such conditions, and in such manner, as the company, by their by-laws, shall direct. And said company shall have power to transact their business by an agent, who shall enter into bonds upon similar conditions. By-laws. Treasurer to give bond. Agent to give bond.

SEC. 12. The aforesaid shares shall be considered personal property. Shares to be deemed personal property.

APPROVED, January 21, 1839.

## INCORPORATIONS.

AN ACT to establish the several Seminaries herein named.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be established in the town of Fort Madison, Lee county, a seminary of learning in science and literature, for the youth of both sexes, and that John Box, Ebenezer D. Ayres, Joel C. Walker, Joseph Webster, Seminary at Fort Madison, Lee county.

Jesse B. Browne, Joseph A. Clark, Peter Miller, John Claypole, John A. Drake, William Wilson, William H. H. Kyle, Henry Eno, Philip Viele, M. Young, and J. Clark, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of "The Fort Madison Academy."

At West Point,  
Lee co.

SEC. 2. *Be it further enacted*, That there shall be established in the town of West Point, in Lee county, a seminary of learning in science and literature, for youth of both sexes, and that William Patterson, John Box, Calvin J. Price, A. H. Walker, Cyrus Poag, Joseph Howard, Isaac Beeler, A. Hunsucker, A. Ewing, Hawkins Taylor, William Pitman, Campbell Gilmer, David Walker, Solomon Jackson, William Steele, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of "The West Point Academy."

At Burlington,  
Des Moines co.

SEC. 3. *Be it further enacted*, That there shall be established in the town of Burlington, Des Moines county, a seminary of learning in science and literature, for youth of both sexes, and that Charles Mason, George Temple, William H. Starr, James P. Stewart, George H. Beeler, William B. Remy, James W. Grimes, Jeremiah Lamson, John S. David, Augustus C. Dodge, Verplanck Van Antwerp, Enos Lowe, James Clark, David Rorer, Gilbert Knapp, S. S. Ransom, and their associates and successors, are hereby declared a body politic and corporate in law, by the name of "The Burlington Academy."

In town 69,  
range 8, W.,  
Des Moines co.

SEC. 4. *Be it further enacted*, That there shall be established in town sixty nine, range three west, in Des Moines county, a seminary of learning in science and literature, for youth of both sexes, and that William Morgan, Stephen Gearhart, Solomon Perkins, Israel Robinson, Henry Walker, John B. Berry, David R. Chance, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of "The Union Academy of Des Moines county."

At Augusta,  
Des Moines co.

SEC. 5. *Be it further enacted*, That there shall be established in the town of Augusta, in Des Moines county, a Seminary of learning in science and literature, for youth of both sexes, and that John Whitaker, Levi Moffit, William Smith, Berryman G. Wells, Joseph Edwards, George Hepner, Y. L. Hughes, Francis Redding, Joshua Holland, Isaac Basey, and Daniel Harty, William Buchanan, John

O. Smith, and their associates, with perpetual succession, are hereby declared to be a body corporate and politic, in law and in fact, by the name and style of "The Augusta Academy."

SEC. 6. *Be it further enacted*, That there shall be established at the town of Farmington, in Van Buren county, a Seminary of learning, for the instruction of the youth of both sexes in science and literature, and that Henry Bateman, Martin A. Britton, John Crane, Stephen Miles, Henry Heffleman, and their associates and successors, are hereby created a body politic and corporate in law, by the name and style of "The Farmington Academy."

At Farmington,  
Van Buren co.

SEC. 7. That there shall be established in the town of North or South Bentonsport, as a majority of the citizens of said towns can decide and agree, in Van Buren county, a Seminary of learning in science and literature, for youth of both sexes, and that S. Richards, G. W. Howe, H. P. Graves, H. Buckland, Bertrand Jones, Henry Smith, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of "The Bentonsport Academy."

At North or  
South Bentons-  
port, Van Bu-  
ren co.

SEC. 8. *Be it further enacted*, That there shall be established at the town of Rockingham, in Scott county, a Seminary of learning in literature and science, for youth of both sexes, and that John H. Sullivan, James Davenport, Adrian H. Davenport, Henry W. Higgins, Ebenezer Cook, Willard Barrows, S. S. Brown, Joseph M. Robertson, E. S. Barrows, John S. Sheller, and their associates and successors, are hereby declared a body politic and corporate in law, by the name and style of "The Rockingham Academy."

At Rocking-  
ham, Scott co.

SEC. 9. That there shall be established at the town of Keosauqua, in Van Buren county, a Seminary of learning, for the instruction of young persons of both sexes in science and literature, to be called "The Keosauqua Academy," and that J. N. Lewis, C. H. Ober, John Carnes, John Fairman, S. W. Summers, James Hall, Wilson Stanley, and their associates, be and they are hereby created a body corporate and politic, by the name of "The Keosauqua Academy."

At Keosauqua,  
Van Buren co.

SEC. 10. *Be it further enacted*, That there shall be established at the town of Du Buque, in Du Buque county, a Seminary of learning, in literature and science, for youth of both sexes, and that P. A.

At Du Buque,  
Du Buque co.

Lorimier, Ezekiel Lockwood, Joseph T. Fales, Patrick Quigley, Benjamin Rupert, Thomas S. Wilson, Lucius H. Langworthy, Timothy Davis, E. M. Bissell, Timothy Fanning, Hardin Nowlin, Chauncey Swan, and their associates, be and they are hereby created a body corporate and politic, by the name and style of "The Du Buque Academy."

In township 89,  
range 1, E.,  
Du Buque co.

SEC. 11. *Be it further enacted*, That there shall be established in township eighty-nine, range one, east of the fifth principal meridian, a Seminary of learning, for youth of both sexes, and that John Paul, A. Bankston, Simeon Clark, Jacob Myers, Abraham Casteel, Isaiah Bohannon, Charles Brady, Samuel Snodgrass, Elias McCants, Hardin Nowlin, and their successors be and they are hereby created a body corporate and politic, by the name and style of "The Julian Du Buque Seminary."

At Davenport,  
Scott co.

SEC. 12. *Be it further enacted*, That there shall be established in the town of Davenport, Scott county, an academy of learning, in science and literature, for youth of both sexes, and that Alexander C. Donaldson, Rodolphus Bennet, Samuel Barkley, William R. Shoemaker, Andrew Logan, John Forrest, T. S. Hoge, Andrew F. Russell, Gilbert C. R. Mitchell, B. F. Coates, Levi S. Colton, D. C. Eldridge, Wheeler Hedges, Thomas Dillon, and their associates, and successors, be and they are hereby created a body politic and corporate, by the name and style of "The Davenport Academy."

Powers granted to the several corporations.

SEC. 13. The several corporations before named shall have perpetual succession, and power to acquire, possess, and retain and enjoy property, real, personal, and mixed, and the same to sell, grant, convey, rent, or otherwise dispose of at pleasure, and they shall have power to contract and be contracted with, sue and be sued, plead and be impleaded, in all courts of justice, and they shall have and use a common seal, with power to alter the same at pleasure.

Capital stock.  
Income limited.

SEC. 14. That the stock of said seminaries shall consist of shares of ten dollars each, which shall be deemed personal property, and shall be transferable on the books of said corporation or corporations, in such manner as may be prescribed by the boards of trustees: *Provided*, That the annual income of either of the said corporations (not including tuition however) shall not exceed the sum of three thousand dollars, and that its funds, privileges, and immunities

shall be used for no other purpose than that of education.

SEC. 15. The corporate concerns of said seminaries shall be managed by a board of trustees, consisting of seven members each, four of whom shall constitute a quorum for the transaction of business, they shall be elected by the stockholders on the first Monday in April annually, and shall hold their offices for the term of one year, and until their successors are duly elected. The election of trustees shall be by ballot, and each stockholder shall be entitled to one vote for every share by him owned to the amount of ten shares, and then to one vote for every five shares over and above that amount. Any stockholder may vote in person or by proxy. Said trustees in each seminary shall elect one of their number to be President of the board, and they shall have power to fill vacancies in their own body. If any election shall not be made on the day designated by this act, such election may be held on any other day, provided a notice of the time and place of holding such election, signed by three of the stockholders, be first published for two successive weeks in some newspaper printed in the county, or by posting up written notices of the same at three of the most public places in the county.

Board of Trustees.

Four to be a quorum.

One of the trustees to be president of the board.  
Elections.

SEC. 16. The boards of trustees shall have power to appoint subordinate officers and agents, to make, ordain, and establish such ordinances, rules, and regulations as they may deem necessary for the good government of said seminaries, its officers, servants, teachers, and pupils, and for the management of the property and affairs of the said corporations to the best advantage: *Provided*, That they shall not contravene the laws of the United States, or of this Territory.

Powers granted to trustees.

Proviso.

SEC. 17. That all deeds and other instruments of conveyance shall be made by order of the trustees, sealed with the seal of the corporation, signed by the President, and be by him acknowledged in his official capacity, in order to insure their validity.

Conveyances to be executed by the president.

SEC. 18. That any future legislature shall have power to alter or amend this act.

This act may be amended by any future legislature.

APPROVED, January 23, 1839.

## INCORPORATIONS.

AN ACT to incorporate the town of Bloomington.

**Limits of the town.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all that part or tract of land in township seventy-six north, and range two west, and township seventy-seven north, range two west, which has been surveyed and laid off into town lots for commercial purposes, in which is embraced the village of Bloomington, be and the same is hereby constituted a town corporate, and shall hereafter be known by the name or title of the "Town of Bloomington."

**When officers to be elected.** SEC. 2. It shall be lawful for the free male inhabitants of said village, having the qualifications of electors, to meet at some convenient place, in said town of Bloomington, on the first Monday of May, and annually thereafter, and then and there proceed, by plurality of votes, to elect, by ballot, a president, recorder, and three trustees, who shall hold their offices one year, and until their successors are elected and qualified; and any three of them shall be a board for the transaction of business, but a less number may adjourn from time to time: *Provided,* That if an election of a president, recorder, and trustees, shall not be made on the day when, pursuant to this act, it ought to be made, the said corporation shall not for that cause be deemed to be dissolved, but it shall and may be lawful to hold such election at any time thereafter, pursuant to public notice to be given in the manner hereinafter prescribed.

**In what manner elections to be conducted.** SEC. 3. At the first election to be held under this act there shall be chosen, *viva voce,* by the electors present, two judges and a clerk of said election, who shall each take an oath or affirmation faithfully to discharge the duties required of him by this act; and at all subsequent elections the trustees, or any two of them, shall be judges, and the recorder clerk of the election; and at all elections to be held under this act the polls shall be opened between the hours of nine and ten o'clock in the forenoon, and close at five o'clock in the afternoon of said day, and at the close of the polls the votes shall be counted, and a true statement thereof proclaimed to the electors present by one of the judges, and the clerk shall make a true record thereof, and, within five days after such election, the said clerk shall give notice to the persons elected of their election; and it shall be the duty of

said town council, at least five days before each annual election, to give notice of the same by posting up notices in three of the most public places in said town.

SEC. 4. It shall be the duty of the president to Duties of president and recorder. preside at all meetings of the town council, and it shall be the duty of the recorder to attend all such meetings, and keep a fair and accurate record of all their proceedings; and the said recorder is authorized, under his hand and seal, to appoint some competent person as his deputy, who, in his absence, shall Recorder may appoint a deputy. do and perform all and singular the duties enjoined upon said recorder, and for whose acts said recorder shall be liable.

SEC. 5. The president, recorder, and trustees of Corporate name and powers. said town shall be a body corporate and politic, with perpetual succession, to be known and distinguished by the name of "The President and Trustees of the town of Bloomington," and shall be capable in law, in their corporate name, to acquire property, real and personal, for the use of said town, sell and convey the same, may have a common seal, which they may alter at pleasure, may sue and be sued, defend and be defended, in any court of competent jurisdiction; and when any suit shall be commenced against said corporation, the first process shall be by summons, which shall be served by an attested copy to be left with the recorder, not less than five, nor more than ten days before the return day thereof.

SEC. 6. The officers elected by virtue of this act shall each, before entering on the duties of his office, Oath to be taken by officers. take an oath or affirmation to support the constitution of the United States, and of the organic law of this Territory (and of this State), and also faithfully to discharge the duties of his office.

SEC. 7. The president and trustees shall have By-laws, rules, and regulations. power to ordain and establish by laws, rules, and regulations, for the government of said town, and the same to alter, repeal, or re-ordain at pleasure, and to provide in said by-laws for the election of a treasurer, two assessors, a town marshal, and other subordinate officers which may be thought necessary for the good government and well being of the town, to prescribe their duties, declare their qualifications, and determine the period of their appointments, and the fees they shall be entitled to receive for their services, and require of them to take an oath or affirmation faithfully and impartially to discharge

- the duties of their respective offices, and may require of them such security for the performance of the duties of their respective offices as shall be thought necessary. Said president and trustees shall also have power to affix to the violation of the by-laws and ordinances of the corporation such reasonable fines and penalties as they deem proper, and to provide for the disposition of such fines and penalties: *Provided* also, That no by-laws or ordinances of said corporation shall have any effect, until the same shall have been published three weeks successively, in a newspaper printed in said county, or by written notices posted up in three of the most public places in said town: *Provided*, Nothing contained in this section shall be incompatible with the laws of the United States, or the laws of this Territory.
- Publication of the by-laws, &c.** SEC. 8. The president and trustees shall, at the expiration of each six months, cause to be made out and published a correct statement of the receipts and expenditures of the preceding six months.
- Receipts and expenditures.** SEC. 9. The electors of said town, in legal meeting assembled, shall have power, by vote, to direct the levy of taxes on all real and personal estate within the limits of said corporation, not exceeding one half of the per centum upon said real and personal estate in any one year; to regulate and improve the lanes and alleys; and to determine the width of sidewalks: *Provided*, That no property shall be taken from any individual, until such individual shall be paid therefor; the value thereof to be ascertained by twelve disinterested freeholders, to be summoned by the marshal for that purpose: they shall have the power to remove all nuisances and obstructions from the streets and commons, and all other places of said town, and to provide for the removal of the same.
- Of taxation and other objects.** SEC. 10. The president and trustees shall be authorized to grant all licenses for the retailing of ardent spirits within the limits of the corporation, and the proceeds of such licenses shall be appropriated for the benefit of said corporation: *Provided*, however, That the power hereby granted shall not be so construed as to conflict with the general laws of this Territory, or of the future State of Iowa, regulating taverns and licenses for retailing ardent spirits.
- Authority to grant licenses.** SEC. 11. The streets, lanes, and alleys of said town shall constitute one road district, including the sev-
- Proviso.**
- Road district.**

eral roads leading from said town for the distance of one mile from the corporation limits; and the electors of said town shall, at their annual meeting, elect an overseer of the same, and in case of death, removal, or other inability of said overseer, or other officers of the corporation, the president and trustees shall have power to fill such vacancies.

SEC. 12. All meetings, for the purposes contemplated in the preceding sections of this act, shall be called by the president, or, in his absence, by the senior trustee, by posting up written notices in three of the most public places in said town, at least three days previous to the holding said meeting; said notices shall specify the time and place of holding said meeting, and the purposes for which said meeting is called.

SEC. 13. The recorder shall receive such fees for his services as the by-laws and ordinances of said corporation shall prescribe; but the president and trustees shall receive no compensation, unless the same shall be authorized by the inhabitants, in legal meeting assembled.

SEC. 14. For the purpose of enabling the president and trustees to carry into effect the provisions of this act, they are hereby authorized annually to lay a tax on all real and personal estate within the bounds of the corporation, as the same has been or may be appraised: *Provided*, Such tax shall in no case exceed the sum for the same year voted for and directed according to the provisions of the ninth section of this act: *And provided*, That the said tax shall not exceed, in any one year, one half of the per centum of the aggregate amount of real and personal estate within the limits of said town, and the said president and trustees shall, between the first Mondays of May and June, in each year, determine the amount of tax to be assessed and collected within the current year.

SEC. 15. It shall be the duty of the president and trustees to make out a duplicate of taxes, charging each individual therein the amount of tax in proportion to the real or personal estate of such individual within said town, which duplicate shall be signed by the president and recorder, and delivered to the marshal, or such person as shall be appointed collector, whose duty it shall be to collect the same within such time, and in such manner, as the by-laws shall direct.

Special provisions touching the collection of taxes.

SEC. 16. The said collector shall have power to sell personal estate, and for want thereof, to sell real estate, for the non-payment of taxes within said town; but no real estate shall be sold by reason of the non-payment of such tax or taxes, unless the assessment of such tax shall have been duly notified, in some public newspaper printed at the seat of government of this Territory, and also at Bloomington, if any be printed there, once each week for at least six weeks, the last publication whereof shall be at least six weeks before the day when said taxes are payable; nor unless the intended sale thereof be duly notified by publication in like manner, in such newspaper or newspapers, for and during the space of at least six consecutive weeks, the last of which publications to be at least six weeks prior to such sale; nor unless such assessment and proceedings thereon be regular, and in all things conformable to the provisions of this act; and moreover all such real estate, so sold, may be redeemed in the same manner, and within the same period of time, as is or may be provided by law in case of real estate sold for any state tax.

This act may be amended.

SEC. 17. This act may be altered, amended, or repealed by the legislature of this Territory.

APPROVED, January 23, 1839.

## INCORPORATIONS.

AN ACT for the incorporation of public Libraries.

When subscribers may meet to hold an election.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That hereafter the inhabitants of any city, town, village, or neighborhood, in this Territory, or any part of them, whenever they have subscribed the sum of one hundred dollars for a public library, may assemble themselves for the purpose of holding an election.

Chairman and clerk to be chosen.

SEC. 2. And if two-thirds of the subscribers are present, they may proceed to choose, by voice, a chairman, who shall preside at that meeting, and a clerk, who shall keep a record of the same.

Seven directors. Library to be named.

SEC. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose, by ballot, seven directors, and to agree upon a name by which their Library shall be known. The directors shall appoint one of their number to be president at their meetings, who shall have no other than a casting vote.

SEC. 4. A true statement of the proceedings of such meeting, including the amount subscribed, and the number of subscribers present at the meeting, shall be sworn to, or affirmed to, before some justice of the peace of the county, by the chairman, or the clerk, provided for by the second section of this act; and it shall be the duty of such justice to certify, on such statement, that it was sworn to, or affirmed to, before him.

Statement of the proceedings to be sworn to and certified.

SEC. 5. It shall be the duty of the recorder of the county to record the said statement in his book of record, when required.

To be recorded

SEC. 6. After the statement of proceedings is duly recorded according to this act, the president and directors, and their successors, forever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office. They shall be capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, or person or persons whatsoever, in all manner of suits, actions, complaints, pleas, causes, and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic, may or can do: *Provided*, however, that nothing in this act contained shall be so construed as to authorize any Library company, incorporated in this Territory, to issue notes or bills of credit, payable to any person or persons, on his or their order, or to bearer, nor to deal in any kind of bills of exchange, notes, or due bills whatever. Except the first election of directors, the annual election thereafter shall be on the second Monday in January; but if any annual election should be omitted, the directors shall remain in power until the next annual election, and until successors shall be chosen.

Library company to be a body corporate

Corporate powers.

That

When elections to be held.

SEC. 7. Such Library, or Libraries, shall be governed and regulated by such by-laws as may, from time to time, be made by the president and directors of the same, not inconsistent with the laws of this Territory, who shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure. They shall have power to levy a tax on the shareholders, provided such tax does not exceed one dollar, on each share, in any one year. Nothing, however, in this act shall be so construed as to prevent a majority of two-thirds of the shareholders,

By-laws.

Common seal.

Tax on shareholders.

Treasurer and librarian. attending at their annual meeting, from increasing such tax to any sum, not exceeding five dollars, on each share, in any one year. They shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

Quorum. Power to fill vacancies. SEC. 8. A majority of the directors shall be necessary to form a quorum. They shall have power to fill vacancies that may happen in their own body, and the director or directors, by them elected, shall serve until the next annual election thereafter, and until others are elected in their stead.

May receive donations in books, monies, lands, &c. SEC. 9. They shall have power to receive by donation any books, monies, papers, or lands, or any other thing or things: *Provided*, Such donation, or the rent or interest thereof, be applied to no other purpose than the true interest of the library on which it was bestowed, according to the true intent and meaning of this act: *Provided*, however, That they shall not keep for a longer time than six months, after receiving the same, more than the real value of five hundred dollars, in land or any other property, except books and those things appertaining to a library.

Limitation as to land or other property, except books, &c.

APPROVED, January 23, 1839.

## INCORPORATIONS.

AN ACT to incorporate the Burlington and Iowa River Turnpike Company

Company created a body corporate. SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That James Guest, Israel Trask, Jonathan Parsons, James Erwin, Elisha Hooke, William Creighton, John H. Benson, M. Eastwood, Elias Keever, Daniel Brewer, James Gordon, Wm. L. Toole, Joshua Swank, and Alvin Clark, of the county of Louisa, and George W. Hite, James Davidson, Oliver H. Cottle, George W. Kelley, Thomas Cooper, Wm. B. Remey, Charles J. Starr, John S. David, George H. Beeler, Leander J. Lockwood, and Richard F. Barret, of Des Moines county, and their associates, be and they are hereby created a body politic and corporate, by the name and style of "The Burlington and Iowa River Turnpike Company," for the sole purpose of constructing a turnpike road, from Burlington, Des Moines county, to the Iowa river, opposite the town of Black Hawk, in Louisa county.

Their style.

SEC. 2. That the capital stock of said company Capital stock. shall be one hundred thousand dollars, to be divided into shares of twenty-five dollars each.

SEC. 3. That the above named persons, or any ten of Books may be opened for subscriptions. them, may proceed to open books of subscription to the capital stock of said company, at such times and places as they may deem proper.

SEC. 4. That so soon as ten thousand dollars shall When meeting may be called for the election of directors. have been subscribed to the stock of said company, the persons named in the first section of this act, or any seven of them, may call a meeting of the stockholders for the election of five directors for the government of said company.

SEC. 5 That the following shall be the rates of Rates of toll. toll for each and every ten miles of said road, and in the same proportion for a greater or less distance, to-wit:

For every four-wheeled carriage, wagon, or other vehicle, drawn by two horses, or oxen, twenty-five cents; and for each horse, or ox, in addition, six cents.

For every two-wheeled carriage, wagon, or other vehicle, drawn by two horses, or oxen, twenty cents; and for each horse, or ox, in addition, six cents.

For every horse and rider six and a fourth cents.

For every horse, mule, or ox, led or driven, three cents.

For every head of neat cattle, two cents.

For every head of sheep, or hogs, one cent.

For every four-wheeled pleasure carriage, drawn by two horses, forty cents.

For every two-wheeled pleasure carriage, drawn by one horse, twenty-five cents.

For every four-wheeled pleasure carriage, drawn by one horse, twenty-five cents.

For every chaise, riding chair, gig, sulkey, or cart, or other two-wheeled carriage of any kind, drawn by one horse, twelve and a half cents.

SEC. 6. That when said company shall have When company to be entitled to toll. completed the grading of ten miles of said road, they shall be entitled to receive one-half of the rates of toll provided for in the preceding section of this act; and the same upon each additional ten miles that may have been graded, as aforesaid, until the whole shall have been completed.

SEC. 7. This act shall be subject to any general This act to be subject to any general law, &c. law that may be passed hereafter, or during the

present session of this Legislative Assembly, for the regulation of Turnpike companies.

APPROVED, January 24, 1839.

## INCORPORATIONS.

AN ACT to incorporate the Burlington and Des Moines Transportation Company.

- SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all such persons as shall become stockholders, agreeably to the provisions of this act, in the corporation hereby created, shall be a body politic and corporate by the name and style of "The Burlington and Des Moines Transportation Company," and by that name may have succession, may sue and be sued, complain and defend, in any court of law or equity, may purchase, hold, and convey real, personal, or mixed estate, so far as the same may be required to secure the object of their incorporation, may make and use a common seal, and alter the same at pleasure, may make by-laws, rules, and regulations, for the management of its property, the regulation of its affairs, and for the transfer of its stock, not inconsistent with the laws of this Territory and of the United States, and may moreover appoint such subordinate agents, officers, and servants, as the business of said corporation may require, and allow them a suitable compensation, prescribe their duties, and require bonds for the faithful performance thereof, in such penal sum, and with such sureties, as they may choose, who shall hold their offices during the pleasure of a majority of the directors of said corporation.
- SEC. 2.** The capital stock of said corporation shall be one million of dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each.
- SEC. 3.** That Charles Mason, Isaac Leffler, George H. Beeler, Hawkins Taylor, Richard F. Barret, Robert Ralston, John H. Randolph, B. F. Wallace, and William B. Remey, shall be commissioners for receiving subscriptions to the capital stock of said corporation, who, previous to opening the books of subscription, shall give notice of the time and place where such books will be opened. A majority of said commissioners shall appoint one or more of their
- Company declared a body politic and corporate.
- Style and corporate powers.
- Capital stock.
- Commissioners
- To give notice when and where books will be opened.

number who shall attend at any time and place appointed by such notice for the opening of said books, and shall continue such subscriptions to the capital stock of said corporation from all persons who shall subscribe thereto, until at least one hundred thousand dollars shall have been subscribed, whereupon said books may be closed by the said commissioners and transferred to the board of directors hereinafter provided. Each subscriber at the time of subscribing shall pay to the commissioners one dollar on each share of the stock by him subscribed, and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount of money received on the subscription of stock.

Sum to be paid  
at the time of  
subscribing.

SEC. 4. The affairs of said corporation shall be managed by a board of at least five directors, which number may be increased at the pleasure of the company, to be annually chosen by the stockholders from among themselves. As soon as may be after one hundred thousand dollars of the capital stock shall have been subscribed, the commissioners shall give notice of the time and place at which a meeting of the stockholders will be held for the choice of directors, and at such time and place appointed for that purpose, the commissioners, or a majority of them, shall attend and act as inspectors of said election, and the stockholders present shall proceed to elect their directors by ballot, and the commissioners present shall certify the result of such election under their hands, which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors therein named. All elections thereafter shall be held at the time and in the manner prescribed by the laws and regulations of said corporation. Each stockholder shall be allowed as many votes as he owns shares at the commencement of such election, and a plurality of votes shall determine the choice. The said directors shall hold their offices for one year, and until their successors are elected, and they shall elect one of their number as president of said board.

Board of di-  
rectors.

How elected.

Subsequent  
elections.

Term of office.

SEC. 5. The directors may require any instalment of the amount subscribed (not exceeding ten dollars per share at any one time) to be paid in at such time and place as they may deem proper. Notice thereof must be published for four weeks successively, in some newspaper printed in the city of Burlington

Directors may  
require instal-  
ments to be  
paid.

aforesaid. If any stockholder shall not pay the said instalment at the time thus appointed, he shall forfeit to the use of the company the shares on which such instalment was due, together with all the amount previously paid thereon, unless he shall pay such instalment, together with interest on the same from the time it was due, within thirty days after being thereunto required.

- Location of the canal.** SEC. 6. The said corporation shall have the right to construct and continue a navigable canal or slack water navigation, from the city of Burlington to such point on the head waters of the Des Moines river as in the opinion of the directors shall be most eligible, and to construct such navigable feeders for said canal as shall be found necessary. And if in the estimation of the directors a canal shall not be found practicable, the said corporation are hereby authorized to construct and continue either a rail-road, or a Macadamized road, between the points aforesaid.
- Railroad, &c.**
- Company may enter upon private property.** SEC. 7. It shall be lawful for said corporation by themselves, and by any and every superintendent, agent, or engineer, employed by them, to enter upon and take possession of, and use, all and singular any lands, water, streams, and materials necessary for the prosecution of the improvements authorized by this act, and to make all such feeders, dykes, locks, dams, and other works and devices as they may think proper for making said improvements, doing nevertheless no unnecessary damage. And that in case any lands, waters, streams, or materials, taken or appropriated for any of the purposes aforesaid, shall not be given or granted to said corporation, and in case said corporation shall not be able to acquire the title to the same by agreement with the parties concerned, a board of appraisers shall be appointed, consisting of three persons, one of whom shall be appointed by the directors of the company hereby incorporated, one by the claimants applying for damages, and one by the commissioners or supervisors of the county in which said lands, waters, streams, or materials, shall be, who shall, before they enter upon the duties of their office, severally take an oath or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act. And it shall be the duty of said appraisers, or a majority of them, to make a just and equitable estimate and appraisal of the loss or damage, if any,
- Appraisers may be appointed.**
- Their duty.**

to the respective owners and proprietors or parties interested in the lands, waters, streams, or materials so taken for the purpose aforesaid. And the said appraisers, or a majority of them, shall make regular entries of their determination and appraisal, with an apt and sufficient description of the several premises, taken and appropriated for the purposes aforesaid, in a book or books to be provided and kept by the directors of said corporation, and certify and sign their names to such entries and appraisal. And the said corporation shall pay the damages so assessed and appraised, and the fee simple of the premises so taken and appropriated shall thereupon vest in the said corporation: *Provided*, however, That if the owner or owners of the lands, waters, streams, and materials, so taken and appropriated, shall not make application to said corporation for the payment of damages by them sustained within two years after such lands, waters, streams, or materials, shall have been taken possession of by the corporation, he, she, or they, shall thenceforth be barred from the collection of any damages from said corporation for the lands, waters, streams, or materials, so used: *Provided*, however, that if either of the parties shall feel aggrieved by any decision of said board of appraisers, he, she, or they, shall have the right of appeal to the district court within the county where the damages in question may have been sustained.

Appraisal to be entered and certified.

Damages.

Proviso.

Either party may appeal to the dis. court.

SEC. 8. It shall be lawful for the said corporation to commence the construction of said canal or road at such points on any part of the said route as in their judgment may appear expedient and proper; and as soon as any portion of said canal or road shall be completed, it shall be lawful for said corporation to erect toll houses or toll gates thereon, and collect such tolls as shall from time to time be prescribed by the legislature of this Territory, or any State that may be formed out of the same. And said corporation is hereby authorized to borrow any sum of money which may in their discretion be deemed necessary, for the proper and efficient prosecution of the works authorized by this act.

Tolls.

Authority to borrow money.

SEC. 9. That it shall be lawful for the directors of said corporation to make from time to time such rules and regulations, not inconsistent with the laws of this Territory and of the United States, in respect to the size and structure of boats, rafts, and other floats on the waters of said canal, and the weighing

May make rules respecting boats, rafts, &c.

and inspecting of boats, and their loading, and in respect to all matters in relation to the navigation of the canals, or the traveling upon said roads, and the collection of tolls and water rents, and impose such forfeitures of money for the breach of such regulations as they may judge reasonable, and provide for the detention and sale of any such boats, rafts, and other floats as shall or may contravene such rules and regulations, in cases where the owner or owners of such boats, rafts, or other floats, shall neglect or refuse to pay such forfeitures: *Provided*, That no forfeitures, so imposed, shall, for a single offence, exceed the amount of actual damages more than fifty dollars, and that nothing in this section shall be so construed as to prevent said forfeitures being recovered by action of debt as hereinafter provided.

Proviso.

Penalty for driving horses, &c., on towing path.

SEC. 10. That any person who shall drive any horse, ox, mule, or other animal, upon the towing path, or bank opposite the towing path, of the canal hereby authorized to be constructed, except for the purpose of towing boats or other floating things upon the waters thereof, or for the purpose of conveying articles to and from said canal in order to their transportation on the waters of the same, or their delivery at their place of destination, shall forfeit for every such offence the sum of five dollars, and shall pay all damages consequent upon such offence, over and above the said forfeiture.

For committing injury to canal or road.

SEC. 11. If any person shall wantonly or on purpose commit any injury to said canal or road, or to any of the appurtenances thereof, he shall forfeit to said company the sum of fifty dollars, in addition to the actual damages consequent upon such offence.

For signing or delivering false bill of lading.

SEC. 12. That every person who shall knowingly sign or deliver to any collector a false bill of lading, with the design of avoiding the payment of tolls, shall be deemed guilty of a misdemeanor, and, on conviction thereof before any court of competent jurisdiction, shall be fined not less than three times the value of the property omitted or falsely stated in such bill.

Collector may require oath.

SEC. 13. That every collector of tolls on the canal herein authorized may require the master of any boat, upon exhibiting his bill of lading, to verify it by his oath, which such collector is hereby authorized to administer, and any person who shall testify falsely before any collector shall be deemed guilty of perjury.

SEC. 14. That for all damages done to the said canal, the offenders shall be proceeded against by indictment in the proper courts, and on complaint being made to any judge, or justice of the peace of the proper county, against any person or persons doing any such damage as is mentioned in the preceding sections of this act, it shall be the duty of such judge or justice forthwith to issue a warrant to the proper officer to arrest and bring before him such offender or offenders, and if, upon the return of such warrant, it shall appear to the satisfaction of such judge or justice that such complaint is true, he shall commit such offender or offenders if he or they shall refuse to give security for their appearance at the proper court to answer to said complaint: *Provided*, however, That if the offender or offenders shall pay to such judge or justice of the peace the penalties, forfeitures, and expenses which he or they may have incurred, together with the costs of prosecution, such offender or offenders shall be discharged.

How offenders  
to be proceed-  
ed against.

Proviso.

SEC. 15. That the captain or master, and the owner, of any boat or other float on the canal herein authorized, and likewise the boat or float itself, shall severally be liable for the payment of any penalty or forfeiture, and likewise of all damages which may accrue in consequence of the violation of any of the provisions of this act, or of any order of the board of directors duly made and published relating to the canal or the navigation thereof, or the collection of tolls thereon, by any person navigating such boat, or assisting in the navigation or management thereof at the time of such violation; and any such boat or other float may, at the discretion of the agents of the corporation hereby created, be prevented from navigating said canal until such penalty, forfeiture, and damages, and costs accrued in prosecuting thereof, shall be fully paid.

Masters, own-  
ers, and boats,  
liable for pen-  
alties, &c.

SEC. 16. That all materials that shall have been procured by any contractor for the construction of any part of said canal, or roads, or any work therewith connected, shall, from the time they are prepared for transportation to the place where they are to be used, be subject to the lien of the corporation for all moneys that may have been or shall be advanced by the said corporation during the performance of said contract, and for all damages that may be sustained in consequence of the non-performance thereof; and no sale made by said contractor, or under

Materials sub-  
ject to the lien  
of the corpora-  
tion.

any execution issued upon any judgment or decree, shall in anywise affect said lien.

Corporation to erect bridges, &c.

SEC. 17. That said corporation shall be bound to erect bridges over said canal at all places where it shall cross any public highway which shall have been, or may hereafter be, regularly laid out and recorded, and where the location of the canal shall interfere with any road which shall be in use, and said corporation is hereby authorized to change the location of said road: *Provided*, That, before so doing, the said corporation shall cause the new road to be opened and put into good repair for the convenience of travel, as the road vacated was at the time of such vacation.

Proviso as to new roads.

Company authorized to loan money.

SEC. 18. Inasmuch as the works herein contemplated would now yield little profit to the said corporation, and inasmuch as the Indian title to a part of the lands, over which said works would pass, has not yet been extinguished, said company are hereby authorized to receive deposits, and loan money on bonds, notes, bills of exchange, and other securities, to the amount that may have been subscribed, at any rate of interest not exceeding twelve per cent. per annum upon its actual loans. But nothing herein contained shall be construed as authorizing said company to issue bank notes or bills; nor to continue its operations of receiving deposits, and loaning money, beyond the period of twenty years from the first day of May next; nor to loan any money, except gold and silver, or notes of specie paying banks: *Provided*, That said company shall not hold bonds, notes, or other securities, from any one person, company, or corporation, for any amount, at any one time, greater than five thousand dollars: *Provided*, also, That the notes of specie paying banks, loaned by said company, shall be such as are at par credit in Burlington, the city of St. Louis, or the city of New York.

Not to issue bank notes or bills.

Limitations.

Proviso as to the notes of specie paying banks.

When the works to be constructed.

SEC. 19. The said corporation shall commence the construction of the works authorized by this act, whenever required by the legislature of the Territory or State of Iowa, at any time within not less than three years from the passage of this act, and shall complete the same, whenever required as aforesaid, at any time not less than twenty years from the passage of said act. And if said corporation shall fail to commence or complete the said works at such times as they shall be required as aforesaid, they shall forfeit to said Territory or State the right of constructing the works aforesaid, together with all

Failing to commence or complete the same, right to be forfeited.

that said corporation may have done or expended thereon. In such case, for the purpose of enabling the said State or Territory to construct said works, it shall have the right to subscribe to the stock of said company an amount equal to that which shall have been already subscribed by the company, to be used in the same manner as the funds of the said company are by this act authorized to be used.

Subscription to stock by State or Territory.

SEC. 20. In case of such subscription by the State or Territory, the legislature thereof may appoint a portion of the directors of said company, not exceeding one half the number elected by said company.

And appointment of directors.

SEC. 21. The future State of Iowa, at any time after its admission into the Union, shall have the right to purchase and hold, for the use of the State, the works herein authorized to be constructed, by paying to the said corporation the amount actually expended in the construction and repairs of the same, together with interest thereon at the rate of seven per centum per annum: *Provided*, however, That in case the Congress of the United States shall make any appropriation or donation, either in land or money, in aid of the construction of the work by this act authorized, the right to the same shall vest in said State whenever the said transfer of the canal, or road, shall be made; and the net proceeds of all sales of land, and the amount of all money so appropriated or donated, shall be deducted from the amount to be paid to the said corporation for the transfer of said works to the State; and the said corporation are hereby authorized to apply to Congress for such an appropriation, in money or lands, to aid in the construction of the works authorized by this act, as Congress in its wisdom shall see proper to grant.

Terms on which State may purchase and hold the works authorized by this act.

Deductions.

SEC. 22. If the State of Iowa shall purchase the said canal or road, after any portion of the same shall have been put in operation, the tolls or income derived from the same (of which a full statement shall be preserved on the books of the company), together with interest thereon at the rate of seven per cent. per annum, from the time said income shall have been received, shall also be deducted from the amount to be paid to said corporation, as provided in the last preceding section. But no purchase of the said canal, or road, shall prevent the company from continuing their business of receiving deposits and loaning money as aforesaid, until the expiration of the twenty years as above provided.

Further deductions.

Provisional stipulation touching loans and deposits.

Permission to be obtained from the competent authorities.

SEC. 23. The improvements hereby authorized shall not be commenced until permission from the competent authority, to pass over and appropriate the necessary lands belonging to the United States, shall have been obtained; nor shall said improvements be continued through lands to which the Indian title shall not have been previously extinguished, without express authority from the Congress of the United States.

Power to amend or repeal this act, if any of its provisions violated

SEC. 24. The legislature of this Territory, or State (as the case may be) shall have the power to alter, amend, or repeal this act at any time, when they shall find that any of the provisions herein contained have been violated by said company, or any persons hereafter composing the same.

APPROVED, January 24, 1839.

## INCORPORATIONS.

AN ACT to incorporate the Keosauqua Lyceum.

James Hall and others constituted a body corporate by the name or style of *The Keosauqua Lyceum*.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That James Hall, John Fairman, S. W. Summers, J. N. Lewis, Elisha Puell, John Carnes, Richard Billups, Simon Drouillard, Jacot Lane, John Goodwin, John Purdon, Sewel Kinney, C. Stevenson, John Stevenson, M. Sigler, John Sigler, Cyrus H. Ober, Wilson Stanly, Russell King, Thomas Wilkinson, Alfred Vesters, and such other persons as from time to time shall become members of said corporation, shall be, and are hereby ordained, constituted, and declared to be one body corporate and politic, in deed, fact, and name, by the name and style of "The Keosauqua Lyceum;" and by that name they and their successors shall have succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered, defending and being defended, in all courts and places whatsoever, in all manner of actions, suits, and complaints, matters and cases whatsoever; and that they and their successors shall have a common seal, and change and alter the same at their pleasure; and that they and their successors, by the same name, shall be persons in law capable to purchase, take, receive, hold, and enjoy, to them and their successors, any real estate, in fee simple, or for term of life or lives, or

Their powers.

otherwise, and any goods, chattels, or any personal estate, for the purpose of enabling them the better to carry into execution, encourage, and promote such measures as may tend to the advancement of science and literature, and also to whatever else that may tend to the promotion of education, the advancement of knowledge, and the development of truth, in the sciences: *Provided*, The clear yearly value of such real and personal estate shall not exceed the sum of five thousand dollars. And that they and their successors shall have full power and authority to give, grant, sell, lease, demise, and dispose of the said real and personal estate, or any part thereof, at their will and pleasure; and that they and their successors shall have power from time to time to make, constitute, ordain, and establish such by-laws, ordinances, and regulations as they shall judge proper, for the election of their officers, for the election or admission of new members of said corporation, and the terms and manner of such admission, for the better government of their officers and members, or fixing the time and place of the meetings of said corporation, and for regulating all the affairs of said corporation: *Provided*, Such by-laws and regulations shall not be repugnant to the constitution or laws of the United States, or of this Territory.

Limitation of real and personal estate.

By-laws, ordinances, &c

Proviso.

SEC. 2. And for the better carrying on the affairs of said corporation, there shall be a President, Vice President, Treasurer, and Secretary, who shall hold their offices from the time of their appointment or election, until the first Monday of March then next, or until others shall have been chosen in their places. And that the said J. N. Lewis is hereby appointed President, the said Wilson Stanly treasurer, and the said John Carnes secretary, until the first Monday of March next; and that said officers shall, on the first Monday of March next, and always thereafter, be chosen by the members of the said corporation in such manner, and afterwards at such time and places, as shall be directed by the by-laws of said corporation to be made for that purpose; and that the President, or Vice President, and any seven members of said corporation shall be sufficient to constitute a legal meeting for the transaction of business.

Officers of the corporation.

First appointments.

Quorum.

SEC. 3. This act shall be subject to amendment by any future legislature.

APPROVED, January 24, 1839.

## INCORPORATIONS.

AN ACT to incorporate the town of Davenport.

**Incorporating clause.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That so much of township seventy-eight, north, of range three east of the fifth principal meridian, in the county of Scott, as is comprised within the limits of the original town plat of the town of Davenport, and the additions made thereto by Antoine Le Clair, together with all additions that may hereafter be recorded thereto, by consent of two-thirds of the qualified voters of said town, be and the same is hereby created a town corporate, and shall hereafter be known by the name of the "Town of Davenport:" *Provided,* That said town shall not exceed two miles square.

**When Mayor, Recorder, and Trustees to be elected.** SEC. 2. That the qualified voters for members of the Legislative Assembly, residing within the limits of said corporation, shall meet at some convenient place within the same, on the first Saturday of April next, and on the first Saturday of April annually thereafter, at such place in said town as the town council shall direct, and then and there proceed to elect, by ballot, a Mayor, Recorder, and five Trustees, who shall have the qualifications of electors, and reside within the limits of the corporation; and the mayor, recorder, and trustees, so elected, shall hold their offices one year, and until their successors are elected and qualified: *Provided,* That a failure to elect on said day shall not forfeit the charter, but an election may be had on any succeeding day, by giving due notice.

**Proviso.**

**At first election judges and clerk to be chosen.** SEC. 3. That at the first election to be held under this act, two judges and a clerk shall be chosen, *viva voce*, by the electors present, and at all subsequent elections the mayor, or any two of the trustees, shall sit as judges, and the recorder, or in his absence, some one of the council, *pro tempore*, shall sit as clerk, and at all such elections the polls shall be opened between the hours of one and two in the afternoon, and close by the hour of four the same afternoon, and at the close of the polls the votes shall be counted, and a statement thereof proclaimed at the door of the house in which the election shall be held; and the persons elected shall, within ten days after their election, take an oath to support the constitution and laws of the United States, and of this Territory, and an oath of office, a certificate of which

**How future elections to be conducted.****Oath to be taken by the persons elected.**

shall be deposited with the recorder, and by him preserved.

SEC. 4. The mayor, recorder, and trustees of said town shall be a body politic and corporate, with perpetual succession, to be known by the name of the "Town of Davenport;" and shall be capable in law to acquire property, real and personal, for the use of said town, and sell and convey the same; may have a common seal, and may alter the same at pleasure; may sue and be sued, plead and be impleaded, answer and be answered, in any court of law or equity in this Territory; and when any suit shall be commenced against said corporation, the first process shall be a summons, a certified copy of which shall be left with the recorder, and, in his absence, with the mayor, at least ten days previous to the return day thereof.

SEC. 5. That the mayor, recorder, and trustees, or a majority thereof, of whom the mayor or recorder shall always be one, shall have authority to make, ordain, and publish all by-laws and ordinances, not inconsistent with the constitution and laws of the United States, or of this Territory, as they shall deem necessary and proper for the promotion of morality, as well as for the good regulation, interest, safety, health, cleanliness, and conveniences of said town and the citizens thereof; they shall have power to fill all vacancies that may happen by death, or otherwise, of any of the offices herein named; they shall also have power to appoint a treasurer, marshal, and such other subordinate officers as they may deem needful, to prescribe their duties, and require surety for their performance, to remove them at pleasure, and to establish the fees of all officers in the corporation not established by this act; they shall have power to impose fines for the breach of their ordinances, but no fine shall be imposed on any one person, for any one breach of any one ordinance, of more than ten dollars, which fine may be recovered, with costs, before a justice of the peace, by action of debt, in the name of the corporation. All fines collected in pursuance of this act shall, by the officer collecting the same, be paid over to the Treasurer of the corporation.

SEC. 6. It shall be the duty of the recorder to keep a true record of the by-laws and ordinances, and of the proceedings of the council, which record shall be at all times kept open for the inspection of the electors of said town, and the recorder shall preside at all meetings in the absence of the mayor.

Power to levy taxes.

SEC. 7. That the town council shall have power to assess, for corporation purposes, an annual tax on all property in said town, made subject to taxation by the laws of this Territory, for Territorial and county purposes, not exceeding in any one year one per centum on the value thereof, which value shall be ascertained by an assessor, appointed by the town council for that purpose, a duplicate of which shall be made out and signed by the recorder, and delivered to the collector; they shall have power to equalize any injudicious assessment thus made, on complaint of the person aggrieved.

Limitation.

Marshal to be collector.

SEC. 8. That the town marshal shall be the collector of any tax assessed, and he is hereby authorized and required, by distress and sale of property, as constables on execution, to collect and pay over said tax to the treasurer, within three months after the time of receiving the duplicate thereof, and the treasurer's receipt shall be his voucher. The town marshal shall make personal demand of every resident charged with tax, and shall give ten day's notice, by advertisement, in three of the most public places in said corporation, of any tax; and if the tax on any lot or piece of land, on which no personal property can be found, shall remain unpaid three months after the expiration of the time by this act allowed the collector for the collection of the tax, then the town marshal shall give notice in the nearest newspaper, stating the amount of such tax, and the number of the lot on which it is due, and that the same will be sold to discharge such tax, unless the payment thereof be made within three months from the date of such advertisement; and if such tax be not paid within that time, the town marshal, after giving thirty days' notice of the time and place of sale, at three of the most public places in said town, shall proceed to sell, at public auction, so much of said lot or piece of land as will discharge said tax.

After public notice given, lots may be sold for the tax due thereon.

May be redeemed within two years.

SEC. 9. That if the owner of such lot or piece of land shall appear, at any time within two years after such sale, and pay the purchase money, with interest, and twelve per centum penalty thereon, he shall be entitled to the right of redemption: *Provided*, That nothing in the two preceding sections shall affect the right of others, in law or equity, to the benefit of the right of redemption, when they shall arrive at full age.

Certified account of the an-

SEC. 10. Twenty days before each annual election, the town council shall put up, in some conspicuous

place within said town, an accurate account of the moneys received and expended by said corporation since the last annual election, with the sources from which they were derived, and the objects on which they were expended, which shall be certified by the recorder.

SEC. 11. The said corporation shall have power to regulate and improve all streets, alleys, sidewalks, drains, or sewers, to sink and keep in repair public wells, remove nuisances, and regulate markets, to grant licenses for retailing ardent spirits within the limits of said corporation, and to appropriate the proceeds of such licenses for the benefit of the town; they shall have power to license and regulate, or prohibit, all shows and public exhibitions: *Provided*, however, That the power hereby granted shall not be so construed as to conflict with the general laws of this Territory, regulating taverns and licenses for retailing ardent spirits.

SEC. 12. That said council shall have power to establish and organize a fire department, to procure an engine, hose, hooks, ladders, and other implements of use in the arrest and extinguishment of fire.

SEC. 13. That the by-laws and ordinances of said corporation shall be published in a newspaper in the county, or posted up in some public place in said town, fifteen days before the taking effect thereof; and the certificate of the recorder upon the town record shall be sufficient evidence of the same having been done. And every annual election, herein authorized, shall be preceded by five days' notice thereof, put up in three public places in said town.

SEC. 14. That the streets and alleys of said town shall constitute one road district, including the several roads leading from said town to the distance of one mile from the corporation limits; and the town council shall have the exclusive right of appointing the supervisor for said district, who in every respect shall act as though appointed by the county commissioners.

SEC. 15. That the mayor, or a majority of the councillors, may call a meeting of the town council whenever, in his or their opinion, the same may be necessary. The mayor and trustees shall receive no compensation, unless the same shall be authorized by the inhabitants, in legal meeting assembled.

SEC. 16. Any future legislature may alter, amend, or repeal this act.

APPROVED, January 25, 1839.

## INCORPORATIONS.

AN ACT to incorporate the Iowa Mutual Fire Insurance Company.

- Company in-  
corporated.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Isaac Leffler, James Cameron, Amos Ladd, Thomas Cooper, George H. Beeler, David Rorer, Jeremiah Lamson, Jesse B. Weber, S. S. Ransom, William H. Starr, David Hendershott, William M. Devoe, George W. Kelley, William S. Edgar, Thomas S. Easton, Nehemiah Chase, Enos Lowe, Jesse B. Browne, George W. Hepner, L. B. Hughes, Thomas M. Isett, Alexander C. Donaldson, Joseph T. Fales, James Hall, and Thomas Cox, and all other persons who may hereafter become members of said company in the manner hereinafter prescribed, are hereby incorporated and made a body politic, by the name of "The Iowa Mutual Fire Insurance Company."
- Object of the  
incorporation.** SEC. 2. The object of said incorporation being to afford the members thereof the means of mutually insuring each other against loss by fire, the company, in its corporate name aforesaid, is hereby endowed with all the powers, and made subject to all the liabilities, which are necessary and proper in order to secure that object as herein authorized.
- Powers.** SEC. 3. They may become a party to suits, may purchase and hold such real and personal estate as may be necessary in order to effect the objects of their association, and may sell and convey the same at pleasure, may establish and put in execution such ordinances, by-laws, and regulations, not being contrary to the laws of this Territory, as may seem necessary or convenient for their regulation and government, and for the management of their affairs, and may have a common seal, which they may change at pleasure.
- Persons insur-  
ed to be deem-  
ed members.** SEC. 4. Every person who shall at any time become interested in said company by insuring therein, and also their representatives, heirs, executors, administrators, and assigns, continuing to be insured therein as hereinafter provided, shall be deemed and taken to be members thereof, for and during the terms specified in their respective policies, and no longer, and shall at all times be concluded and bound by the provisions of this act.
- Board of direc-  
tors.** SEC. 5. The affairs of said company shall be managed and controlled by a board of twenty-five directors, and the persons named in the first section of this act

shall be the first directors. Their successors shall be annually elected in the manner hereinafter prescribed, and it shall be competent for any set of directors to increase or diminish the number that shall be elected on the ensuing year.

SEC. 6. Each set of directors shall continue in office until their successors are elected. All vacancies happening in said board may be filled by the remaining members until the next annual election.

SEC. 7. A majority of the directors shall constitute a quorum for the transaction of business. They may elect a president, and a first and second vice president, from among their own number. They may also, from time to time, appoint a secretary, treasurer, and such other officers, agents, and assistants, as they may deem necessary; may prescribe their duties, fix their compensation, take security from them for the faithful performance of their duty, as they may deem proper, and may remove them at pleasure.

SEC. 8. In the absence or inability of the president to perform his duties, the first vice president shall act in his stead; and if he, for like reasons, is incapable to discharge his functions, the second vice president shall officiate.

SEC. 9. The directors shall meet at such times and places as they may think proper. They shall keep a record of their proceedings, and any director, disagreeing with the majority of the board at any meeting, may enter his dissent, with the reasons therefor, on such record.

SEC. 10. The first election of directors shall take place on the fourth Saturday of October, A. D. 1839, at such place, in the city of Burlington, as the directors shall provide. Thereafter the annual elections shall be held at such place within this Territory, and at such time, not less than ten, nor more than fourteen months from the last annual election, as the directors shall appoint.

SEC. 11. Notice of such election, stating the time and place thereof, and the number of directors to be elected, shall be given by the secretary, by publication for three weeks successively, in at least two newspapers printed in the Territory, but in different counties thereof, the last of which publications shall be at least ten days previous to such election.

SEC. 12. Should the secretary fail to give such notice, or if for any other cause an election should

To be annually elected.

May fill vacancies.

Quorum.  
President and Vice-Presidents.  
Secretary and treasurer.

If president absent, vice-president to officiate.

Meetings and record of proceedings.

When directors to be elected.

Secretary to give notice.

Failing to give such notice,

&c., another day may be fixed,

not be held at the proper time, the directors may fix upon another day for the said election, not more than two months subsequent to that previously fixed, and the secretary shall accordingly give notice thereof as above directed.

Persons entitled to vote.

SEC. 13. Any person, who shall have an existing insurance in such company to the amount of one hundred dollars, or upwards, shall be entitled to vote at such election, the mode of conducting which shall be prescribed by the directors.

Before delivery of the policy, note to be deposited.

SEC. 14. Every person, who shall wish to effect insurance in said company, shall, before he receives his policy, deposit his promissory note with the treasurer for such sum of money as shall be determined by the directors.

What part thereof to be immediately paid.

SEC. 15. A part, not exceeding five per cent. of the amount of such note, shall be immediately paid, and the remainder of said deposit note shall be payable in part, or in whole, at any time when the directors shall deem the same requisite for the payment of losses, or other expenses.

When such note may be relinquished.

SEC. 16. At the expiration of the term of insurance, the said note, or such part of the same as shall remain unpaid, after deducting all losses and expenses occurring during said term, shall be relinquished and given up to the signer thereof, or his representatives.

Liability of members.

SEC. 17. Every member of said company, as aforesaid, shall be bound to pay his proportion of all losses happening, or expenses accruing in said company, to the amount of his premium note.

Lien on property insured.

SEC. 18. All buildings insured in said company, together with the right, title, and interest of the assured to the lands on which they stand, to the extent of one building lot if in town, or of one acre if in the country, shall be pledged to said company by the fact of such insurance; and the said company shall have a lien thereon, for the proportion of losses and expenses that may accrue against the assured, during the continuance of his policy.

Notice of any loss or damage by fire.

SEC. 19. In case of any loss or damage by fire happening to any member, upon property insured in said company, notice thereof shall be given, in writing, to the directors, or some one of them, or to the secretary of the company, within thirty days from the time such loss or damage may have happened, in order to entitle the assured to compensation for his loss.

SEC. 20. The directors shall provide the manner of ascertaining and determining the amount of such loss or damage, which shall be paid accordingly. If the party suffering is not satisfied with the determination of the directors, the question may be submitted to referees, or the said party may bring his action at law against the company.

Amount of loss.

Reference, or action at law.

SEC. 21. Such action may be brought either in the county where the secretary of the company shall hold his office, or in the county where the property insured was situated, and the summons may be served upon the secretary, or either of the directors of the company.

Where such action may be brought.

SEC. 22. If, upon such trial, a greater sum shall be recovered than the amount determined upon by the directors as aforesaid, the plaintiff shall have judgment therefor, with interest and costs of suit; but if no more be recovered than the amount aforesaid, costs shall be awarded against the plaintiff.

Judgment and costs.

SEC. 23. After the amount to be paid to the assured shall have been finally fixed, the directors may at any time settle and determine the proportions to be paid by the several members of the company, and publish the same in such manner as they shall see fit, or as the by-laws shall have prescribed.

Sum to be paid the assured, and notice thereof to members.

SEC. 24. If any member shall, for the space of thirty days after the publication of said notice, neglect or refuse to pay the sum assessed upon him as aforesaid, the directors may sue for and recover the whole amount of his deposit note, with costs of suit.

Of Falling to pay, directors may sue and recover.

SEC. 25. The money thus collected shall remain in the treasury of said company, subject to the payment of such losses and expenses as have or may thereafter accrue; and the balance, if any remain, shall be returned to the party from whom it was collected, on demand, after thirty days from the expiration of the term for which insurance was made.

Money thus collected, how disposed of.

SEC. 26. Any policy of insurance, signed by the president, and countersigned by the secretary, shall be deemed valid and binding on said company in all cases where the assured had a title in fee simple, unincumbered, to the buildings insured, and to the lands on which they stand; but if the assured have a less estate therein, or if the premises be incumbered, the policy shall be void, unless the true title of the assured, and the incumbrances of the premises, be expressed in the application therefor.

Validity of the policy.

In what case to be void.

Further terms  
may be fixed.

SEC. 27. The preceding section shall not be construed to prevent the directors from fixing further terms and conditions, which must be complied with by the person applying for insurance, in order to secure the validity of his policy.

Losses to be  
paid within  
three months.

SEC. 28. The directors shall settle and pay all losses within three months after they shall have been notified as aforesaid, or suit may be commenced therefor, as above provided.

If any house,  
&c., alienated,  
policy to be  
surrendered.

SEC. 29. When any house, or other building, shall be alienated by sale, or otherwise, the policy shall thereupon be void, and be surrendered to the directors of said company to be cancelled; and upon such surrender, the assured shall be entitled to receive his deposit notes, upon the payment of his proportion of all losses and expenses that shall have accrued prior to such surrender. But if the grantee or alienee shall have the policy assigned to him, he may have the same ratified and confirmed to him, for his own use and benefit, upon application to the directors, and with their consent, within thirty days next after such alienation; and the lien of the company upon the premises, as provided for in section eighteen, shall be continued in the same manner as though the premises had not been granted or conveyed.

Or it may be  
assigned to  
alienee.

Privileges and  
liabilities of  
alienee.

SEC. 30. By the ratification and confirmation mentioned in the last preceding section, the said grantee or alienee shall be entitled to all the privileges, and subject to all the liabilities, to which the original party insured was entitled and subjected under this act.

In what case  
additional pre-  
mium to be  
paid.

SEC. 31. If any alteration should be made in any house or building by the proprietor thereof, after insurance has been made thereon with said company, whereby it may be exposed to greater risk or hazard from fire than it was at the time it was insured, then the insurance aforesaid shall be void, unless an additional premium and deposit, after such alteration, be settled with, and paid to, the directors; but no alterations or repairs in buildings, not increasing such risk or hazard, shall in anywise effect insurance previously made thereon.

Double insur-  
ance.

SEC. 32. If insurance on any property shall be and subsist in said company and in any other office, or from or by any other person, at the same time, the insurance made in and by said company shall be void, unless such double insurance subsists with the consent of the directors, signified by endorsement

on the back of the policy, signed by the president and secretary.

SEC. 33. Where personal property is to be insured, the directors may require such security, on the premium note aforesaid, as they shall by their regulations determine. Insurance on personal property.

SEC. 34. Conveyances of real estate, when made by the company, must, in order to be valid, be signed by the president, with the seal of the company affixed, and countersigned by the secretary. An order for such sale must also have been entered on the records of the company by the authority of the directors. The acknowledgment of the president alone shall be sufficient to entitle such conveyance to be recorded. Conveyances by the company.

SEC. 35. No policy shall be issued by the company, until applications for insurance shall have been made to the amount of at least thirty thousand dollars. No policy to issue till \$30,000 subscribed.

SEC. 36. The first meeting of the board of directors may be called by any one of their number, by advertisement in the Burlington Gazette, or by sending personal notice to each of the other directors. Such advertisement or notice must be made at least ten days previous to the day of meeting, and must specify the time and place where such meeting shall be held. First meeting of directors.

SEC. 37. Any future legislature of this Territory, or State, may alter or repeal this act whenever they consider the public good requires it. This act may be altered or repealed.

APPROVED, January 25, 1839.

## INDIANS.

AN ACT to prevent the selling of spirituous liquors to Indians.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That if any tavern keeper, grocery keeper, or other person, or persons, shall sell, or barter, or in any manner dispose of, any spirituous liquor, or any other liquor of intoxicating quality, to any Indian or Indians, within this Territory, such person, or persons, shall forfeit and pay, for the use of the county, a fine not exceeding one hundred dollars, nor less than twenty-five dollars, to be recovered, with costs of suit, by action of debt, in the name of the United States of America, Persons selling, bartering, &c., spirituous liquors to Indians. To be fined, And forfeit the articles received in exchange.

Officers required to give notice of violations of this act.

or by indictment, or information, in any court having competent jurisdiction to try the same; and the person or persons, so offending, shall moreover forfeit the article, of whatever nature or kind, he, she, or they have received in exchange, which shall be restored to the proper owner, upon the necessary proof of ownership being made, before any justice of the peace within the Territory; and all justices of the peace, constables, and all other proper officers, are hereby authorized and required, under the penalty of forfeiture of their respective offices, to make complaint of such violations of this law as come within their knowledge.

SEC. 2. This act to take effect, and be in full force, after the first day of March next.

APPROVED, January 3, 1839.

## INSANE PERSONS.

AN ACT concerning Insane Persons.

Bargain, sale, &c., by insane persons void.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any bargain, sale, conveyance, or act, of any person, or persons, in a state of insanity, shall be void and of no effect in law.

Duty of district court in relation to insane persons.

SEC. 2. When any district court in this Territory shall receive satisfactory information that any person in their respective counties, having property, is or has become insane, it shall be the duty of the said court to direct the sheriff of the county to summon twelve intelligent and disinterested men of the county, impartially to inquire into the fact, and to appoint the time and place where such jury shall meet and inspect such insane person, and also to cause to come before them such persons as they may think proper to give testimony as to the insanity of such person; and if the jury, so summoned and sworn, shall decide, from such inspection and testimony, that such person is insane, and not able to take care of his or her property, the court shall proceed to appoint three suitable persons as guardians of the person and estate of such insane person, whose duty it shall be to take such care of the person and property of such insane person as may be necessary for the safety and preservation of the same.

Jury.

Appointment and duty of guardians.

SEC. 3. Whenever it may be thought necessary, the district court of the county, wherein such inquest of insanity was held, upon proper representation, may direct and order the sale of the real and personal estate of such insane person, for the support of such insane person, his or her family, the payment of his or her debts, or for the improvement thereof, and generally to act, and do what to them shall seem proper, for the benefit of the person or property of such insane person, consistent with law.

Court may order sale of real and personal estate, &c.

SEC. 4. As soon as it is determined by inquest, as mentioned by the second section of this act, that such person is insane, it is hereby declared that all judgments, executions, and suits pending against such insane person, shall be suspended until the appointment of a guardian or guardians, and then the same proceedings may be had against such guardian or guardians, whose appointment shall continue during the insanity of such insane person, to be recovered by the court for the recovery of the debts of such insane person, under the same rules, restrictions, and regulations as are prescribed by the existing laws of this Territory against administrators and executors.

Suits, &c., to be suspended till the appointment of guardian.

SEC. 5. All persons insane, who have no property for their support, shall be entitled to all the benefits of the laws of this Territory for the relief of paupers, and the overseers of the poor, and all other persons concerned, are directed to govern themselves according to the provisions of the laws for the relief of the poor.

Insane persons having no property.

APPROVED, January 19, 1839.

## INTEREST.

AN ACT regulating interest on money in the Territory of Iowa.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That creditors shall be allowed to receive interest, at the rate of six per centum, per annum, for all moneys after they become due, on bonds, bills, promissory notes, or other instruments of writing; on any judgment recovered in any court of law, now or hereafter to be established in this Territory; on any order or decree of a court of chancery, or probate, for the payment of a specific sum of money, from the day of signing

In what cases interest at 6 per cent. allowed.

such judgment, order or decree, until effects be sold, or satisfaction be made; likewise on money lent; on money for the forbearance of payment, whereof an express promise has not been made for the payment of interest; on money due for the settlements of accounts, from the day of liquidating the accounts between the parties, and ascertaining the balance; on money recovered to the use of another, and retained without the owner's knowledge, or retained after demand of payment; and on money withheld by any unreasonable delay of payment.

Agreement in writing to pay a higher rate.

SEC. 2. No person shall, on any contract that may be made directly or indirectly, take for the loan, or use, or forbearance, of money, or other commodity, above the rate or value of six dollars for the use or forbearance of one hundred dollars, or the value thereof, for one year, and so proportionally for any greater or less sum, unless an agreement to pay a higher rate of interest be made, in writing, and signed by the party to be charged: *Provided*, In no case such rate of interest shall exceed the value of twenty dollars for the forbearance of one hundred dollars, for a year, and so after that rate for a greater or less sum, or a longer or shorter time.

Proviso.

Usurious part of any contract to be forfeited, and 25 per cent.

SEC. 3. Any person who shall, upon any contract, take, accept, or receive, by way or means of any corrupt bargain, or by covert or deceitful conveyance, or by any other ways or means whatsoever, for the forbearance on giving day of payment, for one year, above the sum of twenty dollars, for the forbearance of one hundred dollars for one year, and so after that rate for a greater or less sum, or for a longer or a shorter time, shall forfeit and pay, for every such offence, the whole of the usurious part of said contract, and twenty-five per centum interest on the said contract, before any court of competent jurisdiction, which shall be paid into the treasury of the county wherein the same shall be prosecuted: *Provided*, nevertheless, That nothing in this act shall extend to the letting of cattle, or other usages of like nature practiced among farmers, or to maritime contracts, bottomry, or other use of exchange, as hath heretofore been customary.

Proviso.

Repealing clause.

SEC. 4. An act of the Legislative Council of the Territory of Michigan, relating to the interest on contracts, is hereby repealed. This act to take effect and be in force from and after the first day of March next.

APPROVED, December 29, 1838.

## JURORS.

AN ACT concerning Grand and Petit Jurors.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all persons who are qualified electors, in this Territory, shall be liable to serve as jurors, in their respective counties, as hereinafter provided. The following persons shall be exempt from serving as jurors, to-wit: The Governor, Secretary of the Territory, Judges of the supreme and district courts, county commissioners, county treasurers, clerks of the supreme and district courts, and clerks of the boards of county commissioners, judges of probate, sheriffs, under sheriffs, and deputy sheriffs, coroners, constables, the marshal of the United States, and his deputies, counselors and attorneys at law, ministers of the gospel, officers of colleges, (not including trustees or directors thereof,) and preceptors and teachers of incorporated academies or universities, and one teacher in each common school, practising physicians, and surgeons, and all persons more than sixty years of age, together with all persons not of sound mind or discretion and subject to any bodily infirmity, amounting to any disability, and all persons shall be disqualified from serving as jurors who have been convicted of any infamous crime.

Who shall serve as jurors.

Who shall be exempt from such service.

SEC. 2. That it shall be the duty of the county commissioners in each of the counties of this Territory, wherein a district court is directed to be held, at least thirty days previous to the sitting of said court, to select twenty-three persons possessing the qualifications aforesaid, in their respective counties, and to deliver an attested copy of the names so selected within three days thereafter to the clerk of the district court, of the proper county, who shall thereupon issue and deliver to the sheriff of the county a *venire*, or summons, under the seal of the court, commanding him to summon the persons so selected as aforesaid to appear before the said court, at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand jurors, any sixteen of whom shall be sufficient to constitute a grand jury, which said summons shall be served at least five days previous to the sitting of said court either by reading it to the person to be summoned, or by leaving an attested copy thereof at his usual place of residence.

Duties of county commissioners.

Duty of the clerk of district court

Duty of sheriff.

Grand Jury.

Summons to jurors how and when served.

- Foreman of grand jury.** **SEC. 3.** After the grand jury is empaneled it shall be the duty of the court to appoint a foreman, who shall have power to swear, or affirm, all witnesses to testify before said grand jury, and whose duty it shall be, when the grand jury, or any twelve of them, shall find a bill of indictment, to be supported by good and sufficient evidence, to endorse thereon "a true bill," and when they do not find a bill to be supported by sufficient evidence, to endorse thereon "not a true bill," and shall, in either case, be signed by the foreman at the foot of the endorsement, and shall, in all cases, where a true bill is returned into court as aforesaid, note thereon the name or names of the witnesses upon whose evidence the same was found.
- His powers and duties.**
- Bills of indictments.**
- Names of witnesses endorsed on true bills.**
- Oath of grand jurors.** **SEC. 4.** That the oath of the grand jury in all cases shall be as follows, to wit: "You, as grand jurors for the body of the county of \_\_\_\_\_ (as the case may be) do solemnly swear, that you will diligently inquire into, and true presentment make of, all such matters and things as shall come to your knowledge, according to your charge: The counsel of the United States of America, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice, neither will you leave any person unrepresented through fear, favor, or affection, or hope of reward, but that you will present things truly as they come to your knowledge according to the best of your understanding, and according to the laws of this Territory, so help you God."
- Oath of petit jurors, in criminal cases.** **SEC. 5.** That the oath or affirmation of petit jurors in criminal cases shall be as follows, to wit: "You solemnly swear (or affirm) that without respect to person, or favor, or fear, you will well and truly try and true deliverance make between the United States of America and the prisoner at the bar, whom you shall have in charge, according to the evidence given you in court, and the laws of this Territory, so help you God."
- Two grand jurors necessary in making presentment.** **SEC. 6.** No grand jury shall make presentment, of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence is deemed sufficient, an indictment may be found thereon, as upon the evidence of any other witness who may not be of the jury.
- Exception.**

SEC. 7. It shall be the duty of the board of county commissioners, in each of the organized counties in this Territory, where a district court is directed to be held, at least thirty days previous to the sitting of the said court, to select twenty-four persons possessing the qualifications of jurors, who shall compose and constitute two full petit juries, to serve as such at the next succeeding term of the district court, in each county respectively to be summoned, in like manner as hereinbefore directed in the case of grand juries.

Duty of county commissioners.

Petit jurors.

Their number and how summoned.

SEC. 8. It shall be the duty of the clerk of the district court, at the commencement of each term, to write the name of each petit juror, on a separate ticket, and put the whole into a box, or other place for safe keeping, and as often as it may be necessary to empanel a jury the clerk shall, in the presence of the court, draw, by chance, twelve names out of such box, which shall designate the twelve to be sworn on the jury, and in the same manner for each subsequent jury in their turn, as the court may from time to time direct.

Duty of the clerk of the court.

Manner of selecting a petit jury.

SEC. 9. In all cases where the sheriff, or other officer, shall be commanded to execute any summons as aforesaid, he shall be required to make timely return thereof to the clerk, who may have issued the same, with an endorsement thereon, certifying on whom it has been served, and the time when, and, in default of so doing, such sheriff, or other officer, shall be considered as being guilty of a contempt, and may be fined for the use of the proper county in any sum not less than ten, nor more than fifty dollars, unless such sheriff, or other officer, shall make his excuse to the satisfaction and acceptance of the court.

Duty of sheriff.

Neglect of duty.

Penalty.

SEC. 10. If a sufficient number of grand or petit jurors do not appear, when selected and summoned as aforesaid, or if by challenges, or any other cause, there shall not appear a sufficient number of qualified persons to make up the panels, the court may order the sheriff to return, without delay, such number of good and lawful men of the county, as may be necessary for that purpose. And when the sheriff is interested or related to either of the parties, the court may direct the coroner to make such return: And if any district court shall at any time sit before the board of county commissioners shall have made a selection of grand or petit jurors, as aforesaid, or

Non-attendance of grand or petit jurors.

How remedied.

When sheriff is interested,—coroner may act.

- if on any account the whole panel in either case shall fail to attend, the court may order the sheriff, or other officer, to summon from the bystanders, being qualified persons as aforesaid, a sufficient number to supply such deficiency who shall continue to serve for the remainder of the term, unless they shall be sooner discharged by the court.
- Bystanders.** **SEC. 11.** Every person who shall fail to appear when lawfully summoned as a grand or petit juror, as aforesaid, without having a reasonable excuse, shall be considered as being guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars, for the use of the proper county, unless good cause be shown for such default at or before the next term of said court, and it shall be the duty of the clerk to issue a summons against such delinquent, when such person shall not come in without process, to show cause at the next succeeding term of said court why he or they should not be fined for such contempt: *Provided*, That the oath or affirmation of any such delinquent shall, at all times, be received as competent evidence in his favor.
- Their qualifications, and term of service.**
- Grand and petit jurors.**
- Fine for non-attendance.**
- Duty of clerk.**
- Proviso.**
- Death or sickness of jurors provided for.** **SEC. 12.** In case of the death, sickness, or non-attendance of any grand or petit juror, after he shall have been sworn upon the jury, or where any such juror, being sworn as aforesaid, shall, for any reasonable cause, be dismissed, or discharged, it shall be lawful for the court to cause others, if necessary, to be summoned and sworn in his or their stead.
- Duty of clerk.** **SEC. 13.** It shall be the duty of the clerk of the district court, at the end of each term of said court, or within ten days thereafter, to make out a certificate to each juror, certifying the number of days and amount of compensation due to each juror, which certificate shall be presented to the board of county commissioners, and allowed as other demands against said county: *Provided*, That no juror shall be paid out of the county treasury for any days attendance as a juror, in the district court of the Territory, for which he may have received, or may be entitled to receive, pay as a juror of the district court of the United States.
- Certificate of service, to contain number of days and amount.**
- To whom presented, and by whom allowed.**
- Proviso.**
- Jurors privileged from arrest. Exceptions.** **SEC. 14.** All grand and petit jurors shall be privileged from arrest, in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going

to, and returning from, the same, and all arrests in such cases shall be deemed as illegal and void. Arrest of jurors void.

SEC. 15. It shall be the duty of the board of county commissioners to arrange and select the grand and petit jurors, as aforesaid, in such manner as to make the qualified persons of the county perform duties as jurors, as nearly as may be, in rotation, and so that the same may not be unnecessarily burdensome to any of the citizens of the county according to the best information that the said commissioners can obtain. Duty of county commissioners. Rotation in the selection of jurors.

APPROVED, January 4, 1839.

## JUSTICES OF THE PEACE.

AN ACT to make valid and good in law the acts of Robert G. Roberts, done and performed by him as a justice of the peace, in and for the original county of Du Buque, in the Territory of Wisconsin, now the Territory of Iowa.

WHEREAS, Robert G. Roberts, a citizen of the county of Du Buque, late Wisconsin, now Iowa Territory, was in the month of November, in the year of our Lord one thousand eight hundred and thirty-six, duly commissioned, and, in the month of February of the same year, sworn and qualified to act as a justice of the peace, according to the requirements of the law in such case made and provided, except that the bond of the said Robert G. Roberts was not, agreeably to law, filed in the proper office, by the neglect of which requirement doubts have been made as to the validity and virtue of all the official acts done and performed by the said Robert G. Roberts, in pursuance of his commission aforesaid, in and for the county aforesaid: And whereas, it is highly important that his said acts should be declared and rendered legal and valid: Therefore, R. G. Roberts commissioned in November, 1836. Neglected to file his bond.

*Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all and every the official acts and doings of the said Robert G. Roberts, done and performed by him, by virtue of his commission of justice of the peace, in and for the county of Du Buque aforesaid, during the time he held the same, and performed the duties thereof, be and the same are hereby declared to be as good and valid, in law, as if the said bond had been properly filed according to the requirements of the law in Official acts of said R. G. Roberts declared valid.

Rights of appeal, &c., not affected.

such cases made and provided: *Provided*, nevertheless, That nothing in this act contained shall be so construed as to affect the rights of appeal, or such other rights and privileges as are by the laws of this Territory, regulating proceedings had before justices of the peace, extended to the parties interested therein.

APPROVED, December 14, 1838.

## JUSTICES OF THE PEACE.

AN ACT to prescribe the mode of proving, in courts of this Territory, judgments rendered by justices of the peace in the several States.

Official certificates of justices in the States to be evidence in the courts of Iowa.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That the official certificate of any justice of the peace, living in any State in the United States, certifying any judgment by such justice rendered, with a certificate thereon, sealed by the clerk of the county, with the county seal, where such justice shall reside, certifying that he, whose signature appears on such exemplifications, was, at the date of such judgment, a justice of the peace, and qualified to act as such, shall be good and legal evidence, in any court in this Territory, to prove the facts contained in such exemplifications, and nothing more.

APPROVED, January 15, 1839.

## JUSTICES OF THE PEACE.

AN ACT to provide for the appointing of Justices of the Peace, to prescribe their powers and duties, and to regulate their proceedings.

Number of justices and term of service.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, as follows:* There shall be appointed in each of the organized counties of this Territory as many justices of the peace as, in the opinion of the Governor, the public good and the wants of the people may require, and whose term of service shall continue three years, unless sooner removed by the Governor.

Who disqualified.

SEC. 2. No clerk of the District Court shall hold or exercise the office of justice of the peace.

Oath of office.

SEC. 3. Every justice of the peace shall, within twenty days after the receipt of his commission, take

and subscribe an oath to support the Constitution of the United States and the laws of this Territory, and to administer equal justice to the poor and the rich, and to faithfully demean himself in office; which oath shall be endorsed on the back of his commission, shall be recorded in the office of the Clerk of the District Court, and in case of his failing so to do, it shall be deemed a refusal of such appointment. And <sup>To enter into</sup> each and every justice of the peace of this Territory <sup>bond.</sup> shall, at the time of filing his oath of office with the clerk of the District Court, enter into bond with good security to the county commissioners, in the county where he resides, in the sum of five hundred dollars, conditioned that he will faithfully pay over all moneys that may come into his hands on judgments, notes, bills or accounts, and on failure so to do, the party aggrieved may by motion before the District Court where such bond is filed, have judgment for principal with costs and ten per centum interest until paid.

SEC. 4. Any person who shall act as a justice in <sup>Penalty for</sup> violation of the preceding section shall, on conviction <sup>violating 3d</sup> thereof by indictment, be fined in a sum not exceed- <sup>section.</sup> ing five hundred dollars, and his acts shall be null and void.

SEC. 5. No person shall be appointed to the office <sup>Who incap-</sup> of justice of the peace who is not a citizen of the <sup>ble.</sup> United States, and who shall not have been an inhabitant of this Territory twelve months, and of the county for which he is appointed six months before his appointment.

SEC. 6. When a county shall be divided, any justice <sup>Division of</sup> of the peace of the original county, who shall fall <sup>counties.</sup> into the new county, shall continue to discharge the duties of justice of the peace in such new county, until his commission expire, as if the county had not been divided.

SEC. 7. Justices of the peace shall have power and <sup>Jurisdiction</sup> jurisdiction throughout their respective counties as <sup>and powers of</sup> follows:— <sup>justices.</sup>

First—Jointly and severally to cause to be kept all laws made for the preservation of the peace.

Second—To cause to come before them or any <sup>Breach of the</sup> of them, persons who shall break the peace, and <sup>peace.</sup> commit them to jail; or bail them as the case may require.

Third—To arrest and cause to come before them <sup>Arrest and se-</sup> persons who attempt to break the peace or who are <sup>curity.</sup>

- not of good fame, and compel them to give security for their good behavior to keep the peace, or both.
- Commitment.** SEC. 8. If such persons refuse or neglect to give security, they shall be committed, until they find the same.
- Recog. certified to district court.** SEC. 9. Every recognizance so taken for the keeping of the peace, or for good behavior, or for both, shall be certified to the next District Court of the county.
- Contempt.** SEC. 10. In the following cases, and no others, a justice of the peace may punish for contempt persons guilty of the following acts:—  
 First—Disorderly, contemptuous, insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceeding or to impair the respect due to his authority.
- Subpœnas.** SEC. 11. Justices of the peace are empowered to grant subpœnas for witnesses, in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions.
- Resignation or removal of justice; docket, &c., to whom delivered.** SEC. 12. Whenever a justice of the peace shall resign, move out of the county, or be otherwise disqualified, he shall immediately thereafter deliver to the next nearest justice of the peace in the same county, all dockets, records, books, papers and documents, appertaining to his office, or relating to any suit, matter or controversy committed to him in his official capacity, he taking a receipt therefor.

ARTICLE II.

*Of the jurisdiction of Justices of the Peace and authorizing them to hold a Court.*

- Jurisdiction and holding courts.** SEC. 1. Every justice of the peace is authorized to hold a court, for the trial of all actions, in the following section enumerated, and to hear, try and determine the same, according to law and equity.
- Actions.** SEC. 2. First—Of all actions of debt, covenant and assumpsit, and all other actions founded on contract, where the debt or balance due or damages claimed, exclusive of interest, shall not exceed fifty dollars.
- Limitation, §80**
- Trespass.** Second—Actions of trespass and trespass on the case, for injuries to persons or to real or personal property, wherein the damage claimed shall not exceed fifty dollars.

Third—Actions of detinue and replevin, when the thing demanded or claimed does not exceed in value fifty dollars. Replevin, &c.

Fourth—Actions commenced by attachment of property as hereinafter provided, as well as for any penalty given by any statute of this Territory, when the amount shall not exceed fifty dollars; and Attachments.

Fifth—To take and enter judgment on the confession of a defendant, when the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in action. Judgment by confession.

SEC. 3. No justice of the peace shall have cognizance, Actions excluded from cognizance of justice.

First — Against an executor or administrator, for any debt or demand due from the testator or intestate; nor

Second — Of any action of slander, malicious prosecution, or false imprisonment, nor

Third — Of any action, where the title to lands and tenements shall come in question.

SEC. 4. Every justice of the peace shall have jurisdiction co-extensive with the county, for which he is appointed. County limits.

SEC. 5. Every action cognizable before a justice of the peace instituted by summons or warrant, shall be brought before some justice of the township; either Townships;— residents and non-residents.

First — Wherein the defendant resides; or

Second — Wherein the plaintiff resides and the defendant may be found, but if the defendant in any action is a non-resident of the county, or has absconded from the usual place of abode, the action may be brought before some justice of any township where he may be found.

SEC. 6. Every action instituted by attachment shall be brought before some justice of the county, wherein the property of the defendant may be found. Attachments.

SEC. 7. If there are several persons jointly liable to a suit residing in different townships in the same county, the suit may be brought in any such township, against all such persons; and if any defendant in a suit instituted by attachment has property in several townships in the same county, such attachment may be issued against the property of the defendant, wherever it may be found in the county. Joint defendants.

SEC. 8. Whenever there shall be no justice of the peace within the township where any suit cognizable before a justice ought to be brought, or whenever all the justices of such township are interested in any Adjoining townships.

suit or otherwise disqualified by law from trying the same, every such suit may be brought before some justice of any adjoining township of the same county.

### ARTICLE III.

#### *Of the commencement of suits, and the service and return of process.*

- Docket entries.** SEC. 1. Every justice of the peace shall keep a docket in which he shall enter
- Titles of causes.** First — The titles of all causes commenced before him.
- Process** Second — The time when first process was issued against the defendant, and the particular nature thereof.
- Appearance.** Third — The time when the parties appeared before him, either without process or upon the return of process.
- Cause of action, &c** Fourth — A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off was pleaded, a similar statement of the set-off and the amount claimed.
- Continuance.** Fifth — Every adjournment, stating at whose request and at what time.
- Trial.** Sixth — The time when the trial was had, stating whether the same was by jury or by the justice.
- Verdict.** Seventh — The verdict of the jury, and when rendered.
- Judgment** Eighth — The judgment rendered by the justice, and the time of rendering the same.
- Execution.** Ninth — The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, as the same was endorsed on the back of the execution.
- Appeal.** Tenth — The fact of an appeal having been made and allowed, and when made and allowed.
- Order of docket entries.** SEC. 2. The several items in the preceding section enumerated, together with all other entries specially required by this act to be made in the docket, shall be entered under or opposite to the title of each cause to which they respectively relate; and in addition thereto, the justice may enter any other proceedings had before him in the cause, which he shall think it useful to enter in such docket.
- Suits how instituted.** SEC. 3. Suits may be instituted before a justice either by the voluntary appearance and agreement of the parties, or by process; and the process for the

institution of a suit before a justice, shall be either a summons, a warrant against the person, or attachment against the property of the defendant.

SEC. 4. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the institution of the suit; and whenever a suit has been commenced by any person, whether a resident of the county or not, the justice shall, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order, the justice shall dismiss the suit.

SEC. 5. If any suit or set-off be founded upon any lost or destroyed instrument of writing, the party relying upon such lost instrument shall be required upon the trial or hearing of the cause, to prove such loss or destruction, either by his own oath or by other competent testimony; and if upon such trial or hearing it appears that the same was intentionally put away or destroyed, the demand or set-off, founded upon such instrument, shall be rejected.

SEC. 6. All process issued by justices of the peace shall run "In the name of the United States of America," be dated on the day it is issued, and shall be signed by the justice granting the same.

SEC. 7. In all cases not otherwise specially provided for, the process in all suits shall be a summons; and every summons shall be directed to any constable of the county in which the justice, who granted the same, resides, except when it is otherwise specially provided; and shall command him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in the summons, not less than seven nor more than twenty-one days from the date thereof, to answer the complaint of the plaintiff.

SEC. 8. Every summons shall be served at least five days before the return day thereof, and shall be executed either.

First—By reading the same to the defendant; or

Second—By delivering a copy to the defendant; or

Third—By leaving a copy of such summons at the usual place of abode of the defendant, with some person of the family, above the age of fifteen years.

SEC. 9. A justice of the peace shall issue a warrant in every case, where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and

unsatisfied cause of action against the defendant, and that the defendant is about to remove from the county, or to abscond from his usual place of residence, or that the plaintiff will be in danger of losing his debt or demand, unless such warrant be granted.

Arrest.

SEC. 10. A warrant shall be served by arresting the defendant and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made appear to the justice by the affidavit of the defendant, that said justice is a material witness for the defendant in the cause, or is near of kin to the plaintiff in suit, stating therein the degree, the constable shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause and proceed therein, as if the warrant had been issued by himself.

Absence, or inability of justice, &c., to try, how remedied.

Detention of deft. limited.

SEC. 11. When a defendant is brought before a justice on a warrant, he shall in no case be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

service of process, by special deputy.

SEC. 12. Every justice issuing any process, authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same by an endorsement on the process to the following effect:—"At the request and risk of the plaintiff I authorize \_\_\_\_\_ to execute and return this writ.

Form.

E. F. Justice of the Peace."

Incidents.

And the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations and shall receive the same fees for his services.

Payment, discontinuance, costs, &c.

SEC. 13. If at any time after the commencement of a suit, the defendant pay to the constable or the justice of the peace who issued the process, the full amount of the claim and the costs which may have then accrued, the suit shall be discontinued; or if it be further prosecuted, the plaintiff shall pay all costs that may accrue after such payment, and the justice before whom the suit is brought shall endorse the amount upon the summons or warrant, for which suit is commenced, including interest and costs.

SEC. 14. Every constable serving any process authorized by this act, shall return thereon in writing (endorsed on the back) the time and manner of service, and shall sign his name to such return. Return of process.

SEC. 15. If any constable fail to execute any process to him delivered and to make due return thereof, unless for good cause, or make false return, such constable, for every such offence, shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered by an action of debt founded upon this statute, and be liable to indictment for misdemeanor. Liabilities of constables; action, penalty, &c.

#### ARTICLE IV.

##### *Of the appearance and pleadings of the parties and of adjournments.*

SEC. 1. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit, either by agent or in person. Who may conduct suit.

SEC. 2. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person who will consent thereunto in writing, to be named by such plaintiff, to act as his next friend in such suit, who shall be responsible for the costs therein. Infant and next friend,—costs.

SEC. 3. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age. Defendants.

SEC. 4. After the service and return of process against an infant defendant the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who will consent thereto in writing, to be the guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian, and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit. Guardian for defendant, his consent, and costs.

SEC. 5. A party authorized to appear by agent, may appoint any person to act as such agent, and Agent, and his authority.

the authority of the agent may be either written or verbal, and shall in all cases, when the justice requires proof, be proven either by the agent himself or by other competent testimony, unless admitted by the opposite party.

One hour's  
grace.

SEC. 6. Upon the return of a summons duly served, the justice shall wait one hour after the time specified in such writ, for the appearance of parties, unless they sooner appear.

Verbal state-  
ment.

SEC. 7. When both parties first appear before the justice, either upon the return of process or upon their voluntary appearance without process, the justice shall, on the application of the defendant, and may without such application, require of the plaintiff a brief verbal statement of the nature of his demand.

Set-off allowed.

SEC. 8. A defendant may set-off any demand which he may have against the plaintiff in all cases, where such set-off is allowed by the statutes of this Territory regulating set-off, except in the two following cases:

Two excep-  
tions.

First—When the demand to be set-off exceeds the jurisdiction of a justice's court; or

Second—When it is founded upon an instrument of writing, executed by the plaintiff and assigned to the defendant, and it shall not appear on the trial of the cause that the assignment was made to the defendant previous to the commencement of the suit.

Notice of set-  
off, items, &c.

SEC. 9. To entitle the defendant to set-off any demand, he must give notice thereof in court, either verbal or written, before the jury is sworn or the trial submitted to the justice, and when the set-off is founded upon an instrument of writing, executed by the plaintiff or by his testator or intestate, or upon an account, he must, at the time of giving such notice, file with the justice such instrument or a bill of the items of such account.

Lost, or de-  
stroyed, instru-  
ments.

SEC. 10. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the defendant to file with the justice an affidavit similar to that required of a plaintiff upon instituting a suit in a justice's court, on a lost or destroyed instrument of writing.

Judg'ts, on set-  
off.

SEC. 11. If the amount of the set-off duly established be equal to the plaintiff's debt, judgment shall be entered for the defendant with costs of suit; if it be less than the plaintiff's debt, the plaintiff shall have judgment for the residue only with costs; and if it be more than the plaintiff's debt, the defendant

shall have judgment for the excess with costs; and execution shall be awarded and be subject to the same stay as upon a judgment in a suit brought by such defendant: *Provided*, No such stay shall exceed Proviso. twenty days.

SEC. 12. Whenever a set-off is established in a suit Exec'rs. and adm'rs set-off. judg't. &c. brought by the executors or administrators exceeding the demand of the plaintiff, the judgment shall be against them in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

SEC. 13. If in a suit of trespass upon any lands or tenements the defendant shall justify the trespass by Trespass, title to lands, &c. a plea of title, the justice shall immediately make an entry of it in his docket, shall cease all further proceedings in the case, and certify and return to the District Court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit and filed therein in the same manner and within the same time, as upon an appeal.

SEC. 14. Upon the filing of the proceedings and papers in the office of the clerk, the court shall become possessed of the cause and proceed therein to final judgment as upon an appeal, but on the trial in such court the plaintiff shall only be required to prove himself entitled to or in possession of the lands or tenements on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant except the plea of title. Suit removed to district court.

SEC. 15. A justice of the peace without the application or consent of either party may, if it be necessary, adjourn a cause not exceeding three days for any one adjournment, but a justice shall in no case adjourn a cause commenced by warrant upon his own motion. Adjournments by justices.

SEC. 16. A justice of the peace on the application of either party with good cause shown, may adjourn a cause not exceeding sixty days for any one adjournment, and may adjourn for a longer period with the consent of both parties. On application of parties.

SEC. 17. No adjournment shall be allowed upon the application of a party, unless such party satisfy the justice by his own oath or affidavit of some other person, that he cannot safely proceed to trial for want of some material testimony or witness, that he used due diligence to obtain the same, and that he cannot prove the fact by any other person, and that Absent witnesses.

if an adjournment be allowed, he will be able to procure such testimony or witness in time to be used upon the trial.

Limitation,  
and costs.

SEC. 18. Every such adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, not to exceed sixty days, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Recognizance  
on adjourn-  
ment.

SEC. 19. If a cause commenced by summons be adjourned on application of the defendant, he shall, if the plaintiff should request it, enter into a recognizance before the justice with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit and execution be issued against him that he or his security will pay the judgment so recovered; and if the cause be adjourned on application of the plaintiff, he shall, if the defendant should request it, enter into a similar recognizance in a sufficient penalty and under like condition.

When deft. is  
in custody, on  
warrant.

SEC. 20. If a cause commenced by warrant be adjourned on the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody; but the cause shall not be discontinued by such discharge, and at the adjourned day the same proceedings shall be had as on the return of a summons duly served.

And applies for  
adjournment,  
security requir-  
ed, &c.

SEC. 21. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment in custody of the constable, unless he shall enter into a recognizance before the justice with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution be issued against him, that he or his security will pay the judgment so recovered.

New recog.  
when required,  
and by whom.

SEC. 22. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any new recognizance upon a subsequent adjournment, unless such recognizance be required by the justice or the bail of the defendant in such prior recognizance.

Action on re-  
cognizance.

SEC. 23. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover unless he show an execution upon the judgment obtained in the suit, in which such adjournment was

had, duly issued within six days after the time when the same could have been issued against the property of the defendant, and a return thereon that no property of the defendant can be found.

## ARTICLE V.

### *Of witnesses and depositions.*

SEC. 1. A subpoena issued by a justice of the peace shall be valid to compel the attendance in a justice's court of a witness, being in the same county where the cause is to be tried, or being in an adjoining county, and within fifty miles of the place of trial. Effect of justice's subpoena.

SEC. 2. A subpoena may be served either by a constable or any other person duly authorized, and it shall be served by reading it to the witness or by delivering to him or leaving a copy thereof at his usual place of abode. Service of subpoena.

SEC. 3. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpoenaed to appear before him in a suit, shall have failed without just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness:—*Provided*, That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance, if previously demanded by such witness, from the person serving such subpoena. Failure to attend, attachment, &c. Proviso, as to mileage and fees.

SEC. 4. Every such attachment may be directed to any constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party, requiring such attachment, shall pay all costs of such attachment. Service of attachment, and costs.

SEC. 5. Every person duly subpoenaed as a witness who shall not appear, or who, when he shall appear, shall refuse to give testimony, shall forfeit for the use of the county in which he is subpoenaed to appear, unless some reasonable excuse shall be Refusal to appear and testimony.

shown (on his oath or the oath of some other person), a fine not exceeding ten dollars, and the justice shall make an entry of the conviction in his docket, and of the cause thereof. At the expiration of thirty days from the entry of such conviction, it shall be deemed a judgment in all respects at the suit of such county, and execution shall be issued thereon as upon other judgments in a justice's court, and the constable shall pay the fine to the treasurer of the county.

**Penalty.** **SEC. 6.** The person upon whom such fine shall be imposed may at any time, before the expiration of thirty days, appear before the justice and show cause against the imposition thereof, and upon the hearing of such cause the justice may remit or mitigate such fine.

**Discretion of justice to remit or mitigate.** **SEC. 7.** Every person subpœnaed as aforesaid and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for damages which such party may have sustained by his non-appearance.

**Damages.** **SEC. 8.** Either party in any civil suit depending before a justice may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace of any county in this Territory where the said witness may be.

**Depositions.** **SEC. 9.** No such deposition shall be taken, unless notice in writing of the time and place of taking the same shall have been served on the other party three days before the taking thereof, with one additional day for every twenty-five miles of distance from the place of such service to the place of taking.

**And notice thereof.** **SEC. 10.** Such notice may be served in like manner as an original summons and the service may be on the party or his agent in the suit, and when such party resides out of the county and has no agent in the suit therein, the service of such notice may be by filing a copy thereof with the justice before whom the suit is pending.

**Serving notice.** **SEC. 11.** The deposition shall be taken and certified according to the statute of this Territory regulating the taking of depositions, and shall be sealed up and returned so sealed to the justice, before whom the suit in which it is taken is pending, and when such deposition is taken out of this Territory, the official character of the officer by whom it is taken, shall be certified under the seal of the State

**Depositions, how certified.**

or county where such deposition is taken, or under the seal of some court therein.

SEC. 12. The justice shall allow every deposition taken and returned, according to the provisions of this act, to be read on the trial of the cause, in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appear to the justice that the witness whose deposition is offered

When allowed to be read on trial.

First—Is dead or resides out of the county; or

Second—Is unable to, or cannot safely attend before the justice, on account of sickness, age or other bodily infirmity; or

Third—Has gone out of the county without the consent or collusion of the party offering the deposition.

## ARTICLE VI.

### *Of judgments on nonsuits, and by default, and of trials.*

SEC. 1. When a defendant, who has been duly served with process, and when a defendant, who has once appeared to a suit, the trial of which has been adjourned, shall neglect to appear within one hour after the return time of the process, or the adjourned time, the justice shall proceed in the cause in the following manner:—

First—If the suit be founded on an instrument of writing and purporting to have been executed by the other party, and the demand of the plaintiff is liquidated by such instrument, the justice shall, whether the plaintiff appear or not, render judgment against the defendant by default, for the amount which shall appear by such instrument to be due to the plaintiff, after allowing all proper discounts for all payments endorsed thereon, with costs.

Second—If the suit be not founded on an instrument of writing, as is declared in the preceding clause of this section, and the plaintiff appears in person or by his agent, the justice shall proceed to hear allegations and proofs, and shall determine as the very right thereof shall appear from the testimony; and if it appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default against the defendant for so

much, as the testimony shows the plaintiff entitled to recover, together with costs. If it do not appear that the plaintiff ought to recover, judgment shall be given for the defendant, as upon a verdict against the plaintiff with costs.

**Nonsuit.**

Third—If the plaintiff fail to appear, except where the suit is founded upon an instrument of writing as is declared in the first clause of this section, the justice shall render judgment of nonsuit against the plaintiff with costs.

SEC. 2. In all cases not otherwise specially provided for, if the plaintiff fail to appear in person or by agent within one hour after the time appointed for the trial of the cause, the justice shall render judgment of nonsuit against him with costs.

**Judg'ts by nonsuit and default when and how set aside.**

SEC. 3. Every justice of the peace shall have power, on the application of the aggrieved or his agent, and for good cause shown, to set aside judgment of nonsuit and by default upon such terms as shall be just. Every such application shall be made within six days after rendering of the judgment, and if in the mean time any execution has been issued, the justice may revoke the same in the manner hereinafter provided for revoking an execution, after an appeal has been allowed, and with like effect. The justice shall in all cases make an entry in his docket of every such application, and of the day on which it was made, together with his orders thereon.

**New trial, and notice thereof.**

SEC. 4. If any judgment be set aside and a new trial granted, the justice shall fix a time for such trial and make out under his hand a notice to the opposite party, stating the fact that such judgment has been set aside, and specifying therein the time and place fixed for the trial. The notice shall be served on the party or his agent six days before the trial, and shall be executed and returned in like manner as a summons, and the same fees allowed therefor.

**Suits when determined.**

SEC. 5. Every suit instituted by summons or warrant, shall be determined on the return of the process duly served, unless the cause be adjourned.

**Appearance and trial.**

SEC. 6. When both parties appear before the justice in person or by agent at the time appointed for the trial of the cause, the justice shall proceed to hear the allegations and proofs of the parties and to determine the suit, as the very right of the case shall appear.

SEC. 7. Before the justice shall commence an investigation of the merits of the cause by an examination of witnesses or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury. Trial by jury.

SEC. 8. The jury shall consist of six persons, but the parties may agree upon any number of jurors less than six, to try the cause; and in that case the jury shall consist of such number, not exceeding six, as the parties may agree upon. Number of jurors.

SEC. 9. The justice shall issue a summons directed to any constable of the country wherein the cause is to be tried, commanding him to summon six (or such less number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the District Court of the same county, who shall be nowise of kin to either party nor interested in the suit, to appear before said justice at a time and place to be named therein, to make a jury for the trial of the action between the parties named therein. Summons for jury. Qualifications of jurors.

SEC. 10. The constable shall execute such summons fairly and impartially, and shall not summon any persons whom he has reason to believe are biassed or prejudiced for or against either of the parties. He shall summon the jurors personally, and shall make a list of the persons which he shall certify and annex to the summons and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the constable shall immediately summon others to serve in their place. Service, and return of summons, &c.

SEC. 11. To each juror the justice shall administer an oath well and truly to try the matter in difference between ——— plaintiff, and ——— defendant, and unless discharged (by the justice) a true verdict give according to the law and evidence. Juror's oath.

SEC. 12. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence. Duty of jurors.

SEC. 13. If a witness on being produced shall be objected to as being incompetent, such objection shall be tried and determined by the justice. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn or affirmed, that the evidence he shall give relating to the matter in issue between ——— plaintiff, and Competency and oath of witnesses.

— defendant, shall be the truth, the whole truth, and nothing but the truth.

Evidence.

SEC. 14. If there shall be no evidence given to establish any demand founded upon contract, or to establish any set-off; or if the evidence given be insufficient for that purpose, the justice may, upon the application of the party offering such demand or set-off, order the opposite party to be sworn in relation thereto; if the party thus required refuse to testify, the justice shall allow the party offering such demand or set-off to be sworn and examined in relation to the same matter. After an examination of either party, no further evidence shall be given in relation to such demand or set-off.

Parties may be sworn, and when.

May be subpoenaed and examined.

SEC. 15. Either party in any suit founded on contract may cause the opposite party to be subpoenaed as a witness in the cause, in the same manner and with like effect as any other person. If the party, after being duly subpoenaed, fail to attend the trial personally, and such failure be not accounted for, the justice may allow the other party to be sworn and examined as a witness in all cases and with like effect as if the subpoenaed party had been personally present, and had refused to testify.

Execution of writings.

SEC. 16. If any suit or set-off be founded upon an instrument of writing purporting to have been executed by the opposite party, such instrument shall be received in evidence upon the trial, unless the party (before the jury be sworn or the trial submitted to the justice) charged to have executed the same shall deny the execution thereof, on oath taken before such justice, or by an affidavit filed with the justice, and taken before any court or officer authorized to administer oaths.

Execr's and admr's.

SEC. 17. The preceding section shall not be construed to authorize any instrument of writing to be received in evidence, without proof of its execution against an executor or administrator or any other person, representing the person charged to have executed such instrument.

Verdict.

SEC. 18. When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

Jury, when discharged and new jury called

SEC. 19. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new jury summons; unless the parties consent that

the justice may render judgment on the evidence before him, which in such case he may do, unless they consent that the trial upon a new hearing of the evidence shall be by the justice.

SEC. 20. Every person who shall be duly summoned as a juror and shall not appear, nor render a reasonable excuse for his default, shall be subject to the same fine, to be prosecuted for and collected with costs in the same manner, and applied to the same use, as hereinbefore provided in respect to a person subpoenaed as a witness and not appearing. Non-attendance of jurors, and penalty.

## ARTICLE VII.

### *Of judgments and filing transcripts thereof, and the stay of execution.*

SEC. 1. A justice of the peace may enter judgment by confession of the defendant, in any case where the amount confessed does not exceed the amount a justice is authorized to render judgment in an action. Judg't by confession, and requisites herein.

SEC. 2. No confession shall be taken or judgment rendered thereon, unless the following requisites be complied with:—

First—The defendant must personally appear before the justice.

Second—The confession must be in writing signed by the defendant, or by some person by him thereto lawfully authorized and filed with the justice.

SEC. 3. If there be mutual justices judgments between the same parties, one may be set-off against the other by the justice before whom the judgment against which the off-set is proposed may be. Judg'ts may be set off.

SEC. 4. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice, a transcript of such judgment upon which there is a certificate of the justice rendering the judgment, that there is no appeal, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed. Transcripts thereof.

SEC. 5. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a Entry. Execution for balance due.

justice shall allow a transcript of a judgment rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript and return the same to the party who offered it.

Change of venue, for what causes, and how granted

SEC. 6. If upon the appearance of the parties on the return of process in any case (except when the defendant is arrested by warrant) the defendant shall before the jury is sworn, or the trial submitted to the justice, make affidavit that the justice before whom the same is pending is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is of near kin to the plaintiff, stating therein in what degree, or that he believes he cannot obtain justice before such justice, the cause shall be transferred to the next nearest justice of the proper county.

Judg't by nonsuit, confession, &c., when entered.

SEC. 7. In cases where a plaintiff shall be nonsuited or withdraw his action, and where judgment shall have been confessed, and in all cases where a verdict shall be rendered or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment and enter the same in his docket. In all other cases he shall render judgment and enter the same in his docket within three days after the cause shall have been submitted to him for his decision.

Jurisdiction, release of excess, &c.

SEC. 8. If any sum be found in favor of a party either by a verdict of a jury or upon hearing of the cause before a justice, exceeding the sum for which a justice is authorized to give judgment, such party may remit and release the excess and take judgment for the residue.

Stay of execution.

SEC. 9. The execution upon a judgment rendered by a justice of the peace may be stayed, in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment:—

First—If the judgment be for a sum under twenty-five dollars, thirty days.

Second—If the judgment be for more than twenty-five dollars, sixty days.

Security thereon.

SEC. 10. To entitle any person to such stay of execution, some responsible person to be approved by the justice, and not being a party to the judgment, must within five days after the rendering of the

judgment, enter into recognizance before the justice to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

SEC. 11. Such recognizance must be signed by the party entering into the same, and may be in the following form:—"I \_\_\_\_\_ acknowledge myself indebted to \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, to be void upon this condition: Whereas \_\_\_\_\_ obtained judgment before \_\_\_\_\_ a justice of the peace of \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_ 18— against \_\_\_\_\_ now if such judgment shall be paid at the expiration of \_\_\_\_\_ months from the time it was rendered, this recognizance shall be void.

Form of recognizance.

A. B."

SEC. 12. If at the expiration of such stay, the judgment be not paid, the execution shall issue against both principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution was collected by him from the bail, and the time when the same was received.

Execution against principal and bail, and return thereof.

SEC. 13. After the return of such execution the bail shall be entitled, on motion, to a judgment before the justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent. per annum, and such return of the officer upon motion shall be evidence of the facts therein stated.

Judg't for bail, on motion.

SEC. 14. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed.

Execution may be revoked.

SEC. 15. Every justice on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment and the clerk of the District Court of the same county in which the judgment was rendered, shall upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the District Court, judg-

Transcript of judg't certified and filed.

ments and decrees, and shall note therein the time of filing such transcript.

**And its effect.** SEC. 16. Every such judgment from the time of such filing of the transcript thereof shall have the same lien on the real estate of the defendant in the same county, as a judgment of the District Court of the same county, shall be equally under the control of the District Court, and shall be carried into execution in the same manner and with the like effect, as the judgments of such District Court; but no execution shall be issued thereon out of the District Court, until an execution shall have been issued by a justice and returned, that the defendant has no goods or chattels whereon to levy the same.

**1st execution from justice.**

## ARTICLE VIII.

### *Of executions and proceedings thereon.*

**Execution,** SEC. 1. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time upon demand.

**To whom directed, when returnable, and against what.** SEC. 2. The execution shall be directed (except where it is otherwise specially provided) to any constable of the county where the justice resides, shall be dated on the day it was issued, and be made returnable within thirty days from the date. It shall be against the goods and chattels of the person against whom the same was issued.

**May be renewed, how, and for how long.** SEC. 3. If any execution be not satisfied it may at the request of the plaintiff be renewed from time to time by the justice issuing the same, by an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

**Levy, notice and description of goods** SEC. 4. The constable, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements put up at three public places in the county, of the time and place when and where they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 5. At the time so appointed, if the goods and chattels be present for the inspection of the bidders, the officer shall expose them to sale at public vendue to the highest bidder. He shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Sale, and return of execution and money.

SEC. 6. No constable or other officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, but every such sale shall be absolutely void.

Constable cannot purchase, &c.

SEC. 7. If the goods and chattels so levied on are not sufficient to satisfy such execution, the constable shall, upon the demand of the plaintiff, summon in writing as garnishees such debtors of the defendant in execution, as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be exhibited against them, touching their indebtedness to such defendant; and the like proceedings shall be had therein before the justice to final judgment and execution, as in suits instituted by attachment in a justice's court.

Insufficiency of goods, and summons to garnishees, &c.

SEC. 8. If a constable levy an execution on any goods or chattels, and any person, other than the defendant in execution, claim such property, the constable shall give notice forthwith to some justice of the peace of the same county; in which notice he shall set forth the name of the plaintiff, and defendant in execution, and the name of the person claiming, and also a schedule of the property claimed.

Goods claimed by third persons, and notice.

SEC. 9. It shall be the duty of such justice, immediately upon the receipt of such notice, to issue a jury summons directed to any constable of the county, commanding him to summon six disinterested persons having the qualifications of electors, to appear before him at a time therein mentioned, which shall not be more than three days after the date of the said summons, to try and determine the right of property between the defendant in the execution and the person so claiming.

Right of property how tried.

SEC. 10. The justice shall also give notice to the plaintiff in the execution, his agent or attorney, if any, and the said notice shall be directed to the constable and served and returned in the same manner as a summons.

Notice to plaintiff.

SEC. 11. The justice shall administer the following oath to the jurors:—"You and each of you do

Juror's oath.

solemnly swear (or affirm) that you will well and truly try and determine the right of property between ——— claimant, and ——— defendant in execution, to the goods and chattels in controversy, and a true verdict give according to evidence given before you." And the jury so sworn shall be the judges of the law and the fact.

Verdict and costs.

SEC. 12. If the jury find the goods and chattels, or any part of them, to be the property of the defendant in execution, the verdict shall as against the claimant justify the officer in selling such goods and chattels, as the jury have so found. If the verdict is for the claimant, the plaintiff in the execution shall pay the costs in the trial; if it is against the claimant the costs shall be paid by such claimant, and the jurors, constable and witnesses shall be entitled to like fees as for other services in a justice's court.

Monies paid to constable; effect and remedy.

SEC. 13. The constable of the county shall receive all money that may be tendered to him in payment of any judgment obtained before any justice of the peace of such county, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid. And the payment shall be valid against the judgment; and upon the production of the receipt to the justice shall be credited thereto. The person entitled to the money paid shall have the like remedies against the constable and his securities for the recovery thereof, as if such money was collected by the constable in execution.

Process against constable when issued, and its

SEC. 14. In the following cases the justice shall, upon the demand of the party injured or his agent, issue a warrant against any constable to whom any execution has been delivered or who has received any money upon any judgment of such justice, whether with or without execution:—

First—If the constable fail to make return of the execution according to the command thereof.

Second—If he make a false return.

Third—If he fail to have any money by him collected on execution before the justice on the return day thereof, ready to be paid over to the persons entitled thereto, or the receipts of such persons therefor.

Fourth—If he fail to pay over, upon demand, to the person entitled thereto or his agent, any money by him received in payment of any judgment.

Requirements.

SEC. 15. Such warrant shall require the constable forthwith to appear before the justice and show

cause why execution should not issue against him for the amount due upon the execution, or for the amount received by him upon the judgment according to the nature of the case.

SEC. 16. If the constable fail to appear, or appearing, fail to show good cause to the contrary, the justice shall render judgment against him for the amount due by the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon at the rate of one hundred per centum per annum, from the time such execution ought to have been returned, or from the time such money ought to have been had before the justice, ready to be paid over to the person entitled thereto, or from the time the money received on a judgment without execution was demanded by the party entitled thereto or his agent. Upon such judgment there shall be no stay of execution; but an appeal may be had, as in other cases, and with like effect.

SEC. 17. The party injured may proceed in the manner above directed, or may institute a suit against the constable and his securities on his official bond; and in such suit the plaintiff shall be entitled to like recovery as upon a summons against the constable, and suits on such bond may be brought before a justice of the peace, when the amount claimed does not exceed the jurisdiction of a justice of the peace.

## ARTICLE IX.

### *Of appeals and proceedings thereon in the district court.*

SEC. 1. Any person aggrieved by any judgment rendered by a justice of the peace, may in person, or by his agent, make his appeal therefrom to the District Court of the same county where the judgment was rendered.

SEC. 2. But no appeal can be taken, unless within ten days after the rendering of such judgment application shall have been made to the justice by the party aggrieved, to set the same aside, and such application shall have been refused.

SEC. 3. No appeal shall be allowed in any case unless the following requisites be complied with:—

First—The appeal must be made within seven days after the judgment is rendered; or, when the

judgment is by default, within ten days after the refusal of the justice to set aside the default and grant a new trial.

**Recognizance, and security.** Second—The applicant, or some person for him, together with one or more securities, to be approved by the justice, must within the time prescribed in the first clause of this section, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure such judgment and the costs of the appeal; conditioned, that the applicant will prosecute his appeal with due diligence to a decision; and that if on such appeal, the judgment of the justice be affirmed, or if on trial anew in the District Court, judgment be given against him, he will pay such judgment, and if his appeal be dismissed, he shall pay the judgment of the justice, together with the costs of the appeal.

**Form.**

SEC. 4. Such recognizance must be signed by the parties entering into the same, and be attested by the justice, and may be in form following:—

“We, the undersigned ——— and ——— acknowledge ourselves indebted to ——— in the sum of ——— dollars to be void upon this condition: Whereas ——— has appealed from the judgment of ——— a justice of the peace in an action between ——— plaintiff and ——— defendant, now if on such appeal the judgment of the justice be affirmed, or if on the trial anew in the District Court, judgment be given against the appellant, and he shall satisfy such judgment, or if the appeal be dismissed and he shall pay the judgment of the justice, together with the costs of appeal, the recognizance shall be void.

C. D.

Attest, G. H., Justice.

E. F.

**Allowance of appeal entry, and stay.**

SEC. 5. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal, and if in the meantime execution shall have been issued, the justice shall give to the appellant a certificate that such appeal has been allowed.

**Notice to constable.**

SEC. 6. On such certificate being presented to the constable holding the execution, he shall forthwith release the property of the defendant, that may have been taken in execution.

SEC. 7. On or before the first day of the term of the District Court, next after the appeal shall have been allowed, the justice shall file, in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, and filed with the justice. Case, when filed in dis. court and

SEC. 8. Upon the return of the justice being filed in the clerk's office, the court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect or other imperfection in the proceedings of the justice. Proceedings thereon.

SEC. 9. Upon an appeal being made and allowed, the District Court may, by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned. Compulsory return.

SEC. 10. If a justice fail to allow an appeal in a cause where the same ought to have been allowed, the District Court on such fact satisfactorily appearing, may by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him. Allowance.

SEC. 11. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may by rule and attachment, compel him to amend the same. Amendment.

SEC. 12. No appeal allowed by a justice shall be dismissed on account that there is no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter before the District Court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred, by reason of such defect or omission. And perfection of recognizance.

SEC. 13. All appeals allowed ten days before the first day of the term of the District Court next after the appeal allowed, shall be determined at such term, unless continued for cause. Appeals when determined.

SEC. 14. If the appeal be not allowed on the same day on which judgment is rendered, the appellant shall give the appellee at least ten days notice in writing, before the sitting of the court at which the cause is to be determined, stating the fact that an appeal has been taken from the judgment therein Notice by appellant, when and to whom.

- specified. The notice may be served in like manner as an original writ of summons, and when the appellee does not reside in the county and has no agent in the suit therein, the service may be by leaving a copy of such notice with the justice.
- Continuance for want of notice.** SEC. 15. If the appellant fails to give notice of his appeal in a cause where such notice is required, the cause shall, on the application of the appellee, be continued as a matter of course, until the succeeding term, at the costs of the appellant, but no appeal shall be dismissed for want of such notice.
- Cause of action, set-off, &c.** SEC. 16. The same cause of action and no other that was tried before the justice, shall be tried in the District Court upon the appeal, and no set-off shall be pleaded in the District Court that was not pleaded before the justice, if the summons was served on the person of the defendant.
- Judg't in dis. court.** SEC. 17. In all cases of appeals from a justice's court, if the judgment of the justice be affirmed, or if on a trial anew in the District Court, the judgment be against the appellant, such judgment shall be rendered against him and his securities in the recognizance for the appeal.
- Execution.** SEC. 18. If upon execution being issued upon such judgment the principal shall not pay such execution and the officer cannot find sufficient property of such principal to satisfy the same, such execution shall be enforced against the securities, and the officer shall specify in his return by whom the money was paid and the time thereof.
- Judg't for security, on motion.** SEC. 19. After the return of an execution satisfied in whole or in part out of the property of the security, such security shall be entitled to a judgment, upon motion, against the principal, for the amount so paid by him, together with interest at twelve per cent. per annum, from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence, upon hearing such motion of the facts therein stated.

## ARTICLE X.

### *Regulating the action of replevin.*

- Replevin and damages.** SEC. 1. Whenever any goods or chattels are wrongfully taken or wrongfully detained (the value of which shall not exceed fifty dollars) an action of

replevin may be brought by the person having a right to the immediate possession, for the recovery thereof, and for the recovery of the damages sustained, by reason of the unjust caption or detention, except as hereinafter specified.

SEC. 2. No cross replevin or replevin for property in the possession of an officer by virtue of any legal authority shall be brought. Exception.

SEC. 3. No writ of replevin shall be issued, unless the plaintiff file with the justice the affidavit of himself or of some credible person, stating that the plaintiff is lawfully entitled to the property mentioned in the declaration, that the same was wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within one year. Affidavit required.

SEC. 4. The writ of replevin shall command the officer, to whom it is directed, to cause (if the plaintiff give the security required by law) the goods and chattels mentioned in the declaration to be delivered to the plaintiff without delay, and to summon the defendant to appear before the justice on the return day of the writ, and answer the plaintiff in the premises. Requirements of writ.

SEC. 5. No writ of replevin shall be executed until the plaintiff enter into a bond to the officer to whom the writ is directed, with sufficient security in double the value of the property, to be ascertained by the officer; conditioned, that he will prosecute the suit with effect, and without delay make return of the property, if return thereof be adjudged, and keep harmless the officer touching the replevying the property. Bond, security and condition.

SEC. 6. Upon the receipt of the writ and the bond required by this article, the officer shall without delay execute the writ, by causing the property mentioned in the declaration to be delivered to the plaintiff, and by summoning the defendant according to the tenor of the writ. Execution of writ.

SEC. 7. The defendant may plead that he is not guilty of the charge alledged against him, and this plea shall put in issue not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof. Plea and issue.

SEC. 8. If a plaintiff in replevin fail to prosecute his suit with effect, and without delay, the justice or jury shall assess the value of the property taken, Failure of pl'ff. and its effects.

and the damages for the use of the same, from the time of suing the same, until return thereof shall be made as in other like cases.

Judg't and its incidents.

SEC. 9. In such case the judgment shall be against the plaintiff and his sureties, that he return the property taken or pay the value so assessed, and also pay double the damages assessed for the detention of the property.

Officer's remedy.

SEC. 10. If an officer is injured by reason of taking any property by virtue of a writ of replevin, by the direction of the plaintiff, he may maintain an action therefor upon the bond by him taken.

On the bond.

SEC. 11. If the plaintiff violate the condition of this bond, the defendant may sue thereon in the name of the officer, to the use of said defendant.

Officer's liabilities.

SEC. 12. If the officer fail to take a bond of the plaintiff and return the same as is required by this article, or if the bond taken be adjudged insufficient by the justice on the return of the writ, and the plaintiff fail to perfect it if required, the officer shall be liable to the party injured for all damages by him sustained, to be recovered by action of debt on the officer's official bond, or by an action on the case.

## ARTICLE XI.

### *Of Attachments.*

Attachments, in what cases granted.

SEC. 1. Creditors whose demands amount to not more than fifty dollars, and not less than five dollars, may sue their debtors by attachment before a justice of the peace in the following cases:—

First—Where the debtor is not a resident of nor residing within the county.

Second—Where the debtor has absconded or concealed himself or so absented himself from his usual place of abode, that the ordinary process of law cannot be served upon him.

Third—Where the debtor is about to remove his property out of the county, so as to hinder and delay his creditors.

Fourth—Where there is good reason to believe that the debtor is about fraudulently to remove, convey or dispose of his property or effects, so as to hinder or delay his creditors.

Cause of action.

SEC. 2. Any such creditor wishing to sue his debtor by attachment, may apply to any justice of the peace who would have jurisdiction of the debt

if the suit was brought in the common form, and if the cause of action be a bond or note, shall file the same with the justice; and if it be any other kind of contract, shall file with the justice a plain intelligible account or statement thereof, together with the affidavit of himself or some other creditable person, stating that the defendant is justly indebted to him, after allowing all just off-sets and credits, in a sum above five dollars, showing the amount in the affidavit and also stating the belief of the affiant of the existence of one or more of the facts, which under the first section of this article would entitle the plaintiff to sue by attachment, and thereupon the justice shall issue a writ of attachment against the property and effects of the defendant.

*Affidavit and its requisites*

SEC. 3. Writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer, the like proceedings shall be had between him and the plaintiff as on ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

*Issue, return and proceedings on writ.*

SEC. 4. The manner of serving writs of attachment shall be as follows:—

First—The writ shall be served upon the defendant as an ordinary summons.

*Manner of service.*

Second—Garnishees shall be summoned by the constable declaring to them that he does summon them to appear before the justice at the return day of the writ, to answer the interrogatories which may be put to them by the justice and by reading the writ of attachment to them if required.

*On garnishees.*

Third—When goods and chattels, money or evidences of debt are to be attached, the constable shall seize the same and keep them in his custody, if accessible, and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands and summon such person as garnishee.

*Property, &c., attached,—and*

Fourth—When credits are to be attached, the constable shall declare to the debtor of the defendant that he attaches in his hands all debts due from him to the defendant, or that shall become due before the rendition of judgment, or so much thereof as may be sufficient to satisfy the debt sued for with interest and costs, and summon the debtor as garnishee.

*Credits.*

**Bond, and condition, from third persons.** SEC. 5. When property of the defendant found in the hands or possession of any other person than the defendant, shall be attached, such person may retain the possession thereof by giving bond and security to the satisfaction of the officer executing the writ to the constable, his successors or assignees, in double the value of the property so attached; conditioned, that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

**From defendant.** SEC. 6. When property of the defendant shall be actually seized on attachment, the defendant or any person for him may obtain possession thereof without dissolving the attachment, by giving the officer a bond, with good and sufficient security, in double the amount of property; conditioned, that the property shall be forthcoming when and where the justice shall direct, to abide the judgment which may be rendered in the cause.

**Sale of perishable property.** SEC. 7. When property shall be seized on attachment which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the constable in the same manner and on the same notice as goods are required to be sold on an execution, and the proceeds of such sale shall remain in the hands of the constable, subject to be disposed of as the property would have been if seized upon in specie.

**Notice to absent defendant.** SEC. 8. When the defendant cannot be summoned and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket requiring the plaintiff to give notice to the defendant, by three written or printed advertisements set up at three of the most public places in the county, that a writ has been issued against him and his property attached, to satisfy the demand of the plaintiff, and that unless he appear before the justice within thirty days, stating the time and place, judgment will be rendered against him, and his property sold to pay the debt.

**When and how given and proved.** SEC. 9. Such notice shall be set up at least thirty days before judgment, and the setting up thereof may be proved either by the return of the constable upon a copy of the notice, or by the affidavit of any

person who would be a competent witness in the case.

SEC. 10. When the defendant shall be notified as Judgment by default, aforesaid, and shall not appear and answer to the action, judgment by default may be entered which may be proceeded on to final judgment in like manner as in ordinary actions.

SEC. 11. Such judgments shall bind only the And its effect. property and effects attached and no execution shall issue thereon against any other property of the defendant, nor against his body, nor shall any action be brought thereon.

SEC. 12. Attachments may be dissolved on motion Attachments, when, and in what cases, dissolved. made in behalf of the defendant, and at any time before final judgment, in the following cases:—

First—When the defendant shall appear and plead Bond and security, to the action and give bond to the plaintiff with good and sufficient security, to be approved by the justice in double the amount of the property, effects and credits attached, conditioned, that such property, effects and credits shall be forthcoming and abide the judgment which shall be rendered in the cause.

Second—When the defendant shall appear and The sum, &c. plead to the action and give like bond and security, in a sum sufficient to satisfy the debt sworn to in behalf of the plaintiff with interests and costs of suit, conditioned, that the defendant will pay to the Condition. plaintiff the amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, within thirty days after that at which judgment shall be rendered.

SEC. 13. When any attachment shall be dissolved, Effect of dissolution. all proceedings touching the property and effects attached and the garnishees arrested or summoned shall be vacated, and the suit proceed as if it had been commenced by a summons only.

SEC. 14. When any garnishee shall appear before Questions to garnishee. the justice to answer, the following interrogatories, and none other, shall be propounded to him to answer under oath:—

First—At the time of the summons being served upon you as garnishee, had you in your possession or under your control any goods, moneys or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects

Second—At the time of the commencement of this suit, did you owe the defendant any money, or do you

owe him any now? If so, how much, on what account, and when did it become due, and if not yet due, when will it be due?

Answers in writing.

SEC. 15. The justice shall write the answer of the garnishee to each interrogatory, separately, and file the answer as a paper in the cause.

Judg't by default against garnishee, and its effects.

SEC. 16. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the plaintiff may take judgment against him by default, may be proceeded on to final judgment in like cases between plaintiff and defendant, or at the option of the plaintiff, the justice shall attach the body of the garnishee, until he shall make full and direct answers to the interrogatories.

Final judg't.

SEC. 17. No final judgment shall be rendered against the garnishee until final judgment be had against the defendant.

Pl'ff may deny, &c.

SEC. 18. The plaintiff may deny the answer of the garnishee or any part thereof on the same day on which the answer is made, and the justice shall reduce to writing the denial showing what part is denied, and file it as a paper in the cause.

Issue and trial.

SEC. 19. All issues between the plaintiff and garnishee shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary cases; and if upon the trial of any such issue, property or effects shall be found in the hands of the garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the amount in money.

Satisfaction by garnishee.

SEC. 20. Any garnishee having property, money or effects of the defendant, may discharge himself by surrendering and paying the same or so much thereof, as shall be sufficient to cover the debt, interest and cost, to the constable, and taking his receipt therefor, at any time before the final judgment against him.

Additional affidavit, process,

SEC. 21. When any plaintiff at the time he applies for an attachment shall, in addition to the affidavit required by the second section of this article, file the affidavit of himself or of some credible person, stating that any particular person in the county other than the defendant has in hands any property, money or effects of the defendant, or is indebted to the defendant; showing the kinds, quantity and value of the property, or the amount of the debt, (being above five dollars), and stating such circumstances as shall satisfy the justice that the debt of the plaintiff will be

endangered, by reason that such person is about to remove or secrete the property, or if a debtor of the defendant, that he is about to abscond or leave the county, not to return, the justice shall issue his warrant commanding the constable to arrest him, and bring such person forthwith before the justice.

SEC. 22. Such arrest shall be an attachment of the property and effects, money and credits of the defendant in his hands, or due from him, and shall be considered as a garnishee summoned to answer. And arrest.

SEC. 23. If it shall appear, either by the answer of the garnishee, or by the finding of the justice or a jury, that the garnishee has in his hands property or effects of the defendant, the justice shall require him to give bond and security in favor of the plaintiff in such sum, as the justice shall direct; conditioned, that the property or effects so confessed or found in his hands and the debts so due from him or the value thereof, shall abide the final judgment in the cause, and shall be produced and delivered when and where and to whom the justice shall appoint. Bond and security, or

SEC. 24. In default of such bond, the justice shall commit the garnishee to the common prison until discharged by due course of law; nevertheless, the garnishee may be discharged by delivering and paying the property and money, according to the provisions of the twentieth section of this article. Commitment.

SEC 25. In cases where judgment is rendered against the defendant, upon publication of notice without service of summons, or his appearance to the action, no execution shall be awarded either against the defendant or garnishee, or property attached, until the plaintiff or some person for him shall give bond and security in favor of the defendant to be approved by the justice in double the amount of the judgment; conditioned, that if the defendant shall, within one year from the date of the bond, appear and disprove or avoid the debt or damages adjudged against him, or any part thereof, the plaintiff will pay and refund to the defendant all such money as shall have been received by and not justly due to him, together with all such damages as shall be assessed Bond and security by pl'ff. and execution.

SEC. 26. The manner of disproving or avoiding the debt shall be by petition to the justice, who gave the judgment, or his successor, or to the courts into which the records and papers may have been removed, stating the grounds on which he resists the Condition.  
Avoiding debt, petition and notice.

claim of the plaintiff, giving to the plaintiff ten days notice of the time and place the petition will be presented.

Petitioner's oath.

SEC. 27. If the petition deny the original cause of action and be supported by the oath of the petitioner, the plaintiff shall be required to prove his demand, and in default thereof, it shall be adjudged to be disproved and avoided, and the plaintiff shall pay the costs of the petition and of the original suit.

Set-off, or collateral avoidance.

SEC. 28. If the petition allege a set-off or other collateral avoidance, the petitioner shall be required to prove the same, and in default thereof, shall be adjudged to pay costs, and a general judgment may be rendered against him for any balance remaining unpaid on the original judgment and the costs.

SEC. 29. Executions may be awarded and issued on judgments in attachment causes, according to the circumstances of the case, as follows:—

When execution may be awarded,

First—Where there is a general judgment against the defendant the execution shall be a common *feri facias*, which may be levied upon all the property of the defendant (subject to execution) whether attached in the case or not.

General and special.

Second—Where there is a judgment against the property, money or effects attached, the execution shall be a *feri facias* against such property, money or effects only, and may be levied upon the same whether in the hands of the officer or secured by bond, as provided for in this article.

Against garnishee.

Third—Where the judgment is against the garnishee, the execution shall be such as is used and allowed on general judgments in common actions on contracts.

Officer's compensation.

SEC. 30. When property is seized on attachment, the justice may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping and maintaining the same, as shall be reasonable and just.

## ARTICLE XII.

### *Proceedings in case of breach of the peace.*

Summary process.

SEC. 1. No assaults, battery or affray shall be indictable, but all such offences shall be prosecuted and punished in a summary manner before justices of the peace, as hereinafter provided.

SEC. 2. The foregoing section shall not extend to Exceptions. the trial or punishment of any case of riot or unlawful assembly, nor to any assault with an intent to maim, nor an assault with intent to commit a rape, nor an assault with intent to commit robbery, nor an assault with intent to kill; nor shall it embrace the offences of shooting at or stabbing, but all such offences shall be punishable by indictment.

SEC. 3. Whenever a complaint shall be made to a Complaint and justice of the peace on the oath or affirmation of any warrant; by person competent to testify against the accused that whom execu- an assault, battery, affray or other breach of the peace has been or is about to be committed, the justice shall forthwith issue his warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county or any constable of the county, or by some competent person specially deputed by the justice for that purpose.

SEC. 4. If any justice of the peace shall have any Arrest on view, knowledge that any of the offences mentioned in the or from person- last section are about to be committed, he shall issue al knowledge, his warrant and proceed as is directed in that section, and if any such offence is committed, threatened or attempted in his presence, he shall immediately arrest the offender or cause it to be done; and for this purpose no warrant or process shall be necessary. But the justice may summon to his assistance aid and assist- any sheriff, coroner or constable, and all other persons then present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duty.

SEC. 5. When any person shall be brought before Summary a justice of the peace under the provisions of this mode. act, it shall be the duty of the justice to hear and determine, in a summary mode, the complaint alleged against the defendant.

SEC. 6. Upon good cause shown, the justice may Trial, when postpone the trial of the cause to a day certain, in postponed, se- which case he shall require the defendant to enter curity, &c. into a recognizance, with sufficient security, conditioned, that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him.

SEC. 7. If the defendant shall fail or refuse to Commitment. enter into recognizance, the justice shall commit him to the common jail of the county, there to remain

until the day fixed for the trial of the complaint alleged against him.

Breach of recog.

SEC. 8. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the District Court, to be proceeded in according to law.

Want of jurisdiction, how remedied.

SEC. 9. If in the progress of any trial before a justice of the peace, under the provisions of this article, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the District Court.

Witnesses, &c.

SEC. 10. In all cases, arising under this article, it shall be the duty of the justice of the peace acting, to summon the injured party and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

Jury trial, and its incidents.

SEC. 11. All trials before a justice of the peace under this article, shall be by a jury of six competent men, unless the parties agree to leave the decision to the justice, who, if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than five dollars nor more than fifty dollars, according to the nature of the offence.

Complainant liable for costs.

SEC. 12. When proceedings are commenced under the provisions of this article on the information or complaint of the injured party, his name shall be entered by the justice in his docket as prosecutor, and if the defendant shall be discharged or acquitted the prosecutor shall be adjudged to pay costs; in all other cases of discharge or acquittal, the costs shall be paid by the county.

Judg't, fine, costs, and execution.

SEC. 13. In all cases of conviction under the provisions of this article, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

Imprisonment and discharge, costs, and privilege.

SEC. 14. Any defendant who shall be committed or taken in execution on such judgment, may at any time after ten days actual imprisonment in jail, be discharged; and in that case, the county shall pay the costs of the prosecution and charge of imprisonment, and for the amount thereof shall be a priv-

ileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

SEC. 15. Either the prosecutor or the defendant may appeal to the District Court, if he shall on the day of the rendition of the judgment file an affidavit, stating that he verily believes that injustice has been done by the verdict and judgment, and also enter into a recognizance with two sufficient securities, which recognizance shall be in the form and with the same condition required in appeals from a justice of the peace in civil cases.

Appeal to dis.  
court. Recog-  
nizance.

SEC. 16. All appeals taken ten days or more before any term of the District Court of the county, shall be returnable to that term, but if taken within ten days next before the commencement of a term, shall be returnable to the second term.

Appeals, when  
to be taken.

SEC. 17. When an appeal is taken it shall be the duty of the justice to cause all material witnesses to enter into recognizance in the sum of fifty dollars each, conditioned, for their appearance to testify in the cause at the term to which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the District Court a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizances of the appellant and witnesses duly certified.

Recog. of wit-  
nesses, process,  
entries, affida-  
vit, &c.

SEC. 18. The clerk of the District Court shall enter the cause on his docket, and if the appeal be regularly taken, the cause shall be heard on the merits at the return term, unless good cause be shown for a continuance; and the costs in both courts shall abide the event of a trial in the District Court.

Trial on the  
merits, costs,  
&c.

SEC. 19. If the appeal be not taken and perfected within ten days after rendering judgment by the justice, the judgment shall be affirmed.

Judg't, when  
affirmed.

SEC. 20. If the judgment of the justice shall be affirmed, or upon a trial in the District Court the defendant shall be convicted and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his securities.

Def't. and se-  
curities.

SEC. 21. If in an appeal taken by the prosecutor the judgment of the justice shall be affirmed, the prosecutor and his securities shall pay all costs of said appeal, and if the judgment of the justice should have imposed the payment of the costs upon said prosecutor and said judgment be affirmed, the

When prosecu-  
tor to pay costs

judgment of the District Court shall include the costs of both courts, and be against the prosecutor and his securities.

**Execution.** SEC. 22. If the judgment of the District Court be not satisfied in thirty days after the rendition thereof, execution may issue against the party against whom judgment has been rendered, and his securities, which shall be made out of the property of the said party, if sufficient thereof be found; if not, then out of the property of said securities.

**General rule.** SEC. 23. In all cases not specially provided for by this article, the process and proceedings before the justice shall be governed by the laws regulating proceedings in justices courts in civil cases.

**Duty of justice as to fines, &c.** SEC. 24. It shall be the duty of the justice, before whom any conviction may be had under this article, if there be no appeal, to make out and certify and within fifteen days after the date of the judgment deliver to the treasurer of the county a statement of the case, the amount of the fine, and the name of the constable charged with the collection thereof; and the county treasurer shall charge the constable with the amount of such fine, and unless the same be paid into the county treasury within sixty days after the date of the judgment, the said justice shall render judgment against such officer for the amount due and twenty per centum thereon, making, however, proper deductions for insolvencies, on which judgment execution shall be issued as other executions are, and the proceeds paid into the county treasury.

**Constable's liabilities.**

**Penalty.** SEC. 25. Any justice of the peace, sheriff, coroner, constable or other officer, who shall wilfully neglect or refuse to perform any duty enjoined on him by this article, shall be deemed guilty of a misdemeanor in office, and shall moreover pay the sum of fifty dollars. And any person who shall, when summoned to aid in arresting or securing an offender, refuse to give such assistance, shall pay five dollars.

**Fine and penalties.**

SEC. 26. Fines and penalties incurred under the provisions of this article in cases not otherwise provided, may be recovered before any justice by action of debt.

**Verbal notice to witnesses.**

SEC. 27. When a trial, under the provisions of this article, shall be continued by the justice, it shall not be necessary for the justice to summon any witness who may be present at the continuance, but such justice shall verbally notify such witnesses, as either party may require, to attend before him to

testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

SEC. 28. Previous to the commencement of any trial before a justice of the peace, the defendant or his agent may make oath that it is the belief of such deponent, that the defendant cannot have an impartial trial before such justice; whereupon, it shall be the duty of the justice immediately to transmit all the papers and documents belonging to the suit, to the nearest justice of the peace, who shall proceed as if the said suit had been instituted before him: *Provided*, There shall be but one change of venue.

### ARTICLE XIII.

#### *Of the forms of writs of process.*

SEC. 1. The following, or other equivalent forms, shall be used by the justice of the peace, in proceedings to be had under this act, to wit:

#### A SUMMONS.

TERRITORY OF IOWA, ——— county, ss.

To any constable in said county.

In the name of the United States of America, you are hereby commanded to summon if shall be found within your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on day of 18 at of the clock, in the noon, at in the said county, to answer the complaint of . Given under my hand this day of 18 .

A. B., Justice.

Form of summons.

#### A WARRANT.

TERRITORY OF IOWA, ——— county, ss.

To any constable in said county.

In the name of the United States of America, you are hereby commanded to take the body of if he be found within your county, and bring forthwith before the undersigned, or some other justice of the peace, in and for said county, at in said county to answer the complaint of and you are also commanded to give due notice thereof to the said plaintiff.

Given under my hand this day of 18 .  
C. D., Justice.

Warrant.

## A SUBPENA.

TERRITORY OF IOWA, ——— county, ss.

To

Subpœna.

In the name of the United States of America, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, at ——— on the — day of — at — of the clock in the ——— noon of said day, to give evidence in a certain cause then and there to be tried between ——— plaintiff, and ——— defendant, on the part of the ———.

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

E. F., Justice.

## A VENIRE FOR A JURY.

TERRITORY OF IOWA, ——— county, ss.

To any constable of said county.

Venire for a jury.

In the name of the United States of America, you are hereby commanded to summon ——— good and lawful men to be and appear before the undersigned, one of the justices of the peace in and for said county, on the — day of — present (or next) at — of the clock in the ——— noon of said day in the town of ——— to make a jury, for the trial of an action of ——— between ——— plaintiff and ——— defendant.

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

G. H., Justice.

## AN EXECUTION.

TERRITORY OF IOWA, ——— county, ss.

To any constable of said county.

Execution.

Whereas, judgment against ——— for the sum of ——— and ——— costs, lawful money of the United States, was recovered the — day of — before the undersigned, one of the justices of the peace in and for said county, at the suit of ———. These are therefore in the name of the United States of America, to command you to levy distress, on the goods and chattels of the said ——— (excepting such as the law exempts) and to make sale thereof according to law in such cases made and provided, to the amount of said sums, together with thirty-seven and a half cents for this execution, and the same return to me within thirty days.

Given under my hand this — day of — 18—.  
J. K., Justice.

Where security has been given for stay of execution <sup>Against securi-</sup>  
on the judgment against the principal and security:—<sup>ty.</sup>

TERRITORY OF IOWA, ——— county, ss.

To any constable in said county.

Whereas, judgment against ——— for the sum of  
——— and ——— costs, lawful money of the United  
States, was recovered the ——— day of ——— 18—  
before the undersigned, a justice of the peace in and  
for the said county, at the suit of ———. And  
whereas ——— on the ——— day of ——— in the  
year aforesaid became security to pay the said judg-  
ment with interest on the same, in — months from  
the date of the judgment aforesaid, agreeably to law,  
in the payment of which the said ——— have failed.

These are therefore in the name, &c. (as in com-  
mon form.)

#### A WRIT OF ATTACHMENT.

TERRITORY OF IOWA, ——— county, ss.

To any constable of said county.

In the name of the United States of America, you <sup>Writ of attach-</sup>  
are commanded to attach C. D. by all and singular <sup>ment.</sup>  
his goods, chattels, moneys, effects, and credits, or so  
much thereof as shall be sufficient to satisfy the sum  
of ——— (the sum sworn to) with interests and costs  
of suit, in whosoever hands or possession the same  
may be found in your county, and so provide, that  
the goods and chattels so attached, may be subject  
to further proceedings thereon, as the law requires;  
and also to summons the said C. D. if to be found, to  
be and appear before me at my office, in the town of  
——— on the — day of — 18— to answer unto  
——— plaintiff; and also that you summon as gar-  
nisees all such persons found in your county, as  
may be directed by the plaintiff or his agent to ap-  
pear before the said justice at the time and place  
aforesaid, to answer such interrogatories as the  
justice may propound, and have you then and there  
this writ.

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

O. P., Justice.

APPROVED, January 21, 1839.

## LAWS AND JOURNALS.

AN ACT regulating the publication and distribution of the laws and journals of the Legislative Assembly of the Territory of Iowa.

- Laws to be prepared for publication.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That it shall be the duty of the Secretary of the Territory to make an index and marginal notes to the acts and joint resolutions passed at the present session of the Legislative Assembly as soon as possible, and as early as convenient to furnish the Territorial printer with true copies of the said acts and joint resolutions, together with the index and marginal notes thereto, who shall thereupon proceed, without delay, agreeably to his contract, to print two thousand copies of the laws, to which shall be added joint resolutions, also the local acts passed by the Legislative Assembly as hereinafter mentioned, and when so printed, they shall by him be put up in half binding, and called "The Statute Laws of the Territory of Iowa." And there shall be prefixed to the volume of the acts a complete table of contents, the declaration of independence, articles of confederation and perpetual union, constitution of the United States, with the amendments thereto, the ordinance of congress, July 13, 1787, and the organic law, entitled, "An act to divide the Territory of Wisconsin, and to establish the Territorial Government of Iowa," approved, June 12, 1838.
- 2,000 copies to be printed.**
- What shall be prefixed to the acts.**
- Certificate to printer on delivery of the copies.** SEC. 2. So soon as the said printing shall be completed, and the copies delivered to the Secretary of the Territory, he shall give to said printer a certificate containing a detailed account of all the printing done by the said printer, together with the total amount due for the same, which shall be a sufficient voucher for said Secretary to audit and pay the same out of any money in the treasury not otherwise appropriated.
- To be sent into the several counties.** SEC. 3. The Secretary of the Territory is hereby required to contract with some suitable person, or persons, immediately after the printing in this act authorised to be done is completed, to convey and deliver the several volumes of the aforesaid acts, joint resolutions, and journals, to the clerk of the board of county commissioners, and take a receipt of the several clerks of the boards of county commissioners, who are authorised to receive the acts and journals aforesaid, setting forth that the proper

number of volumes of the acts and journals have been delivered in good order.

SEC. 4. It shall be the duty of the Secretary of the Territory to superintend the printing, in such manner as he may conceive most conducive to the public good, the acts and joint resolutions of the Legislative Assembly, and to correct the same by the enrolled bills in his office, and, when the printing of the same shall be finished, to certify the fact of his having compared and found the same correct; which certificate shall be signed and dated by the Secretary, and annexed in print to the volumes of the acts and joint resolutions as aforesaid; and the volumes containing the acts of a general and public nature shall be arranged under their proper heads, in alphabetical order, according to their subject matter.

Secretary to  
superintend  
printing.

SEC. 5. The other statute laws, not disposed of as aforesaid, shall be distributed as follows, to wit: To the counties of Lee, Van Buren, Henry, Des Moines, and Du Buque, each one hundred copies. To the counties of Scott, Jackson, Muscatine, Louisa, and Cedar, each seventy-five copies. To the counties of Clayton, Clinton, Jones, Johnson, Linn, Jefferson, and Slaughter, each sixty copies. And all counties attached for judicial purposes, twenty copies, to be deposited in the clerk's office of the counties to which they are attached.

No. of copies to  
each county.

SEC. 6. It shall further be the duty of the said Secretary of the Territory to deliver, or cause to be delivered, one copy of the aforesaid laws to each of the following named persons, to wit: the Governor of the territory, Judges of the Supreme court, Attorney General, and District Court of the United States, for said Territory.

Copy to the  
Governor,  
Judges, &c.

SEC. 7. It shall be the duty of the printer, authorized to print the journals of the House of Representatives, to print, under the direction of the chief clerk, three hundred copies, and it shall be the duty of the printer, authorized to print the journal of the Council, to print, under the direction of the Secretary of the Council, one hundred and fifty copies, which shall be distributed in equal proportions among the members of their respective houses, that is, to the members of each house its own journals; which said journals shall be delivered to the clerks of the several boards of county commissioners in the same way, time and place, that the aforesaid

Printing and  
distribution of  
the journals.

**Copies of laws and journals to be reserved.** volumes of the acts are to be delivered, and the said clerks, on receipt thereof, shall deliver the same to the members for whom they are intended; and the Secretary of the Territory shall carefully reserve and file away, in his office, all the volumes of the statute laws and special acts, by this act directed to be printed, together with forty copies of the journals of the House of Representatives, and twenty copies of the journals of the Council, not otherwise disposed of by this act, to be disposed of by the Legislative Assembly as future circumstances may require.

**To whom the laws shall be distributed.** SEC. 8. It shall be the duty of the clerks of the boards of county commissioners of the several counties in this Territory, upon application, to deliver to the different civil officers of his county, allowing each one copy of the statute laws, to wit: to every member of the Council and House of Representatives of the present Legislative Assembly, to the judge of probate, each recorder, public administrator, county commissioner, sheriff, coroner, each justice of the peace, county treasurer, county surveyor, each clerk of the district court, and clerk of the county commissioners, mayor of any incorporated city, and to all militia officers above the rank of lieutenant, three copies for the use of the district court, grand jury, and bar, and the surplus copies, if any, shall be by said clerk carefully filed in his office, and kept to be distributed as may be hereafter directed by law; and upon the delivery of the copy of the laws, as aforesaid, it shall be the duty of the clerk aforesaid to take a receipt for the same from such person, and file the same in his office, and in no case shall any person be entitled to more than one copy, although he may hold several offices.

**Clerks to take receipts.**

**When the volumes, thus delivered to county officers, to be returned.** SEC. 9. Upon the expiration of the term of service, resignation, or removal from office, of any county officer, it shall be his duty to return to the clerk of the county commissioners, for the use of his successor in office, the copy or copies of the laws of this Territory received by him in pursuance of this act, and in case of the death of any such officer, the said copy or copies of the laws shall be returned as aforesaid by his executors or administrators. If any such officer, his executors or administrators, shall refuse or neglect, for the space of three months after the happening of such vacancy as aforesaid, to return the said copy or copies of the laws to the clerk

of the said county commissioners as aforesaid, it shall then be the duty of said clerk to sue for the same, before any justice of the peace in said county, and he shall recover, for the use of said county, the sum of five dollars for each copy so detained, with costs of suit. No person, however, while he continues to hold any office which entitles its incumbent to a copy of the laws as aforesaid, shall be required to return his copy of the same as aforesaid.

SEC. 10. That the Secretary of the Territory be and he is hereby required to furnish the public printer with a copy of all the acts of Congress, now in force, relative to the naturalization of aliens, as soon as practicable, and that it shall be the duty of the printer aforesaid to publish the same, as an appendix, with the statutes of a public nature of the present Legislative Assembly.

SEC. 11. This act shall take effect and be in force from and after its passage.

APPROVED, January 21, 1839.

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## LEGISLATIVE ASSEMBLY.

AN ACT to district the Territory of Iowa into electoral districts, and to apportion the Representatives of each.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the counties of Du Buque, Clayton, Fayette, Delaware, and Buchanan, shall form the first electoral district, and shall be entitled to three members of the House of Representatives; the county of Jackson shall form the second electoral district, and shall be entitled to one member of the House of Representatives; the counties of Clinton and Scott shall form the third electoral district, and shall be entitled to two members of the House of Representatives; the counties of Muscatine, Johnson, and Keokuck, shall form the fourth electoral district, and shall be entitled to two members of the House of Representatives; the counties of Cedar, Linn, Jones, and Benton, shall form the fifth electoral district, and shall be entitled to one member of the House of Representatives; the counties of Louisa and Slaughter shall form the sixth electoral district, and shall be entitled to two members of the House of Representatives; the counties

- Seventh district. of Henry and Jefferson shall form the seventh electoral district, and shall be entitled to three members of the House of Representatives; the county of Van Buren shall form the eighth electoral district, and shall be entitled to three members of the House of Representatives; the county of Lee shall form the ninth electoral district, and shall be entitled to four members of the House of Representatives; the county of Des Moines shall form the tenth electoral district, and shall be entitled to five members of the House of Representatives.

APPROVED, January 21, 1839.

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### LEGISLATIVE ASSEMBLY.

AN ACT fixing the time for the annual meeting of the Legislative Assembly.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the Legislative Assembly shall commence its session, annually, on the first Monday in November, in each year.

To meet on the first Monday in November.

Next meeting at Burlington.

SEC. 2. That the next meeting of the Legislature shall be held in the city of Burlington, in Des Moines county.

APPROVED, January 23, 1839.

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### LEGISLATIVE ASSEMBLY.

AN ACT to authorize the Governor to call a Special Legislative Assembly.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the Governor of this Territory is hereby authorized and empowered to call a special session of the Legislative Assembly, at any time when he may deem the same expedient and proper.

Governor may call a special session.

SEC. 2. This act to be in force from and after its passage.

APPROVED, January 25, 1839.

## LIMITATION OF ACTIONS.

AN ACT for the limitation of actions, and for avoiding vexatious law suits.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all actions of trespass, detinue, trover, and replevin, for taking away goods and chattels, all actions for the arrearages of rent, due on a parole demise, and all actions of account, and upon the case, except actions for slander, and malicious prosecutions, and such actions as concern the trade of merchandise between merchant and merchant, their factors or agents, shall be commenced within five years next after the cause of action shall have accrued, and not after.

Limitation of actions of trespass, detinue, trover, &c.

SEC. 2. That all actions of trespass for assault and battery, wounding and imprisonment, or any of them, shall be commenced within two years next after the cause of such action shall have accrued, and not after.

Assault, battery, &c.

SEC. 3. That every action on the case for slanderous words, shall be commenced within one year next after the words spoken, and not after; and every action for malicious prosecution shall be commenced within two years next after the cause of action shall have accrued, and not after.

Slanderous words, and malicious prosecution.

SEC. 4. That every action of debt, or covenant for rent, or arrearages of rent, founded upon any lease, under lease, or every action of debt, on account founded upon any single or penal bill, promissory note, or writing obligatory, for the direct payment of money, or the delivery of property, or the performance of covenants, or upon any award, under the hands and seals of arbitrators, for the payment of money only, shall be commenced within six years after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, single bond, or penal bill, promissory note, writing obligatory, or award, within or after the said period of six years, then an action instituted on such lease, single or penal bill, promissory note, writing obligatory, or award, within six years after such payment, shall be good and effectual in law, and not after.

Debt or covenant for rent, &c.

SEC. 5. That judgment in any court of record in this Territory may be revived by *scire facias*, or an action of debt may be brought thereon within twenty years next after the date of such judgment, and not after.

Judgments revived.

Right of entry  
barred after 20  
years.

SEC. 6. That no person, who now hath, or hereafter may have, any right of entry into any lands, tenements, or hereditaments, shall make an entry but within twenty years next after such right shall have accrued, and such person shall be barred from any entry afterwards.

Certain actions  
to be brought  
within twenty  
years.

SEC. 7. That every real, possessory, ancestral, or mixed action, or writ of right, brought for the recovery of any lands, tenements, or hereditaments, shall be brought within twenty years next after the right or title thereto or cause of such action accrued, and not after: *Provided*, That in all the foregoing cases in this act mentioned, where the person or persons who shall have right of entry, title, or cause of action, is, are, or shall be at the time of such right of entry, title, or cause of action, under the age of twenty-one years, insane, or beyond the limits of this Territory, or *feme covert*, such person or persons may make such entry, or institute such action, so that the same may be done within such time as is within the different sections of this act limited, after his or her becoming of full age, sane, *feme sole*, or coming within this Territory.

Absence not to  
be accounted in  
certain cases.

SEC. 8. That if any person or persons against whom there is, or shall be, any cause of action, as is specified in the preceding sections of this act, except real or possessory actions, shall be out of this Territory at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons, who shall be entitled to such action, shall be at liberty to bring the same against such person or persons after his, her, or their return to this Territory, and the time of such person's absence shall not be accounted or taken as a part of the time limited by this act.

Effect of reversal  
of judgment  
on writ of error,  
&c.

SEC. 9. That if in any of the said actions, specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by a writ of error, or upon appeal, unless a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff; or if the plaintiff be non-suited, then, if the time limited for bringing such action shall have expired during the pendency of such suit, the said plaintiff, his or her heirs, executors, or administrators, as the case shall require, may commence a

new action, within one year after such judgment is reversed, or given against the plaintiff, and not after.

APPROVED, January 25, 1839.

## MECHANICS.

AN ACT relative to Mechanics' liens, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That in all cases hereafter, where any contract shall be made between the proprietor or proprietors of any tract of land or town lot on the one part, and any person or persons on the other part, for the erecting or repairing any house, or other building, mill or machinery of any description whatever, or their appurtenances, or for furnishing labor or materials for the purposes aforesaid, and every other person who may have furnished materials which may have been used in the construction of such house, building or mill, by special agreement, the person or persons who shall, in pursuance of such contract, have furnished labor or materials for such purpose, or who shall have furnished such materials as aforesaid, shall respectively have a *lien*, to secure the payment of the same, upon such house, or other building, mill, or machinery, and on the lot or tract of land on which the same shall be erected. Lien on building and lot for materials and labor.

SEC. 2. When any person or persons shall wish to avail himself, herself, or themselves, of the benefit of such *lien*, he, she, or they shall commence his, her, or their action in any court having jurisdiction of the same, within six months from the time payment should have been made, by virtue of any such contract by which such lien shall have been claimed. And if such suit be commenced in the district court, it shall be by bill or petition, describing, with common certainty, the tract of land, town lot, building, mill, or machinery, upon which said lien is intended to be made to operate, and also the nature of the contract or indebtedness, with a bill of particulars of his account; which bill or petition shall be filed in the clerk's office of the proper county, and docketed by the clerk on the common law appearance docket. The courts, trying such causes, shall be governed by the same rules of evidence that are now observed in When action to be commenced.  
Bill or petition to be filed.  
Particulars of the account.

suits at law, and give judgment according to the justice and equity of the case.

Special execution to be issued.

SEC. 3. The clerk of the court, when judgment has been had under the provisions of this act, on application, shall issue a special execution, directed to the sheriff of the proper county, describing the property upon which said *lien* is made to operate, and out of which said judgment and costs are to be collected, or so much thereof as said property will bring; and no other property of the said defendant, in any suit as aforesaid, shall be bound for the payment of such judgment, unless the claimant shall hold collateral security for the payment of the same.

Proceedings before a justice of the peace under this act.

SEC. 4. Any person or persons, wishing to avail himself, herself, or themselves, of the benefit of the *lien* under this act, by suit before a justice of the peace, shall, upon the commencement of such suit, file an account setting forth, with common certainty, the property upon which said lien is intended to be made to operate, and whether it is for work and labor done, or materials furnished; and upon the trial of said cause, the justice of the peace, trying the same, shall hear the proof, and if it shall appear that the defendant in such cause is indebted to the plaintiff, he shall give judgment for the amount so due, and, on application of the plaintiff, said justice of the peace shall give a transcript of the judgment, and certify the same to be for work and labor done, or materials furnished (as the case may be), and also a description of the property subject to such *lien*; which transcript and certificate shall be filed in the clerk's office of the proper county in which said judgment shall have been rendered, and, when filed, it shall have the same effect as a judgment of the district court, and execution shall issue in the same manner, and have the same effect, as an execution issued upon a judgment rendered in the district court under this act: *Provided*, That either of the parties, in such suit, shall have the same right to appeal that is, or hereafter may be, allowed for the judgment of justices of the peace in other cases.

Right of appeal.

Benefit of the act extended to persons employed on mineral ground.

SEC. 5. And it is further provided by this act, that when any person is employed to work on mineral ground, where mineral is found, he shall have all the benefit of this act, and shall have a *lien* on a sufficient quantity of mineral, on the lot where he may be employed, to pay him for any just demand

which he may have, in consequence of labor that he may have performed on the same.

SEC. 6. All acts, and parts of acts, coming within the purview of this act, are hereby repealed. This act to take effect from and after its passage. Repealing clause.

APPROVED, December 17, 1838.

## MILITIA.

AN ACT to organize, discipline, and govern the Militia of this Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That immediately after the passage of this act, the militia of this territory shall be arranged into divisions, brigades, regiments, battalions, and companies. It shall consist of infantry or district companies, light infantry, riflemen, artillery men, and dragoons or mounted riflemen. There shall be three divisions, as follows, viz: The counties of Lee, Van Buren, Jefferson, Henry, and Des Moines, shall form the first division. The counties of Louisa, Slaughter, Keokuck, Johnson, Linn, Cedar, Scott, and Muscatine, shall form the second division. And the counties of Clinton, Jones, Jackson, Du Buque, Clayton, Delaware, Fayette, Buchanan, and Benton, shall form the third division. A division shall consist of not less than two, nor more than three brigades; a brigade shall consist of not less than two, nor more than five regiments; a regiment shall consist of not less than five, nor more than ten companies, two of which shall be light infantry or riflemen; each company shall consist of not less than thirty, nor more than one hundred men, exclusive of commissioned officers. Militia how to be arranged. Divisions.

SEC. 2. That whenever a county or district of country is distant, or so detached that in the opinion of the Governor it would be inconvenient for the persons residing therein to belong to an organized regiment, they shall be organized as a separate battalion, under the command of a major, and be subject to the same rules and regulations in all respects that regiments are subject to. Detached districts may form separate battalions.

SEC. 3. That to a division there shall be one major-general; to a brigade one brigadier-general; to a regiment one colonel, one lieutenant-colonel, Officers.

and one major; to a company of infantry, light infantry, and riflemen, there shall be one captain, one first lieutenant, and one second lieutenant; to a company of artillery men, and dragoon or mounted riflemen, there shall be one captain, one first lieutenant, one second lieutenant, and one third lieutenant. All commissioned officers (except those of the light infantry and rifle corps), and staff officers, shall be clothed, armed, and accoutred as the commander-in-chief may direct.

Gov. & Council to appoint them.

SEC. 4. That the Governor, with the advice and consent of the Legislative Council, shall appoint and commission all the officers provided for in the preceding section.

Aids.

SEC. 5. That the commander-in-chief may appoint, during his pleasure, four aids, with the rank of colonel; a major-general may appoint, during his pleasure, two aids, with the rank of major; a brigadier general may appoint, during his pleasure, one aid, with the rank of captain. The Governor shall

Adjutant General, &c.

appoint and commission one adjutant general, one commissary general, and one quarter-master general, each with the rank of brigadier general, and to each brigade a brigade inspector, with the rank of major.

Appointments in each regt.

The commandant of each regiment, and separate battalion, shall appoint, during his pleasure, one adjutant, one quarter-master, and one pay-master, each with the rank of lieutenant, also one surgeon, and one surgeon's mate, one drum major, one fife major, and one sergeant major. The captain or commanding officer of each company shall appoint, during his pleasure, four sergeants, one of whom shall be clerk of the company, four corporals, and two musicians.

Who shall be enrolled.

SEC. 6. That the captain or commanding officer of each infantry or district company shall, by his clerk, enroll all free white male persons, between the ages of eighteen and forty-five years, residing, or from time to time coming to reside, within the bounds of his beat or company district, except such as are hereinafter excepted.

Divisions and brigades may be increased or diminished.

SEC. 7. That the commander-in-chief shall have power and authority to increase or diminish the number of divisions and brigades, and to alter and arrange the boundaries thereof, and to divide, annex, and consolidate them as he may from time to time deem necessary, having regard however to the provisions of the first section of this act. And in like

manner the brigadier general may, with the appro- Bounds of regiments, &c., may be altered.  
 bation of the major general, divide, annex, or alter  
 the bounds of any of the regiments, or separate  
 battalions, under his command, and the commanding  
 officer of a regiment, or separate battalion, with the  
 approbation of the brigadier general, may divide,  
 annex, or alter the bounds of the companies under  
 his command.

SEC. 8. That there shall be within each brigade Artillery and dragoons.  
 district, and attached to said brigade, one company  
 of artillery, and one company of dragoons or  
 mounted riflemen, to be composed of volunteers;  
 they shall be organized, clothed, armed, and ac-  
 counted in all respects as such corps in the service  
 of the United States are, unless the commander-in-  
 chief shall otherwise direct. There shall be within  
 each regimental district, and attached to said regi- Light infantry or riflemen.  
 ment, two companies of light infantry or riflemen;  
 they shall be composed of volunteers, and the light  
 infantry shall be organized, clothed, armed, and  
 equipped as the infantry in the army of the United  
 States are for the time being, unless the brigadier  
 general shall otherwise order and direct. The rifle-  
 men shall be clothed, armed, and equipped as the  
 brigadier general may direct.

SEC. 9. That the militia, for the purpose of improv- When militia to rendezvous.  
 ing in martial exercise, shall rendezvous by companies  
 in their respective districts, on the first Saturdays  
 in the months of May and September, in each year, at  
 ten o'clock in the forenoon of said days. The place  
 of meeting shall be designated by the captain or  
 commanding officer, by putting up, or causing to be  
 put up, at least four written or printed advertise-  
 ments, in the most public places in his district, ten  
 days before the day of meeting. Captains or com-  
 manding officers of volunteer companies shall in like  
 manner, give notice of the place of the meeting of  
 their respective companies twelve days previous to  
 said day.

SEC. 10. That on the last Saturday of the month When company and staff officers to rendezvous.  
 of August, in every year, the colonel or command-  
 ing officer of each regiment, and separate battalion,  
 shall, by written or printed advertisements put up  
 or distributed, fifteen days before said day, call out  
 all company and staff officers under his command  
 to rendezvous at some convenient and suitable  
 place, where they shall be formed and drilled in  
 company order by the commandant. And at said

- Notice of regimental meetings.** rendezvous the commandant shall give to the officers public notice of the place where the regiment or battalion shall meet, which place shall be within his district, and the time as follows, viz: the first regiment, or the one lowest in number in each brigade, shall meet at ten o'clock in the forenoon, on the first Monday in October, and the next lowest in number shall meet on the next day, and so on, in numerical order, until all shall have met. The captain or commanding officers of companies shall then, within proper time, give notice of the intended regimental or battalion parade, in the same manner as they are directed by the preceding section to do in case of company rendezvous. Each regiment, and separate battalion, shall assemble in the month of October, as aforesaid, for the purpose of drill and parade, at such place as the commandant may appoint and direct. And at such drill and parade as many evolutions shall be performed as circumstances and the nature of the case will permit. *Provided*, That at the parades provided for by this and the preceding sections, the militia shall not be kept under arms longer than three hours at any one time.
- When to assemble for drill and parade.**
- How long militia may be kept under arms.**
- Rifles, &c., to be in good order.** SEC. 11. That it shall be the duty of every non-commissioned officer and private, who owns a rifle, musket, or fire-lock, to appear with it in good order at every parade.
- Books of instruction to be provided.** SEC. 12. That in order to ensure uniformity in the organization, discipline, and government of the militia of this Territory, it shall be the duty of the commander-in-chief from time to time to provide, at the expense of the Territory, such books of instruction as are or may be prescribed for the use of the army or militia of the United States, and furnish each commissioned officer with a copy. And each officer shall preserve and keep said book or books in good order, and hand them over to his successor in office.
- Militia to be reviewed.** SEC. 13. That the commander-in-chief, or the major general, may review the militia at his pleasure. It shall be the duty of the brigadier generals to review at least one regiment, under their respective commands, every year.
- Duties of brigade inspectors.** SEC. 14. That it shall be the duty of the brigade inspectors to attend to the regimental and battalion parades of the militia, composing the brigade to which they respectively belong, during the time of their being under arms, to inspect the arms and accoutrements of the different corps, superintend

their exercise and manœuvres, and to see that the same system of discipline is uniformly used by every officer in the brigade, and that it be the same which is used for the time being in similar corps in the army of the United States, or such as is directed to be used in the militia by the government of the United States. And it shall be the duty of the brigade inspectors to attend particularly to the dress, arms, and accoutrements of the volunteer companies, and also to the horse and equipments of the dragoons or mounted riflemen. The brigade inspectors shall, one month previous to the meeting of the Legislative Assembly, make full and complete returns to the adjutant-general of the actual condition of the arms and accoutrements of the several corps, and of every other thing which in his judgment may relate to the government and the general advancement of good order and military discipline. Each brigade inspector shall be allowed the sum of eight dollars for each regiment, or separate battalion, by him inspected and returned agreeably to this section, and twenty dollars additional, in full, for defraying travelling and contingent expenses, which shall be paid out of any money in the Territorial Treasury not otherwise appropriated. Their pay.

SEC. 15. That the commissary general shall, under the order of the commander-in-chief, have the custody and direction of all arms belonging to this Territory, and shall annually report to the commander-in-chief, and Legislative Assembly, the condition of the same. He shall, under the orders of the Governor, lend the arms and accoutrements to the officers of any volunteer company having twenty men in uniform. It shall be his duty to take the bond of the officers, with sufficient security, for the preservation and prompt return of said arms and accoutrements, when called for. And in order to enable the commissary general to comply with this section, it shall be the duty of the captain or commanding officer of each company, which shall have obtained arms and accoutrements as aforesaid, to report to him annually, or oftener if required, the exact condition of said arms and accoutrements. Arms and accoutrements.

SEC. 16. That the captain or commanding officer of each company of infantry, light infantry, and riflemen, shall annually, six weeks before the annual meeting of the Legislative Assembly, make a full and complete return, to the colonel or commandant When commanding officers of companies to make returns.

of the regiment or battalion to which he belongs, of the names of all the officers, non-commissioned officers, musicians, and privates, belonging to his company, also the dates of the commissions, and place of residence of the officers, the number and kind of arms and accoutrements belonging to, or in the possession of, the members of his company. The captains of the companies of artillery, and dragoons or mounted riflemen, shall, at the same time, make similar returns to the adjutant general.

When commanders of regiments to make returns.

SEC. 17. That the colonels or commandants of regiments and separate battalions, on receiving the annual returns from the captains, shall, one month previous to the annual meeting of the Legislative Assembly, consolidate them, and make a return thereof to the adjutant general. They shall also, at the same time, give a local description and the bounds of each company district composing the regimental or separate battalion district which they command.

Returns to be filed by the Adjutant General.

SEC. 18. That the adjutant general shall receive, and file in his office, all returns directed by law to be sent to him; he shall enter in a book, to be kept for that purpose, a local description of the companies, regiments, brigades, and divisions; he shall keep a roster of the officers of the militia, containing their names, dates of commissions, their rank, and corps to which they belong, also the division, brigade, regiment, and company to which they are attached. He shall annually, previous to the meeting of the Legislative Assembly, make a return to the commander-in-chief, and forward a duplicate thereof to the President of the United States; said return shall show the strength and condition of the different corps, and the number and quality of the arms and accoutrements. The adjutant general shall be allowed and paid one hundred and fifty dollars, annually, for book stationery, and in full for all his services as such, payable quarterly out of any money in the Territorial Treasury not otherwise appropriated.

When and to whom his returns to be made.

His pay.

Fines to be imposed for neglect or refusal to perform the duties required

SEC. 19. That if any commandant of a regiment, separate battalion, or company, shall refuse or neglect to give the proper notice for calling out the militia under his command, as required by the 9th and 10th sections of this act, he shall be tried by a court-martial, and fined at the discretion of the court in a sum not exceeding twenty dollars. And every person, subject to do duty under the provisions of

this act, who shall be absent, except in case of the sickness of himself or family, or, if present, shall refuse or neglect to answer to his name, and to do duty, or who shall leave his post or quit the ranks without leave, shall be tried by a court martial, and fined, if a colonel, not more than twenty dollars, nor less than five dollars; if a lieutenant colonel, or major, not more than fifteen dollars, nor less than five dollars; if a captain, not more than ten dollars, nor less than five dollars; if a lieutenant, not more than six dollars, nor less than three dollars; if a non-commissioned officer, musician, or private, not more than three dollars, nor less than two dollars. That every commissioned officer, who shall be guilty of disobedience of orders, neglect of duty, disrespect towards a superior officer, or any other unofficer-like conduct, shall be arrested and tried by a court martial, and fined in any sum not exceeding one hundred dollars, and may be suspended or cashiered, at the discretion of the court martial. If a non-commissioned officer, musician, or private, shall be guilty of disobedience to orders, or disrespect to an officer, during the course of the hours of parade, he shall be arrested and kept under guard during the balance of the three hours, and afterwards tried by a court martial, and fined not less than five dollars, nor more than twenty dollars. If any person, whether officer, non-commissioned officer, or private, or whether belonging to the militia of this Territory or not, shall appear at any parade, wearing any personal disguise or other unusual or ludicrous article of dress, or any arms, weapons, or other implements, not required by law, and calculated to excite ridicule, or to interrupt the orderly and peaceable discharge of duty by those under arms, he shall be arrested and kept under guard the balance of the three hours of parade, and be tried by a court martial, and fined not more than twenty dollars, nor less than five dollars.

And for appearing on parade ludicrously attired, &c.

SEC. 20. That the colonel or commanding officer shall, on the day of the regimental or battalion parade, make a list of the field officers, staff officers, and company officers, who are absent without special leave, and also a list of those (if any) who have been guilty of any offence mentioned in the preceding section, and he shall, within ten days thereafter, forward the list, with the charges and specifications, to the brigadier general, unless the brigadier general

To whom list of absentees and offenders to be forwarded.

be charged with some offence, in that case the list and charges and specifications shall be forwarded to the major general. The major general, or brigadier general, on receiving the aforesaid list, shall detail a court martial to meet at some suitable and convenient place within twenty days thereafter. And such courts martial shall be constituted, and all their proceedings shall be conducted, as courts martial for the trial of officers of similar grade are by the rules and regulations of the army of the United States for the time being, except only that the members may sit without being dressed in uniform. The proceedings of the court shall be immediately transmitted to the commander-in-chief for his approval or rejection.

Court martial to be detailed.

Proceedings to be sent to commander in chief.

Non-com. officers and privates absent without leave, &c.

Court martial.

SEC. 21. That at each and every parade, either company, battalion, or regimental, the captain or commanding officer of each company shall keep a correct list of the non-commissioned officers, musicians, and privates, who are absent without special leave, and on the last parade day, in each and every year, he shall detail a court martial for the trial of all who shall have been absent as aforesaid, or who shall have been guilty of any offence in the course of the current year. Said court martial shall consist of one commissioned officer, and four privates, the commissioned officer shall preside, and in case of a tie he shall decide. The president of a court martial shall have power and authority to swear and examine witnesses. If the commissioned officer be absent on the day of the court martial, the officer who detailed the court shall immediately supply the vacancy, by the appointment of another member of the company, whether officer or private. And a report of said absence shall be made to the commandant of the regiment, and the absentee shall be tried by a court martial, and fined in like manner as if he had been absent on the day of the regimental parade. And if any one of the privates be absent, the vacancy shall be immediately filled, and the absentee fined as though he had been absent on a parade day, without leave and without excuse, but he may appeal to the colonel of the regiment, who shall hear the cause and determine it equitably.

Fines, how collected and applied.

SEC. 22. That it shall be the duty of the president of each and every court martial held under the authority of this act, immediately after court rises, to make out a return to the clerk of the county com-

missioners' court of the name of each of the persons fined, and the amount of each fine. The said return shall be made to the clerk in the county in which the person fined resides, and the clerk shall include said fines in the list of taxes, and they shall be collected in the same manner, by the same collectors, with the same fees and costs, and be applied in the same manner, as other taxes for county purposes are for the time being collected and applied.

SEC. 23. That each drum major and fife major shall be allowed and paid two dollars for each day that they are employed on field days and officers' drills, and each drummer, fifer, and bugler, shall be allowed and paid one dollar for each day that they are employed under the provisions of this act.

SEC. 24 That the field officers of each regiment, and the commissioned officers of each company, shall furnish their respective commands with a stand of colors, and the necessary instruments of music. Each captain shall appoint the most efficient of the non-commissioned officers color bearer, and the field officers, on the day of the regimental parade, shall select the most efficient color bearer on that day. The commandants of regiments and companies shall have power and authority to draw on the county treasurer, of the county in which they respectively reside, for the amount by them expended in the purchase of colors and instruments of music, and also for the per diem herein allowed for the pay of musicians. And the treasurer is hereby authorized and required to pay it out of any money in the treasury not otherwise appropriated: *Provided*, That a stand of colors for a regiment shall not cost more than thirty dollars, and a stand for a company not more than fifteen dollars.

SEC. 25. That it shall be lawful for any commissioned officer, whenever and as often as any invasion, or imminent danger thereof, may come to his knowledge, to order out the militia, or any part thereof under his command, for the defence of the Territory. He shall immediately give notice thereof, detailing all the circumstances, to the commander-in-chief, and the commander-in-chief shall, on all occasions which to him may seem to require it, have full power and authority to call out any portion of the militia, either by draft, by the acceptance of volunteers, or EN MASSE.

Per diem allowance to musicians.

Colors and musical instruments to be furnished.

Militia may be called out in case of invasion, or danger thereof.

Persons ex-  
empted from  
militia duty.

SEC. 26. *And be it further enacted*, That the following designated officers and persons be and they are hereby exempted from militia duty, viz: The members of the executive, legislative, and judiciary departments of the Government of the United States, and their respective officers, all custom house officers and their clerks, all postmasters and mail carriers actually employed in the care and conveyance of the mail of the United States, all ferrymen on post roads, the Secretary of the Territory, the members and officers of the Legislative Assembly during its session and fourteen days before and after each session, ministers of the gospel of every denomination, who prove to the commandant of the company, in whose beat or precinct they reside, that they have been regularly ordained or licensed, and are now in full communion with their respective churches, and no others.

Repealing  
clause.

SEC. 27. That all laws contrary to the provisions of this act are hereby repealed, and that this act take effect from and after its passage.

APPROVED, January 4, 1839.

## MILL DAMS.

AN ACT to authorize Benjamin Nye to build a dam across Pine river.

Authority to  
erect a dam  
and mills or  
other machinery.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Benjamin Nye, his heirs and assigns, are hereby authorized and empowered to build a dam across Pine river, at any point on the north-west quarter of section twenty-one, township seventy-seven, north, range one, east of the fifth principal meridian, and to erect mills or other machinery, as they may deem proper, or in any other manner to make use of the water power created thereby: *Provided*, Said dam, or mills, shall not interfere with the rights of any individual, or of the United States.

APPROVED, January 12, 1839.

## MILL DAMS.

AN ACT to authorize William Meek and Sons to erect a dam across the Des Moines river.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That William Meek and Sons be, and they are hereby authorized, to construct a dam across the Des Moines river, in Van Buren county, in said Territory, between sections eight and seventeen, in township sixty-eight, north, range eight, west of the fifth principal meridian; which said dam shall not exceed three feet in height, above common low water mark, and shall contain a convenient lock, not less than one hundred and thirty feet in length, and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts, and other water craft, provided said water craft will bear two tons burthen.

Authority to construct a dam.

Lock for the passage of boats.

SEC. 2. It shall be the duty of the persons, authorized in the preceding section of this act to build said dam, at all times to keep the lock in the same in good repair, and they shall, at all reasonable times, pass any water craft above mentioned through, free of toll, without any unnecessary delay. And any person who shall be unnecessarily detained, shall be entitled to recover of said owners double the amount of damages they shall prove to have sustained by reason of such detention.

Lock to be kept in repair, and boats passed without delay.

SEC. 3. Any person who shall destroy, or in anywise injure, either said dam, or lock, shall be deemed to have committed a trespass and shall be liable accordingly. And any person who shall wilfully or maliciously destroy, or injure, said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owners may have sustained, or be imprisoned, at the discretion of the court.

Penalty for destroying or injuring dam or lock.

SEC. 4. Nothing herein contained shall authorize the individuals named in this act, their heirs or assigns, to enter upon and flow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity.

Not to enter upon or overflow lands without consent of owner. Nuisances to be removed.

SEC. 5. The legislature of this Territory (or State) may at any time alter or amend this act, so as to provide for the navigation of the said river.

This act may be amended.

When dam and lock to be completed.

Limitation of the act.

SEC. 6. The dam and lock, specified in the first section of this act, shall be completed within three years, from the first day of May next.

SEC. 7. The right of constructing and continuing the aforesaid dam and lock, across the Des Moines river, shall be vested in the said Wm. Meek and Sons, for the term of fifty years, from the first day of May next.

SEC. 8. This act to take effect from and after its passage.

APPROVED, January 17, 1839.

### MILL DAMS.

AN ACT to authorize Henry Eno and others to erect a dam across the Des Moines river.

Authority to construct a dam.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Henry Eno, George W. Howe, Seth Richards, and their associates, be and they are hereby authorized to construct a dam across the Des Moines river, in Van Buren county, in said Territory, at the point between the towns of North and South Bentonsport; which said dam shall not exceed three feet, above common low water mark, and shall contain a convenient lock, not less than one hundred and thirty feet in length, and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts, and other water craft, provided said water craft will bear two tons burthen.

Lock for the passage of boats.

Lock to be kept in repair, and boats passed without delay.

SEC. 2. It shall be the duty of the persons, authorized in the preceding section of this act to build said dam, at all times to keep the lock in the same in good repair, and they shall, at all times, pass any water craft above mentioned through, free of toll, without any unnecessary delay. And any person, who shall be unnecessarily detained, shall be entitled to recover of said owners double the amount of damages they shall prove to have sustained by reason of said detention.

Penalty for destroying or injuring dam or lock.

SEC. 3. Any person, who shall destroy, or in anywise injure, either said dam, or lock, shall be deemed to have committed a trespass, and shall be liable accordingly. And any person who shall wilfully or maliciously destroy, or injure, said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owners may have sustained, or be imprisoned, at the discretion of the court.

SEC. 4. Nothing herein contained shall authorize the individuals named in this act, their heirs and assigns, to enter upon or overflow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity.

Not to enter upon or overflow lands without consent of owner. Nuisances to be removed.

SEC. 5. The legislature of this territory (or State) may at any time alter or amend this act, so as to provide for the navigation of the said river.

This act may be amended.

SEC. 6. The foregoing act shall cease and determine at the expiration of fifty years, from its date, unless a future legislature, having the control of the same, shall otherwise determine: *And provided further*, That said dam and lock shall be completed in five years, from the passage of this act.

Limitation of the act. When dam and lock to be completed.

SEC. 7. *And be it further enacted*, That the said Henry Eno, George W. Howe, Seth Richards, and their associates, may at any time, within one year from the passage of this act, call a meeting of said company, by giving at least six weeks notice, in some newspaper printed within the Territory, or by posting up written or printed notices in three of the most public places in said county.

Meeting may be called within one year.

SEC. 8. And said company, when so convened, may call one of their number to preside, and may proceed to enact such by-laws, and rules and regulations, for the government of said company, as a majority of them may deem right and proper: *Provided*, Said by-laws do not conflict with the laws of the United States, or this Territory.

By-laws, rules, and regulations.

SEC. 9. All subsequent meetings shall be in such manner, and at such time and place, as a majority of said company shall direct

Subsequent meetings.

APPROVED, January 17, 1839.

MILL DAMS.

AN ACT to authorize Robert Willson, his heirs or assigns, to erect a dam across Skunk river.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Robert Willson, his heirs or assigns, are hereby authorized to construct a dam across Skunk river, in Henry county, in said Territory, in section twenty-four, in township seventy-one, north, in range seven, west,

Authority to construct a dam.

Lock for the passage of boats. at the seat now occupied by said Robert Willson; said dam shall contain a convenient lock, not less than seventy-five feet in length, and fifteen feet in width, for passage of steam, keel, and flat boats, and rafts, and other water crafts.

Lock to be kept in repair, and boats passed without delay. SEC. 2. It shall be the duty of the person, authorized in the preceding section of this act to build said dam, at all times to keep the lock in the same in good repair, and he shall, at all reasonable times, pass any water craft above mentioned through, free of toll, without any unnecessary delay. Any person, who shall be unnecessarily detained, shall be entitled to recover of said owner, or owners, double the amount of damages they shall prove to have sustained by reason of such detention.

Penalty for destroying or injuring dam or lock. SEC. 3. Any person, who shall destroy, or in anywise injure, either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly. And any person, who shall wilfully or maliciously destroy, or injure, said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owner, or owners, may have sustained, or be imprisoned, at the discretion of the court: *Provided*, Such imprisonment does not exceed three months.

Not to enter upon or overflow lands without consent of owners. Nuisances to be removed. SEC. 4. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the lands of any person, without the consent of such person; and he shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity.

This act may be amended. SEC. 5. The legislature of the Territory (or State) may at any time alter or amend this act, so as to provide for the navigation of the said river.

APPROVED, January 19, 1839.

## MILL DAMS.

AN ACT to authorize John Carter to erect a dam across Big Cedar, in Jefferson county.

Authority to erect a dam. SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That John Carter is hereby authorized to erect a dam across Big Cedar, in Jefferson county, in said Territory, at a

point on the north-east quarter of section thirty-three, in township No. seventy-one, north, range nine, west, which dam shall not exceed eight feet above low water mark.

SEC. 2. Any person, who shall destroy, or in any-wise injure said dam, shall be deemed to have committed a trespass, and shall be liable accordingly; and any person, who shall wilfully or maliciously destroy or injure said dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned, at the discretion of the court. Penalty for destroying or injuring the dam.

SEC. 3. Nothing herein contained shall authorize the individual named in this act, his heirs or assigns, to enter upon and flow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity. Not to enter upon and overflow lands without consent of owner. Nuisances to be removed.

APPROVED, January 22, 1839.

### MILL DAMS.

AN ACT to authorize Hiram C. Smith and ——— Cordell to erect a dam across Skunk river.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Hiram C. Smith and ——— Cordell be, and they are hereby authorized to construct a dam across Skunk river, in Henry county, in said Territory, at a point in section 28, township No. 70, north, range 5, west; which dam shall not exceed four feet above common low water mark, and shall contain a convenient lock, not less than one hundred and thirty feet in length, and thirty-five feet in width, for the passage of steam, keel, and flat boats, rafts, and other water crafts; *Provided*, Said water craft will bear two tons burthen: *And provided further*, That said dam and lock shall be completed within the term of four years from the passage of this act. Authority to construct a dam. Lock for the passage of boats. Proviso.

SEC. 2. It shall be the duty of the persons, authorized in the preceding section of this act to build said dam, at all times to keep the lock in good repair, and they shall, at all reasonable times, pass any water craft above mentioned through, free of toll, Lock to be kept in repair, and boats passed without delay.

without any unnecessary delay; and any person, who shall be unnecessarily detained, shall be entitled to recover of the owners double the amount of damages they shall prove to have sustained by reason of said detention.

Penalty for destroying or injuring dam or lock.

SEC. 3. Any person, who shall destroy, or in anywise injure, either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly; and any person, who shall wilfully or maliciously destroy or injure said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned, at the discretion of the court.

Not to enter upon and overflow lands without consent of owner. Nuisances to be removed.

SEC. 4. Nothing herein contained shall authorize the individuals named in this act, their heirs and assigns, to enter upon and flow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity.

This act may amended.

SEC. 5. The legislature of this Territory (or State) may at any time alter or amend this act, so as to provide for the navigation of said river.

APPROVED, January 23, 1839.

## MILLS AND MILLERS.

AN ACT regulating Mills and Millers, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any person, owning lands on one side of any stream or water course, the bed of which wholly, or in part, belonging to himself, or herself, and may be desirous of building a water grist mill, or saw mill, on such lands, or to erect any dam across such water course for that purpose, and shall not own the lands on the opposite side of such stream or water course, such person on application to the district court of the county where the opposite lands may be, may obtain a writ of *ad quod damnum*, to be issued, directed, and proceeded on as is hereinafter directed: *Provided*, That notice, in writing, of such application be given four weeks before said application by personal service on the owner or owners of such lands, his, her, or their agents, if to be found in the county, and if not, by

Owners of land on one side of a stream, how to acquire a title on the other side.

Application to district court.

Proviso, as to notice.

affixing such notice on the court house door of the county.

SEC. 2. The said writ shall be directed to the sheriff of the county in which the lands to be affected thereby may lie, commanding him to summon twelve good and lawful men of the county, to meet upon the lands in such named, on a day therein to be specified, and ten days' notice of the execution of such writ shall be given by the sheriff to the proprietor of such lands as before directed in the case of notices, unless the party, his, or her, or their agents were present in court when such writ was obtained.

Writ, to whom directed, on whom served, and notice to owners, &c.

SEC. 3. The jury so summoned, when met, shall be sworn and charged by the sheriff impartially, and to the best of their skill and judgment to view the lands in the said writ described, and the lands above and below the proposed dam, and ascertain the damage as by said writ directed; and shall locate and set apart, by metes and bounds, so much land as they shall think necessary for the purpose of erecting such dam, not exceeding three acres, having due regard, in such location, to the interest of both parties, and shall appraise the same at its true value; also to examine the lands of other persons which may probably be overflowed by the erection of such dam, and say what damage each owner will sustain thereby, and whether the dwelling house, out-house, orchard, or garden, of any such owner will be overflowed, and whether, in their opinion, the health of the neighborhood will be injuriously affected by such overflowing; which inquisition shall be made and signed by all the jurors, and returned by the sheriff with the writ to the next term of the court whence it issued.

Jury to be sworn and charged to view and ascertain damage.

Metes and bounds Limitation.

Dwelling houses, orchards, gardens, health, &c. Duty of jury, as to Inquisition. Return by sheriff.

SEC. 4. When the inquest aforesaid shall be taken, the party obtaining the same shall notify the owner or owners of lands mentioned in such inquisition, whose lands are to be affected by the same, to appear at the district court of the next term thereof, and show cause why leave should not be granted to build such mill and dam, which notice shall be served as before directed.

Notice to owners, to appear in court, and show cause, &c.

SEC. 5. Any person wishing to build such mill and dam any water course, who may own the land on both sides of such stream, shall make application as aforesaid to the court of the county where such mill is proposed to be erected, for a writ to examine

Where the land, on both sides, is owned by the same person.

Application for writ. Its object, service and return.	as aforesaid what lands may be thereby overflowed and what damage will be sustained by the owner or owners of such lands, and whether the health of the neighborhood will be affected by such overflowing; which writ shall be issued, directed, and returned, as before prescribed.
Inquest and evidence.	SEC. 6. If on such inquest, or other evidence, it shall appear to the court that the dwelling house of any proprietor, or any out-house, garden, or orchard, will be overflowed or the health of the neighborhood impaired, they shall not give leave to erect such dam; otherwise if the said court shall judge it reasonable, and for the public benefit, they may give leave, and lay the party applying under such regulations and restrictions in respect to the navigation of such stream as they shall judge proper.
Discretion of the court. Regulations and restrictions	
Acquisition and character of title.	SEC. 7. If the party applying obtain leave to build the said dam, he shall, on paying the proprietors of the lands located, and the damages assessed by the jury as aforesaid, become seized in fee of the lands so located, to him, his heirs, and assigns. But if he shall not, within one year thereafter, begin to build the said mill and finish it in three years, and afterwards keep it in good repair, for the accommodation of the public, or in case the said mill or dam be destroyed, shall not begin to rebuild in one year after its destruction, and finish it in three years, the said land shall revert to the former owner and his heirs, unless at the time of such destruction, the owner of such mill be an infant, or otherwise disabled in law, in which case the same time shall be allowed after such disability is removed.
Limitations.	
When title to revert.	
Exception.	
Operation of this act, as to damages.	SEC. 8. The inquest of the jury aforesaid, or the opinion of the court, shall not bar any prosecution or action which would otherwise be maintained in law had this act never been passed, other than for such injuries as were foreseen and estimated by the jury.
Non-compliance and	SEC. 9. Any person having obtained leave to erect any dam and mill as aforesaid, who shall neglect to finish the same within the time aforesaid, or having erected such mill shall fail to keep it in repair and running for the accommodation of the public, for the space aforesaid, at any one time, shall forfeit all rights acquired by virtue of this act, or any act of this Territory.
Forfeiture.	
What constitutes a public mill.	SEC. 10. All mills now in operation, or which may hereafter be put in operation, in this Territory, for

grinding wheat, rye, corn, or other grain, and which shall grind for toll, shall be deemed public mills.

SEC. 11. The owner or occupier of every public mill, within this Territory, shall grind the grain brought to his mill as well as the nature and condition of his mill will permit, and in due turn as the same shall be brought, and may take for the toll, if a water mill, or steam mill, for grinding and bolting wheat, or rye, one-eighth part; for grinding Indian corn, oats, barley, and buckwheat, not required to be bolted, one-seventh part; for grinding malt and chopping all kinds of grain, one eighth part: For an ox or a horse mill, for all kinds of grain, one-fourth part: *Provided*, If the owner of any such grain, ground at an ox or horse mill, shall furnish team to grind the same, with the consent of the owner or occupier of such mill, the same toll shall be taken as is allowed for a water or steam mill, and no more.

Regulations of steam and water mills.

Rates of toll.

Ox, or horse mills, rates of toll.

Proviso.

SEC. 12. It shall be the duty of each and every owner and occupier of every public mill, to give due and punctual attention when his mill shall not be out of repair, and to aid and assist in loading and unloading all grain which shall be brought to him to be ground. And he shall keep, in his mill, an accurate half-bushel measure, and an accurate set of toll dishes, and for a failure to perform any of the duties required by this act, every owner or occupier of a public mill shall forfeit and pay the sum of five dollars, to the use of any person who will sue for the same, as an action of debt in any court having cognizance thereof.

Duty of millers.

Measure and toll dishes.

Forfeiture.

SEC. 13. Every owner or occupier of a public mill as aforesaid, shall be accountable for the safe keeping of all grain received in his mill, for the purpose of being ground, with the bags or casks containing the same, and shall, when required, deliver the same, or the flour or meal thereof, to the owner, or his or her agent or servant, with the bags or casks in which the same was received: *Provided*, That such miller shall not be accountable for any bags or casks unless the same be distinctly marked with the initial letters of the owner's name, nor for the loss of grain bags or casks, which happen by unavoidable accidents.

Safe keeping of grain, &c.

Bags and casks Delivery of grain or flour. Bags, &c., marked.

Accidents.

SEC. 14. If any miller, or the occupier of any mill, shall take a greater proportionate quantity of toll than is allowed by this act, or shall not sufficiently grind, or grind and bolt, as the case may be, agreeably to the capacity of his mill, and in due turn, as

Taking unlawful toll, &c.

the same may have been brought; any miller so offending, shall forfeit and pay the sum of five dollars as before directed.

Forfeiture.

This act, when to take effect. SEC. 15. This act to be in force from and after the first day of May next.

APPROVED, January 25, 1839.

## MINORS, ORPHANS, AND GUARDIANS.

AN ACT concerning Minors, Orphans, and Guardians.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the courts of probate, in their respective counties, shall admit orphans, minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years, in all cases where such minor shall be possessed of, or entitled to, real or personal estate.

Orphan minors may choose guardians.

SEC. 2. Whenever it shall be represented to said court that any orphan minor, above the age of fourteen years, has not a guardian, it shall be the duty of said court to issue a notification to such minor to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or, on appearing, shall neglect to choose a guardian, the court shall appoint one for such minor, as if said minor were under the age of fourteen years.

Neglecting to do so, probate court to appoint.

SEC. 3. Where a minor, having a father living, shall be entitled to, or possessed of any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor should not be appointed; if sufficient reason be not shown, may appoint the father, if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose; if such minor neglect or refuse, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor. And when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

In what case the father may be appointed guardian.

SEC. 4. If the father of a minor be insane, or be incapable from want of understanding to take care of and provide for such minor, the court of probate shall appoint a guardian as though such father were dead, such insanity or incapacity to be ascertained by inquest, in the district court, as in other cases.

SEC. 5. Guardians, by virtue of their office as such, shall be allowed, in all cases, to prosecute and defend for their wards.

SEC. 6. The court of probate shall take, of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows:

"The condition of this obligation is such, that if the above bound A. B. who has been appointed guardian for C. D. shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship to the court of probate for the county of \_\_\_\_\_, from time to time, as he shall thereto be required by said court, and comply with all orders of said court, lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods, and chattels, title papers, and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall thereto be entitled, or to any subsequent guardian, should such court so direct, this obligation shall be void, or otherwise to remain in full force and virtue:" which bond shall be taken to the people of the Territory of Iowa, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all, or any one or more of the obligors, in the name, and to the use and benefit, of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

SEC. 7. Courts of probate shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianships, to said courts for adjustment; and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof to remove such guardian.

Probate court  
may remove  
guardians.

SEC. 8. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this act; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian to deliver up to such successor all goods, chattels, moneys, title papers, or other effects, belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she, or they comply with the order of the court.

Powers of guar-  
dians.

SEC. 9. Guardians shall have power to demand, sue for, and receive all moneys belonging to their wards, from executors and administrators, as soon as the same may be collected, or of any other person or persons in whose hands or possession the same may be: and it shall moreover be their duty to put to interest the moneys of their wards, upon mortgage security, to be approved of by the court; which letting shall always be for one year, and at the end of each year the interest shall be added to, and made part of the principal. And said guardians shall also have power to lease the real estate of the ward, upon such terms, and for such length of time, as the court of probate may direct: *Provided*, That such leasing shall never be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

Education of  
ward.

SEC. 10. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward; and, for that purpose, may pay out such portions of the ward's money as the court of probate shall from time to time, by order, direct: *Provided*, That the rents and profits arising from his real estate, and next the interest on the ward's money, shall always be first resorted to for the education and nurture of the ward.

District court  
may order sale  
of real estate.

SEC. 11. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application

of the guardian, by petition in writing, stating the facts, and having given notice to all persons concerned of such intended application, in some public newspaper printed in this Territory, or setting up written notices, in three of the most public places in the county, at least three weeks before the sitting of the court. Such order may enable the guardians to sell and convey the real estate, for the support and education of the ward, or to invest the proceeds in other real estate. The court in such order shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security of the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchaser or purchasers all the interest the ward had in the estate so sold. Application for the sale of such real estate shall be made in the county where the ward shall reside, although the estate may lie in a different county; but if the ward do not reside in the Territory, such application shall be made to the court of the county where the whole or any part of the estate shall be situated.

SEC. 12. An account of all moneys received by any guardian for the sale of real estate of any minor, as aforesaid, shall be returned, on oath, by said guardian to the court of probate of the county where letters of guardianship were obtained; and such moneys shall be accounted for, and shall be subject to the order of the court of probate, in like manner as other moneys belonging to such minor.

Account of moneys to be returned to probate court.

SEC. 13. Appeals shall be allowed, in all cases, from the order or judgment of the court of probate, to the district court, in the same manner as is provided by an act relative to wills and testaments, executors and administrators, and the settlement of estates.

Appeals allowed to district court.

SEC. 14. Guardians, on final settlement, shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are or shall be allowed by law to administrators.

Compensation to guardians.

APPROVED, January 25, 1839.

## NE EXEAT AND INJUNCTIONS.

AN ACT regulating the issuing of writs of *Ne Exeat* and Injunctions.

- Writs of ne exeat, in what cases granted.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That writs of *ne exeat republica* may hereafter be granted, as well in cases where the debt or demand is not actually due, but exists fairly and bona fide in expectancy, at the time of making application, as in cases where the demand is due; and it shall not be necessary to authorize the granting of such writ of *ne exeat* that the application should shew that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.
- Obligors, joint and several, and their remedies against each other.** SEC. 2. In case of joint or joint and several obligors, or debtors, if one or more of them be about to remove without the jurisdictional limits of this Territory, taking their property with them, leaving one or more co-obligors or debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived at the time of such intended removal, such co-obligor or debtor who remains shall be entitled, on application, to writ of *ne exeat* to compel the co-obligor or co-debtor, who is about to remove, to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or to join in the conveyance of the land. Also, in cases of security, the writ of *ne exeat* may issue on application of a security against the principal, or co-security, when the obligation or debt shall not be yet due, and the principal or co-security is about removing out of the Territory.
- Debt, delivery of property, or conveyance of lands.** SEC. 3. No writ of *ne exeat* shall be granted but on bill or petition filed, and affidavit to the truth of such allegations therein contained. Upon the granting of any such writ, the court, judge, or any person he may have appointed for that purpose, granting the same, shall endorse, or caused to be endorsed, on the bill or petition in what penalty bond and security shall be required of the defendant, and shall also, before issuing the said writ, take bond of the complainant with good and sufficient security in such sum as the said court, judge, or person authorized shall deem proper, conditioned that the said complainant will prosecute his bill, or petition, with effect, and that he will reimburse to the defendant
- Securities, principals, and co-securities.**
- Application for writ, how made.**
- Endorsement on writ.**
- Bond and security.**
- Condition.**

such damages and costs as he shall wrongfully sustain by vacation of the said writ. If any defendant to such writ of ne exeat shall think himself aggrieved he may bring suit on such bond, and if on trial it shall appear that such writ of ne exeat was prayed for, without a just cause, the person injured shall recover damage, to be assessed as in other cases on penal bonds.

SEC. 4. All writs of ne exeat shall be returnable into the district court of the proper county, and when granted by the judge, in vacation, may be issued under the hand of the judge, or the judge may direct the clerk of said court to issue the said writ, and to take bond of the complainant as above required.

SEC. 5. The writ of ne exeat shall contain a summons for the defendant to appear in the district court, and answer to the said petition, or bill, and upon the same being served upon him, he shall give bond with security in the sum endorsed on such writ, conditioned that he will not depart the Territory without leave of said court, and that he will render himself in execution to answer any judgment or decree which the said court may render against him; and in default of giving such security, he may be committed to jail as in other cases, for the want of bail; no temporary departure of the defendant from the Territory shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order, or decree of said court.

SEC. 6. The surety, in any bond for the defendant as aforesaid, may at any time before the said bond shall be forfeited, surrender the said defendant in exoneration of himself, in the same manner that bail may surrender their principal and obtain the same discharge.

SEC. 7. On the return of the writ of ne exeat, if the same shall have been duly served, the court shall proceed therein as in other cases in chancery, if the matters alleged in said bill be purely of an equitable character, and the time of performance of the duty or obligation of the defendant has expired, if not, then the proceedings shall be stayed until it has expired; but the court may, nevertheless, proceed to determine whether the said writ ought not to be quashed, or set aside.

Suit on bond and damages.

Return of writ.

Writ in vacation, and requirements, in such cases.

What writ shall contain, and service thereof.

Bond and security.

Condition.

Temporary absence, and return.

Security may surrender the principal, and be discharged.

Return of writ, and proceedings in court.

May be stayed, quashed, or set aside.

- Writs of ne exeat, by whom and when granted.** **Writs of injunction.** **Limitation.** **SEC. 8.** The supreme and district courts, in term time, and any judge thereof in vacation, shall have power to grant writ or writs of ne exeat and injunction. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace, for a sum not exceeding twenty dollars besides the costs.
- Return of writs.** **SEC. 9.** When an injunction shall be granted by the supreme court, or a judge thereof, it shall be made returnable into the district court of the proper county.
- Injunction, to stay proceedings at law.** **SEC. 10.** Where an injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained, or the suit is pending, and the writ of subpoena may be sent, in the first instance, into any county within this Territory where the defendant resides.
- Subpœna.**
- Restriction.** **SEC. 11.** No injunction shall be granted to stay any judgment at law for a greater sum than the complainant shall shew himself equitably not bound to pay, and so much as shall be sufficient to cover costs. Every injunction, when granted, shall operate as a release of all errors in the proceedings at law that are prayed to be enjoined. No injunction shall be issued unless the complainant shall have previously executed a bond with sufficient surety to the defendant, approved by the court or judge granting such injunction, and filed with the clerk in double the sum directed to be enjoined; conditioned for the payment of all money and costs due, or to be due, to the plaintiff in the action at law, and also all such costs and damages as shall be awarded against the complainant, in case the injunction shall be dissolved, or such bond may be entered into before the clerk of the district court of the county where the writ is required to be issued; the court or judge granting the injunction, having first approved the security. If the injunction be dissolved in the whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award on such part as may be released from the injunction, and the clerk shall issue execution for the same, when he issues execution upon such judgment.
- Release of errors.**
- Bond necessary to procure injunction.**
- Condition, costs and damages.**
- Clerk may take the bond.**
- Dissolution, costs, interests, damages, and execution.**
- Disobedience to, or breach of, injunction.** **SEC. 12.** If any person, against whom a writ of injunction shall be issued, shall, after the service thereof, be guilty of disobedience to, and breach of said injunction, it shall be lawful for the judge granting the

same, or if the same were granted in open court, then for any judge of that court, in vacation, to issue an attachment against the said person for a contempt, upon his being brought before the said judge, unless he shall disprove, or purge the said contempt, the said judge may, in his discretion, commit him to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

SEC. 13. Upon the filing of an answer, it shall be in order at any time, in term, to move for the dissolution of the injunction, and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer, the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. If after such dissolution is moved for the plaintiff in the bill will satisfy the court by his own affidavit, or the affidavit of any disinterested person, that the answer, or any material part thereof (to be specified in such affidavit), is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion until the next term. The testimony to be heard on such motions, aside from the bill and answer, shall be by deposition in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore, and the depositions taken to dissolve an injunction may be read on the final hearing of the cause in which they have been taken.

APPROVED, January 25, 1839.

## PARTITION.

AN ACT to provide for the partition of real property.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any one or more joint tenants or tenants in common of any

- lands, tenements, or hereditaments, being entitled to the present possession thereof, may commence suit in the district court of the county where the premises are situated for a partition thereof.
- Petition and affidavit.** SEC. 2. Such application shall be by petition, describing the property and the respective interests of all the joint owners thereof, if known, and if unknown, stating that fact also, which petition shall be verified by affidavit, and filed in the office of the clerk of the court.
- Who must be parties to the suit.** SEC. 3. All persons having interest in such property liable to be affected by the proceedings, whether they be in possession, expectancy, or by way of incumbrance, must, as far as known, be made parties to the suit, either as petitioners or defendants. If not included at first, their names may be inserted at any time during the progress of the cause.
- Infant owners.** SEC. 4. If any of such joint owners be an infant, or otherwise legally incapable of acting for himself in the premises, the person, to whom the care of his share of the joint property is by law intrusted, shall, so far as regards the proceedings authorized by this act, be deemed the owner thereof.
- Court may appoint guardian.** SEC. 5. If such incapable person shall have no one legally authorized to act for him as aforesaid, the court may, for that purpose, appoint a guardian *ad litem*, who shall give such security for the faithful discharge of his duties as the court may direct.
- Summons.** SEC. 6. After filing the petition aforesaid, a summons shall issue which shall be served and returned as in other cases.
- Notice to unknown defendants.** SEC. 7. If said summons be returned "not found" as to any of the defendants, or if the petitioners believe it at all probable that there may be joint owners not known and not named in the petition, the court may, upon their application, direct the clerk to make out a notice to such defendants not known or not found as aforesaid, to be signed by him, and furnished to the petitioners, or their attorney, on demand.
- What it shall contain.** SEC. 8. Such notice shall state concisely the objects of the petition aforesaid, and the names of the parties thereto, and shall require all persons interested in the property therein described (whether such persons are named in said petition or not), to appear and answer said petition on or before the first day of the court, or that the proceedings had in the cause thereafter will be binding and conclusive on them forever.

SEC. 9. The publication of such notice once in Publication of the notice. each week, for twelve weeks successively, in some newspaper printed most conveniently to the place where the court is held, and for four successive weeks in some newspaper printed at the seat of government for the Territory (such publications to be made as soon as practicable after the issuing of such notice), shall be considered in all respects equivalent to a personal service of the summons aforesaid.

SEC. 10. The answer of the defendants may be Defendant's answer. either joint or separate, and must state the amount and nature of each of their respective interests.

SEC. 11. Or it may deny the right of either and What it may deny. all the petitioners to any part of said property, or that, having an interest, they had no right to present possession, or any other matter which would bar the right of the petitioners to commence the suit; and if such answer be admitted or found true, the proceedings shall be dismissed at the cost of the petitioners.

SEC. 12. Any of the parties in interest, who shall Issue formed. have appeared as aforesaid either as petitioners or defendants, may reply to the answer of any other party, and whenever an issue is formed the court shall direct it to be entered on the record.

SEC. 13. The different issues of fact may be tried Juries. by separate juries, or any portion thereof by the same jury at the discretion of the court.

SEC. 14. After an amendment affecting the inter- Amendment. ests of any party, the court may allow further pleadings and the making up of other issues.

SEC. 15. After the introduction of new parties, as When new parties introduced. authorized by section third, unless notice shall have been given by publication as hereinbefore provided, the same proceedings in relation to such new parties shall be pursued, by summons or publication, as has been prescribed for the commencement of the suit.

SEC. 16. All issues of fact shall be tried by a jury Issues of fact. unless the parties interested shall otherwise agree.

SEC. 17. In all cases, each of the parties appearing, whether as petitioners or defendants, shall be required to exhibit his proof of title, and authentic copies of the conveyances by which the same is held, each of which (or copies thereof) shall be filed with the clerk. What each of the parties to exhibit.

SEC. 18. If the statements in the petition are not When statements to be taken as true. contradicted by some of the defendants, or by the

- aforesaid proofs themselves, such statements shall be taken as confessed and true.
- Judgment.** SEC. 19. After all the shares and interests of the parties shall have been settled in any of the methods aforesaid, judgment shall be rendered, confirming such shares and interests, and that partition be made accordingly.
- Parties not appearing.** SEC. 20. The shares and interests of all those parties who shall not have appeared as aforesaid, shall, as between such parties, remain undivided.
- Incumbrance.** SEC. 21. Any incumbrance on the undivided share of any party shall, after partition, be confined to the particular share of such party.
- Commissioners** SEC. 22. After judgment of partition shall have been rendered as aforesaid, the court shall appoint three reputable citizens of the county to act as commissioners for making such partition, and shall specify, in an order of court, the number and nature of the shares into which the property shall be divided.
- Vacancy.** SEC. 23. If any of the persons so appointed shall die, resign, or neglect to serve, the court, or the judge thereof in vacation, may fill the vacancy.
- Affidavit by commissioners** SEC. 24. Each of such commissioners, before proceeding to act, shall make affidavit that he will honestly and impartially execute the trust reposed in him, which affidavit shall be filed with the clerk of the court.
- Acts of majority valid.** SEC. 25. All the commissioners must meet together in the performance of their duties, but the acts of a majority so met shall be valid, subject, however, to the revision of the court.
- If partition would be prejudicial.** SEC. 26. If it shall appear to the commissioners that a partition of the property cannot be made without great prejudice to the owners thereof, they shall report that fact to the court.
- Partition according to value.** SEC. 27. Where a partition is deemed proper, it shall be made according to value, and not according to quantity. The commissioners shall designate the shares by permanent monuments, and may employ the county surveyor and necessary assistants to aid them therein.
- Report.** SEC. 28. The report of the commissioners shall be in writing, signed by at least two of them. It shall describe the respective shares with as much accuracy as would be necessary in a deed, and shall be accompanied with a plat of the premises. It shall also contain an item of their charges.

SEC. 29. Where the case will admit, the court shall direct the commissioners merely to make the partition into shares. The clerk, in open court, shall make the allotment of those shares, by first numbering the shares, and then drawing the names of the corresponding owners. after the manner of selecting a petit jury. Allotment of shares.

SEC. 30 Where the case requires, the commissioners may make a partition of a part of the property in the manner aforesaid and, as to the remainder, may report as provided in section twenty-eight. The proceedings, in relation to each of the two portions thus divided or undivided, shall be the same, respectively, as is by this act provided for property in either of the two predicaments. Partition of part of the property.

SEC. 31 The court shall allow the commissioners two dollars per diem for their services and expenses, as well as for the surveyor and other necessary assistants. Allowance to com.

SEC. 32. All the costs of partition shall be paid in the first instance by the petitioners, but eventually by all the parties in proportion to their interests. Costs.

SEC. 33. Said report, if not presented in court by the commissioners themselves, must be acknowledged or proved in the same manner as required in the case of deeds to entitle them to be recorded. It shall then be filed with the clerk. Report to be acknowledged.

SEC. 34. On good cause shown, the report may be set aside, and new commissioners appointed by the court as often as the case may require, who shall proceed as above directed. May be set aside.

SEC. 35. Upon the report of commissioners being confirmed, judgment shall thereon be rendered that such partition be firm and effectual forever. Confirmation.

SEC. 36. Where all the parties in interest shall have been duly notified to appear and answer the petition. either by the service of the summons, or by the publications, or by the publication herein before prescribed, the judgment aforesaid shall be binding and conclusive upon all persons whatsoever. In what cases judgment to be conclusive.

SEC. 37. In other cases it shall only bind those who shall have been duly served with the summons as aforesaid. Other cases.

SEC. 38. If the said commissioners shall report that the whole or any portion of the property is so situated that a partition thereof cannot be made without great prejudice to the owners, the court, if satisfied that such report is correct, may cause an order to be Court may order sale of property.

- entered, directing the commissioners to sell the premises so situated at public auction, to the highest bidder, and also fixing the terms of sale.
- Security.** SEC. 39. Before the commissioners proceed to sell as aforesaid, they shall give security, to be approved by the court, or judge thereof, conditioned for the faithful discharge of their duties as such commissioners. And at any time thereafter, upon good cause shown, such court or judge may require further or better security.
- General incumbrance.** SEC. 40. After making the order of sale as aforesaid, the court shall direct the clerk to ascertain and report whether there be any general incumbrance by mortgage, judgment, decree, or otherwise, upon any portion of said property.
- Holders to be parties.** SEC. 41. If such incumbrance be ascertained to exist, the holders thereof shall be made parties to the proceedings, and the same course pursued in relation thereto as directed in section nineteenth.
- Notice of sale.** SEC. 42. The commissioners shall give the same notice of sales to be made by them, as is required where lands are sold by the sheriff on execution.
- Report to be filed.** SEC. 43. After completing such sale, the commissioners shall report their proceedings to the court, with a description of the different parcels of land sold to each purchaser, and the price paid by him, which report shall be filed with the court.
- Conveyances.** SEC. 44. If such sales be approved and confirmed by the court, an order shall be entered directing the commissioners, or any two of them, to execute conveyances pursuant to such sales: *Provided*, That no such conveyances shall be made until all the money is paid, without receiving from the purchaser a bond and mortgage of the land so conveyed.
- If sales disproved.** SEC. 45. If such sales be disproved, the moneys paid, and the securities given, shall be returned to the respective purchasers.
- Conveyance to be recorded.** SEC. 46. Such conveyances, so executed as aforesaid, shall be recorded in the county where the premises are situated, and shall be a bar to all persons interested in such premises, who shall have been duly summoned or notified as hereinbefore directed.
- Share of party under legal disability.** SEC. 47. Where any of the parties are under any legal disabilities, as mentioned in section fourth, his share of the proceeds shall be paid over to the person who has represented him in the suit, to be invested for the benefit of the said owner, and to be

subject to the laws relative to real property until after such disability has ceased.

SEC. 48. Where the holder of an incumbrance shall have appeared pursuant to the provisions of section forty-one, he shall make proof of such incumbrance and the exact amount thereof, and if any issue of fact be thereon joined, it shall be tried as hereinbefore directed.

SEC. 49. If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which shall be considered an equivalent for such estate, the court shall direct such sum to be calculated according to the principles of law applicable to annuities, and which the person entitled thereto shall consent to accept in lieu thereof, by an instrument under his hand and seal, and acknowledged or proved in the manner required in case of deeds to entitle them to be recorded.

SEC. 50. If such consent be not given on demand, the court shall direct the proceeds of the whole share, upon which the incumbrance existed, to be invested, and the same disposition to be made of the proceeds thereof as though such instrument had remained real property after partition.

SEC. 51. The proceedings in relation to incumbrances, as above provided, shall not delay the distribution of the proceeds of those shares in regard to which no such proceedings are necessary.

SEC. 52. Any person claiming to hold an incumbrance upon any portion of the property, in relation to which the suit is brought, may, in default of the owner thereof, appear and act as his representative in any of the proceedings under this act.

SEC. 53. Persons having a contingent interest in said property may be made parties to the proceedings herein authorized, and the proceeds of the share so situated shall be invested until such contingent interest vests in some ascertained owner.

SEC. 54. In all cases the ascertained share of any absent or unknown owner shall also be invested for his benefit.

SEC. 55. Before the proceeds of any sales hereby authorized shall be paid over or invested, the due proportion of the expense of the aforesaid proceedings shall first be deducted.

SEC. 56. The proceedings authorized by this act being intended as a substitute for all partitions in

chancery as well as at law, the court is authorized to exercise equity powers, except as herein otherwise provided.

Security to refund.

SEC. 57. The court may, in its discretion, require all or any of the parties, before they shall receive the moneys arising from any sale as aforesaid, to give satisfactory security to refund such moneys, with interest, in case it shall afterwards appear that said parties were not entitled thereto.

Security to be by bond.

SEC. 58. Whenever by this act security is required to be given, it shall, unless otherwise provided, be by bond to the clerk of the court, and filed in his office, and if the conditions thereof be broken, it shall be prosecuted by him, or his successors, for the use of the parties aggrieved, whenever required by them so to do.

How investments to be made.

SEC. 59. All investments under the provisions of this act shall be made upon bond and mortgage of real estate, of the clear unincumbered value of at least twice the value of the investment, and the security shall be given, and the breach thereof presented, as provided in the preceding section.

Discharge, &c., of security.

SEC. 60. No such security shall be discharged, transferred, or impaired, by any act of the clerk, without an order from the court entered on the minutes thereof.

Clerk to receive and apply moneys, &c.

SEC. 61. Such clerk shall receive all moneys as they become due, and apply or re-invest the same, according to the circumstances of the case, as the court shall direct; and shall once in each year, or oftener if required by the court, render to said court an account in writing, and on oath, of all moneys received by him, and of the application thereof.

In what cases petitioners to pay costs.

SEC. 62. If the petitioners for any partition shall become nonsuit, or suffer a discontinuance, or a verdict shall pass against them, or judgment shall be rendered against them on demurrer, they shall pay costs, to be recovered and collected as in personal actions.

Writ of error may be bro't.

SEC. 63. Upon any final judgment, rendered pursuant to the provisions of this act, a writ of error may be brought by any of the parties to such judgment, either jointly or separately, in the same manner as in personal actions.

What errors may be assigned thereon.

SEC. 64. Errors may be assigned upon such writ for any erroneous adjudication upon the rights of any of the respective parties, and the court shall direct the person, whose interest is affected by such adju-

lication, to appear in such cause as a defendant in error.

SEC. 65. Judgment may be given by the court above either for affirmance or reversal in part, or in whole, or a new adjudication of the matter may be directed in the court below. The proceedings in other respects shall be the same as in personal actions.

APPROVED, January 4, 1839.

## PARTNERSHIPS.

AN ACT relative to limited Partnerships.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That limited partnerships for the transaction of any agricultural, mercantile, mechanical, mining, smelting, or manufacturing business, within this Territory, and for no other purpose, whatever, may be formed by two or more persons, upon the terms, with the rights, and powers, and subject to the conditions, liabilities herein prescribed.

Limited partnerships, by whom, and for what purposes, formed.

SEC. 2. Such partnerships shall consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons who shall contribute, in actual cash payment, a specific sum, as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them.

General and special partners, and their respective liabilities

SEC. 3. The general partners only, shall be authorized to transact business and sign for the partnership, and to bind the same.

General partners to transact business, &c.

SEC. 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain: first, the name, or firm, under which such partnership is to be conducted: second, the general nature of the business intended to be transacted: third, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence: fourth, the amount of capital which each special partner shall have contributed to the common stock: fifth, the period at which the partnership is to commence, and the period that it will terminate.

Certificate, to contain name of firm, nature of business, general and special partners, their residence, the amount of capital, and period of connection.

Certificate, by, before whom, and in what manner acknowledged.

SEC. 5. The certificate shall be acknowledged by the several persons signing the same, in the manner, and before the same persons, that deeds are now acknowledged, and the said acknowledgment shall be certified in the same manner as the acknowledgment of deeds is now certified.

Certificate, where, and by whom recorded.

SEC. 6. The certificate, so acknowledged and certified, shall be recorded and filed in the office of the register of deeds of the proper county, in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate and of the acknowledgment thereof duly certified by the register, in whose office it shall be filed, and under his official seal shall be filed and recorded in like manner in the office of the register of every such county.

How certified, and when to be recorded, in different counties.

Affidavit, as to moneys paid in.

SEC. 7. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, and to have been actually, and in good faith, paid in cash.

Partnership, when formed and the effect of false statements.

SEC. 8. No such partnership shall be deemed to have been formed, until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed. And if any false statement be made in such certificate, or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

Publication, under whose direction, when made, and consequence of neglect.

SEC. 9. The partners shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registering, in a newspaper published in the county where the principal business of the partnership shall be carried on, if there be one published in that county, if not, then in a newspaper in the Territory nearest to the said principal place of business, to be designated by the register of deeds of the county in which said registry shall be made, and if such publication be not made, the partnership shall be deemed general.

Affidavit of publication, and its effect.

SEC. 10. Affidavit of the publication of such notice, by the printers of the newspaper in which the same

shall be published, may be filed with the register of deeds, in the county where the principal business of the partnership may be carried on, and shall be evidence of the facts therein contained.

SEC. 11. Every renewal, or continuance, of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed, or continued, shall be deemed a general partnership.

Renewal, or continuance, and what is required herein.

SEC. 12. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital, or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership which shall, in any manner, be carried on after any such alteration shall have been made, shall be deemed a general partnership; unless renewed as a special partnership according to the provisions of the last section.

Alteration of names, business, or capital and the effect thereof.

SEC. 13. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term, and, if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

Names to be used in business transactions.

SEC. 14. Suits, in relation to the business of the partnership, may be brought and conducted by and against the general partners, in the same manner as if there were no special partners.

Style of suits.

SEC. 15. No part of the sum, which any special partner shall have contributed to the capital stock, shall be liable for any debts previously contracted by the general partners, nor shall any part of such sum be withdrawn by him, or paid, or transferred to him, in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership. But any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital, and if after the payment of such interest, any profit shall remain to be divided, he may also receive his portion of such profits.

Special partners, extent of their liabilities,—and their privileges.

Interest and profits.

SEC. 16. If it shall appear, that by the payment of interest, or profits, to any special partner, the original

Reduction of capital, prohibited.

capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest.

Special partners, their special privileges and liabilities.

SEC. 17. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise, as to their management, but he shall not transact any business on account of the partnership, nor be employed, for that purpose, as agent, attorney, or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner.

Partners to account to each other.

SEC. 18. The general partners shall be liable to account to each other, and to the special partners for the management of their concerns, both in law and in equity, as other partners now are by law.

Fraud and consequent damages.

SEC. 19. Every partner who shall be guilty of any fraud, in the affairs of the partnership, shall be liable, civilly to the party injured to the extent of his damage.

fer, in contemplation of insolvency, &c.

SEC. 20. Every sale, assignment, or transfer, of any of the property, or effects of such partnership, when insolvent, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien enacted, or security given, by any such partner, under the like circumstances, and with the like intent shall be void, as against the creditors of the partnership.

Judg'ts, liens, &c., when void.

SEC. 21. Every such sale, assignment or transfer of any of the property, or effects of the general, or special partner, made by such general or special partner, when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditor of the partnership, and every judgment confessed, lien enacted, or security given, by any such partner under the like circumstances shall be void, as against the creditors of the partnership.

Preference of creditors, prohibited.

SEC. 22. Every special partner, who shall violate any provision of the two last preceding sections, or who shall concur in, or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Liabilities thus incurred.

SEC. 23. In case of the insolvency, or bankruptcy, of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor,

until the claims of all the other creditors of the partnership shall be satisfied. Creditors to be first satisfied.

SEC. 24. No dissolution of such partnership, by the acts of the parties, shall take place, previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed, and recorded, in the register's office, in which the original certificate was recorded, and published once in each week, for four weeks, in a newspaper published, as is provided for in the ninth section of this act. Notice of dissolution to be recorded, where and how long, published.

APPROVED, January 25, 1839.

## PENITENTIARY.

AN ACT to provide for the erection of a Penitentiary, and establishing and regulating Prison Discipline for the same.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That a Penitentiary, of sufficient capacity to receive, secure, and employ one hundred and thirty-six convicts, to be confined in separate cells at night, shall be erected, at or near the place hereinafter designated, for the confinement and employment of persons sentenced to imprisonment and hard labor in the Penitentiary of said Territory, or State: *Provided,* That said Penitentiary shall be constructed on such a scale that in the estimation of the directors it can be fully completed for a sum not exceeding forty thousand dollars, exclusive of the labor of the convicts: *Provided,* That said directors shall lay a full and complete plan of said buildings and estimate in detail of the cost of erecting said buildings, before the Legislative Assembly, in the first week of their next session. Capacity to employ, &c., 136 convicts. Separate cells. Scale and cost of building, plan and estimate thereof, when and to whom submitted.

SEC. 2. There shall be elected, by joint ballot of the Council and House of Representatives of the Territory of Iowa, three directors of the Penitentiary hereby authorized to be built, and under the direction of a majority of them, the erection of the Penitentiary shall be conducted and prosecuted. They shall severally take an oath or affirmation faithfully to discharge the duties required of them. Of the three directors, to be elected by this General Assembly, the first elected shall hold his office for the term of three years, the second for the term of two years, and the third for the term of one year, and after the Directors, their number, and how elected. Directors' oath and tenure of office.

Vacancies, how filled.	<p>first election of said directors, as the term of office of any shall expire, his successor shall be elected for the term of three years; and in case a vacancy should happen in the office of director from death, resignation, or other cause, the Governor may appoint a person to fill such vacancy, and the person so appointed, shall qualify in manner hereinbefore provided, and shall hold his appointment until the legislature shall elect a person to fill his place during the remainder of the term; and the directors shall hold their office until their successors shall be elected and qualified.</p>
Where penitentiary to be located.	<p>SEC. 3. The directors of the Penitentiary, elected and qualified as aforesaid, are hereby authorized and instructed to locate and erect the said Penitentiary within one mile of the public square, in the town of Fort Madison, in the county of Lee: <i>Provided</i>, The citizens of said town of Fort Madison and county of Lee shall, on or before the first day of May next, execute to the directors, for the Territory of Iowa, a proper deed of conveyance for a tract of ten acres of land in fee simple absolute, which land shall in the opinion of the directors include a suitable spot on which to erect the said Penitentiary, and cause such deed to be recorded in the recorder's office of the county of Lee, and deposited in the office of the Secretary of the Territory. And the directors are hereby also authorized and instructed to procure by contract, or otherwise, the right to take and conduct into the Penitentiary for the use thereof any spring, or water course they may deem necessary.</p>
Fort Madison. Proviso, as to title and quantity of land.	
10 acres.	
Deed, where recorded, and with whom deposited.	<p>SEC. 4. The directors shall appoint a superintendent of the buildings, who shall hold his appointment during their pleasure, or until the buildings are completed. The superintendent shall take an oath, or affirmation, faithfully to discharge his duties, and shall execute to the Territory of Iowa a bond in the sum of ten thousand dollars, with at least two sufficient securities, freeholders of said Territory, to be approved of by the directors, conditioned for the faithful performance of the several duties that may from time to time be required of him by law, which bond the directors shall deposit in the office of the Secretary of the Territory; and the superintendent, having taken the oath, and executed the bond required of him as above, shall, under the direction, and subject to the control of the directors, project the plan for the said Penitentiary, conforming as nearly as convenient and may appear advisable, to</p>
Springs, or water.	
Superintendent, by whom appointed, and tenure of office. His oath, duties, and bond; condition thereof, and with whom deposited.	
Superintendent's direction and duties.	

the Connecticut State Prison at Wethersfield; he shall also, and under the like direction, and subject to the same control, contract for and procure all the materials of every description whatsoever necessary and proper for the erection of the penitentiary, shall contract for all the workmanship and labor necessary for the erection and completion of the same; he shall superintend the erection of the Penitentiary, in its progress, inspect the materials and workmanship, securing to the Territory a Penitentiary of the most substantial materials and workmanship.

SEC. 5. For the erection of the said Penitentiary, the Governor is hereby authorized and required to draw the sum of twenty thousand dollars, appropriated for the erection of public buildings in the Territory of Iowa, by an act of Congress approved July 7, 1838, and pay the same over to the Superintendent, to be used by him for the purchase of materials and pay of workmen and laborers necessary to erect said building: *Provided*. It shall not interfere with the twenty thousand dollars appropriated by the organic law, organizing the Territory of Iowa. And the said directors are hereby authorized and empowered to cause to be employed, in the erection of the Penitentiary, all such persons as now are, or may hereafter be, convicted of any infamous crime in this Territory, and sentenced to hard labor, or as many thereof as in the opinion of said directors can be employed, with advantage and safety to the Territory, and all convicts so employed shall be kept at hard labor, under such guards, and according to such rules and regulations, as the directors shall prescribe for that purpose, and an account of the labor of the convicts thus employed shall be carefully preserved and reported by the directors to the Legislative Assembly annually. The directors shall examine the accounts of the Superintendent as frequently as they may choose so to do, not less than once a month, and they shall make a settlement with him quarter yearly, and submit such quarterly settlements to the Legislative Assembly annually.

SEC. 6. The directors shall receive, annually, as a compensation for the services required of them by this act, such yearly salary, not exceeding eight hundred dollars, as to the directors may appear reasonable, to be paid quarterly, on the order of a majority of the directors.

<p>Appointment of Warden.</p>	<p>SEC. 7. As soon as the Penitentiary shall be fitted for the reception and employment of convicts, the directors shall thereupon appoint a Warden of the Penitentiary, who shall hold his office during the pleasure of the directors, he shall take an oath or affirmation faithfully to discharge the duties of his office, and shall give bond to the Territory, or State of Iowa, in the sum of ten thousand dollars, with at least two sufficient sureties, who shall be freeholders within this Territory, or State, to be approved of by the directors, conditioned for the faithful performance of the several duties which may from time to time be required of him, by law, which bond the said directors shall deposit in the office of the Secretary of the Territory, or Treasurer of the State of Iowa. The Warden shall appoint such number of assistants, not exceeding ten, as to the directors may appear necessary, and the assistants so appointed shall severally take an oath, or affirmation, to discharge, with fidelity, their duties as such, and shall enter into bonds to the Territory, or State of Iowa, with one or more sufficient sureties to be approved of by the directors, in any sum not exceeding five hundred dollars each, conditioned for the faithful discharge of their duties, which bond shall be deposited in the office of the Secretary of the Territory, or Treasurer, of the State of Iowa.</p>
<p>His securities, bond and condition.</p>	
<p>\$10,000.</p>	
<p>Bond, with whom deposited.</p>	
<p>Assistants; their securities, bond, and condition.</p>	
<p>\$500.</p>	
<p>Bond deposited.</p>	
<p>Compensation of Warden and assistants.</p>	<p>SEC. 8. The Warden shall receive an annual compensation for his services, to be fixed by the directors, not exceeding eight hundred dollars, and each assistant shall receive not exceeding twenty-five dollars per month, to be fixed by the directors.</p>
<p>Raw materials, manufacturers, and sales.</p>	<p>SEC. 9. The Warden shall attend to the purchasing of the raw materials, to be manufactured in the Penitentiary, and shall also attend to the sale of all articles manufactured therein; he shall also provide food and clothing for the convicts, and shall have in charge the whole operations of the establishment. All moneys drawn from the Treasury for the use of the prison, after the same shall be completed, shall be drawn on the order of the Warden, countersigned by at least one of the directors, and under such rules and regulations as shall from time to time be prescribed by law, or the rules established by the directors.</p>
<p>Food and clothing of convicts.</p>	
<p>Money, how drawn, &amp;c.</p>	
<p>Warden's account, inspection of prison and report.</p>	<p>SEC. 10. The directors shall, in turn, every two weeks, and in company every three months, inspect the warden's accounts, the different apartments of the prison, and the condition of the prisoners, and annually, in the month of December, submit to the</p>

Legislative Assembly a report of the progress and condition of the prison, together with suggestions as to the improvement that may to them appear necessary. Improvements.

SEC. 11. The directors of the Penitentiary shall from time to time establish by-laws, rules, and regulations, for the discipline and government thereof, and the Warden, for himself and his assistants, shall be held responsible for the observance and enforcement of such by-laws, rules, and regulations: *Provided*, always, That such by-laws, rules and regulations shall not be contrary to law, and the directors shall annually submit such by-laws, rules, and regulations, to the legislature. By-laws, rules, and regulations. Proviso, and report.

SEC. 12. That the directors may, at their discretion, employ any minister of the Gospel to officiate as chaplain in the Penitentiary, and they are hereby authorized to pay such minister of the Gospel any sum not exceeding five dollars for each and every Sabbath he shall so officiate as chaplain in the said Penitentiary. Minister of the Gospel may be employed, his compensation.

SEC. 13. The whole amount of twenty thousand dollars appropriated in the fifth section of this act, may be expended in the first instance, if necessary, in the erection of the cells and inclosure of the Penitentiary, but if at any time hereafter the Congress of the United States shall make a sufficient specific appropriation for the establishment of a Penitentiary, within this Territory, the said twenty thousand dollars shall be refunded from such specific appropriation, and expended in the erection of other public buildings within the Territory of Iowa. Appropriations, past and future.

APPROVED, January 25, 1839.

## PETITIONS.

AN ACT to regulate the mode of petitioning the Legislature in certain cases.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That previously to any petition or memorial being received at any future session of the legislature, praying that an act may be passed, whereby the particular rights or privileges of any individual or individuals, bodies politic or corporate, may be affected or infringed, notice of such intended application by petition or memorial shall be given at least thirty days before Public notice to be given of any intended application to the legislature.

the ensuing session of the Legislature, either by advertisement in a newspaper printed within the county where the parties interested reside, or if there be no such paper, then said notice shall be given by advertisement, to be fixed on the door of the court house, and at three other of the most public places in said county, for the said period of thirty days.

How long petition or memorial may be circulated.

SEC. 2. That no such petition or memorial shall be received by any future legislature, which petition or memorial has been in circulation more than six months, previous to the commencement of the session at which it shall be presented.

Affidavit to accompany petition or memorial.

SEC. 3. That all such petitions and memorials shall be accompanied with the following affidavit, to be sworn to and subscribed by the person, or persons, who may have carried about or put the same in circulation: "Territory of Iowa, county of \_\_\_\_\_ ss. I, A. B., do solemnly swear that I have presented the above petition to the persons whose names are thereunto subscribed, and to the best of my knowledge they are all residents of this county, are of proper age, and have the qualifications of voters, and that the object of said petition, or memorial, has been explained, and that the signatures are all signed by the proper persons whose names appear thereto, or by some person duly requested so to do by such person.

(Signed,) C. D.

Sworn and subscribed to before me, at my office, this \_\_\_\_\_ day of \_\_\_\_\_ 18—. O. M., Justice.

Duty of President of Council, and speaker of House of Rep.

SEC. 4. That it shall be the duty of the President of the Council, or Speaker of the House of Representatives, when such petition, or memorial, shall be presented, to inquire and ascertain whether notice thereof has been given agreeably to the provisions of this act, and whether such petition, or memorial, has been in circulation more than six months, and whether the affidavit, prescribed in section three of this act, accompanies said petition, or memorial; and if satisfactory proof be given that the foregoing requirements have been complied with, then such petition, or memorial, shall be received.

Repealing clause.

SEC. 5. That the act of Michigan, entitled "An act to regulate the mode of petitioning, &c.," and an act of Wisconsin, supplementary thereto, approved, January 19, 1838, are hereby repealed.

APPROVED, January 19, 1839.

## PRACTICE.

AN ACT regulating Practice in the district courts of the Territory of Iowa.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all writs issued by any court in this Territory shall run in the name of the United States of America, and bear test in the name of the presiding judge and shall be sealed with the seal of said court, signed by the clerk thereof, and made returnable to the first day of the next term, after the date of such writs.

Authority, test,  
seal, date and  
return of writs.

SEC. 2. It shall be the duty of the sheriff, or coroner, to serve all process of summons, or capias, when it shall be practicable, ten days before the return day thereof, and to make return of such process to the clerk who issued the same, by or on the return day, with an endorsement of his service, the time of serving it, and the amount of his fees: *Provided,* That when such process shall have been directed to a foreign county, the officer executing the same, may make return thereof by mail, and the clerk may charge the postage and tax the amount in his fee bill.

Service and  
return of writs,  
by whom, to  
whom, and  
when, with  
amount of fees.

Proviso.

SEC. 3. If it shall not be in the power of such sheriff or coroner to serve such summons, or capias ten days before the return day thereof, he may execute the same at any time before or on the return day, but in such case the defendant, or defendants, shall be entitled to a continuance and shall not be compelled to plead before the next succeeding term.

Continuance  
granted for cer-  
tain reasons.

SEC. 4. Whenever it shall appear by the return of the sheriff, or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another summons, or capias (as the case may be), and so on until service be had and the defendant or defendants be summoned or brought into court; and if such summons or capias be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment in the same manner as if the defendants were in court, and any judgment so obtained, shall be valid against the defendant or defendants on whom the process had been served, and the plaintiff or plaintiffs may at any time afterwards have a summons in the nature of a scire facias against the defendant or defendants not served with the first process as aforesaid, to cause him, her, or them to appear in the said court and show cause why he, she,

Original pro-  
cess may be  
rendered from  
term to term.

And the trial  
may proceed  
and judgt be  
had, where all  
the def't's have  
not been serv-  
ed.

How said def't's  
may be made a  
party in such  
judgt's.

- Credits, and form and effect of such judgt's. or they should not be made a party to such judgment, and the court shall thereon proceed to hear and determine the matter in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case shall be, that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant in the former judgment, the amount of his debt, or damages, as the case may be.
- Rule on the sheriff to return process. SEC. 5. If any sheriff, or coroner, to whom any summons or capias shall be delivered, shall neglect or refuse to make return of the same before or on the return day of such process, the plaintiff may enter a rule requiring said sheriff or coroner to make return of such process, on a day to be fixed by the court, or to show cause, on that day, why he should not be attached for a contempt of the court; and the plaintiff shall thereupon cause a written notice of such rule to be served on such sheriff or coroner, and if good and sufficient cause be not shown to excuse such officer, the court shall adjudge him guilty of a contempt, and shall proceed to punish such officer as in other cases of contempt.
- Service of notice. SEC. 6. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing, or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the court at which the summons or capias is made returnable, the court on motion of the defendant shall continue the cause, at the costs of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial, and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of non-suit.
- Contempt and punishment. SEC. 7. The clerks of the district courts in this Territory shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the names of the plaintiff's attorney, and he shall furnish the judge and the bar at each term with a
- Declaration, account, or other writing, to be filed, and when.
- Continuance, the first term.
- Second term, judg't for def't, if declaration, &c., be not filed.
- Clerk shall enter parties, cause of action, names of attorneys, &c., on a docket.

copy of the same, in which all indictments and causes to which the United States may be a party, shall be first set down, after which shall be set down all cases in law, in order, according to the date of their commencement, and lastly, the suits in chancery; and the clerk shall also set and apportion the causes for as many days of the term as he may think necessary, or be directed by the judge, and all subpoenas for witnesses shall be made returnable on the day on which the cause in which the witnesses are to be called, is set for trial.

Classification  
of causes.

Apportion-  
ment of causes,  
and attendance  
of witnesses.

SEC. 8. The clerk shall from time to time issue subpoenas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend is set for trial, and every clerk who shall refuse so to do, shall be fined at the discretion of the court in any sum not exceeding one hundred dollars.

Duty of clerk  
as to witnesses.

Penalty.

SEC. 9. In all cases pending in any district court of this Territory, if both the parties shall agree, both matters of law and fact may be tried by the court.

When the  
court may de-  
cide the law  
and the facts.

SEC. 10. The several district courts shall have power in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice thereof given, to require the parties, or either of them, to produce books or writing in their possession or power, which contain evidence pertinent to the issue, and it shall be the duty of the defendant or defendants, in all cases where he, she, or they intend to prove on trial any accounts or demands against the plaintiff or plaintiffs, to file with his plea a bill of the particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved to the jury, or court, on that trial.

Books, writings  
and accounts  
may be requi-  
red.

Particular  
items to be  
filed with deft's  
plea.

SEC. 11. On the appearance of the defendant or defendants, the court may allow such time to plead as may be deemed reasonable and necessary, and for want of appearance, may give judgment by default on calling the cause, except in cases where the process has not been served or declaration filed ten days before the term of the court, but all the causes shall be tried, or otherwise disposed of, in the order they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct. And whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit

Time to plead.

Judgment by  
default.

Exception.

Continuance.

- of the party so applying, or his, her, or their authorized agent, showing that due diligence has been used to obtain it, and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses, and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.
- Due diligence.**  
**Names and residence of witnesses, and facts to be proved.**  
**Admission of facts.**  
**Multiplicity of pleas.**  
**General issue, and special matter.**  
**Execution of instruments.**  
**Pleas verified.**  
**Proviso.**  
**Executors, and administrators.**  
**Judgments by default, on written instruments.**  
**Damages.**  
**When judgments by default set aside.**
- SEC. 12.** The defendant may plead as many matters of fact in several pleas as he may deem necessary, for his defence, or may plead the general issue, and give notice in writing under the same of the special matters intended to be relied on for a defence on the trial, under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been especially pleaded and issue taken thereon; but no person shall be permitted to deny on trial the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of defence or set-off, unless the person so denying the same shall, if defendant verify his plea by affidavit, and if plaintiff shall file his or her affidavit denying the execution of such instrument: *Provided*, If the party making such denial be prosecuting, or sued as executor or administrator, it shall be sufficient to state in such affidavit the belief of the party making the same according to his or her best knowledge, that such instrument was not executed by the testator or intestate.
- SEC. 13.** Whenever judgment shall be given against the defendant or defendants by default in any action brought on any instrument of writing for the payment of money only, the court may direct the clerk to assess the damages by computing the interest and principal and report the same to the court, upon which final judgment shall be given, and in all other actions, when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.
- SEC. 14.** The court may, in its discretion, before final judgment, set aside any default upon good and sufficient cause, upon affidavit, upon such terms and conditions as shall be deemed reasonable: *Provided*,

That no judgment by default shall be set aside unless Proviso, as to the motion, is made at the term said judgment was time. rendered.

SEC. 15. All affidavits made in court during the Affidavits must progress of any cause and relating thereto, shall be be filed and filed and preserved by the clerk. preserved.

SEC. 16. In actions brought on penal bonds, con- Actions on pe- ditioned for the performance of covenants, the plain- nal bonds. tiff may assign in his declaration as many breaches Breaches of co- as he may think fit, and the jury, whether on trial of venants. the issue, or of inquiry, shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as a secu- Penalty to rity for such other breaches as may afterwards hap- stand as securi- pen; and the plaintiff may, at any time afterwards, ty. sue out a writ of inquiry to assess damages for the Damages. breach of any covenant, or covenants, contained in such bond subsequent to the former trial or inquiry, and whenever execution shall be issued on such judg- Execution. ment, the clerk shall endorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coroner (as the case may be) shall only collect the amount so endorsed: *Provided*, That in all cases where a writ of inquiry of damages shall be issued for any such breaches subsequent to the first trial or inquiry, the defendant, or his agent Notice to def't or attorney shall have at least ten days' notice in or his att'y. writing of the time of executing the same.

SEC. 17. The defendant, or defendants, in any ac- Set-off, plea, tion brought upon any contract or agreement, either and notice. express or implied, having claims or demands against the plaintiff in such actions, may plead the same or give notice thereof under the general issue, as is provided in the twelfth section of this act, or under the plea of payment, and the same or such part thereof as the defendant shall prove on trial shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due, and if it shall appear that the plaintiff be indebted to the defend- Judgment for ant, the jury shall find a verdict for the defendant, defendant. and certify to the court the amount so found, and the court shall give judgment in favor of such defendant for the amount so certified, with the costs of his de- Execution. fence, and execution shall be issued on such judgment, as in other cases.

SEC. 18. In all civil actions each party shall be en- Preemptory titled to a challenge of three jurors without showing challenge. cause for such challenge, and when the jury retire to

- Documentary evidence.** consider of their verdicts they shall be permitted to take any papers that may have been used as evidence on the trial. And no plaintiff shall suffer a non-suit on the trial, unless he do so before the jury retire from the bar.
- Non-suit.**
- Bill of exceptions part of the record.** **SEC. 19.** If during the progress of any trial in any civil cause either party shall alledge an exception to the opinions of the court and reduce the same to writing, it shall be the duty of the judge to allow the said exceptions and to sign and seal the same, and the said bill of exceptions shall thereupon become a part of the records of such cause; and if any
- Judge's refusal.** judge of the district court shall refuse to allow or sign such bill of exceptions tendered and the same
- How remedied.** is signed by three or more disinterested by-standers, or attorneys of said court, the judge shall then permit the said bill to be filed and become a part of the record, if the judge refuse, the supreme court of this Territory may, when such cause is brought before them, by writ of error or appeal, upon proper affidavit of such refusal, admit such bill of exceptions as a part of the record.
- By supreme court.**
- Verdict, how rendered.** **SEC. 20.** It shall be sufficient for the jury to pronounce their verdict by their foreman in open court, without reducing the same to writing, and the clerk shall enter the same in form under the direction of the court, and if either party may wish to except to the verdict or for other causes to move for a new trial, or in arrest of judgment, he shall, before final judgment be entered, give by himself or counsel to the opposite party or his counsel, the points in writing, particularly specifying the grounds of such motion and shall also furnish the judge with a copy of the same, and final judgment shall thereupon be stayed until such motion can be heard by the court: But no more than two new trials shall be granted to the same party in the same cause, nor shall any verdict or judgment be set aside for irregularity only, unless cause be shown for the same during the sitting of the court at the term such judgment or verdict shall be given.
- Entry in form.**
- Motion for new trial, or in arrest of judgment.**
- Grounds of such motion, how stated. Proceedings stayed. Limitation.**
- Irregularity.**
- General verdict, how sustained.** **SEC. 21.** Whenever an entire verdict shall be given on several counts, the same shall not be set aside or reversed if any one or more of the counts be good.
- Attachment.** **SEC. 22.** In cases of attachment against absent or absconding debtors, the attaching creditor shall, on the return of the writ of attachment, or at the term of the court where the same is made returnable, file

a declaration (unless otherwise provided in the act Declaration regulating writs of attachment), with a copy of the therein, instrument, or account on which the attachment was issued as in other cases; after which the cause shall proceed as in other cases, and if no declaration shall be filed, the defendant, on entering his appearance, shall have a judgment against the attaching creditor Judg't for def't. for costs.

SEC. 23. Any person, for a debt bona fide due, Judg't by confession, release may confess judgment by himself or attorney, duly of errors. authorized without process, and every confession of judgment whether with or without process shall operate as a release of errors on the entering up of the judgment or making record thereof, and in no case, except when the title of land shall come in question, shall it be necessary for the clerk to make a The record, in complete record, unless especially requested by one such cases. of the parties, who shall pay the costs of the complete record.

SEC. 24. Where judgment shall be arrested for any Judg't arrested defect in the record of proceedings, after the first for error. process, the plaintiff shall not be compelled to commence his action anew, but the court shall order Order of court new pleadings to commence with the error that caused the arrest.

SEC. 25. The clerks of the several district courts Clerk's fee book shall keep a fee book, in which shall be clearly and how kept. distinctly set down in items under the proper title, What it shall the costs of each suit, including the sheriffs and witnesses, as well as clerk's fees, noting distinctly what fees have accrued on the part of each party, which fee book shall be a public record, and, whenever any Fee book, a suit shall be determined and final judgment entered, public record. the costs and charges of each party litigant shall be made up, and, together with the costs of the prevailing party, shall be included in the judgment, and the clerk shall always send out a bill of such costs with Bill of costs the execution, and the costs of the party failing in to accompany the suit, shall be collected in the manner prescribed execution. by law. How collected.

SEC. 26. If any clerk shall issue a fee bill, or a bill Bill of costs to of costs, with the execution, without first entering correspond the same in his fee book, or if any such bill of costs with the re- or fee bill shall be so issued which shall not be in cord. substance a copy of the recorded bill, the same shall Otherwise void. be void, and any person having paid such bill of costs, or fee bill, may recover from the clerk the Penalty. amount thereof with costs of suit; in any court

Names of witnesses, and number of days. Docket book.	having cognizance thereof, and in every bill of costs to be made or recorded as aforesaid, the names of the witnesses shall be stated with the number of days each attended at every term.
Character, and correction of fee book.	SEC. 27. It shall not be necessary to insert in the judgment other than the docket book, the costs of the prevailing party, except in cases where a complete record shall be required, but the fee book of the clerk shall be taken and deemed a part of the record, subject, however, at all times to be corrected by the court.
Judgment docket, order thereof.	SEC. 28. The clerks of the several district courts shall provide and keep in their respective offices a well bound book for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts, and it shall be the duty of the said clerks, during every term, or within thirty days thereafter, to enter in such term in alphabetical order by the name of the person against whom the judgment or decree was entered, which shall contain, in columns ruled for that purpose, the names of the parties, the date, the nature of the judgment, or decree, the amount of the debt, damages and costs, the book and page in which it is entered, and leaving a blank column, or columns,
Duty of clerk detailed.	
Satisfaction of judgment.	for entering a note or memorandum of the satisfaction, or other disposition thereof; and when any judgment or decree shall be satisfied by execution, or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof in the column left for that purpose, showing how disposed of, and the date, book, and page where the evidence thereof is recorded, and such docket may be searched by persons, at all reasonable times, without fee; and every clerk who shall fail to keep such docket or to enter therein any judgment, or decree, as aforesaid, shall forfeit and pay a sum not exceeding one hundred dollars, nor less than twenty-five dollars, and costs of suit, the one half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same, to be recovered by action of debt in the district court.
Penalty.	
How recovered.	SEC. 29. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution to him delivered, and deliver when the same shall be returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the party suing out such execution on giving to said sheriff or coro-
Remedy against sheriff, &c.	

ner five days' notice, in writing, of his, her, or their intention, may apply to the court for relief: and it shall be the duty of the court, on proof by affidavit of the delivery of such execution, if the same be not returned, or on proof that such money has been collected and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution, or if the amount, or any part thereof has been collected, to pay over the same immediately, with twenty per cent. thereon from the time of collection till paid, and on failure of such sheriff or coroner to comply with such order, on demand, and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly; or the plaintiff in such execution may have judgment for the money, with twenty per cent. thereon so collected, and have execution as in other cases: *Provided*, That in such cases, no stay of execution shall be granted.

Notice.

Duty of court,

To grant an order.

Its requirements.

Contempt, and punishment.

Remedy modified.

Proviso.

SEC. 30. The clerk shall enter, in a book to be kept by him for the purpose, the return of the sheriff or coroner of all executions within thirty days after the same shall be returned, under the penalty imposed in the twenty-eighth section of this act.

Duty of clerk, as regards return of executions.

Penalty.

SEC. 31. Appeals from the district court to the supreme court of this Territory shall be allowed in all cases when the judgment or decree appealed from be final, and shall amount, exclusive of costs, to the sum of twenty-five dollars: *Provided*, Such appeals be prayed for at the time of rendering the judgment or decree, and provided the party praying such appeal shall, by himself, agent, or attorney, give bond, with sufficient security, to be approved by the court, and filed in the office of the clerk; which bond shall be in a reasonable sum, sufficient to cover the amount of the judgment appealed from, and all costs, interests, and damages, in case the judgment shall be affirmed; and also for the due prosecution of said appeal, and the obligee in such bond may at any time on a breach of the condition thereof, have and maintain an action at law, as on other bonds.

Appeals from district to supreme court, when allowed.

Proviso.

Bond and security.

Condition.

Forfeiture and remedy.

SEC. 32. The appellant shall lodge in the office of the clerk of the supreme court, an authenticated copy of the record or decree appealed from by or before the third day of the next succeeding term of said supreme court: *Provided*, That if there be not thirty days between the time of making the appeal and the sitting of the court, then the record shall be lodged

Record authenticated and filed.

Proviso, as to time.

- as aforesaid, at or before the third day of the next succeeding term of the supreme court; otherwise the said appeal shall be dismissed, unless further time to file the same shall have been granted by the supreme court, upon good cause shown.
- Dismissal.**            **SEC. 33.** In all cases of appeals and writs of error, the supreme court may give final judgment and issue execution, or remand the cause to the district court in order that an execution may be there issued, or that other proceedings may be had thereon.
- Exception.**
- Execution awarded, or record remanded.**
- Supersedeas, how granted.**    **SEC. 34.** No writ of error shall operate as a supersedeas, unless the supreme court, or some justice thereof, in vacation, after inspecting a copy of the record, shall order the same to be made a supersedeas; nor until the party procuring such writ shall file a bond in the manner and with the condition required in cases of appeals; when the clerk issuing such writ shall endorse thereon that it shall be a supersedeas and operate accordingly, and the parties in writs of error shall be subject to the same judgment and mode of execution as is provided in cases of appeals.
- Bond and condition.**
- Duty of clerks.**
- Judgment and execution.**    **SEC. 35.** Whenever the supreme court shall be equally divided in opinion on hearing an appeal or writ of error, the judgment of the court below shall stand affirmed.
- Difference of opinion.**
- Charge of district court confined to law.**    **SEC. 36.** The district courts in charging the jury, shall only instruct them as to the law of the case.
- Scrawl equal to seal.**    **SEC. 37.** That any instrument of writing to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation to all intents as if the same was sealed: *Provided*, The seal be referred to in the body of the instrument.
- Proviso.**
- Incompetent witnesses.**    **SEC. 38.** A negro, mulatto, or Indian, shall not be a witness in any court or in any case against a white person.
- Non-joinder in appeal or writ of error, not to affect proceedings thereon.**    **SEC. 39.** That in all cases where a judgment or decree shall be rendered in any district court in any case whatever, either in law or chancery, against two or more persons, either one of the said persons shall be permitted to remove said suit to the supreme court by appeal or writ of error, and for that purpose shall be permitted to use the names of all of said persons, if necessary; but no costs shall be taxed against any person who shall not join in said appeal or writ of error. And all such cases shall be determined in said supreme court as other suits are, and in the same manner that it would have been

if all the parties had joined in said appeal or writ of error.

SEC. 40. Hereafter minors may bring suits in all cases whatever by any person that they may select as their next friend, and the person so selected, shall file a bond with the clerk of the district court, or justice of the peace, before whom the suit may be brought, acknowledging himself bound for all the costs that may accrue and legally devolve upon such minor; and after bond shall have been so filed, said suit shall progress to final judgment and execution as in other cases.

Minors may sue by next friend.

Bond required for costs.

SEC. 41. That in any species of personal actions in law or equity when there is more than one defendant, the plaintiff commencing his action where either of them reside, may have a writ or writs issued, directed to any county or counties where the other defendants, or either of them, may be found: *Provided*, That if a verdict shall not be found, or judgment rendered against the defendant or defendants, resident in the county where the action is commenced, judgment shall not be rendered against those defendants who do not reside in the county, unless they appear and defend the action.

Proceedings where defendants reside in different counties.

Proviso.

SEC. 42. Interpreters may be sworn truly to interpret when necessary.

Interpreters.

SEC. 43. No declaration shall hereafter be considered necessary to be filed in any scire facias to revive a judgment.

Sci. Fa. to revive judgment, Narr. not required.

SEC. 44. That when any person, holding a bond or note for the direct payment of property or money, shall desire to put the same in suit, he may do so by filing with the clerk of any district court having jurisdiction thereof, together with a petition purporting as follows:

Filing bond or note, &c.

And petition.

District Court, \_\_\_\_\_ }  
County, Iowa Territory. } sct.

A. B., plaintiff, states that he holds a bond, or note, (as the case may) on the defendant, C. D., in substance as followeth: (here insert a copy of the bond or note), yet the same debt remains unpaid, wherefore he prays judgment for his debt and damages for the detention of the same, together with his costs.

Form.

SEC. 45. If the plaintiff shall hold the bond or note as indorsee, then after reciting the bond or note, say on which is the following assignment: (recite the assignment) whereby the plaintiff hath become the

Assignment of bond or note.

proprietor thereof, of which the defendant hath had due notice.

Summons and petition, their requirements and service.

SEC. 46. A copy of the petition shall be sent out with the summons annexed thereto, requiring the defendant or defendants to appear and answer the said demand on the first day of the succeeding term, which shall be executed by the sheriff by delivering a copy of the petition and summons to the defendant, and each of them, if there be more than one.

Time of service and its effect.

SEC. 47. The sheriff or other officer, in his return, shall note the day on which it shall have been executed; and whenever it shall appear therefrom that it was executed ten days or more before the return day, judgment shall be rendered at the first term, subject to be continued on affidavit, as provided in this act, but if the process shall not have been executed ten days before the sitting of the court to which the same is made returnable, a continuance shall be entered, unless a trial shall be had by consent of parties.

Continuance.

Petition equal to declaration.

SEC. 48. The said petition shall stand in the place of a declaration, the defendant or defendants may appear and plead, and then an issue may be joined as in actions of debt on such bond or note; but if the defendant or defendants shall not appear and plead, the plaintiff may take judgment by default, as in other cases.

Judgment by default.

Defects after verdict, how cured.

SEC. 49. After verdict, the act of jeofails shall apply as in actions of debt heretofore; nothing herein shall prohibit any person who shall choose so to do, from suing in the ordinary way, and the fees shall be the same as in other cases.

Election of remedies.

Holding to bail — affidavit required.

SEC. 50. When a petition shall have been filed according to the provisions of this act, and on affidavit to hold to bail as herein provided, there shall be issued by the clerk a *capias* and an order to hold to bail, as is now or may be provided by law. In such cases the affidavit shall be in substance as follows:

Territory of Iowa, }  
 \_\_\_\_\_ county. } ss.

Form.

A. B., plaintiff in the above petition, maketh oath and saith, that he has a real, subsisting, and unsatisfied cause of action set out in the above petition, and amounts to the sum of \_\_\_\_\_; and further, that the deponent will be in danger of losing his debt unless the defendant be held to bail. Signed, A. B.

Acknowledgment, before whom taken.

Sworn to and subscribed before me at my office, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. — G. W. H., Clerk.

Which affidavit may be made before the clerk of the district court, or any justice of the peace of the proper county.

SEC. 51. This act to take effect and be in force from and after the first day of May next. This act, when to take effect.

APPROVED, January 25, 1839.

## PROMISSORY NOTES.

AN ACT relative to promissory notes, bonds, due bills, and other instruments of writing.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all promissory notes, bonds, due bills, and other instruments of writing, made by any person, body politic, or corporate, whereby such person, or persons, promise to pay any sum of money, or articles of personal property, or any sum of money in personal property, or acknowledge any sum of money, or articles of personal property to be due, shall be taken to be due and payable to the person to whom the said note, bond, bill, or other instrument of writing is made; and any such note, bond, bill, or other instrument of writing, made payable to any person, shall be assignable, by endorsement thereon, under the hand of such person and of his assignee in the same manner as bills of exchange, so as absolutely to transfer and vest the property thereof in each and every assignee successively; and any assignee to whom such sum of money, or personal property is, by such endorsement, made payable, or in case of the death of such assignee, his executor or administrator, may, in his name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed any such note, bond, bill, or other instrument of writing, or against his executor or administrator, as might have been maintained against him by the obligee or payee, in case the same had not been assigned; and in every such action, in which judgment shall be given for the plaintiff, he shall recover his damages and costs of suit as in other cases: *Provided,* That the maker shall never be allowed to al- Bonds, notes, &c., shall be taken according to their purport.

Assignment thereof, and its effect.

Suits for the recovery of the money or property promised and the right of action hereina.

Proviso.

SEC. 2. Every assignor, or his heirs, executors, or administrators, on every such note, bond, bill, or other Due diligence of assignee.

instrument in writing, shall be liable to the action of the assignee thereof, or his executors or administrators, if such assignee shall have used due diligence by the institution and prosecution of a suit against the maker or makers of such assigned note, bond, bill, or other instrument of writing, or against his heirs, executors, or administrators, for the recovery of the money, or property due thereon, or damages in lieu thereof: *Provided*, That if the institution of such suit would have been unavailing, or that the maker had absconded, or left the Territory when such assigned note, bond, bill, or other instrument in writing, become due, such assignee, his executor, or administrator, may recover against the assignor, or against his heirs, executors or administrators, as if due diligence by suit had been used.

Proviso in case of absconding obligors.

Endorsement, and the defence allowed.

SEC. 3. If any such note, bond, bill, or other instrument in writing, shall be endorsed, after the day on which the money or property therein mentioned became due and payable, and the endorsee shall institute an action thereon against the maker and signer of the same, the defendant being maker and signer, shall be allowed to set up the same defence that might have been done had the said action been instituted in the name, and for the use of the person, or persons, to whom the said note, bond, bill, or other instrument in writing, was originally made due and payable.

Notice of payment to endorsee, and its effect, on trial.

SEC. 4. If any such note, bond, bill, or other instrument of writing shall be endorsed, before the day the money or property therein mentioned became due and payable, and the endorsee shall institute an action thereon, the defendant may give in evidence, at the trial, any money or property actually paid on the said note, bond, bill, or other instrument in writing, before the said note, bond, bill, or other instrument in writing was endorsed or assigned to the plaintiff, by proving that the plaintiff had sufficient notice of the said payment before he accepted or received such endorsement.

The consideration, must be good, or valuable.

SEC. 5. In any action commenced in any court of law in this Territory upon any note, bond, bill, or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions by the obligee or payee thereof, if such note, bond, bill, or instrument in writing was made without a good and valuable consideration, or if the consideration upon which such note, bond,

bill, or other instrument in writing was made, has wholly failed, it shall be lawful for the defendant against whom such action shall have been commenced by such obligee, or payee, to plead such want of consideration, or that the consideration has wholly, or in part, failed; and if it shall appear that any such note, bond, bill, or other instrument of writing was made without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant, and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the justice and equity of the case: *Provided*, That nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee of any instrument made assignable by this act, where such assignment was made before such instrument became due.

Want of consideration, or its failure, in whole, or in part.

Proviso, as to time.

SEC. 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud, or circumvention, may be pleaded in bar to any action brought on any such instruments, whether such action be brought by the party committing such fraud, or circumvention, or any assignee of such instrument.

Fraud, or circumvention, may be pleaded in bar.

SEC. 7. In all cases, where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other than money, and no particular place be specified in such instruments of writing for the payment or delivery thereof, it shall be lawful for the maker of any such instrument to tender, or cause to be tendered, on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided, at the time of the execution thereof: *Provided*, however, If such personal property be too ponderous to be easily removed, or if the obligee or payee of such instrument had not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker or makers reside, then it shall be lawful to tender such personal property at the place where the maker or makers of such instrument resided, at the time of the execution thereof. Any tender made in pursuance of this section, shall be equally as valid and legal in case any such instrument of writing shall have been

Delivery of personal property; the time, place and manner of tender.

Proviso, as to the bulk of property, and residence of parties.

assigned, in pursuance of the first section of this act as if no such assignment had been made.

Effect of legal tender, as to personal property.

SEC. 8. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon, and the property thus tendered is hereby declared to be vested in the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided*, however, if any such property, so tendered, shall be of a perishable nature, or shall require feeding, and the person owning and holding such instrument of writing be absent at the time of tendering the same, it shall be lawful for any person making such tender, to preserve, feed, or otherwise take care of the same, and he shall have lien on such tendered property for his, her, or their reasonable trouble, and the expenses of feeding, preserving or sustaining such property until payment be made for such trouble and expense.

Proviso, as to personal property, tender, absence, &c.

Corporations, partnerships, &c., style of suit, judgment, and execution.

SEC. 9. That in all suits brought in any court of this Territory, upon any promissory note, bond, bill, or other instrument of writing, made payable to, or by any corporate body, by their corporate name, or any association of individuals by their associate name, or partners trading together under their partnership name and style, it shall only be necessary to prove the corporate, associate or partnership name and style, without proving the names of the individuals who compose the same, and when in any such suit judgment be rendered against such corporate body, association of individuals, or partners, said judgment shall be entered up against such corporate body, association of individuals, or partners, under the same name and style as that in which said suit is instituted; and the execution, when issued on said judgment, against such corporate body, association of individuals, or partners, in the corporate, associate, or partnership name and style, said execution shall run against his, her, or their individual, as well as corporate, associate, or partnership property, and shall be levied thereon and collected in like manner as if the suit had been instituted in the individual names of the partners composing such corporate body, association of individuals or partnership.

Individual liability herein.

Signatures to notes, bonds,

SEC. 10. The signature to all bills, promissory notes, bonds, or other instruments of writing, on which suit

is or may be commenced in any of the courts of this Territory, shall be considered *prima facie* evidence of their execution, and the party denying the same, his agent or attorney, shall deny the same by oath, when the party introducing the instrument shall prove the signature by extrinsic evidence: *Provided*, If the defendant fails to appear at the first term of the court, the plaintiff, in order to obtain judgment against him at that term, must prove the execution of the note, bond, or other instrument.

bills, &c., denied under oath.

Proviso, as to evidence and judgment.

SEC. 11. That all acts, or parts of acts, coming within the purview of this act, be and the same are hereby repealed; and that this act take effect, and be in force, from and after the first day of March next.

Repealing and enforcing clause.

APPROVED, January 4, 1839.

PUBLIC ADMINISTRATORS.

AN ACT to authorize the appointment of Public Administrators in the several counties of this Territory, and to prescribe their duties.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be elected, biennially, in each organized county in this Territory a suitable person, to be known and named the Public Administrator, whose office and duties shall be prescribed as follows:

Public administrator, biennial election of, in each county.

SEC. 2. That when any person shall die intestate in any county in this Territory, or when any person, a non-resident, shall die intestate, having goods and chattels, rights and credits, or either, in this Territory, and no widow, or next of kin, or creditor, or creditors, shall be living within this Territory, administration of the goods and chattels, rights and credits of such intestate shall be granted to the public administrator of the county, in which such intestate died, or in which the goods and chattels, rights and credits shall be found, in case such intestate shall have been a non-resident, and his successors in office.

To whom administration granted.

Residents and non-residents: the county and effects.

SEC. 3. Each and every public administrator who may at any time be appointed as aforesaid, shall, before entering upon the duties of his office, take and subscribe the following oath, to wit: "I, A. B., public administrator, in and for the county of \_\_\_\_\_ and Territory of Iowa, do solemnly swear (or affirm) that I will well and truly perform all such duties as

Oath of public administrator, before whom taken, in writing, and with whom filed.

may be required of me, by law, as such administrator, to the best of my knowledge and abilities, so help me God:" which said oath shall be taken before the judge of probate of the proper county, reduced to writing, and subscribed by the public administrator, and filed in the office of said judge.

Bond and security.

SEC. 4. It shall be the duty of the public administrator, before entering upon the duties of his office, as aforesaid, to enter into bond with sufficient security, to be approved of by the judge of probate in the sum of \_\_\_\_\_ thousand dollars, conditioned for the due administration, according to law, of all such goods and chattels, rights and credits, and assets as may belong and appertain to the several estates upon which administration may be granted to him as aforesaid; which said bond shall be in the following form,

Form of bond.

to wit: "Know all men by these presents, that we, A. B., C. D. and E. F. of the county of \_\_\_\_\_ and Territory of Iowa, are held and firmly bound unto the people of the Territory of Iowa, in the penal sum of \_\_\_\_\_ thousand dollars, current money of the United States, which payment, well and truly to be made and performed, we and each of us do bind ourselves, our heirs, executors, administrators and assigns jointly, severally and firmly by these presents, as witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_

Condition.

18—. The condition of this obligation is such, that whereas the said A. B. has been appointed public administrator, in and for the county of \_\_\_\_\_: Now, if he, the said A. B., as such public administrator, shall well and truly administer all such goods and chattels, rights, credits and assets as shall come to his hands, or possession, or to the possession of any other person, for him, and which may belong to the estate, or estates, of any person, or persons, upon which administration may, at any time, be granted to him, by the judge of probate of said county of \_\_\_\_\_ and do cause to be made, or make himself, a true and perfect inventory of the goods, chattels, rights, credits and assets of all such deceased persons, the administration of whose estates shall be committed to him as aforesaid, and the same so made doth exhibit in the said court of probate, when he shall thereunto be required by law, and do make and render a just account of all his actings and doings, as such, in each separate estate, to the probate court of the proper county, when required so to do, and shall, in general, do and perform all such other duties

as may, from time to time, be required of him by law, then the above obligation to be void, otherwise to remain in full force and virtue," which said bond shall be signed and sealed by the public administrator, and his securities, and attested by the judge of probate, and filed in his office.

To be signed, sealed, attested and filed.

SEC. 5. In all cases, when administration shall have been granted to any public administrator, as aforesaid, and it shall afterwards appear, that there is, or are, a widow, or next of kin, or creditor, or creditors, of the deceased, entitled to the preference of administrator, by this act, it shall be the duty of the court of probate to revoke the letters granted to such public administrator, and to grant the same to such widow, next of kin, creditor, or creditors, as shall be entitled thereto: *Provided*, That application shall be made to the court of probate, of the proper county, by such person, or persons, within six months after letters shall have been granted to the public administrator as aforesaid, saving to such administrators, in all cases, all such sum or sums of money as may be due to him from such estate on account of commission and expenses due to and incurred by him in the management of said estate.

When letters of administration may be revoked.

Proviso and limitation.

Commission and expenses.

SEC. 6. If any balance of any such intestate estate, as may at any time be committed to any public administrator, as aforesaid, shall remain in the hands of such administrator, after all just debts and charges against such estate shall have been fully paid, which shall have come to the knowledge of such public administrator, for two years after the administration of such estate shall have been committed to him, as aforesaid, such administrator shall cause the amount thereof, with the name of the intestate, the time and place of his, or her, decease to be published in some one of the newspapers printed in this Territory, for eight weeks successively, notifying all persons having claims or demands against such estate, to exhibit the same, together with the evidence in support thereof, before the court of probate of the proper county, within six months after the date of such notice, or that the same will be forever barred, and if no such claim be presented for payment, or distribution, within the said time of six months, such balance shall be paid into the county treasury, and the county shall be answerable for the same, without interest, to such person or persons as shall

Balances in the hands of public administrator.

Notice thereof, how given.

Limitation.

County to answer for such

balances; how  
and to whom.

Protection of  
property, &c.,  
before admin-  
istration shall  
have been  
granted.

Allowance  
therefor.

thereafter appear to be legally entitled to the same, if any shall ever appear.

SEC. 7. Upon the death of any person, or intestate, not leaving a widow, or next of kin, or creditor, or creditors, within any county of this Territory, it shall and may be lawful for the public administrator of the county, wherein such person may have died, as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper for the protection and securing the property and effects of such intestate, from waste and embezzlement, until administration thereon shall be granted to the person entitled thereto, as aforesaid, the expenses whereof shall be paid to such public administrator upon the allowance of the court of probate, in preference to all other demands against such estate, funeral expenses excepted.

APPROVED, January 19, 1839.

## PUBLIC LANDS.

AN ACT to provide for the collection of demands growing out of contracts for sales of improvements on public lands.

What con-  
tracts, &c.,  
hereafter made  
shall be deem-  
ed valid.

Conveyances  
to be binding  
and effectual.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all contracts, promises, assumpsits, or undertakings, either written or verbal, which shall be made hereafter in good faith and without fraud, collusion, or circumvention, for sale, purchase, or payment, of improvements made on the lands owned by the government of the United States, shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts.

SEC. 2. That all deeds of quit claim, or other conveyance, of all improvements upon public lands, shall be as binding and effectual, in law and equity, between the parties, for conveying the title of the grantor in and to the same, as in cases where the grantor has the fee simple to the premises conveyed.

APPROVED, January 15, 1839.

## PUBLIC LANDS.

AN ACT to prevent trespass and other injuries being done to the possession of settlers on the public domain, and to define the extent of the right of possession on the said lands.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That here-  
 after in actions of trespass, *quare clavsum fregit*, tres-  
 pass, ejectment, forcible entry and detainer, as well  
 as forcible detainer only, when any person may be  
 settled on any of the public lands in this Territory,  
 where the same have not been sold by the General  
 Government, his, her, or their possession shall be  
 considered on the trial as extending to the bound-  
 aries embraced by the "claim" of such person or  
 persons, so as to enable him, her, or them, to have  
 and maintain either of the aforesaid actions without  
 being compelled to prove an actual enclosure: *Pro-*  
*vided*, that such "claim" shall not exceed in number  
 of acres the amount limited to any one person, ac-  
 cording to the custom of the neighborhood in which  
 said land is situated, and shall not in any case exceed  
 in extent three hundred and twenty acres: *And pro-*  
*vided*, That such "claim" may be located in two  
 different parcels as will suit the convenience of the  
 holder. But no such holder shall be entitled to hold  
 a "claim" less than the smallest legal subdivision,  
 agreeably to the laws of the United States relative to  
 selling the public lands. And all such claim, or part  
 of a claim, shall be marked out, so that the bound-  
 aries thereof can be readily traced, and the extent of  
 said claim easily known: *Provided*, That no person  
 shall be entitled to sustain either of said actions for  
 possession of, or injury done to, any "claim" (ex-  
 cept mineral lots) unless he has actually made an  
 improvement, as required by the custom of the neigh-  
 borhood in which such *claim* or *claims* may be sit-  
 uated.

Possession of  
unenclosed  
public lands or  
"claims."

Proviso.

Proviso.

Proviso.

SEC. 2. A neglect of a *claim* by the owner, and  
 those under whom he claims, for a period of six  
 months, or more, shall be considered such an aband-  
 onment as to preclude said owner from sustaining  
 either of the aforesaid actions.

Abandonment.

SEC. 3. Nothing in this act contained shall be con-  
 strued to prevent any person from sustaining either  
 of the aforesaid actions, when there shall be an  
 actual enclosure, for an injury done within the same,  
 although the "claim" of such person, enclosed and

Particular case  
in which ac-  
tions may be  
sustained.

unenclosed, may exceed in the whole three hundred and twenty acres.

APPROVED, January 25, 1839.

## QUO WARRANTO.

AN ACT relating to information in the nature of *quo warranto* and regulating the mode of proceeding thereon.

**SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any person or persons shall usurp, intrude into, or unlawfully hold or exercise any public civil office, or any franchise within this Territory or any office in any corporation created by the authority of this Territory, or when any public civil officer shall have done, or suffered any act, which, by the provisions of law shall work a forfeiture of his office, or when any association of persons shall act as a corporation within this Territory without being lawfully incorporated, the District Attorney of the proper county shall, when directed by the Governor, the District Court of the proper county, or the Legislative Assembly, or he may, upon his own relation, or the relation of any private individual, upon leave granted by said court in term time, or the judge thereof, in vacation, file an information in the nature of a *quo warranto* in the said court.

When, against whom, by whom, and at whose instance, an information, in the nature of a *quo warranto*, may be filed.

Summons, service, return & appearance.

**SEC. 2.** Whenever any such information shall be filed a summons shall be issued thereon which shall be served and returned forthwith, and whenever the same shall be returned served, the clerk of the court shall enter the defendant's appearance.

What right determined by the judgment.

**SEC. 3.** Whenever any such information shall be filed against any person for usurping any office, as in the first section provided, the District Attorney in addition to the other matters required to be set forth in the information, may also set forth therein the name of the persons, if any there should be, who may claim to be rightfully entitled to such office, with an averment of his right thereto, and in every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so averred to be entitled, or only upon the right of the defendant, as justice shall require.

Oath of office, bond and de-

**SEC. 4.** If judgment be rendered upon the right of the person so averred to be entitled, and the same be

in favor of such person, he shall be entitled after taking the oath of office and executing any official bond which may be required by law, to take upon him the execution of the office, and it shall be his duty immediately thereafter, to demand of the defendant in such information all the books and papers in his custody, or within his power, appertaining to the office from which he shall have been ousted.

SEC. 5. If any such defendant shall refuse or neglect to deliver over any such books or papers, pursuant to any such demand, he shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars, and be imprisoned in the cell or dungeon of the jail of the county until he shall comply with the order of the court, or be otherwise discharged by due course of law.

SEC. 6. If judgment be rendered upon the right of the person so averred to be entitled, in favor of such person, he may, at any time within one year from the date of said judgment institute any suit which may be proper in the premises against the defendant, previously ousted, and recover the damages which he may have sustained by reason of the usurpation of said defendant.

SEC. 7. Where several persons claim to be entitled to the same office, or franchise, an information may be filed against all such persons, in order to try their respective rights to such office or franchise.

SEC. 8. An information in the nature of a *quo warranto* may also be filed by any district attorney upon his own relation, or on the relation of any other person, on leave granted, and shall be so filed where the same shall be directed by the Governor, the Legislative Assembly, or the district court of the proper county, against any corporate body, when such corporation shall have: 1. Offended against any of the provisions of the act or acts creating, altering, amending, or renewing such corporation: 2. Whenever it shall have forfeited its privileges and franchises by non-user: 3. Whenever it shall have done or omitted any acts which amount to a surrender of its corporate rights, privileges, and franchises: 4. Whenever it shall have misused any franchise or privilege conferred, or exercised any franchise or privilege not conferred on it by law, and it shall be the duty of the district attorney to apply for leave to file such information in every case provided for in this

mand for books, papers, &c.

Refusal, a contempt; fine and punishment therefor.

Suit for damages. Limitation, one year.

Plurality of claimants.

Quo warranto against corporations; by whom filed, at whose instance, and in what cases.

section, whenever he shall have good reason to believe that the same can be established by proof.

Application, in what county notice thereof, and hearing.

SEC. 9. Leave to file such information may be granted by the said district court, in term time, or the judge thereof in vacation, upon the application of the district attorney of the county wherein the principal office, or place of business, of such corporation shall be, and upon such application the court or judge may in their discretion direct notice thereof to be given to such corporation or its officers, previous to granting such leave, and may hear such corporation in opposition thereto.

Upon leave granted, information filed; summons, or rule, and plea, in 20 days.

SEC. 10. Upon such leave being granted, and endorsed on the information, under the hand of the clerk of the court, or of the judge granting the same, the district attorney may forthwith file the same, and thereupon shall issue a writ of summons against such corporation, to be directed to the sheriff, commanding him to summon such corporation to appear in said court, and to answer the said information, and the said writ of summons shall be forthwith served and returned, but when such corporation shall appear by counsel, pursuant to the notice authorized by the ninth section of this act to be given, and shall be heard in opposition to the granting of such leave, the court or judge granting leave may also direct a rule to be entered, requiring the defendant to appear and plead to such information, within twenty days after service of a copy thereof, and notice of such rule, and in such cases it shall not be necessary to issue a writ of summons.

Summons, on whom served, return and appearance.

SEC. 11. The writ of summons issuing against such corporation, shall be served on the presiding officer, or the cashier, or the secretary, or treasurer thereof, and if there be no such officers, or none can be found, such service may be made on any director, or other person having the management of the affairs of the corporation, and upon the return of the summons served, the clerk shall enter the appearance of such corporation.

Copy of information, pleadings and issue.

SEC. 12. Whenever any writ of summons, issued pursuant to the provisions of this act, shall have been returned served, the defendant or defendants may apply for and receive a copy of said information from the clerk of the court, and shall plead thereto within thirty days from and after the return of said writ of summons, and each party shall file the proper pleadings on his part within thirty days from that on

which the last pleadings were filed, until a complete issue is presented for trial.

SEC. 13. Whenever any writ of summons, issued upon an information in the nature of *quo warranto* shall be returned not served, by reason of the defendant or the officers of the defendant not being found within the county, the clerk shall make out and cause to be published for four successive weeks, in some newspaper of general circulation in the county, and if there be none in the said county, then in the nearest newspaper; a notice of the filing of such information setting forth the substance thereof, and if said defendant shall not appear and plead to such information within thirty days after the last publication of said notice, the plaintiff shall be entitled, upon filing an affidavit of the due publication of said notice, to enter the default of the defendant and judgment shall be rendered on such default, in like manner as if the writ had been returned duly served.

When writ cannot be served, notice required and how given, affidavit, and judgment by default.

SEC. 14. An order may be made by the District Court or the judge thereof, on good cause shown, enlarging the time within which any matter of pleading shall be filed: *Provided*, Such order do not work a continuance of the cause.

Order of court, and proviso.

SEC. 15. Whenever any defendant, or defendants, against whom an information in the nature of a *quo warranto* shall have been exhibited, shall be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such defendant or defendants be ousted, and altogether excluded from such office, franchise or privilege, and also that the district attorney or relator, if there be one, recover his costs against such defendant or defendants.

Effects of judgment, and relators' costs.

SEC. 16. Whenever it shall be found or adjudged that any corporation, against which an information in the nature of a *quo warranto* shall have been filed, has, by offending against any of the provisions of the act or acts creating, altering, amending or renewing the same, exercising any franchise or power not conferred by law, or by any misuser, nonuser, or surrender, forfeit its corporate rights, privileges, and franchises, judgment shall be rendered that such corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that said corporation be dissolved.

Judgment against corporations, and dissolution thereof.

Execution for costs.

SEC. 17. If judgment be rendered, upon any such information, against any corporation, or against any person claiming to be a corporation, the court may cause the costs thereon to be collected by execution against the directors, or other officers of such corporation, or against the person claiming to be a corporation.

Appointment of trustees: their bond, securities, duties and powers.

SEC. 18. Upon the dissolution of any corporation, under the fifteenth section of this act, the court pronouncing the judgment of ouster and dissolution, shall appoint three persons who shall not be directors of, or stockholders in, such corporation at the time of its dissolution, as trustees of the creditors and stockholders of the corporation dissolved, and who, after entering into bond to the Territory of Iowa, in such sum and with such securities as the said court shall designate and approve, conditioned for the faithful discharge of the trust and payment over and proper application of all money that may come into their hands, shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts, and divide among the stockholders the moneys and other property that shall remain after the payment of debts, and other necessary expenses.

Trustees to demand books, papers, &c., may sue for debts, and in whose name.

SEC. 19. The persons, so constituted trustees, shall forthwith demand of the officers of said corporation all moneys, property, books, deeds, notes, bills, obligations, and papers, of every description, whether in their custody or within the power and control of any one of them, belonging to said corporation, or in anywise necessary for the settlement of its affairs, or the faithful discharge of its debts and liabilities, and they shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its usual corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall come into their hands.

Their liabilities.

Refusal to deliver books, papers, &c., a contempt, and how punished.

SEC. 20. If the officers of such corporation, or any one or more of them, shall refuse or neglect to deliver over any such moneys, property, books, deeds, notes, bills, obligations, or papers, pursuant to such demand, he or they so refusing or neglecting, shall be deemed guilty of a contempt of court, and shall be severally fined in any sum not exceeding five

thousand dollars, and be imprisoned in the cell or dungeon of the jail of the proper county, until he or they shall comply with the order of the court, or be otherwise discharged by due course of law, and shall be liable moreover to the said trustees in an action on the case for all damages that may have been sustained by the stockholders and creditors of the corporation, or any one of them, in consequence of such neglect or refusal.

Action for damages.

SEC. 21. When the information against any corporation shall be filed, as aforesaid, on any alleged misconduct of the officers or directors thereof, and judgment of forfeiture and ouster shall be rendered thereon, it shall be lawful for any person who has been injured thereby, at any time within one year from the date of said judgment, to institute any suit which may be proper in the premises against any such officer or directors, and recover the damages he may have sustained by reason of such misconduct.

Misconduct, forfeiture, and damages.

Limitation.

SEC. 22. Whenever the office of district attorney shall happen to be vacant, or said attorney shall be absent, or interested in the subject matter of contestation, or disabled from performing the duties prescribed by this act from any cause whatever, the district court in term time, or judge thereof, in vacation, may direct or permit any member of the bar to do and perform the duties herein directed to be done and performed by the district attorneys of the several counties of this Territory.

Who may perform the duties required of district attorneys, under this act.

SEC. 23. Nothing in this act contained shall be intended to restrain any court of chancery in this Territory from enforcing the performance of trusts for charitable purposes, at the relation of the district attorney of the proper county, or from enforcing trusts or restraining abuses in other corporations at the suit of the person injured.

Trusts, and their performance. Court of chancery.

SEC. 24. That all fines collected under the provisions of this act, shall be paid over into the treasury of the proper county, for the use of schools within said county.

Fines, where paid, and for what use.

SEC. 25. Nothing in this act contained shall authorize any proceeding against any corporation for forfeiture of charter, unless the same shall be commenced within five years from the time of the exercise of the power or the act of omission alleged as the cause of forfeiture, and no proceeding under this act shall be sustained against any corporation on account of the exercise of any power or franchise under its charter,

Limitation of suits.

- which shall have been used and exercised for the term of twenty years prior to the commencement of such proceeding, nor shall any proceeding be commenced under this act against any officer to oust him or her from office, unless such proceeding shall be commenced within three years next after the cause of such ouster, or right to hold such office, shall have arisen: *Provided*, That such proceedings under this act may be had, and the same shall not be barred in any of the above cases, if commenced within two years from the passage of this act.
- Actions, when to be commenced.** SEC. 26. Appeals may be taken from the decision of the district court only in cases wherein a corporation is a party to any proceedings under this act, upon such terms as the said district court shall prescribe, but in all cases writs of error may be prosecuted whenever the supreme court or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing such writ. The said supreme court or judge, in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error as to the said court or judge shall seem reasonable and just. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the district court until the determination, but writs of error, without supersedeas shall issue as writs of right as in other cases.
- Proviso.**
- Appeals, when and to whom allowed.**
- Writs of error, how they shall operate.**
- This act in force, May 1st, 1839.** SEC. 27. This act to take effect, and be in force from and after the first day of May next.
- APPROVED, December 20, 1838.

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## RECORDERS.

AN ACT relating to the office of Recorder of Deeds, &c.

- Recorder's office in each organized county.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be an office of recorder of deeds, in each and every organized county in this Territory, which shall be called and styled the recorder's office; and said office shall be kept at the county seat of each organized county, and the recorder shall duly attend to the duties of the same, shall provide good, large, well bound books, of royal or other large paper, which shall be paid for out of the county treasury, wherein

he shall record, in a fair and legible hand, all deeds and conveyances which shall be brought to him for that purpose, according to law.

SEC. 2. That every two years there shall be a poll opened, at the annual election, for recorder of deeds for each organized county in this Territory, and the election shall be conducted as other elections for county officers, and the person having the highest number of legal votes, shall receive a certificate of election from the county commissioners' clerk. And after receiving his certificate of election shall, within ten days thereafter, give bond, with two good and sufficient securities, in the penal sum of five hundred dollars, to the county commissioners of the county for which he is elected, and to their successors in office, conditioned for the true and faithful performance of the duties of his office, and to deliver up the records, papers, and effects, to his said office belonging, safe and undefaced to his successor in office; which said respective bonds shall be filed in the office of the clerk of the county commissioners' court for the county for which said recorder is elected, and there safely kept in order to be made use of, for making satisfaction to the parties that shall be aggrieved, as is or shall be directed by law.

Recorder to be elected biennially.

Bond.

Condition.

SEC. 3. And no recorder of deeds, hereafter to be elected as aforesaid, shall enter upon or officiate in his said office before he hath given such security as aforesaid, upon pain of forfeiting the sum of one hundred and fifty dollars, one half to the use of the county, the other for the use of the party complaining, but no record made by such recorder of deeds shall be vacated, or so avoided as to operate against the parties to the instrument recorded, by reason of such recorder not giving such bond.

Penalty for officiating before security be given.

SEC. 4. Every recorder of deeds shall keep a fair book in which he shall immediately make an entry of every deed or writing brought into his office to be recorded, mentioning therein the date, the parties, the place where the lands, tenements, hereditaments, granted or conveyed by the said deed or writing, are situated, dating the entry on the day on which such deed or writing was filed in his office, and shall record all such deeds and writings in regular succession according to the priority of time of their being brought into his said office, and shall also make and keep a complete alphabetical index to each record book, showing the page on which each instrument is

Entry book.

Deeds to be recorded in succession.

Index.

Recorded, with the names of the parties thereto; he shall give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same day as the entry, and containing the abstract aforesaid: *Provided*. That it shall be the duty of all recorders under this act to file immediately all deeds and papers which may be presented to them for record, and they shall note, on the back of the same, the hour and the day when the same were filed.

**Fees.** SEC. 5. And as a compensation for the duties to be performed by said recorder of deeds, that the following be his lawful fees, which he may demand and collect for recording all deeds, mortgages, and other instruments of writing; for every one hundred words, twelve cents; for copies of the same, when requested, for every one hundred words, twelve cents; for every official certificate, with seal, when requested, twenty-five cents.

**Recorders now in office.** SEC. 6. But nothing herein contained shall be so construed as to affect or remove from office any recorder of deeds now elected in this Territory, until an election take place in each organized county, either general or special, and the newly elected recorder is sworn into office. That all acts, or parts of acts, now in force in this Territory, relating to the recorder of deeds, be and the same are hereby repealed from the taking effect of this act.

SEC. 7. This act to take effect and be in force from and after the first day of March next.

APPROVED, January 19, 1839.

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## REPLEVIN.

AN ACT regulating the action of Replevin.

**Action of replevin, when, by whom, and for what purpose instituted.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That where any goods and chattels are wrongfully detained, an action of replevin may be brought for the recovery of such property, by the person entitled to the immediate possession thereof, or, in his name, by any person duly authorized, by him, for that purpose.

**Affidavit, when and with whom filed, and what shall be set forth therein.** SEC. 2. The writ, in this action, shall not issue without an affidavit of the plaintiff, his agent or attorney, shall have been filed in the office of the clerk by whom such writ is to be issued, stating that such goods and chattels are wrongfully detained by the

defendant, that the plaintiff has a good right to the present possession thereof, and that they were not taken from him by writ of replevin, or in execution issued on any judgment against him, nor for the payment of any tax, fine, or amercement against the said plaintiff.

SEC. 3. Where property shall have been taken in execution, which was exempt therefrom by law, upon affidavit filed as aforesaid, that such property was so exempt, a writ of replevin may issue as above provided.

Property exempt from levy, may be replevied.

SEC. 4. Any writ of replevin, issued without an affidavit being filed as aforesaid, shall be quashed at the costs of the clerk, who issued the same, who, as well as the plaintiff, shall be, moreover, liable in damages to the party injured.

Clerk and Plaintiff liable, where affidavit is not filed.

SEC. 5. Such writ, however, shall not be quashed for any defect in the affidavit happening by mistake, or oversight, if upon being objected to, a new affidavit of the proper form and substance shall be made and filed as aforesaid.

Defects in affidavit, how remedied.

SEC. 6. The writ shall be directed to the sheriff (or coroner, as the case may be,) of the county, commanding him to cause to be replevied, to the plaintiff, the goods and chattels therein named, and to summon the person charged with their unlawful detention, to appear at the proper district court, on the first day of the next term thereof, to answer unto the plaintiff for such unlawful detention.

The writ, to whom directed, and its requirements.

SEC. 7. The officer executing such writ may break open any house, or other building, or inclosure, in which such property is concealed, in order to replevy the same, having first made demand of such property, and of entrance into said building, or enclosure, and the same having been refused.

Privilege of officer, as to buildings, and enclosures. Demand and refusal.

SEC. 8. Before such officer shall deliver to the plaintiff any goods or chattels, replevied as aforesaid, a bond shall be given to the said officer, with two or more sufficient sureties, conditioned that the plaintiff shall appear at the return term of the writ, and prosecute his suit to effect, and pay all costs and damages that shall be awarded against him.

Bond and securities.

Condition.

SEC. 9. Such bond shall be in double the value of property replevied (which value shall be ascertained by two or more disinterested persons whom the officer shall swear truly to appraise the same,) and shall be returned with the writ for the security and benefit of the defendant, and of the officer taking the same.

Amount of bond returned with the writ, and for whose security.

Remedies and liabilities of the officer, &c.

SEC. 10. The remedies and liabilities of the officer taking such bond, and all the parties bound by, or interested in the same, shall be like those in case of an ordinary bail bond and the same proceedings, as far as the nature of the case will admit, may in all respects be had to carry those remedies into effect.

Bond to be executed within 24 hours, or the property returned.

SEC. 11. If the plaintiff, his agent or attorney, shall refuse, or neglect, to execute and give bond, as aforesaid, within twenty-four hours from the taking of such property by virtue of said writ, the officer who shall have said property in possession, must return the same to the defendant.

Officer's liability, where insufficient security shall have been taken.

SEC. 12. If such officer shall deliver any property, so replevied, to the plaintiff, or detain the same from the defendant, without taking sufficient security as aforesaid, he shall be liable to the defendant in damages.

Where property is claimed by third persons.

SEC. 13. If the property replevied, or any part thereof, be claimed by some third person, the right of property shall be tried in the same manner as where property may have been thus claimed, after having been taken in execution.

Claimant made a def't. on motion, &c.

SEC. 14. Such claimant shall, in all cases, on motion, be made a defendant in the action, unless he will disclaim, or the plaintiff relinquish the right to said property.

Where property is not delivered, action may proceed.

SEC. 15. If the property replevied, as aforesaid, in any case, be not delivered to the said plaintiff, he may, nevertheless, proceed in the action for the recovery of said property, or the value thereof.

This action to conform to what rules, usages, &c.

SEC. 16. The proceedings in an action of replevin shall, as far as practicable, be subject to the same usages and rules of practice, as in ordinary personal action, except as otherwise provided by law, or by the rules of court.

Right of property, trial by jury, &c.

SEC. 17. If the plaintiff shall discontinue his suit, or become non-suit, or judgment be rendered against him on demurrer, or he shall otherwise fail to prosecute his suit to final judgment, the court, on application of the defendant, or his attorney, shall empanel a jury to inquire into the right of property and right of possession of the defendant, to the goods and chattels in controversy.

When the jury find for the defendant;—damages, costs, &c.

SEC. 18. If such jury find that said goods and chattels were the property of the defendant, or that he was entitled to the possession thereof, at the commencement of the action, they shall assess damages for the defendant, as may be right and proper, for

which, together with costs of suit, the court shall render judgment against the plaintiff.

SEC. 19. In all cases, upon issue joined where the jury shall find for the defendant, they shall also find whether he had the right of property, or right of possession in said goods and chattels, and if they find either in his favor, they shall assess the damages of the defendant, on which judgment shall be rendered as declared in the preceding section.

Right of prop-  
erty, and right  
of possession.

SEC. 20. Where the jury find for the plaintiff on an issue joined, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property for which, and the costs of suit, the court shall render judgment.

Where the jury  
find for the  
plaintiff,—  
costs, damages,  
&c.

SEC. 21. In such case, if said property shall not have been replevied and delivered to the plaintiff, he shall, in addition to the judgment authorized by the preceding section, be entitled to a further judgment, that such goods and chattels be replevied and delivered to him, without delay, or in default thereof, that he recover the value of said property, as the same shall have been assessed by the jury who gave the verdict in the case, the requirements of the writ of execution shall be regulated accordingly.

Additional  
judg't, where  
property has  
not been re-  
plevied; value  
how ascertain-  
ed, &c.

SEC. 22. The judgment for the plaintiff shall be against all those defendants who have been guilty of wrongfully detaining the property or interposing a claim thereto, as aforesaid.

Judgment,  
against whom,  
&c.

SEC. 23. No suit shall be instituted on the bond given by the plaintiff, as provided in this act, nor against the officer who took the same, until an execution shall have issued on the judgment in favor of the defendant, in which it shall be returned, that sufficient property of the plaintiff cannot be found in the county, whereon to levy, and make the amount of said judgment.

Suit on bond,  
when it may  
be commenced

APPROVED, January 23, 1839.

## REVENUE.

AN ACT for assessing and collecting county revenue.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That for the purpose of raising a revenue for county purposes, the board of county commissioners shall levy a tax

County com-  
missioners to  
levy a tax, and

<p>on what property. Real estate.</p> <p>Personal property.</p> <p>Property exempt from taxation.</p> <p>Liquors, &amp;c., in incorporated towns.</p> <p>In unincorporated towns. Merchandise.</p> <p>Wooden clocks, &amp;c.</p> <p>Ferries.</p> <p>Poll tax on voters.</p> <p>Per centage. Proviso.</p> <p>Tavern keepers.</p> <p>Assessor, his election, term of service, and qualifications.</p> <p>His bond, security and oath.</p> <p>Where assessor fails, or refuses to act, and notice thereof.</p>	<p>on all lands, town lots, and out lots, with the improvements thereon, not heretofore exempt from taxation by any law of the United States, now in force, and on all personal property, with the exception of seventy-five dollars worth of household furniture to each householder, and excepting libraries, tools of mechanics, and agricultural implements; on each license for retailing spirituous liquors, and foreign and domestic groceries by a less quantity than one gallon, to be drank in or about the house where such liquors are retailed, in all incorporated towns, one hundred dollars; all groceries other than those in incorporated towns, fifty dollars; but on each license to vend merchandize, not less than ten, nor more than fifty dollars per annum, discretionary with the board of commissioners; on each license for hawking wooden, or brass clocks in the county, not less than one hundred, nor more than three hundred dollars; on each ferry not less than five, nor more than twenty dollars per annum.</p> <p>SEC. 2. The commissioners shall annually, at their regular session in July, or so soon thereafter as the assessment roll is filed, levy a poll tax of one dollar on every qualified voter, in their county under sixty years of age, and a per centage on real and personal property as aforesaid: <i>Provided</i>, That such per centage shall not, in any case, exceed five mills on the dollar. No tavern keeper shall be permitted to retail spirituous liquors without a grocery license.</p> <p>SEC. 3. That, at the time and place of holding the election for county commissioners, there shall be elected one assessor for each county, who shall be a qualified elector, and whose term of office shall be one year, and until his successor is duly elected and qualified. Such assessor shall, within sixteen days after receiving a certificate of his election, enter into bonds with security, to be approved by the board of county commissioners, in the penalty of three hundred dollars, conditioned for the faithful performance of his duties, as assessor, and also take an oath, or affirmation, to be administered, by the clerk of the board of county commissioners, well, truly and faithfully to discharge the duties required of him by law.</p> <p>SEC. 4. If any assessor, so elected under the provisions of this act, shall refuse to accept of such office, or fail to comply with the foregoing section, the clerk of the board of commissioners shall, upon</p>
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such failure, issue a notice thereof to the board of commissioners, which shall be served by the sheriff upon said commissioners, and it shall be the duty of said commissioners, upon receiving notice thereof, to call a meeting forthwith, and appoint some suitable person to fill such vacancy, which assessor, so appointed, shall be qualified according to the foregoing section, and should any assessor die, or become unable, from bodily infirmity or any other cause, to complete the assessment of his county, township, or district, according to the provisions of this act, upon information thereof to the clerk aforesaid, a like summons as above mentioned shall be by him issued, and the appointment and qualification thereupon made, and such last mentioned assessor shall demand and receive the assessment roll of his predecessor, or of the person in whose possession it may be, and proceed to complete the assessment of taxable property, according to the provisions of this act, and if the roll of his predecessor cannot be obtained, the clerk, on application, shall make out a new form.

Vacancy, how, and by whom, filled.

Death, sickness, or infirmity of assessor, or, how remedied.

Duties of successor,—and the comm'r's. clerk.

SEC. 5. Immediately after the election and qualification, each assessor shall commence assessing all property subject to taxation, within his district, or county, as the case may be, and shall deliver to the board of commissioners, on or before the first Monday in July, thereafter, a full and complete assessment roll thereof, which roll shall exhibit the description, number of acres, and rate, whether 1st, 2d, and 3d, of the lands, the description and value of the town lots, and all other property specifically chargeable with tax for county purposes: The lands shall be designated by the numbers and descriptions, as laid down on the plan or map of the original surveys, and the town lots by their numbers and description as laid down on the plan of said town, or by the boundaries, if no other specific description can be obtained, and all lots, in towns or villages, the plats, or plans of which have not been recorded, shall be taxed in the same manner that lots are in towns and villages, whose plats, or plans, have been recorded, and all tracts, and lots of land, owned by non-residents, or persons unknown, and where specific description is not furnished, by the owner or claimant, shall be described by their subdivisions, as known or designated on the map or plan deposited in the office of the clerk, or any other public offices,

Duties of assessors.

Assessment roll, and description of property.

Lands and town lots, how described.

Unrecorded plats.

Lands of non-residents, &c.

Subdivisions, &c.

- or which are generally recognized as containing a correct representation of the same by their numbers, or other specific description, and as the property of persons unknown and non-residents. The rates of the land shall be determined as described in this act, and in estimating the value of town lots, the assessor shall take to his assistance two discreet persons, and should any person feel aggrieved by the rate which may be affixed upon his land, by the assessor, or by the value at which the appraisers estimated his town lot, he may produce evidence before the board of commissioners, and if they think the rate of value too high, they shall order the clerk to alter it accordingly
- Value of town lots.** SEC. 6. The clerks of each board of commissioners shall prepare blank forms of assessment rolls under this act, and deliver one to each of the assessors of his county, at the time of his qualifying.
- Commissioners may relieve, &c.** SEC. 7. On the last Monday in June, the assessor shall attend, at the office of the clerk of commissioners, and with the assistance of said clerk shall publicly, in order that all persons interested may have the necessary corrections made, examine the assessment rolls, and correct all double or imperfect listing, or errors, in rates, descriptions, or quantities of lands, or lots, and if it shall appear that there are omissions, or lands taxable not entered by the assessor on his roll, the clerk and assessor shall correct all such omissions, and shall enter upon the rolls lands so omitted, as non-resident lands, and if the entry of any tract of land, or lot, cannot be rendered certain, in its descriptions by the before mentioned examinations, such entry shall be rejected from the roll, and the assessor shall, within five days thereafter return to the clerk a correct description of such lands, or lot, and the clerk shall thereby amend the defective entry in said roll, and if the assessor shall fail to attend at the time and place required, the roll, when returned, shall be compared, corrected, and completed as herein required, and for such failure, the assessor shall be liable, under this act, for a violation of his duty.
- Duty of clerk, as to blank forms.** SEC. 8. After the clerk and assessor shall have corrected the assessment roll, as aforesaid, the same shall be laid before the board of commissioners, and if it is found to contain all the taxable land in said county, and is otherwise correct, the board shall accept it in writing on the back thereof, signed and
- Last Monday in June, assessor to attend and where, for the correction of errors, &c.**
- Omissions.**
- Insufficient descriptions rejected, and how perfected.**
- Violation of duty.**
- Acceptance of assessor's roll; roll to be filed, and preserved, as a record.**

attested by their clerk, and the clerk shall file the same in his office, where it shall remain, unalterable, as a matter of record, and shall be a guide to future assessors, as far as the same may remain correct, but the assessment roll shall, every year, be corrected in the manner named in the preceding section of this act, before such roll shall be accepted and filed as aforesaid. Roll, to be corrected, every year.

SEC. 9. In all transfers of real estate, made after the taking effect of this act, it shall be the duty of the purchaser, at the time he gets his deed recorded, to have his name entered on the assessment roll, by the clerk, in the place of the grantor, and the assessors elected by the authority of this act shall leave a sufficient blank space on each page of his, or their roll, for subsequent entries of the kind. Transfer of estate, and duty of the grantee.

SEC. 10. Whenever any assessor shall discover, during the time he is making his assessment, that there are tracts of land, town lots, or chattels, subject to taxation in his county, or district, which were liable to taxation, and were omitted by the assessor, in one or more preceding years, he shall enter the same upon his roll, noting distinctly the years in which such omissions were made, in the same manner as the assessments for the current year, (but no such assessment shall be made for a longer period than one year back,) and such assessment shall have the like force and effect as assessments made at the proper time, and the tax due thereon charged and collected with the revenue of the year in which such assessment is made, and land and town lots shall be subject to the tax omitted to be assessed as aforesaid, in whose hands soever they may come. Omissions, how corrected by assessor. Limitation. Transfers.

SEC. 11. For the purpose of aiding future assessors, in making assessments under this act, the first assessor shall make out and retain in his possession a duplicate of his assessment roll, and shall make the necessary corrections therein from time to time, so that it correspond with the assessment roll returned by him into the office of the clerk, and, when he is succeeded in his office, he shall deliver the same, with all other documents in his possession relating to said office, to his successor. Duplicates, by whom made, corrected, and transferred, and to whom. Other documents.

SEC. 12. The board of commissioners shall allow to the assessors, in their respective counties, such compensation as to them shall seem just and reasonable, to be paid out of the treasury of the proper county, on the order of said board as other monies Assessor's compensation

<p>Receipts, on unassessed property, to be deducted.</p>	<p>are paid. At the time the collector of the county makes return of the amount of taxes collected by him of unassessed property, as hereinafter provided, the said board shall make an order deducting such sums, as to them may seem reasonable, for failing to assess such property from the allowance made to such assessor: If such assessor shall have received his pay for assessing, he and his securities shall be liable, on their bond, for the amount of such deduction.</p>
<p>Liability on bond.</p>	
<p>Rates of taxation, when, and by whom, determined.</p>	<p>SEC. 13. The board of commissioners, for the purpose of enabling the clerk to calculate and carry out the amount of tax, on all property returned by the assessor, shall, at their session in July in each year, determine the rates of taxation upon the several subjects allowed to be taxed for county revenue under the restrictions of this act, and enter such determination on record, which shall govern the clerk in making the said calculations.</p>
<p>Object and record hereof.</p>	
<p>Duty of the clerk, as to calculations, assessment rolls, precept, &amp;c.</p>	<p>SEC. 14. Immediately after the return, perfection, acceptance and filing of the assessment roll, as hereinbefore directed, the clerk shall calculate and carry out the amount of taxes, opposite to the specified property, lots, or lands, charged with tax, and within ten days after the filing shall make out and deliver a certified statement of the amount, as exhibited by said assessment roll, to the treasurer of the county; and within the same time shall also make out a duplicate or transcript of the roll or rolls aforesaid, and deliver the same, together with a precept in the name of the Territory, tested by the clerk under the seal of the board of commissioners, and directed to the collector of his county, commanding him to collect the taxes charged in said transcript, by demanding payment of the persons charged therein, and sale of their goods and chattels, severally, or by sale of the tracts of land, or lots mentioned in said transcript, according to exigency, and that he pay over the moneys collected by him by virtue of said precept, as directed thereby, and return such precept, together with the transcript of the roll aforesaid, and an account of his acts thereon, to the said clerk, on or before the first Monday in January next ensuing the date thereof.</p>
<p>Precept, and its requirements.</p>	
<p>When returned.</p>	
<p>Person in possession, to pay the tax.</p>	<p>SEC. 15. Whosoever may be in possession of any taxable estate, at the time any tax is to be assessed, shall be liable to pay the tax thereon, and if any other person, by agreement, or otherwise, ought to</p>

pay such tax, or part thereof, the person paying the same may, by action of debt, recover the amount from the person so bound, or liable, with damages not exceeding twenty per cent. on the amount paid, and all taxes on real estate shall be a lien thereon until paid, and have preference of all other charges, and all taxes upon personal estate, shall have preference of all other demands.

Re-payment,  
with damages.

Preference of  
tax claims.

SEC. 16. That the sheriffs of the several counties shall collect the county revenue, and pay over to the county treasurer all such sums collected, and take his receipt therefor, which receipt shall be a sufficient voucher for the board of commissioners to cancel the amount of such assessment roll, standing charged against said collector on the books of said commissioners.

Sheriffs to collect  
the county  
revenue, and to  
whom paid, &c.

SEC. 17. The collector, on receiving the duplicate and precept, which he shall demand at the office of the clerk, at the expiration of the time limited for their completion, shall proceed to collect the taxes charged thereon by demanding payment thereof, at the most usual and best known places of residence of each person charged in the duplicate, or from the person so charged at any other place, on or before the first Monday in November next ensuing, and on the payment of the full amount of the county revenue due from any person, shall give a receipt, in which the amount paid, and for what year, shall be particularly designated in words at full length: *Provided*, That a demand of the person, at any other time, shall be a sufficient demand.

Demand for  
taxes, where to  
be made, and  
when.

Receipt, and  
its specifica-  
tions.

Proviso.

SEC. 18. Any collector, in cases of gross assessment of taxes, upon any tract, or lot of land, upon the application of any claimant, or owner of a part thereof, either divided, or undivided, of such lot, or tract, to pay a part of the taxes, interest and charges due thereon, proportionate to the quantity of such lot, or tract owned, or claimed, shall receive the same: *Provided*, The owner or claimant will specify, with sufficient certainty, to such collector, by a map, or plan of such lot, or tract, or by a memorandum of the undivided part of a survey, which indicates the boundaries thereof, to be delivered to such collector by such owner, or claimant, and the balance of such taxes, interest and charges shall be a lien, only on the balance of such lot or tract of land.

Payment in  
part, when  
rec'd.

Description,  
and lien, for  
the residue.

SEC. 19. If the taxes are not paid to the collector, on or before the first day of August, he may proceed

Collections,  
when made, by  
sale of chattels.

10 days notice  
of time and  
place of sale.

Sale of lands  
and town lots,  
for taxes, and  
the notice  
herein requir-  
ed.

Description of  
lands, &c.

Proof of notice,  
how, and by  
whom, made.

to collect the same by distress and sale of the goods and chattels of the person charged, or of the person found in possession of the lands or town lots charged with such unpaid taxes, giving ten days' notice of the time and place of such sale, by written notices, set up in three of the most public places in said county, and publishing the same in a newspaper printed in said county, if there be any.

SEC. 20. If no goods or chattels can be found, out of which to make the taxes charged on lands and town lots, the collector shall give notice in some weekly newspaper published in his county, or if no such paper be there published, then in some paper published in the county nearest thereto, also by putting up four written notices, one of which shall be on the court house door, the others in three of the most public places in said county, for four weeks preceding the second Monday in December, annually, notifying all whom it may concern, that he will, on the second Monday in December next ensuing the date of such notice, commence selling, at the court house door, or where courts are usually holden in such county, or at the most public place in the county seat, all and singular the lands and town lots in said county on which the taxes due thereon for the year or years (naming the year or years for which he is authorized to collect), are not paid, on or before the second Monday of December, and that such sale will be continued from day to day, between the hours of nine o'clock in the forenoon, and four o'clock in the afternoon, of each day, until all are offered for sale, but such notices are not to contain any description of lands, or lots: *Provided*, however, And it is hereby made the further duty of such collector to put up a written notice at the court house door of the proper county, describing each tract of land, or town lot, intended to be sold as aforesaid, at least four weeks previous to such day of sale.

SEC. 21. Before any collector shall proceed to make any sale of real estate, under the provisions of this act, he shall procure and file in the clerk's office of his county a verification under oath of the printer, or some person belonging to his office, that the advertisement hereinbefore required to be published, relating to the sale of lands and town lots, a copy of which is to be annexed to such verification, has been duly published, the length of time required by this act.

SEC. 22. After having filed evidence of the publication of the notice required in the preceding section, the collector shall proceed, in pursuance thereof, on the said second Monday of December, between the hours of nine and four o'clock of said day, to expose to sale each and every tract of land, and town lot, on which the taxes are not paid, by the description and number by which they are designated on the duplicate for the taxes, and interest due thereon, and the costs of advertising and selling the same, or so much thereof as will sell for the amount due and chargeable thereon, to the best bidder for ready cash, such collector declaring, at such exposure to sale, in what manner the division of a lot, or tract of land, shall be made, if a part thereof shall pay the tax and other charges thereon, and continue, from day to day, between the said hours, to expose the said lands and lots to sale, until all shall be duly offered.

Sale to commence on the 2d Monday of December,

For ready cash.

Division of lots and continuance of sale.

SEC. 23. When any lots, or tract of land, or part thereof, shall be sold for the nonpayment of the taxes, and costs, and charges thereon, the collector shall give to the purchaser a certificate, in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lot, or tract, or part thereof, which certificate shall be assignable, and transferrable, by endorsement on the same, which assignment shall have the same force and effect as the assignment of other bonds for the conveyance of lands; and if the owner, or claimant of the lot, or tract of land, described in such certificate, shall not, within two years, from the date thereof, pay to the purchaser, his heirs or assigns, or to the board of commissioners of the county in which such lot or tract of land be situate, for the use of such purchaser, his heirs or assigns, the sum mentioned in said certificate, with interest thereon at the rate of fifty per centum per annum, together with such other taxes, costs and charges upon the lot, or tract of land sold, as mentioned in said certificate, as may have accrued under the laws of this Territory, and have been paid by such purchaser, his heirs, or assigns, if vouchers of the payment thereof be deposited with board of commissioners, or produced to such owner or claimant, the said collector, or his successor in office, at the time such deed is demanded, shall, at the expiration of the said two years, execute to the said purchaser, his heirs, or assigns, in the name of the

Certificate of sale, description, price, &c.

Certificate assignable.

Redemption within 2 years, and the other conditions thereof.

If not redeemed, deed by

whom, and to whom made, and character of title vested.

Acknowledgment, record, and effect.

Proviso, as to idiots, insane persons, &c.

75 cents to the clerk, when demandable. Proviso, as to taxes paid; and, also, as to minors.

Lands unsold, 7 per cent. interest, charged on taxes; costs, &c., thereon.

Delinquent list, by whom corrected, and how.

Territory of Iowa, a conveyance of the lot or tract of land so sold as aforesaid, and described in said certificate, which conveyance shall vest in the person to whom it is given, an absolute estate, in fee simple, subject to the claim of the county for all taxes, costs and charges accruing and remaining unpaid upon such lot, or tract of land, after such sale as aforesaid, and such conveyance shall be *prima facie* evidence that the sale was regular, according to the provisions of this act, and every such conveyance, executed by the collector, or his successor, and duly acknowledged before any officer authorized to take acknowledgments of conveyances, may be recorded and have like effect as other conveyances when acknowledged and recorded: *Provided*, That idiots, femes covert, and insane persons, who are owners, or claimants, of lands, or lots, sold under the provisions of this act, may redeem such lands, or lots, at any time not exceeding five years after the sale thereof, in the same manner as is provided in other cases: *And provided also*, That every person wishing to redeem any lands, or lots, sold under the provisions of this act, by depositing with the board of commissioners of the proper county the money, shall pay to the clerk of said board, at the time of depositing the redemption money, the sum of seventy-five cents for his services: *Provided*, No sale of lands for taxes, nor deed made in pursuance thereof, shall be of any validity if the taxes for which the same is sold, shall have been paid prior to such sale: *Provided*, always, That when the lands of minors be sold, the same shall be redeemable when said minor becomes of age, and one year thereafter.

SEC. 24. All lands, and town lots, which shall not be sold, as above provided, and the taxes charged thereon still remain unpaid, shall still remain charged therewith, until finally paid, and such taxes, and charges, from the second Monday of December, in the year such taxes were assessed, shall bear interest at the rate of seven per centum per annum, until paid; and the board of commissioners, before the duplicate for the succeeding year is made out, shall examine the delinquent list returned by the collector, and strike therefrom all lands which they know to be forfeited, or relinquished to the United States, all lands, or lots, which have been double listed, or on which the taxes have been paid, and correct all manner of errors that may exist, and see that the clerk makes

due return of such corrected lists of former years to the collector, every year; and the several clerks, when they make out the duplicate of taxes, for each and every year, shall annex, to the new duplicate of taxes, the taxes and charges of any and all former years that remain as unpaid, on lands, lots and personal property, on the delinquent list of the preceding year, after its correction by the board, as hereinbefore directed, and the same, together with the interest thereon, shall be collected by the collector of the current year, as hereinbefore directed.

Supervision,  
and duty of  
clerk.

Unpaid taxes,  
to be annexed  
to annual du-  
plicate, with  
interest, and  
collected.

SEC. 25. Taxes are hereby made a lien on the lands, or town lots, on which they may be due, in whosoever hands such lands, or town lots, may come, and when any land, or town lot, is offered for sale for any such taxes, it shall not be necessary that the collector should sell it as the property of any particular person, and if it should be sold as the property of any particular person, no misname of the owner, or supposed owner, or other mistake respecting the ownership of such land, or town lot, shall ever, in any way, affect the sale or render it void, or voidable.

Taxes, a lien  
on lands, lots,  
&c.

Irregularities,  
not to affect the  
sale.

SEC. 26. At any time before the sale of goods and chattels, or lands and town lots, under the provisions of this act, the owner, or claimant, may release the same by the payment of the taxes, interest, and charges, for which the same are liable to seizure and sale, and whenever any balance of any sale of any goods and chattels under this act, over and above what is sufficient to pay the taxes, interest and charges for which the same were sold, remains, the collector shall pay the same over to the owner of such goods and chattels, on his demand, and if at any time, within two years, after the payment of tax, the person who has paid the same, can satisfy the board of county commissioners that such tax was improperly assessed or paid by mistake, when it was not legally chargeable, the said board shall order that the same be repaid, and such order shall be a legal debt against the county, and shall be paid by the treasurer of said county, and such treasurer shall be entitled to a credit for the amount thereof, as in cases of payment of other claims.

Owner, or  
claimant, may  
release by pay-  
ment before  
sale.  
Surplus, to be  
repaid.

Proceedings  
before county  
commissioners,  
as to mistakes,  
and their dis-  
cretion herein.

SEC. 27. In cases where sales of goods and chattels, lots or lands, are made under the provisions of this act, unless the purchaser shall, within such time as may be allowed by the collector, who makes such sale, pay the purchase money, the collector may, at

Remedy  
against pur-  
chasers, with  
costs and da-  
mages.

his discretion, again expose the property to sale, or sue such purchaser for the amount of the purchase money, and shall recover the same, with costs, and ten per centum damages.

**When lands and lots may be offered for sale a second time, for taxes, and claims of the collector for such service.**

SEC. 28. If the collector of any county shall, at any time, unavoidably fail to offer for sale the delinquent lands, or town lots, in his county, or may have offered them for sale, and the purchaser thereof shall refuse to pay the collector the amount due thereon, it shall be the duty of such collector to again advertise and sell such lands, or lots, on the second Monday of April next ensuing, and such advertising and sale shall, in all things, be governed by the provisions of this act, and be as legal and valid, to all intents and purposes, as such sales would have been had they been made on the second Monday in December, and when such collector shall have settled at the treasury, at the proper time, the amount charged against him, he shall be entitled to draw on the treasury for the balance in his favor, on account of lands that shall not sell when offered by him on the said second Monday of April, which account shall be made out and sworn to, as is provided for in this act, for his delinquent return.

**Collector's return, and what shall be set forth therein.**

SEC. 29. The collector of taxes, in his return to the precept before mentioned, shall state fully and distinctly the payment of taxes made by way of credit to the property charged on the transcript of the assessment rolls aforesaid, the payments enforced by distress and sales of goods and chattels, and in like manner the sales of lots and tracts of land, or parts thereof, and the persons to whom, and the sums for which, the same were sold; also the taxes remaining unpaid, designating particularly the tracts, or lots, remaining unsold, the name of the persons, delinquent in the payment of other taxes, and the tax or property with which he is charged, and the legal cause of failure to enforce payment as commanded in said precept, and such other special matters as are provided by this act, to be by him done, and the truth of such return shall be verified by affidavit of the collector, to be taken before the clerk of the board of commissioners, and if any individual shall be injured, or sustain a damage, by a false return of any collector made to any precept under the provisions of this act, or other illegal or fraudulent act of such collector, such individual, upon suit, to be brought against such collector, and his securities, upon their

**Return, to be verified by affidavit.**

**False returns, and the remedies provided for injuries herein.**

bond for his use, shall recover treble damages and full costs and charges. Treble damages.

SEC. 30. It shall be the duty of the clerk of the board of commissioners of the several counties, to make four copies of the lists of delinquents, as returned by the collectors of their several counties, one of which they shall put up in some conspicuous place in their office, and shall keep the same up at least twelve months, and shall cause three other copies to be posted up in three of the most public places in their counties, within ten days after receiving said return; and the board of commissioners of the county may, if they should deem it necessary, cause fifty copies of such delinquent list to be printed and circulated in their county: *Provided*, That it shall be lawful for any collector to proceed, by distress and sale of goods and chattels, to collect any taxes returned delinquent, within ten days after making such return. Lists of delinquents to be made out, and posted up where, and for what length of time. 50 additional copies. Proviso, as to the time of sale.

SEC. 31. All collectors shall have power to proceed, in the collection of taxes, due them for two years, from the time at which they were bound to pay over to the county, in each year in the same manner they would have done during their appointment, or term of office, but this provision shall not be so construed as to authorize any collector to collect taxes by him returned as delinquent after receiving credit therefor. Powers of collectors, as to time, and restriction, as to delinquent returns.

SEC. 32. Each and every collector is authorized and required to assess a county tax, on all real, or personal estate, that may not have been assessed, and at the time he makes return of the precept, and list of delinquents, as required by this act, shall make out, sign, and verify by affidavit, a list of the property by him so assessed, and the taxes collected thereon, and no allowance shall be made to any collector, on his delinquent list, by the board of commissioners, until he shall have complied with the foregoing requisition; and it shall be the duty of the clerk to publish a list of the unassessed property that has been assessed and taxes collected thereon by the collector, in the same manner, and at the same time, that he publishes the delinquent list. Property assessed and taxes collected thereon, how, and when, returned and verified. Duty of clerk.

SEC. 33. When any collector discovers that any tract of land, or town lot, has been assessed more than once for the same year, he shall credit only the tax really due, and make return of the balance as illegal assessments, and in all cases where too much Report of illegal assessments.

Proviso as to what it shall contain, and how it shall be verified.

Vacancies filled by commissioners; oath, securities and duties of the persons appointed.

Credits.

Receipts.

Proviso, as to deputies.

personal property has been, through mistake, charged by the assessors, the collector may remit the excess of tax and report the same, with the list of illegal assessments: *Provided*, however, That all such lists of illegal assessments returned by any collector shall contain a description of the property illegally assessed, in what the illegality consists, and the names of the persons concerned, and be verified by affidavit, and filed with the clerk before it shall have any effect.

SEC. 34. If any collector shall die, or become unable, from bodily infirmity, to perform the duties of his office, the board of commissioners shall forthwith appoint a collector in the place of the one deceased, or infirm, as aforesaid, who shall take the oath of office before said clerk, with like penalty and condition as hereinafter prescribed, and the said collector shall forthwith demand and receive from the person in whose possession the same may be, the precept and duplicate of the assessment rolls as aforesaid, and shall immediately proceed to complete the collections, as commanded by said precept, and such collector shall be liable, under the provisions of this act, for the amount of the assessed taxes of his county, after deducting those which appear from the memorandums of the deceased, or the statements of the infirm collector, to have been collected, and the executors, administrators, heirs, devisees and securities of the deceased collector, and the infirm collector, and his securities, shall be liable, under the provisions of this act, for the amount of taxes collected by them severally, unless the same be paid over, as herein provided; and any person injured by the neglect of any deceased, or infirm collector, to enter credits for taxes paid on the transcripts aforesaid, shall have redress by action on such collector's bond, for the damages thereby sustained, and if any persons, charged with the taxes on the transcript of the deceased, or infirm collector, (no evidence being furnished to the successor of payment thereof, by, or on the part of such collector, deceased or infirm) be able to produce a receipt for such taxes paid such prior collector, the successor aforesaid shall not be charged therewith, but shall take up such receipt, giving his own in lieu thereof, and return the same with said receipt, and the amount thereof shall be recoverable as before provided: *Provided*, however, That this section

shall not be so construed as to prohibit any collector, who may be disabled by bodily infirmity from appointing deputies under the provisions of this act, hereinafter provided.

SEC. 35. Every collector of taxes shall receive for any individual, or individuals, orders regularly drawn upon the treasurer of his county, in payment of taxes due said county. Treasury orders, receivable for taxes.

SEC. 36. It shall be the duties of the collectors of the several counties, to pay to the county treasurer the amount of taxes assessed in their respective counties, on or before the first Monday in January, in each year, and if there be any deficiency in the amount thereof, he shall account for the same, by producing to the board of county commissioners a certified statement, to be made by the clerk, attested by his signature, and official seal, of the amount of delinquencies in the payment of taxes, specifying the name of the person, and the property, or tax for which he is delinquent, as appears from such collector's return to the precept, and it is made the duty of the clerk to make out such statement and certificate, and calculate the amount thereof, and if the amount of such certified statement of delinquencies, and the treasurer's receipt for the payment aforesaid, will balance the charges on the books of the county commissioners, they shall give him a receipt for the amount of such taxes. Payments, by collector, when, and to whom made, and the adjustment of his accounts. Treasurer's receipt.

SEC. 37. Each collector shall be entitled to the following fees, for his services: seven dollars for every one hundred dollars, of county tax by him collected, and in the same proportion for less sums, to be retained by him, in making payment, and credited therefor in his settlement with the board of county commissioners, five per centum commission, where goods are distrained, and taxes, commission and charges paid before sale; eight per centum commission on sales of distress and charges for keeping property distrained, together with the tax and charges out of the monies received therefrom; on sales of real estate, five per centum on the amount for which the same is exposed to sale, and twenty-five cents for each certificate of sale under this act, which are to be added to, and estimated in, the sum, for which any tract of land, or lot, or part thereof, shall be sold. Collector's fees.

SEC. 38. If any collector shall fail to make settlement of the taxes assessed in his county, for county Liabilities of collectors, on

**falling to pay over.** purposes, at the time required by this act, it shall be the duty of the board of county commissioners, forthwith, to charge in the account against such collector, five per centum damages, on the amount of balance due from such collector, on account of such taxes for such delinquency, and unless the said debt and damages, and the interest thereon to be paid to the treasurer of the county, the county commissioners shall, with due diligence, cause suit to be commenced upon such collector's bond, against him and his securities, for the debt and damages due as aforesaid, and the said amount shall bear interest from the day at which payment thereof should have been made, at the rate of ten per centum per annum, until paid, and upon the trial of any such suit, the stated account of the collector, against whom the suit is brought, certified by the clerk of the board of commissioners, as truly transcribed from the accounts current against such collector, on the books of said commissioners, authenticated by the county seal, shall be conclusive evidence of the amount against such collector, and his securities; nor shall such collector, or his securities, be permitted to set off, or alledge in payment of such demand, any payment, or claim of credit, unless the same has first been presented to the board of county commissioners, and been allowed, or rejected by them, or the same could not, by using due diligence, have been presented to said board of commissioners for their determination thereon, to be had before trial of such suit.

**Suit on collector's bond.**

**Interest.**

**Evidence of the amount due.**

**Where the collector fails to make a return, or makes a false return.**

**Judg't for full amount.**

**Duty of district attorney.**

**SEC. 39.** If any collector shall fail to return the precept, and duplicate, as hereinbefore directed, or shall make a false return thereto, the judgment, upon the determination of the suits which may be brought, by the board of county commissioners, against such collector, and his securities shall be for the full amount of the taxes for the county revenue, as contained in the transcript of the assessment rolls aforesaid, together with the damages, commission, costs and charges, as hereinbefore provided, and of the amount of said taxes, the stated account of the board of commissioners aforesaid, in the several cases shall be sufficient evidence, and it shall be the duty of the district attorney to aid the board of commissioners in prosecutions under this act, when requested, and to give advice and counsel concerning the revenue, when requested by any officer con-

cerned in the collection thereof, and it shall be the duty of all officers to give information to the grand jury of the proper county of all frauds and offences against this act. Information to grand jury.

SEC. 40. If any officer shall neglect, or refuse to perform any of the duties imposed upon him by this act, he, and his securities shall forfeit and pay to the county not less than fifty, nor more than one hundred dollars, for each offence, besides all damages which may be sustained by the county, or any individual, in consequence of such violation of his duty, the said penalties to be adjudged, within the limitations aforesaid, by the court before whom the adjudication shall be had, and to be recovered, with costs of suit, in an action to be brought upon the official bond of such officer, and this provision shall be construed to extend to all cases of violations of official duties, not provided for by this act. Forfeitures and penalties, for violations of duty.

SEC. 41. All bonds, directed to be taken by this act, shall be made payable to the board of county commissioners of the proper county, and all suits brought thereon shall be prosecuted in the corporate name of the board of county commissioners, and if brought for the use or benefit or by the direction of any person, or persons, such suit shall be brought in the corporate name of the board of county commissioners, on the relation of such person, or persons, and several rights may be prosecuted in the same suit on such bond, and one judgment, entered thereon, shall be no bar to other rights; but the board of county commissioners, or any other person, having right thereto, may have the defendants to such judgment, again summoned by *scire facias*, to show cause why execution should not be had on such judgment, for the debt, or damages, supposed to be due, owing, or belonging to the party complaining, as often as such right may accrue. Bonds, to whom payable, and style of suits thereon. Several rights, and one judg't. Scire factas.

SEC. 42. Any officer, withholding the payment of any monies belonging to the county, after the same shall be demanded, or become due, shall be liable to pay five per centum, in damages, and twenty per centum interest per annum, from the date of such defalcation, to be recovered of such officer, and his securities, or either of them, by action as in other cases; and the accounts, in favor of the county, in all cases of the trial against all and every person, or persons, charged on the books of the board of county commissioners, and certified to be true by the clerk Penalties for withholding money, by any officer.

of said board of commissioners, as above provided, in case of collectors, and authenticated by their seal, shall be evidence, in all cases of debtors, of the charges therein stated, to put the defendant upon his defence, to the demand.

**Collector's oath, securities, and bond.** SEC. 43. The sheriff, before he enters upon the duties of his office as collector, shall take an oath or affirmation before some person authorized to administer the same, that he will well and truly perform the duties of his office, as collector, and shall enter into bond, to be filed with the clerk, with security, to be approved of by the board of county commissioners, in the penalty of fifteen thousand dollars; conditioned for the faithful performance of the duties of his office, as prescribed by law, and such collector may appoint as many deputies as he may think necessary, or proper, who shall be sworn, and possess the same power and authority as his principal; such collector being at all times responsible for the acts of deputies, and should any deputy fail to pay over any monies collected by him, as such, for county revenue, such principal is hereby authorized to proceed against him in the same summary manner, as is provided for proceeding against collectors in like cases.

**Condition.**

**May appoint deputies.**

**Their duties, &c.**

**License, to whom granted, for what purposes.** SEC. 44. That no merchant, store keeper, pedlar, company, or corporation, shall hereafter be permitted to vend, sell, or retail, at private sale, any goods, wares, or merchandise, without first having obtained a license for that purpose from the board of county commissioners of the proper county, in which such goods, wares, or merchandise may be offered for sale; for which he, or they, at the granting thereof, shall pay into the county treasury, for the use of such county, such sum as shall be assessed by the said board, not less than ten, nor more than fifty dollars, which license, when thus procured, shall authorize the applicant, or applicants, to whom the same may be granted, to vend, sell, and retail goods, wares and merchandise, in such county, for the term of one year, from the time of granting the same; but no such license, as aforesaid, shall authorize any person, or persons, to vend, or peddle clocks, in this Territory, but, in order to authorize any person to vend or peddle clocks, he shall procure a special license for that purpose, in the manner herein prescribed, and the board of county commissioners may grant license to venders and pedlars of clocks for any term not less than three months, nor more than

**And for how long.**

**Special license, for vending clocks.**

one year, which shall authorize such person, or persons, to vend and peddle clocks within the county for the time specified in such license. The person, or persons, so applying, shall pay a sum not less than twenty-five, nor more than seventy-five dollars per quarter of a year for the use of the county, but any resident in this Territory may sell, or peddle, without license, any articles not prohibited by law, except clocks, if such articles shall have been produced or manufactured within this Territory, by the person selling, or peddling the same.

SEC. 45. In all cases, when the said board of commissioners shall not be in session when application is about to be made for a license as aforesaid, it shall be lawful for the clerk of such board to grant a written permission to such applicant, or applicants, to vend, sell and retail goods, wares and merchandise, as aforesaid, until the next meeting of said board of county commissioners, to be holden after the granting of such permit, and for one year from the date thereof, if the said board of commissioners, at their said next meeting, shall, upon examination and consideration, approve the same: *Provided*, Such applicant, or applicants, shall first pay into the county treasury, for the use aforesaid, such sum as the said clerk, in his discretion, shall direct, in conformity with the rate prescribed in the foregoing section, and as shall be usual in similar cases, for each of which permits, or licenses, when granted, the clerk shall receive one dollar to be paid by such applicant.

SEC. 46. When a permission is granted, by the clerk in vacation, as aforesaid, it shall be the duty of the board of commissioners, at their next session thereafter, to examine such permit, and to proceed, forthwith, to assess the amount of the tax to be paid in such case, as in the case of an original application, and if the tax, thus assessed, correspond with the amount fixed by the clerk, as aforesaid, they shall cause a license to be issued to the applicant, or applicants, for the term of one year, commencing with the date of the permit: If a greater sum shall be assessed than that fixed by the clerk, the applicant, or applicants, shall forthwith be required to pay over the residue to the county treasurer, under the penalty of forfeiting the amount already paid, and of his having his, her, or their permit revoked; but if a less sum shall be assessed, it shall be the duty of the board of commissioners, to order a warrant to be

Non-residents,  
and residents.

Clocks except-  
ed.

When clerk  
may grant a  
permit, or spe-  
cial license.

Proviso, as to  
payment.

Duty of com-  
missioners, as  
to permits,  
granted by  
their clerk.

Forfeiture.

**Overplus.** drawn on the treasurer, in favor of such applicant, or applicants, for the overplus, payable out of any money in the county treasury, not otherwise appropriated.

**Penalties for selling without license; and how, by, and before whom, recoverable.** SEC. 47. If any store keeper, merchant, pedlar, company, or corporation, keep a store, or shall sell or retail any goods, wares, or merchandise, (except as hereinbefore excepted,) without being duly authorized by a license, or permit, as aforesaid, such person, or persons, company, or corporation, so offending, shall forfeit and pay any sum not exceeding one hundred dollars, nor less than ten dollars; to be recovered by action of debt, in the name of the board of commissioners of the proper county, for the use of the county, before any justice of the peace, or court of record, having jurisdiction of the same, in all of which cases it shall be the duty of the county commissioners, sheriffs, coroners, justices of the peace, and clerks of the several courts in this Territory, and lawful for any other person, or persons, in case of their neglect, to cause such offenders to be sued, and the suit, or suits, prosecuted to effect, and bail may be required, in such cases, without affidavit, if the court, or justice, in their discretion, shall deem the same necessary, to secure the county in the ultimate payment of any such penalty.

**Applications for license, and preliminary rec'pt from treasurer.** SEC. 48. That no person, or persons, applying for a license, or permit, shall be entitled to the same, until he, she, or they file with the clerk of the board of commissions, a receipt from the county treasurer, for the amount ordered to be paid by such applicant, agreeable to the provisions of this act, and such receipt shall be charged in account against said treasurer, on the books of said board of commissioners.

APPROVED, January 24, 1839.

## REVENUE.

AN ACT to provide for a Territorial Revenue.

**5 per cent. of the gross am't of taxes, in each county, to be appropriated for Territorial purposes.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That, for the purpose of raising a Territorial revenue, to defray the expenses authorized by law to be paid out of the Territorial Treasury, it shall be the duty of the county commissioners of each of the counties of this Territory, at the time of the filing of the assessment

roll, to deduct from the gross amount of taxes there charged, five per cent. to be set apart, by the said county commissioners, as a debt due from said county to the Territory.

SEC. 2. The county commissioners shall furnish the Treasurer of the Territory, immediately after the same may be filed, with a copy of the duplicate for their respective counties, for the current year, together with the sum which will be due from said county to the Territory, for that year.

Duty of county commissioners, as to duplicate.

SEC. 3. The first moneys which may be returned by the collector, collected from the duplicate of any year, to the amount due the Territory for that year, from the county, shall be retained by the Treasurer of each county for the use of the Territory, and the county treasurers shall pay over the same upon the drafts or warrant of the Treasurer of the Territory.

Money to be retained, and paid over, on draft.

SEC. 4. The duties, herein enjoined upon the county treasurers, shall be so considered, that a departure therefrom shall be deemed a breach of the conditions of their official bonds, so that they, and their securities, shall be liable to the Territory for any loss which may accrue therefrom; and any county treasurer who shall dishonor, or refuse to pay, the drafts of the Territorial Treasurer, for any money which may be in his hands, and due from said county, at the time, to the Territory, shall be amerced in damages of fifty per cent.

Official bonds of county Treasurer,—their duties, &c.

Damages charged at 50 per cent.

APPROVED, January 25, 1839.

## RIGHT.

AN ACT to allow and regulate the action of right.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That hereafter the proper remedy for recovering any interest in lands, tenements, or hereditaments, shall be by an action of right.

Action of right, for interest in lands, &c.

SEC. 2. No person shall recover in this action, unless, at the time of commencing it, he shall have had a valid subsisting interest in the property claimed, and the right to recover the immediate possession thereof.

What right is required there-in.

SEC. 3. The action shall be brought in the district court of the county where the property claimed is situated. It shall be commenced by summons, and

Action where bro't, and how.

- all the proceedings therein shall be assimilated, as nearly as practicable, to those in personal actions, except as herein otherwise provided.
- Against whom.** SEC. 4. The action may be brought against any person acting as owner, landlord or tenant of the property claimed.
- Notice to landlord, his agent, &c.** SEC. 5. If brought against the tenant, he shall forthwith give notice thereof to the landlord, his agent, or attorney, under the penalty of forfeiting to such landlord the value of two years' rent, to be recovered in the same manner as other rents.
- Penalty.**
- Substitution of landlord; exception.** SEC. 6. In such cases, the landlord may, at any time appear, and, after having his name substituted in the proceedings, instead of that of the tenant, may become sole defendant in the action: Such substitution, however, shall not take place where the tenant sets up some other claim to the said property than that derived from such landlord.
- The writ how served.** SEC. 7. The summons shall be served on the defendant personally, or, if he cannot be found, by leaving a copy thereof at his residence, with some person of proper age.
- Non-residents and their agents.** SEC. 8. If the defendant be a non-resident of the county, and have a known agent (in relation to the property for which the action was brought) therein, such summons may be served upon said agent in the same manner as though he were the principal.
- Service abroad.** SEC. 9. If being a non-resident, as aforesaid, he have no such agent, the summons may be served either in this Territory, or elsewhere, by any person whatever, in the manner prescribed in section seventh.
- Service, return and proof.** SEC. 10. Where a person, other than the proper officer, shall, in any case, serve such summons, said service must be duly shown to the court by affidavit accompanying the return of the writ and filed therewith, which shall fully state the manner of service.
- Notice by advertisement,—where given, & how long.** SEC. 11. Where the defendant is not to be found in the county in which the action is brought, instead of the mode of service authorized above, the plaintiff may cause an advertisement to be published in some newspaper printed most conveniently to the court where the suit was brought, which publication shall be continued weekly for the term of twelve weeks, in succession.
- Contents and requirements of such notice.** SEC. 12. Such advertisement shall contain the names of the parties, and the description of the property claimed, as stated in the summons, and

shall require the defendant to appear and plead to the action on or before the first day of the term of the court next succeeding the termination of the time of publication, as aforesaid, or that judgment will be rendered against him by default.

SEC. 13. The declaration in this action shall be sufficient in substance if it set forth the names of the parties, and the property, or right, claimed, with such certainty as to leave no grounds of mistake.

SEC. 14. If an undivided share or interest is claimed, the same shall be set forth in the declaration.

SEC. 15. Several tracts of land, or other rights, may be claimed in the same declaration, either in one or several counts.

SEC. 16. The declaration may, at any time before trial, be amended, at the costs of the plaintiff.

SEC. 17. The declaration may charge several defendants jointly in one count, and separately in others.

SEC. 18. The plea to the merits shall be sufficient, if it clearly set forth which of the rights claimed by the plaintiff, or what particular portion thereof, are meant to be defended by such plea.

SEC. 19. The defendant may demur to the declaration, or else he shall plead the general issue only.

SEC. 20. The action of right being intended to supersede the action of ejectment, the writ of right and the writ of dower, whatever might be given in evidence, under the general issue in either of those actions, may also be done in this.

SEC. 21. If the jury find for the plaintiff, they shall also assess the damages sustained by him from the withholding of his rights by the defendant. But no damages shall be recovered for the use, occupation, or intervening profits of the property recovered, which shall have accrued more than six years prior to the commencement of the action.

SEC. 22. If judgment by default be obtained against the defendant, in cases where the summons shall have been personally served, a jury of inquest shall be forthwith empanelled, to assess the said damages of the plaintiff.

SEC. 23. The judgment, in each case, shall be as well for the restoration of the right, as for the amount of the damages and costs: A writ of possession, and also a fieri facias, shall be ordered accordingly.

Verdict and judgment, in certain cases.

SEC. 24. If the interest of the plaintiff in the property sued for expire before the day of trial, the verdict for the plaintiff shall be only for his damages sustained as aforesaid: Judgment shall be rendered for such damages and costs, and, as to the property itself, that the defendant go thereoff without delay.

Default, action on the case, new trial, &c.

SEC. 25. If judgment by default be rendered in a case where the summons was not personally served, there shall be no jury of inquest as above provided, but the plaintiff may bring his action on the case for damages: If, however, the defendant obtains a new trial, as hereinafter provided, the said action on the case shall be dismissed with costs to abide the event of the suit

Proceedings on new trial.

SEC. 26. All the proceedings on the new trial shall be the same as above provided for, in cases where the defendant may have appeared, or been personally served with the summons, and shall be attended with like consequences.

Restitution & damages.

SEC. 27. Where the joint act of several defendants, in withholding the plaintiff's property, is proved on the trial, and the summons shall not have been personally served on all, the plaintiff, if successful, shall be entitled to judgment of restitution against all, but for the recovery of damages he shall proceed as prescribed in section twenty-fifth.

New trial, when allowed, to whom.

SEC. 28. In such cases any of the defendants who have not been personally served, as aforesaid, shall have the right to a new trial, as hereinafter provided, in the same manner as though they had been sole defendants, but the consequences of such new trial shall not enure to the benefit of those defendants upon whom the summons shall have been personally served.

Distinct parcels of property. Plaintiff may elect, &c.

SEC. 29. When on the trial it shall appear that some of the defendants occupy distinct parcels of the property claimed, and other defendants other distinct parcels, the plaintiff shall elect against which to proceed before the testimony shall be deemed closed, and the defendants, not so proceeded against, shall have judgment for their costs.

Discontinuance, in what cases.

SEC. 30. Where there is no proof against some of the defendants, the court may order a discontinuance as to them, at the plaintiff's costs, before the testimony shall be deemed closed.

Verdict and judgment, as to defendants.

SEC. 31. If on the trial, the jury find against some of the defendants and not against the others, the plaintiff shall have judgment against the former,

and judgment shall be rendered against him, for the costs of the latter.

SEC. 32. If the jury find that one or more of several plaintiffs ought to recover, and that the others ought not, the verdict shall specify as to which of said plaintiffs they find for, or against the defendants. As to plaintiffs.

SEC. 33. If the verdict be for a part of the property claimed, it should specify particularly what part, if for an undivided share, or interest, in the whole property claimed, or in any part thereof, it shall specify what share. Specifications in verdict.

SEC. 34. Where, however, the verdict follows the declaration, it may be general for the plaintiff, and in all the above cases judgment shall be rendered according to the verdict. General verdict, and judg't.

SEC. 35. Judgments, in actions of right, shall be as conclusive as in personal actions against the plaintiff, and all those defendants who shall appear and plead, and against those who having been personally served with the summons aforesaid, shall make default. Judgments in this action.

SEC. 36. But in all those cases the court, in its discretion, may grant a new trial on application of the defendant, or his legal representatives, made within the time limited in the following section. New trials.

SEC. 37. Such application, if made by the defendant himself, must be within three years after the said judgment by default. Limitation.

If he die, within the three years, his heirs may have at least two years after his death, within which to make such application. Heirs, may apply, and

If any such heirs are minors, they shall have at least one year after they respectfully become of age, within which to make application as aforesaid. When.

SEC. 38. The time during which any of the individuals named in the last section shall have been insane or imprisoned, for a less period than during life, shall not be included in estimating the limitations therein provided for. Insane persons, &c.

SEC. 39. But no further privileges, than as above specified, shall be permitted on account of any of the parties interested having been married women. Married Women.

SEC. 40. When the defendant was without the United States, during the progress of the action against him, he may, on his part, institute the action of right to recover possession of the same property, at any time within two years after his return, provided Def'ts not in the U. S.—Return and limitation.

- the same be within seven years from the date of the judgment against him as aforesaid.
- Writ of possession.** SEC. 41. The defendant, who shall have been successful on the new trial above provided for, may (if the case require it) have a writ of possession to restore him his property.
- Landlord and tenant.** SEC. 42. Where the action is brought against a tenant, the judgment shall be conclusive against his landlord, in case he received due notice of the pendency of the suit, either in the manner provided for in section fifth, or otherwise.
- Want of notice, &c.** SEC. 43. If not thus notified, he shall enjoy the same privileges as defendants who have not been personally served with summons, as provided for in sections thirty-seven and thirty-eight
- Parties to this action.** SEC. 44. No determination of an action of right shall prejudice the interest of any person not a party to the suit, except in case of a landlord as aforesaid.
- Title.** SEC. 45. The plaintiff, in this action, can only recover upon the strength and validity of his own title.
- Limitation, 20 years.** SEC. 46. Twenty years quiet possession, under a claim of title adverse to that of the plaintiff, shall be a bar to the action of right, except as hereinafter provided.
- Disabilities, and their removal.** SEC. 47. Persons insane, or imprisoned, or minors, during any portion of the said twenty years, shall be allowed to commence said action at any time, within two years after such disability has ceased.
- Widow's dower.** SEC. 48. No widow shall commence this action for the recovery of her dower, until after the expiration of six months from the death of her husband.
- Joint tenants, and tenants in common.** SEC. 49. If the action be brought by tenants in common, or joint tenants, against their co-tenants, the plaintiffs must prove, on the trial, that the defendants actually ousted said plaintiffs, or did some act amounting to a total denial of their rights, as such co-tenants.
- Arrest of judgment, &c.** SEC. 50. The same proceedings shall be allowed as in personal actions to arrest, or reverse, any judgment, or obtain a new trial in actions of right.
- Warrant of attorney.** SEC. 51. The attorney of the plaintiff, if required by the defendants, must show, or state sufficient authority for commencing this action, otherwise the suit shall be dismissed, at the costs of such attorney.
- Waste, and damages.** SEC. 52. If the defendant, in an action of right, shall commit any waste upon the property claimed, he shall forfeit treble damages to the party aggrieved, to be recovered in an action on the case, after said

party shall have recovered possession of the property sued for.

SEC. 53. Where, by the provisions of this act, the plaintiff in an action of right shall be entitled to damages for withholding, or using, or injuring his property, the defendant shall be allowed to set off any permanent improvements he may have made thereon, at their fair value, to said plaintiff. Permanent improvements.

SEC. 54. After issue shall have been joined on the merits, no exceptions shall be taken to the declaration, in any manner whatever. Joining of issues.

SEC. 55. Where the action is brought to recover any particular piece of property, lying partly in one county and partly in another, it may be instituted in the district court of either of said counties. County lines.

SEC. 56. Any widow who shall have established her right to dower, in any property, by means of this action, shall have her dower assigned her, in the following manner: Assignment of dower.

1. The court shall appoint three reputable and disinterested commissioners, who, after having been duly sworn to the honest, faithful and impartial discharge of their duty, shall proceed to lay off the said dower designating the same by metes and bounds. Commissioners, their oath and duties.

2. They shall make a written report of their proceedings in the premises to the next term of said court. Report.

3. Said report may then be excepted to, and the court shall have power, for good cause shown, to set the same aside, and direct a new commission, as before. Exceptions thereto.

4. After the report of commissioners shall have been confirmed, a writ of possession shall be awarded, which shall be similar in its character to that provided for in other cases. Possession awarded.

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## FORMS OF PROCEEDINGS UNDER THIS ACT.

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

## SUMMONS.

County, } ss.

**Form of summons, in actions of right.** The United States of America to the Sheriff of said county.

You are hereby commanded to summons D. F. to appear before the district court of the county aforesaid, on the first day of the next term thereof, to answer unto A. B. in an action of right, for certain land with the appurtenances (or whatever the property claimed may consist of) in said county, which the said A. B. claims to be his right in fee simple (or according to the fact), and of which he complains that the said D. F. wrongfully withholds the possession. Hereof fail not, and have you then there this writ, witness, &c.

ADVERTISEMENT.—[ See Sections 11 and 12.]

**Advertisement.** Whereas A. B. has brought his action of right in the district court of——county, against D. F. for certain lands, with the appurtenances (or whatever the property claimed may consist of), lying in said county, and which the said A. B. claims to be his right in fee simple (or according to the fact): Now this is to require the said D. F. to appear, and plead, to said action, on or before the first day of the term of said court next succeeding the end of twelve weeks from the day of the date hereof, or that judgment, by default, will be rendered against him; dated this——day of——A. D. 18—[ the day on which the advertisement was first published.]

## DECLARATION.

County, } ss.

**Declaration.** District court for said county [ to be dated the day on which the declaration was filed ]—A. B. claims against D. F. a tract of land, with the appurtenances [or whatever the property claimed may consist of], lying in the county aforesaid, and described as follows: [state the description] and hereupon the said A. B. says, that he has right to the immediate possession of said property, and to the ownership thereof, in fee simple [ or as the case may be ] and

also to damages for its detention, and offers to prove that such is his right. J. M., Atty. for pl'tff.

### PLEA TO THE MERITS.

County, } ss.

District court for said county [ to be dated the day on which the plea is filed ]—D. F. denies the right of A. B. to the tract of land, with the appurtenances, and damages for the detention thereof, as set forth in his declaration, or to any part thereof, and hereupon he prays a jury to determine the truth of this plea. G. W., Atty. for defendant.

### WRIT OF POSSESSION.

County, } ss.

The United States of America to the Sheriff of said county.

In pursuance of a judgment obtained by A. B. against D. F. in the district court of said county, you are hereby commanded to deliver to the said A. B. without delay, the possession of the following premises, with the appurtenances, to wit [ here describe the property recovered with like certainty as in a declaration ]. And further, that of the goods and chattels, lands and tenements of the said D. F. being in your county, you cause to be made, and delivered to the said A. B. the sum of \_\_\_\_\_ for his damages, costs and charges, as specified in said judgment; hereof fail not, and have you this writ with a return of your doings thereon before said court, on the first day of the next term thereof, witness, &c. [ or the damages, costs and charges aforesaid, may be collected by a separate writ of fieri facias, as in ordinary judgments. ]

APPROVED, December 29, 1838.

## ROADS.

AN ACT to locate and establish a Territorial Road from Keokuck, on the Mississippi river, to Iowa City, on the Des Moines river.

Commission-  
ers to locate  
the road.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That James Sutton, Joseph Robb, and James McMurry, be and they are hereby appointed commissioners to locate and mark a Territorial Road, commencing at Keokuck, in Lee county, on the Mississippi river, thence to the horse tail reach, on the Des Moines river, thence up said river as near as practicable to Iowa city, on said river, passing through Farmington, New Lexington, Bentonsport, Columbus, and Philadelphia, in the county of Van Buren.

When and  
where commis-  
sioners to  
meet.

SEC. 2. *And be it further enacted*, That the commissioners aforesaid, or any two of them, shall meet at Keokuck, on the first day of June next, for the purpose of proceeding to the discharge of their duties as commissioners aforesaid, and that they be and are hereby authorized to adjourn from time to time, and from place to place, as they may agree and determine; and that in case said commissioners, from any cause, shall fail to meet at the time and place aforesaid, or any other time or place to which the said commissioners may have adjourned, that then the sheriff of Lee county be authorized, and he is hereby required, on the application of any of said commissioners, either written or verbal, to notify in writing said commissioners of some other day, to be by him appointed, and request their attendance on such day at the place aforesaid.

Falling to do  
so, sheriff of  
Lee county  
may appoint a  
day.

APPROVED, December 14, 1838.

## ROADS.

AN ACT to locate a Road from Fort Madison, in Lee county, to Trenton, in Henry county.

Comm'rs. to  
locate the road.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*. That William Skinner, of the county of Lee, and Samuel Brazleton and Myriam Kilbourn of the county of Henry, be and they are hereby appointed commissioners to locate and mark a Territorial road, commencing at the town of Fort Madison, on the Mississippi river, running thence on the nearest and best route to Balti-

more, in Henry county, thence on the nearest and best route to Mount Pleasant, in said county, thence on the nearest and best route to Trenton, in said county.

SEC. 2. That the said commissioners, or any two of them, shall meet in the town of Fort Madison, on the first Monday in April next, for the purpose of proceeding to the discharge of their duties, and that they be and are hereby authorized to adjourn from time to time, as a majority of them may deem proper; and that in case the aforesaid commissioners, from any cause, shall fail to meet at the time and place aforesaid, or at any other time to which the said commissioners may have adjourned, that then the sheriff of Lee county be authorized, and he is hereby required, upon the application of any one of said commissioners, to notify said commissioners, in writing, of some other day, to be by him appointed, and the commissioners, when assembled, shall proceed to lay out and mark said road, according to the provisions of law in such case made and provided.

Where and when comm'rs to meet.

Failing to do so, sheriff of Lee county may appoint a day.

APPROVED, December 19, 1838.

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## ROADS.

AN ACT to provide for laying out and opening Territorial Roads.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That all Territorial roads to be hereafter located and established within this Territory shall be viewed, surveyed, and established, and returns made thereof agreeably to the provisions of this act, within one year from the passage of the act by which said road or roads may be granted or authorized to be laid out respectively.

Territorial roads to be laid out within one year.

SEC. 2. The commissioners, appointed to locate and establish any Territorial road, shall cause the same to be correctly surveyed and marked from the beginning throughout the whole distance, by setting stakes in the prairie at three hundred yards distance, and blazing trees in the timber; they shall establish mile posts, which shall be marked with a marking iron, in regular progression, from the beginning to the termination of said road, and shall also establish a post at every angle in the said road, marking as

Special provisions as to the mode.

aforesaid upon the same, and upon a tree in its vicinity, if any there be, the bearing from the true meridian of the course, beginning at said angle post, set as herein directed, and note the bearing and distance of two trees in opposite direction, if there be any in the vicinity, from each angle and mile post.

Certified return of survey and plat.

SEC. 3. The commissioners and surveyor of each road shall make a certified return of the survey and plat of the whole length of said road, specifying in said return the width, depth, and course of all streams, the position of all swamps and marshes, and the face of the country generally, noting when timber and when prairie, and the distance said road shall have been located in each county.

Where to be recorded.

SEC. 4. Said return and plat shall be signed by a majority of the commissioners, and the surveyor of said road, and forwarded to the Secretary of the Territory, within sixty days after the view and survey of the same, to be by him recorded and preserved; they shall also, within sixty days as aforesaid, deposit in the office of the clerk of the board of commissioners of each county through which said road shall be laid, a return and plat, as aforesaid, of so much of said road as shall be laid out and established in said county, to be there recorded as aforesaid.

Expense to be paid by the counties.

SEC. 5. The said commissioners shall, after the completion of the survey of any road as aforesaid, make out a certified account of all services rendered, as well by the surveyor and other hands as by themselves, charging to each county, through which said road may have been laid, a proportion of the expense, agreeably to the number of days employed thereon, and the board of commissioners of said county shall audit and settle the same.

Established width of roads.

SEC. 6. All Territorial roads, authorized to be laid out by any law of this Territory, and not yet commenced, shall be laid out in the manner prescribed in this act, and the commissioners shall comply with all the regulations herein contained; and further, the established width of all Territorial roads shall be seventy feet.

No part of expense to be paid by Territory.

SEC. 7. When any road shall have been located and established agreeably to the provisions of this act, the same shall be and forever remain a public highway, and shall be opened and worked by the counties through which it shall be laid as county roads are; and no part of the expense of laying out

and establishing any Territorial road, or of the damages sustained by any person or persons in consequence of laying out any Territorial road, shall be paid out of the Territorial Treasury.

APPROVED, December 29, 1838.

## ROADS.

AN ACT to locate and establish a Territorial Road, from Black Hawk, in Louisa county, via Wapello and Mount Pleasant, to the southern boundary line of the county of Van Buren, in a direction to Jefferson City, in the State of Missouri.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That S. S. Gourly, of Louisa county, Robert Caulk, of Henry county, and Silas Stone, of Van Buren county, be and the same are hereby appointed commissioners to locate and establish a Territorial Road, commencing at the town of Black Hawk, in Louisa county, thence the nearest and best route to Wapello, in said county, thence the nearest and best route to Mount Pleasant, thence the nearest and best route to Washington, in Henry county, thence the nearest and best route to Bentonsport, in Van Buren county, thence to the southern line of said county, in a direction to Jefferson City, in the State of Missouri.

SEC. 2. That said commissioners, or a majority of them, shall meet in the town of Wapello, on the second Monday in May next, and shall proceed to locate said road, according to the provisions of an act to locate and establish Territorial Roads; and if said commissioners, or a majority, shall fail to meet at such time and place as is herein specified, it shall be the duty of the sheriff of the county of Louisa to notify said commissioners, of a day to be by him appointed, of the time and place of a second meeting of said commissioners, who shall then proceed to locate said road as above directed.

SEC. 3. This act to take effect and be in force from and after its passage.

APPROVED, December 31, 1838.

## ROADS.

AN ACT to locate a Territorial Road, from the town of Du Buque, to Keosauqua, in Van Buren county.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That a Territorial Road shall be established, from the town of Du Buque to the northern boundary of Missouri, via the Territorial seat of government, provided the same is located in Johnson county, if not, then on the nearest and best route to Keosauqua, in Van Buren county, and thence southward to the line of Missouri: And Simeon Clark of Du Buque county, William Chambers of Muscatine county, and Henry Filkner of Johnson county, are hereby appointed commissioners to locate such road from Du Buque to the southern line of Johnson county, who shall be at Du Buque on or before the first Monday in September next, and proceed to the discharge of the duties herein assigned them.

Commissioners to locate part of the road.

Comm'rs to continue the location.

SEC. 2. *Be it further enacted,* That David Goble, of Washington county, John Williford, of Henry county, and William Billups, of Van Buren county, be and they are hereby appointed commissioners to locate and mark said road, from the place where the first named commissioners stop, to the line of Missouri, on the route above mentioned, who shall meet, on or before the first Monday of September next, in the town of Keosauqua, and proceed to the discharge of their duty.

Counties to pay the expenses.

SEC. 3. The county commissioners of the several counties, through which said road may pass, shall audit and pay the expenses, in their respective proportions to the amount of the road laid out in each.

Compensation

SEC. 4. The commissioners shall receive, each, two dollars and fifty cents per day for their services. They may employ one surveyor on each end of the road, and such other hands as may be actually necessary to prosecute said work, who shall receive such compensation as a majority of said commissioners may agree upon.

Surveyor, &c., may be employed.

County com. to open the road.

SEC. 5. The county commissioners of the several counties, through which said road passes, shall cause the same to be opened as soon as practicable after the same is surveyed.

How road to be marked.

SEC. 6. The commissioners shall mark said road, by blazing trees in the woods, and setting stakes in the prairies.

APPROVED, January 25, 1839.

## ROADS.

AN ACT establishing certain Territorial Roads.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That Alfred Hebard and Azariah Gregg, of Des Moines county, and Meshack Sigler, of Van Buren county, be and they are hereby appointed commissioners to lay out and establish a Territorial Road from the city of Burlington, in Des Moines county, as near as practicable on the township line dividing townships 69 and 70, north, through Salem, in Henry county, and Keosauqua, in Van Buren county, to the line of the State of Missouri, leaving said township line at such place as the said commissioners shall deem advisable. Said commissioners shall meet at the city of Burlington, on the first day of August, 1839, or at such time during the year 1839, as the said commissioners shall agree.

Road from  
Burlington to  
Missouri State  
line.

When commis-  
sioners to meet.

SEC. 2. *Be it further enacted*, That James Fanning, John Paul, and Benjamin C. Pierce, be and they are hereby appointed commissioners to lay out a Territorial road, running the most practicable route from Du Buque to the settlement in Delaware county; and the said commissioners shall meet at the town of Du Buque, on the first Monday of June next, or on such other day as the said commissioners may agree, and proceed to the discharge of their duties under this act.

Road from Du  
Buque to De-  
laware county.

Where and  
when comm'rs  
to meet.

SEC. 3. *And be it further enacted*, That Isaac Mitchell, of Linn county, John G. Fay, of Cedar county, and Jonathan Pettibone, of Muscatine county, be and they are hereby appointed commissioners to lay out a Territorial road commencing at Bloomington, in Muscatine county, thence to Rochester, in Cedar county, and thence to the county seat of Linn county. Said commissioners, or a majority of them, shall meet at Bloomington, on the first Monday in May next, to discharge their duties.

Road from  
Bloomington to  
county seat of  
Linn.

Where and  
when comm'rs  
to meet.

SEC. 4. *Be it further enacted*, That Richard Knolt, of Cedar county, Calvit Roberts, of Du Buque county, Calvin Reed, of Jones county, be and they are hereby appointed commissioners to lay out and establish a Territorial road on the post route from Du Buque, by way of the post route of the seat of justice of Jones county, to Rochester, in Cedar county. Said commissioners, or a majority of them,

Road from Du  
Buque to Ro-  
chester.

Where and when comm'rs to meet. shall meet at the town of Du Buque, on the first Monday in June, 1839, or at such time of the year of 1839 as the majority of them may agree, and proceed to discharge their duty.

Road from S. Hearn's to West Point. SEC. 5. *And be it further enacted*, That William Howard, Thomas Douglass, and Samuel Hearn, of the county of Lee, be and they are hereby appointed commissioners to mark and lay out a Territorial road, commencing at Samuel Hearn's, on the Des Moines river, in Lee county, thence on the nearest and best route to the town of West Point, in said county. Said commissioners, or a majority of them, shall meet on the first

No time appointed for meeting of comm'rs.

Road from Keokuck to Mount Pleasant. SEC. 6. *And be it further enacted*, Thomas W. Taylor, of the county of Lee, and William Morrow and Larkin Johnson, of Henry county, be and they are hereby appointed commissioners to mark and lay out a Territorial road, commencing at the town of Keokuck, thence up the Mississippi as near as practicable to the town of Montrose, thence on the nearest and best route to Mount Pleasant, in the county of Henry. Said commissioners to meet at Keokuck, on the first Monday in May next, to discharge their duties.

Where and when comm'rs to meet.

Road from ferry opposite Oquaka to Napoleon. SEC. 7. *And be it further enacted*. That Samuel Brewer and Jacob Rinearson, of Louisa county, and John Gilbert, of Johnson county, be and they are hereby appointed commissioners to locate and establish a Territorial road, commencing at the ferry landing opposite Oquaka, Illinois, thence on the nearest and best route, via Florence and Wapello, in Louisa county, to Napoleon, in Johnson county.

Road from Davenport to seat of justice of Linn.

SEC. 8. *And be it further enacted*, That Alfred Carter, Warren Stiles, and A. F. Russell, of Scott county, be and they are hereby appointed commissioners to mark and lay out a Territorial road, commencing at Davenport, in Scott county, thence to Hickory Grove, thence to Poston's Grove, thence to Red Oak Grove, thence to the Pioneer Grove, thence to Big Linn Grove, thence to the seat of justice of Linn county. Said commissioners to meet, or a majority of them, to discharge their duties, at Davenport, on the first Monday in May next.

Where and when comm'rs to meet.

Road from Fort Madison to Iowa City. SEC. 9. *And be it further enacted*. That John Box and Lewis Pitman, of Lee county, and John Reynolds of Van Buren county, be and they are hereby appointed commissioners to lay out a Territorial road, commencing at Fort Madison, in Lee county,

thence to West Point, thence to Parkersburg, and thence to Iowa City. Said commissioners to meet at Fort Madison, on the first Monday in May next to discharge their duties.

Where and when comm'rs to meet.

SEC. 10. *And be it further enacted*, That Joseph Cole, of Lee county, Peter Boger, of Henry county, and Alfred Wright, of Jefferson county, be and they are hereby appointed commissioners to mark and lay out a Territorial road, commencing at West Point, in Lee county, thence to Salem, in Henry county, and thence to the county seat of Jefferson county. Said commissioners to meet at West Point, on the second Monday in May next, to discharge their duties.

Road from West Point to county seat of Jefferson.

Where and when comm'rs to meet.

SEC. 11. *And be it further enacted*, That Daniel Strong and Enoch H. Sexson, of Des Moines county, and Grinder Wilson, of Henry county, be and they are hereby appointed commissioners to lay out a Territorial road, commencing at Burlington, in Des Moines county, thence to Trenton, thence to Joseph York's, thence to Lee's, and then west to the Indian boundary line. Said commissioners shall meet at Burlington, on the third Monday in April next, to discharge their duties.

Road from Burlington to Indian boundary line.

Where and when comm'rs to meet.

SEC. 12. *And be it further enacted*, That C. Jones, of the county of Henry, George W. Fry, and John Sullivan, be appointed commissioners to review, lay out, and establish a Territorial road from Mount Pleasant to Rome, in Henry county, from thence to Lockridge, thence to Smith's Crossing, on Big Cedar, in Jefferson county, from thence to Iowa City, in Van Buren county. Said commissioners, or a majority of them, shall meet at the town of Mount Pleasant, on the first Monday of May next, to discharge the duties required of them by this act.

Road from Mount Pleasant to Iowa City.

Where and when comm'rs to meet.

SEC. 13. *And be it further enacted*. That James L. Kirkpatrick and Charles Swan, of Jackson county, and Joseph M. Robertson, of Scott county, be and they are hereby empowered to lay out a Territorial road from Davenport, Parkhurst, Charleston, to Belleview; and that the said commissioners shall meet at Davenport, on the first Monday in May next, and proceed to lay out said road on the nearest and best route.

Road from Davenport to Belleview.

Where and when comm'rs to meet.

SEC. 14. *And be it further enacted*, That John M. Whitaker and William Goodall, of Van Buren county, and Isaac Blakely, of Jefferson county, be and they are hereby appointed commissioners to lay out a

Road from Keosauqua to county seat of Jefferson.

- Territorial road, commencing at Keosauqua, in Van Buren county, on the nearest and best route to the county seat of Jefferson county. Said commissioners to meet at Keosauqua, in Van Buren county, on the first Monday in June next to discharge their duties.
- Where and when comm'rs to meet.** **Road from Farmington to N. boundary line of Missouri.** SEC. 15. *And be it further enacted,* That Henry Bateman, John Davidson, and Henry King, of Van Buren county, be and they are hereby appointed commissioners to mark and lay out a Territorial road, commencing at the town of Farmington, in said county, from thence to the northern boundary line of the State of Missouri, a direction to the town of Waterloo, the present seat of justice for Clark county, in the State of Missouri aforesaid. Said commissioners shall meet at the town of Farmington, on the first day of May next, to discharge their duties.
- Where and when comm'rs to meet.** **Duty of sheriffs.** SEC. 16. And if the aforesaid commissioners, or a majority of them, fail to meet at the time and places named in the preceding sections of this act, it shall be the duty of the sheriffs of the several counties, having jurisdiction over the points named, on application of any one of the commissioners, to notify them to meet on some other day.
- Duty of county commissioners.** SEC. 17. That it shall be the duty of the county commissioners, of the different counties of this Territory, to order the opening of all Territorial roads, without delay, that are now laid out, or may hereafter be laid out, within this Territory.
- County com'rs to fill vacancies.** SEC. 18. That should any of the commissioners, named in the different sections of this act, die, refuse to serve, or remove out of their respective counties, the county commissioners of the county where such vacancy shall happen, shall fill such vacancies as often as they may occur.
- Compensation to comm'rs surveyors, &c.** SEC. 19. Said commissioners shall be allowed two dollars a day for their services, and shall employ one or more surveyors, and as many laboring hands as they may think necessary. The surveyor's salary shall not exceed four dollars a day, and the laborers shall not exceed one dollar and fifty cents a day, to be paid according to the provisions of an act to provide for laying out and opening Territorial roads.
- APPROVED, January 25, 1839.

## SEALS.

## AN ACT respecting Seals

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any instrument, to which the person making the same shall affix any device, or scrawl, by way of seal, shall be adjudged and held to be of the same force and obligation as if it were actually sealed. Scrawl equivalent to a seal.

SEC. 2. All instruments shall be considered, and adjudged, as sealed instruments whenever the aforesaid scrawl or device, is attached by the mark thereof, although the word "seal" is not mentioned in the body of the instrument. Scrawl, or device, without the word "seal."

APPROVED, January 24, 1839.

## SEAT OF GOVERNMENT.

## AN ACT to locate the Seat of Government 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 until the public buildings are completed, and ready for the reception of the Legislative Assembly and other officers of the Territory, at the permanent seat of government, located as hereinafter directed, the sessions of the Legislative Assembly shall be held at the town of Burlington, for three years, and until the aforesaid necessary buildings shall be declared, by the proclamation of the Governor, ready for the reception of the Legislative Assembly. Sessions of legislative assembly to be held at Burlington for three years.

SEC. 2. *Be it further enacted,* That the commissioners hereinafter mentioned, or a majority of them, shall, on the first day of May, in the year eighteen hundred and thirty-nine, meet at the town of Napoleon, and proceed to locate the seat of government at the most eligible point within the present limits of Johnson county, in said Territory. Meeting of commissioners.

SEC. 3. That three commissioners, to consist of one person from each judicial district in this Territory, shall be appointed by joint ballot of the Council and House of Representatives, to locate and establish the permanent seat of government of this Territory, as hereinbefore directed, in the said county of Johnson. Comm'rs to be appointed by joint ballot.

Public build-  
ings.

Governor to of-  
ficiate as treas-  
urer.

Account to be  
rendered.

Duty of acting  
commissioner.

Comm'rs com-  
pensation.

Land to be  
laid out in lots,  
streets, &c.

Copy of plat to  
be sent to the  
Governor.

Oath to be ta-  
ken by com-  
missioners.

SEC. 4. *Be it further enacted*, That the said commissioners, or a majority of them, shall agree upon a plan of said buildings, and shall issue proposals, giving six months notice thereof, and contract for the erection of said buildings without delay. The Governor of the Territory shall officiate as treasurer, whose duty it shall be to draw from the treasurer of the United States such sum or sums of money as have been, or hereafter may be, appropriated by Congress towards the erection of public buildings for the use of said Territory, and shall pay the same, upon the order of a majority of said commissioners, to such persons as they may direct. The Governor shall annually render to the Legislative Assembly a true account of all moneys received and paid out by him. And the said commissioners shall agree upon one of their number to be acting commissioner, whose duty it shall be to superintend daily, in person, the rearing and finishing said buildings; and the said acting commissioner shall have power at all times, when he may think proper, to call the board of commissioners together for the purpose of transacting business on this subject; and the said board shall, in all contracts, reserve the privilege of suspending any contract made by them, for the purpose or carrying into effect the object above named, until the matter in dispute shall be settled, if any there should be. The said commissioners shall receive such compensation as may hereafter be allowed them by law.

SEC. 5. *Be it further enacted*, That the said commissioners shall employ one or more competent surveyors, and all other hands necessary, and shall have six hundred and forty acres of land laid out in lots, out lots, streets, squares, and alleys, at the place where the said seat of government is so located, if practicable.

SEC. 6. *Be it further enacted*, That it shall be the duty of the commissioners to have the town platted, and to transmit a copy of the same to the Governor, which shall be filed in the office of the Secretary of the Territory.

SEC. 7. *And be it further enacted*, That the said commissioners, previous to their entering upon their duties, as provided in this act, shall take and subscribe the following oath before some person legally authorized to administer the same:

"We (*here insert the names of the commissioners*) do solemnly swear, (or affirm, as the case may be), in

the presence of Almighty God, that we will, to the best of our skill, abilities, and judgment, locate and establish the permanent seat of government for the Territory of Iowa, in the county of Johnson, in the Territory aforesaid; and that we will faithfully and honestly superintend the erection and completion of the public buildings, as is provided in the act entitled, 'An Act to locate the Seat of Government of the Territory of Iowa, and for other purposes,' and that in all things we will faithfully and truly discharge our duties under the same without partiality, favor, or interest:" which oath, subscribed as aforesaid, shall be transmitted and filed in the office of the Secretary of the Territory.

And filed in  
the Secretary's  
office.

APPROVED, January 21, 1839.

## SEAT OF GOVERNMENT.

AN ACT supplementary to "An Act to locate the Seat of Government 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 so soon as the place shall be selected, agreeably to the provisions of the act to which this is a supplement, and report thereof made to the Governor, and the consent of the United States obtained, the commissioners shall proceed to lay out a town, to be called "Iowa City," on the piece of ground so selected, upon such place as may be agreed upon by a majority of said commissioners; and after a plat of the same shall have been recorded, the Governor shall, by proclamation, direct a sale of lots in said town, to be under the direction of the commissioners above named, the proceeds of which shall go into the Territorial Treasury, to be expended as may hereafter be directed by law.

Seat of Gov-  
ernment to be  
called "Iowa  
City."

Sale of lots.

SEC. 2. *Be it further enacted,* That the acting commissioner shall give bond to the United States in the penal sum of forty thousand dollars, to be approved of by the Governor, for the faithful performance of his duty, and said bond shall be filed in the office of the Secretary of the Territory.

Acting com-  
missioner to  
execute a bond.

SEC. 3. *Be it further enacted,* That the acting commissioner shall annually render, to the Legislative Assembly, a true account of all monies received and paid out by him.

Account to be  
rendered an-  
nually.

Donation of  
land, or pre-  
emption.

\$80,000 ap-  
propriated by  
Congress.

Commission-  
ers.

In case of va-  
cancy, Govern-  
or to appoint.

Proviso.

SEC. 4. *Be it further enacted*, That the Governor is hereby authorized to apply to Congress for a donation of, or a pre-emption to, four sections of land on which to locate the seat of government of the Territory of Iowa, and also to draw from the treasury of the United States the sum of twenty thousand dollars, appropriated by Congress to be expended in the erection of public buildings, and also such other sum or sums of money as may hereafter be appropriated for like purposes, and the said Governor is hereby required to pay the same to the acting commissioner, after he shall have given bond, as required in the second section of this act.

SEC. 5. *Be it further enacted*, That Chauncey Swan, John Ronalds, and Robert Ralston, be and they are hereby appointed a board of commissioners to locate the seat of government of the Territory of Iowa, and to superintend the erection of public buildings.

SEC. 6. *Be it further enacted*, That if by death, resignation, or any other cause, there shall be a vacancy in said board of commissioners, it shall be the duty of the Governor to appoint some person, from the district where the vacancy occurred, to perform the duties of such disqualified commissioner: *Provided*, however, That such appointment shall not extend beyond the meeting of the next Legislative Assembly.

SEC. 7. *Be it further enacted*, That such parts of the law, to which this is amendatory, as are contrary to the provisions of this act, are hereby superseded.

APPROVED, January 21, 1839.

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## SECURITIES.

AN ACT concerning debtors and their securities.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That when any person bound as security by bond, bill, note, or otherwise, for the payment of money, or performance of a contract, shall apprehend that the principal debtor for whom he is bound, is likely to become insolvent, or migrate from this Territory, without previously satisfying or discharging such debts due, demand, or obligation, so that it will become impossible, or difficult, for such security, after paying, satisfying, or discharging such debts due, or demand, to

When security  
apprehensive  
that principal  
will become  
insolvent, &c.

recover the value thereof from such principal, debtor it shall be lawful for such security, if action shall have accrued on any such contracts as aforesaid, to require by notice, in writing, his creditor forthwith to put the bond, bill, note, or other contracts by which he is bound as aforesaid, in suit, who shall, within twenty days, commence an action and proceed with due diligence to judgment and execution thereon, and if such creditor shall fail or neglect to proceed as aforesaid, the said surety shall be discharged from the performance of said contract.

SEC. 2. That the provisions of this act shall be extended to the heir, executor, or administrator of any deceased security against the creditor or his assignee, executor, or administrator, upon his compliance with the first section of this act; but nothing herein contained shall be construed to extend to the official bonds of public officers, guardians, executors, administrators, or bonds with collateral conditions.

To whom provisions of this act shall extend.

Proviso as to public officers, guardians, &c.

SEC. 3. That when any security, his heirs, executors, or administrators, pays or discharges the debt or contract of his principal, or part thereof, upon judgments rendered against him, he shall have judgment to recover the value or amount so paid or discharged, together with the interest and costs, upon motion, in the court where such judgment may have been rendered against such security, his heirs, executors, or administrators, of such principal debtor, his heirs, executors, or administrators.

Security to have judgment for the sum paid, with int. and costs.

SEC. 4. That in case when there are two or more securities to any bond, bill, note, or contract, and one or more of such sureties are subjected, by judgment of any court, to the payment of the debt or damage by default of the principal obligor, and such obligor be insolvent so that the amount or value thereof cannot be recovered of him, the court, before whom such judgment may be rendered, shall, upon motion of such surety or sureties, grant judgment that they recover against all and every other co-sureties, their heirs, executors, and administrators, for their and each of their respective shares and proportions of the amount or value of such judgment with damages and costs.

When principal obligors become insolvent.

SEC. 5. That no surety, his heir, executor, or administrator, shall be suffered to confess, or suffer judgment by default so as to distress his principal, if such principal will enter himself defendant to such suit, and tender to such surety, or his legal

Sureties suffering judgment by default.

representatives aforesaid, good collateral security, to be approved by the court before whom such suit is depending.

Special bail of judgment debtor.

SEC. 6. That when the special bail of any judgment debtor shall be indemnified by the payment of such judgment, or part thereof, it shall be lawful for such bail, his executor, administrator, or heir, to recover the amount of such payment, with interest and costs, upon motion in the same court where judgment was rendered against such bail, or his legal representatives of the said debtor, his heirs, executors, or administrators.

Notice to be given.

SEC. 7. That in all proceedings, by motion, under this act, ten days notice of such motion shall be given to the person against whom such judgment is to operate.

APPROVED, December 25, 1838.

## SECURITIES.

AN ACT for the relief of securities of persons charged with criminal offences.

When securities may surrender their principal.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That in all cases of surety for the appearance of persons charged with criminal offences before any court, the security or securities of such person may, at any time before judgment is rendered upon the *scire facias* to show cause why execution should not issue, seize and surrender their principal to the sheriff of the county wherein the recognizance shall be taken; and it shall be the duty of such sheriff, on such surrender, and on the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person into custody, and by writing acknowledge the surrender aforesaid, and thereupon the said security or securities shall be acquitted and discharged of such recognizance.

APPROVED, January 3, 1839.

## SHERIFFS.

AN ACT for the appointment and duties of Sheriffs.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be appointed, and commissioned by the Governor, by and with the consent of the Legislative Council, in each of the organized counties of this Territory, a sheriff, who shall hold his office for the term of two years, unless sooner removed, who shall, previous to entering upon the duties of his office, take an oath or affirmation to support the constitution of the United States, and, also, an oath, or affirmation, faithfully to execute the duties of his office.

SEC. 2. Every sheriff, appointed and commissioned as aforesaid, on receiving notice of his commission, shall, within thirty days thereafter, enter into bonds, to the United States, with good and sufficient security, to be appointed by the judge of the district court of his county, at the term next after the dates of such bond, in the penal sum of five thousand dollars, conditional for the faithful discharge of all the duties required, or to be required, of him by law, as sheriff, and shall also, at the time of giving such bond, take and subscribe, before the clerk of the district court, the several oaths required by law: *Provided,* That if no district court be held within the proper county, within thirty days after notice of such commission as aforesaid, the clerk may approve the bond and security aforesaid, which bond, in that case, shall be good and valid, until the end of the next succeeding district court.

SEC. 3. The oaths, so taken, and bond given as aforesaid, shall be filed and recorded by the clerk of the district court, and the taking and subscribing of the oaths, shall be certified by him on the back of the commission, and a certified copy of such bond under the seal of the district court shall be evidence in all courts in this Territory.

SEC. 4. If any sheriff, appointed as aforesaid, shall neglect, or refuse, to enter into bonds, and take the oaths above subscribed, within the time above specified, or if any bond approved by the clerk, as aforesaid, shall be disapproved by the judge of the district court, and such sheriff shall not, during the term of the court, procure such security as the judge shall

Sheriff in each county, by whom appointed and commissioned.

Tenure, and oaths of office.

When bonds, to be given, to whom, and by whom approved.

Penal sum, \$5,000. Condition of bonds.

Proviso, as to approving bond in vacation.

Filing, recording and certifying sheriff's oaths and bonds, by whom performed.

When the office of sheriff shall be deemed vacant.

approve, in all such cases the office shall be deemed vacant.

Duties of sheriff, as regards the execution, and return, of process. Contempt of court. Peace, and power of the county.

SEC. 5. It shall be the duty of every sheriff, when qualified as aforesaid, to execute, and return, all writs, warrants, process, orders and decrees, of every description, that shall, or may be legally directed and delivered to him, within the limits of his county, under pain of contempt of court, under which warrant, writ, process, or decree may have issued, and for the service of such process, and for keeping of the peace, such sheriff may call to his aid the power of the county, when necessary.

Sheriff to give certificate, in what cases.

SEC. 6. Every sheriff, to whom any writ shall be delivered, in the county where it is to be executed, shall, if required by the person delivering the same, give to such person a certificate under his hand, without taking anything therefor, wherein the names of the parties and the day of delivering the writ shall be mentioned.

Neglect, or refusal to pay over money, &c.

SEC. 7. If any sheriff shall neglect, or refuse to pay over any money collected by virtue of any execution, or process, to any person entitled to receive the same, or shall wilfully neglect his duties, to the prejudice, or injury, of any person, such person may, in the court where the bond of such sheriff is filed, and recorded, prosecute the bond of such sheriff, and the same proceedings shall be had thereon, as in other cases of bonds for the performance of covenants, and after judgment had, any person injured and who would be entitled to sue on said bond, may obtain a writ of inquiry of damages, on such judgment, and in every case where damages shall be assessed, execution shall be issued for the amount of such damages, and costs, and collected, for the use of the injured party, or upon the failure of any sheriff, after demand made to pay over any money by him collected, by virtue of any execution, or process whatever, to any person entitled to receive the same, such person may proceed against the sheriff in a summary way, before the district court, by motion, upon giving to such officer three days' notice of the application, and recover the amount so neglected to be paid, with twenty per cent. damages thereof, for such detention, and shall have execution therefor: *Provided*, That in all such cases, if the sheriff shall pay, or satisfy, the amount claimed by the party prosecuting, with costs, under the direction of the court before final judgment, or in any subsequent prosecution

How redress may be obtained, in such cases.

Damages and costs.

Proviso.

before inquest found, all further proceedings on such bond or judgment shall be stayed by the court.

SEC. 8. If any sheriff shall fail to settle with, and pay over, to the board of county commissioners, according to law, any money which he may have collected, or received, belonging to such county, it shall be lawful for the board of county commissioners of such county, to proceed against such sheriff in a summary way before the district court, by motion, upon giving such sheriff three days' notice of such application, and recover the amount due such county, with twenty per cent. damages thereon, for such neglect, and shall have execution therefor, or may proceed against such sheriff, and his securities, for such delinquency, upon his bond of office.

Sheriff's settlement with county commissioners.

Summary proceedings, in such cases; and election of remedies.

SEC. 9. It shall be the duty of each and every sheriff, in this Territory, to make a settlement with the board of county commissioners of his county, for the taxes, and moneys by him, collected, or due the county, at the April term of such board, annually, and as often thereafter as he shall be required by the board of commissioners.

Annual settlement in April, for taxes, &c.

SEC. 10. The several sheriffs shall be conservators of the peace, in their respective counties, and to keep the same, by causing all offenders against the law, in their views, or within their knowledge, to enter into recognizance, with sufficient sureties for keeping the peace, and appearing at the next term of the district court of the proper county, and to commit, in case of refusal, and return said recognizance, certified to the said court; and it shall also be the duty of all sheriffs to suppress all riots, routs, affrays, fightings, and all crimes and breaches of the peace, and to do and perform all such other duties as are, or may be, required of them by law.

Duties of sheriffs, in preserving the peace, and their powers herein.

SEC. 11. It shall be the duty of the sheriff of each county to attend all district courts, probate courts, and boards of county commissioners, in his county, at the terms and sessions of such courts, or boards, and he shall have the care and custody of the court house, and jail, and shall appoint a keeper of the jail, for whom he shall answer.

Sheriffs to attend courts, and have charge of court house, and jail.

SEC. 12. No sheriff, or other officers, by color of their office shall directly, or indirectly, ask, demand, or receive, for any services, or acts to be by them performed, in pursuance of any duty of their office, any greater, or more fees, than are allowed by law, on pain of forfeiting, for such offence, to the party

Penalties for taking unlawful fees.

how, and by whom, recoverable.

aggrieved, his treble damages, together with costs of suit; and also the sum of two hundred and fifty dollars, the one moiety to the county wherein the sheriff, or officers, shall reside, and the other moiety to the party who shall sue for the same, to be recovered with costs of suit, in any court of record, having cognizance thereof, by action of debt

Sheriffs not to purchase at their own sales.

SEC. 13. No sheriff shall become the purchaser, nor procure any person to become the purchaser, for him, of any property, real or personal, by him exposed to sale, by virtue of any execution, or other process, and all such purchases made by any sheriff, or by any other person, in his behalf, shall be absolutely null and void.

Sheriffs may appoint deputies, in what manner, &c.

SEC. 14. The sheriff of each county in this Territory may, as soon as may be, after he has taken upon himself the office, by writing under his hand and seal, make some proper person deputy sheriff of the same county, who shall also be his deputy during the pleasure of the said sheriff, and as often as such deputy sheriff shall die, or be removed from his office, or move out of the county, or become incapable of executing the duties of his office, another shall be appointed in his place, in manner aforesaid, and every such deputation, or appointment, shall be recorded in the office of the clerk of the district court of the proper county; and in case of the death of the sheriff of any county, the deputy sheriff of the county shall, in all things, execute the office of sheriff of the same county, in the name of the deceased sheriff, until another shall be appointed and commissioned, and shall take upon himself the said office, and the faults and misfeasances, in office, of such deputy sheriff in the mean time, as well as before, shall be adjudged a breach of the condition of the bond and security given by the sheriff who appointed him; and in case there shall be no such deputy sheriff of any county, at the time of the death of the sheriff of such county, or if such deputy sheriff shall die, or remove out of the county, or become incapable of executing the office before another sheriff of the same county shall be appointed, and commissioned, and have taken upon himself the said office, then, and in every such case, the coroner of such county shall, in all things, execute the office of sheriff of the same county, until a sheriff thereof shall be appointed and commissioned, and shall take upon himself the said office: *Provided*, That nothing

Vacancies.

Where recorded.

Death of sheriff, and duties of deputies.

When coroners to act as sheriffs, and their powers and duties.

Proviso, as to

in this act contained shall be so construed as to prevent any sheriff from appointing so many deputies as he may deem proper, and further, that no person deputed to do a particular act only, shall be required to take the oath, or affirmation, to be taken by the deputies of sheriffs.

SEC. 15. Whenever the office of any sheriff shall have expired, it shall be lawful for the same person, whether re-appointed or not, and his deputy, or deputies, to continue to perform all the duties of sheriff, until his successor shall be commissioned and qualified as hereinbefore directed, and whenever any sheriff shall go out of office, and his successor in office shall be qualified as aforesaid, the clerk of the district court shall issue a notice in writing stating that ——— has been appointed sheriff, and is qualified according to law, which notice shall be served by the new sheriff, and the former sheriff shall, thereupon, transfer and deliver to the new sheriff all the writs, process, and papers belonging to his office, except as hereinafter excepted, and also the possession of the court house, and jail of his county, and shall take from the new sheriff, a receipt specifying the papers so delivered over, and the prisoners in custody, if any, which receipt shall be sufficient indemnity to the person taking the same.

SEC. 16. Every sheriff, going out of office, at the expiration of his term, and having any writ of *feri facias*, or fee bill, which he may have levied, but not collected, or any tax list, uncollected, shall be and is hereby authorized to proceed on and collect such execution, fee bill, or tax list, in the same manner as if his office had not expired.

SEC. 17. Sheriffs, and jailors, shall receive from any constable, or other officer, without taking anything therefor, and safely keep in prison, all felons indicted, or taken in the fact, who shall be taken by any constable, or other officer, and shall not, of their own authority, let out of prison any person in their custody, by virtue of any process, for any felony, or upon any condemnation, or committed by special order, of any court, or justices, upon pain of being punished by fine and imprisonment, and to answer the damages of the party aggrieved, if any be thereby aggrieved.

SEC. 18. It shall not be lawful for any sheriff, or jailor, to confine male and female prisoners, who are, or shall be imprisoned, except husband and wife, in

general and special deputations.

Expiration of sheriff's office, and his powers and duties, &c.

New sheriff, notice hereof.

Transfer of papers, prisoners, jail, &c., and receipt for the same.

Executions, fee bills, tax lists, &c., when to be retained.

Duty of sheriffs and jailors, in regard to prisoners, &c.

Penalties.

Male and female prisoners, to be kept in

separate rooms any jail in this Territory, in the same prison room, and in case any sheriff, or jailor, shall offend in the premises, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined at the discretion of the court, before whom such conviction shall be had.

Penalty. **SEC. 19.** All prisoners who shall be committed to any prison, shall be actually detained within such, until they shall be from thence discharged, by due course of law, and if at any time the keeper of any prison permit, or suffer any prisoner committed to his custody to go, or to be at large, out of his prison, except by virtue of some writ of *habeas corpus*. or otherwise, agreeably to law, every such going or being out of prison, shall be adjudged, and is hereby declared, an escape.

What shall be deemed an escape. **SEC. 20.** If any sheriff, or any keeper of any prison, shall take any sum of money, reward, or gratuity whatsoever, or any security for the same, to procure, assist, connive at, or permit any escape of any person in his custody, and shall be thereof lawfully convicted, every such sheriff, or keeper, shall, for every such offence, forfeit the sum of two hundred and ninety dollars, and liable to all the pains and penalties of perjury, and be forever after incapable of executing the said office.

Penalties, on conviction for escapes. **SEC. 21.** That whenever the commissioners of any county in this Territory, shall neglect or refuse to provide a sufficient jail for the confinement of prisoners, or where they shall fail to direct the necessary measures for the preservation of the prisoners, when confined in jail, then and in that case, it shall be the duty of the sheriff, and he is hereby authorized, with the approbation of the judge of the district court, to employ such means for the safe keeping of all prisoners committed to his custody, either by repairs to the jails, or by confinement in some secure place within his county, and also, in his discretion, to provide for the health of the prisoners, as aforesaid.

Duties of sheriffs, as to jails, and providing for the security of prisoners. **APPROVED, January 21, 1839.**

Health of prisoners. **SHERIFFS,**  
AN ACT providing for the relief of the sheriffs of Lee and Scott counties.

Further time allowed for **SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That Praxton W. Gillock, sheriff of Lee county, and Frazer

Wilson, sheriff of Scott county, be and they are <sup>final settlement</sup> hereby allowed further time until the April term of <sup>with the court.</sup> the board of the county commissioners' court, for the year eighteen hundred and thirty-nine, to make their delinquent returns and final settlement with the said court for the year 1838.

APPROVED, January 23, 1839.

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## SHERIFFS.

AN ACT for the relief of the sheriff of Cedar county.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the taxes now remaining due and unpaid on any personal property, in the county of Cedar, for the year A. D. 1838, shall be collected and returns thereof made on or before the first day of October, 1839. <sup>Taxes for 1838, to be collected before Oct. next.</sup>

SEC. 2. It shall be the duty of the sheriff to proceed to collect the same, and make returns thereof before the time specified in the foregoing section. <sup>Duty of sheriff.</sup>

APPROVED, January 23, 1839.

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## SHERIFFS.

AN ACT to provide for the compensation of sheriffs of the different counties of this Territory, for ordering elections and posting up notices.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be paid out of any monies that have been, or may hereafter be appropriated by Congress, for defraying the expenses of the present Legislative Assembly: <sup>Sums to be paid to the sheriffs of the several counties.</sup>

To James Cameron, sheriff of Des Moines county, Des Moines. one hundred dollars.

To James Davis, sheriff of Muscatine county, Muscatine. fifty dollars.

To George W. Cummins, sheriff of Du Buque county, Du Buque. fifty dollars.

To Frazer Wilson, sheriff of Scott county, Scott. fifty dollars.

To Joshua Owens, sheriff of Lee county, Lee. fifty dollars.

To Andrew Kennedy, sheriff of Henry county, Henry. fifty dollars.

- Van Buren.** To Henry Heffleman, sheriff of Van Buren county, fifty dollars.
- Louisa.** To Martin Harless, sheriff of Louisa county, fifty dollars.
- Jackson.** To William A. Warren, sheriff of Jackson county, fifty dollars.
- Cedar.** To J. W. Tallman, sheriff of Cedar county, fifty dollars.
- Clayton.** To J. B. Griffith, sheriff of Clayton county, fifty dollars.
- Johnson.** To Samuel C. Trowbridge, sheriff of Johnson county, twenty-five dollars.
- APPROVED, January 25, 1839.

## STEAM BOATS.

AN ACT to prevent disasters on steam boats, navigating the waters within the jurisdiction of the Territory of Iowa.

- Duties of masters, as regards officers, crew, boilers, engine, tackle, &c.** *SEC. 1. Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That it shall be the duty of the owners, of steam boats, navigating on the rivers and lakes within the jurisdiction of this Territory, to have a competent master, officers, and crew on board, and to have a substantial and sufficient engine, boiler, or boilers, and to have the same, at all times, in good and safe order and condition, and have the vessel supplied with all necessary boats, tackle and furniture, and in every respect sea worthy.
- Boats, ascending and descending, how regulated, in passing each other.** *SEC. 2.* In ascending and descending navigation, the said boats shall conform to the following regulations: The descending boat shall keep the shore, or bar, she may be on, until the ascending boat passes, and, when both boats are running, the descending boat shall keep the middle of the channel, or in the deepest water, and, in all cases, when it is practicable, leave room for the ascending boat to pass on either side.
- Boats passing in narrow channels, and in the night, how managed.** *SEC. 3.* When two boats meet in a contracted part of the river, or in any narrow, or intricate channel, both boats shall stop their engines, or work them very slow, until they pass each other, and in the night time the descending boat shall not take any of the small chutes, but shall keep the main channel, in order to avoid the ascending boats.
- Duty of passengers, in the** *SEC. 4.* It shall be the duty of the masters, and officers of all steam boats, to keep their vessels, at

all times, well and steady trimmed, and particularly in coming to and departing from shore, and for that purpose the passengers and all others on board the boat shall strictly obey the directions of the master, or officers on watch, and keep the place, or position, they may be directed, and under such pecuniary fine, or penalties, as the rules and regulations of the boat, in that behalf, shall impose, which rules and regulations shall be constantly kept up, in at least five conspicuous and different parts of the boat.

observance of rules.

Rules kept up.

SEC. 5. The master, and owners, shall be severally and jointly responsible for all damages which any person may sustain by the neglect, or refusal to comply with the requisitions of the foregoing section.

Responsibilities of masters and owners.

SEC. 6. If any loss of life shall ensue, from any neglect, or refusal on part of the officers, the officers on watch and conducting the boat at the time, shall be deemed guilty of the crime of manslaughter, and upon conviction thereof, shall be punished accordingly.

Loss of life from negligence. &c.

Penalty.

SEC. 7. It shall not be lawful for steam boats to run races, for the trial of speed, or for any other purpose, and the owner and officers, severally and jointly, shall be liable and responsible for all damages which any one may sustain, from any accident, or casualty, which may happen during said race.

Racing prohibited, and accountability thus incurred.

SEC. 8. And, moreover, in case of loss of life, or lives in consequence of said racing, the master of the boat, or person, or persons, having command thereof for the time being, shall be deemed guilty of a high crime and misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding five thousand dollars, nor less than five hundred dollars, or imprisoned for any time not exceeding ten years.

Loss of life, occasioned by racing, and penalties here-by incurred.

SEC. 9. That, in landing passengers from steam boats, the master shall cause the vessel to be brought to shore, whenever practicable and convenient, and especially when females, or children, are to be landed; and whenever impracticable, or decidedly inconvenient so to do, may land the passengers in good, sufficient, and comfortable boats, to be at all times kept for that purpose, and managed by a sufficient number of civil, competent and careful men, and during the time of disembarking from the steam boat, into the small boat, and of leaving the vessel, the engine shall be stopped, and the speed of the vessel checked.

Landing of passengers, and duties of steam boat masters herein.

Penalties for a violation of the preceding section.

SEC. 10. Any neglect or refusal to comply with any of the requirements of the preceding section, shall subject the owners and masters of the boat to the payment of all damages that may result to any person, or persons, from such neglect, or refusal; and, in the event of loss of life thereby, the master or officer, in command of the boat for the time being, shall be deemed guilty of a high misdemeanor, and be punished as is provided for in the eighth section of this act.

Gunpowder as freight, how and where to be stored; and

SEC. 11. It shall be the duty of the master, and officers, of any steam boat carrying gunpowder, as freight, to store the same in the safest part of the vessel, and separate and apart from articles liable to spontaneous combustion, and where, in discharging the cargo, it will not be necessary to carry any lighted lamp, torch, or candle, and the master and officers failing to comply with the provisions of this section, shall forfeit one hundred dollars each, for every time the same shall be so neglected, which may be recovered by action of debt, the one-half to the person who shall sue for the same, and the other half to the use of the county, and shall, moreover, be liable for all damages which may happen to any person by reason of such neglect or failure.

penalties for neglect, or failure to comply herewith.

Duty of passengers, and others, as to gunpowder on steamboats.

SEC. 12. It shall not be lawful for any person, or persons, to put, or keep any gun powder on any steam boat, without first giving the master, or officers, notice thereof, and any person or persons, so offending, shall be liable to pay the sum of one hundred dollars, to and for the use of any person who may sue for the same, in an action of debt, before any court having jurisdiction thereof, and, moreover, the person or persons so offending, shall be liable for all damages, which may happen to any person thereby

Penalty and damages.

This act to be printed and put up in steam boats.

SEC. 13. Copies of this act shall be printed, and put up in frames, and kept publicly placed in the cabin, and steerage of each steam boat, navigating the rivers or lakes within the jurisdiction of this Territory, and a failure to comply with these provisions, shall subject the master and owners to a penalty of one hundred dollars for each day the same shall be omitted, to be recovered in an action of debt, before any tribunal having jurisdiction thereof, one-half to the use of the county in which the suit shall be brought; and the other to the use of the person, who may sue for the same.

Penalty for neglecting this requirement.

SEC. 14. Any complaint, suit, or indictment, under this act, may be commenced, found and maintained in any county along, or through which said steam boat, on her trip, usually passes.

Where suit may be brought under this act.

SEC. 15. This act to take effect from and after its passage.

When to take effect.

APPROVED, January 4, 1839.

## COUNTY SURVEYORS.

AN ACT defining the duties of county surveyors.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be elected, in each county in this Territory, at the first general election, one county surveyor, and it shall be the duty of the Governor to commission such person, so elected, who shall continue in office two years from the time of his election: *Provided,* That an absence from the county six months, at any one time, shall be considered sufficient cause to declare the office vacant, unless the surveyor's family continue to reside in the county.

County Surveyors to be elected, commissioned, and continue in office two years. Absence from the county.

SEC. 2. Each and every surveyor shall, previous to entering on the duties of his office, take an oath, that he will faithfully and impartially discharge the duties of his office, to the best of his skill and judgment, without favor or affection, which oath may be administered by any judge or justice of the peace, in the county, and shall be endorsed on his commission.

Oath, and by whom it may be administered.

SEC. 3. Each and every county surveyor may appoint one or more deputies, who shall take an oath, similar to the one taken by the surveyor himself, and the surveyor shall be responsible for the official acts of his deputy.

Appointment of deputies.

SEC. 4. It shall be the duty of the said county surveyor to make all surveys, within the bounds of his county, that he may be called on to make, either by himself, or deputy, properly authorized by him, and competent to perform the same, within a reasonable time after application is made to him.

Duty of Surveyor.

SEC. 5. All chain men necessary shall be employed by the person wanting surveying done:—They shall be good and disinterested persons, to be approved of by the surveyor, and they shall be sworn by the surveyor to measure justly and exactly to the best of their knowledge.

Chainmen to be sworn.

Surveys to be made according to the original survey.	SEC. 6. It shall be the duty of county surveyors, previous to making any survey under the authority of this act, to furnish themselves with the field notes of the original survey, of the lands that they may be called on to survey, and all surveys, made by a county surveyor, shall be made according to the original survey.
Special directions.	For the purpose of perpetuating every survey, the surveyor shall be required to establish his corners, by taking bearing trees, and noting particularly their course and distance, and where there are no trees within a reasonable distance, the surveyor shall perpetuate his corners by erecting mounds: <i>Provided</i> . In all cases, where it shall be practicable, the surveyor shall require the person having the survey made, to furnish suitable stone, which stone shall be permanently placed at each corner in the ground. The surveyor shall furnish the proprietor of every tract of land with a copy of the original field notes of every tract of land he may survey. It shall also be the duty of the county surveyor to furnish himself with a well bound book, in which he shall carefully and legibly record and note down every survey made by him, giving the name of the person the survey of whose land is so recorded, and describing, as near as practicable, the metes and bounds of the lands, and noting the date on which the survey was made, and such record shall be subject to the inspection of every person who may be interested in the same, and a certified copy thereof, under the hand of the surveyor, shall be admitted as <i>prima facie</i> evidence in any court of record in this Territory.
Copy of original field notes for proprietor.	SEC. 7. It shall be the duty of every county surveyor, or other person having the official record of such surveyor in his possession, to deliver it up to his successor when demanded; and every person having possession aforesaid, refusing the same, when demanded, shall forfeit and pay one dollar for every day he may detain it after demand, to be recovered by any person who may sue for the same before any justice of the peace of the proper county, one-half to the person suing, and the other half to the use of the county.
Record, & what it shall contain.	SEC. 8. No act or record, by any surveyor, or his deputy, as aforesaid, shall be conclusive, but may be reviewed by any competent tribunal, in any case where the correctness thereof may be disputed.
Subject to inspection.	
Certified copy to be <i>prima facie</i> evidence.	
Official record to be given up to successor.	
Penalty for refusing to do so.	
Record not conclusive. May be reviewed.	

**SEC 9** The county surveyors, respectively, shall be entitled to such compensation, from each person, to whom they have rendered their services, as surveyors, as may be, or now is, allowed by law.

APPROVED, December 25, 1838.

## TERRITORIAL TREASURER.

AN ACT to provide for the appointment of a Territorial Treasurer, and defining his duties.

**SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That there shall be appointed, by the Governor of the Territory, by and with the advice and consent of the Council, a Territorial Treasurer, who shall hold his office for the term of three years, and shall, previous to entering upon the duties of his office, give bond to the United States in the sum of five thousand dollars, with three or more sufficient securities, to be approved of by the Secretary of the Territory, conditioned for the faithful discharge of the duties of his office, and shall, also, take an oath in the following form, before one of the judges of the supreme court: "I, A. B., do solemnly swear (or affirm,) that I will faithfully, and honestly, execute the duties appertaining to the office of Treasurer of the Territory of Iowa: I will not, on any occasion, or pretence, apply, otherwise than according to law, any moneys, securities, or effects, which shall come into my hands, belonging to the Territory, or to the United States of America."

Territorial treasurer, by whom appointed and for how long.

Bond and securities, in what sum, by whom approved, and condition.

Treasurer's oath.

**SEC. 2.** The Treasurer shall receive all monies, belonging to the Territory, that may be raised by taxation, or otherwise, and shall procure suitable books, in which he shall enter an account of his receipts and disbursements.

What moneys he shall receive. His books, accounts, receipts and disbursements.

**SEC. 3.** The Treasurer shall, in no case, pay money out of the treasury, but according to law, and shall annually report, to the Legislative Assembly, a true account of his receipts and disbursements, with the necessary vouchers for the same, and shall deliver to his successor in office, all books, moneys, accounts, or other property, belonging to the Territory, so soon as his successor shall become qualified.

Prohibition.

Annual report, and vouchers.

Transfer of money, &c., to his successor.

**SEC. 4.** The Treasurer shall receive for his services, such sum as may hereafter be allowed him by law.

Compensation.

APPROVED, January 24, 1839.

## TOWN PLATS.

AN ACT to provide for the recording of Town Plats.

- SEC. 1.** *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any county commissioners, or other person or persons, wish to lay out a town in this Territory, or an addition, or subdivision of out-lots, said commissioners, or other person or persons, shall cause the same to be surveyed, and a plat, or map, thereof made, by the county surveyor, if any there be in the county in which said town, or addition, is situated, but if there be no county surveyor in the county, then, in that case, by the county surveyor, of an adjacent county, which plat, or map, shall particularly describe, and set forth, all the streets, alleys, commons, or public grounds, and all in and out-lots, or fractional lots, by him surveyed within, adjoining, or adjacent to said town, giving the width, courses, boundaries, and extent, of all such streets and alleys.
- SEC. 2.** All the in-lots, intended for sale, shall be numbered, in progressive numbers, or by the squares, in which they are situated, and their precise length, and width, shall be stated, on said plat or map. Out-lots shall not exceed ten acres, and shall, in like manner, be surveyed and numbered, and their precise length and breadth stated on the plat, or map, together with any streets, alleys, or roads, which shall divide, or border, on the same.
- SEC. 3.** The county commissioners, proprietor, or proprietors of the town, addition, or subdivision of out-lots, by themselves, or agents, shall, at the time of surveying and laying the same, plant and fix, at a corner of the public ground, or at a corner of a public lot, if any there be, and if there be none, then at the corner of some one of the in-lots, in the town, and at the corner of each out-lot, a good and sufficient stone, of such size and dimensions, and in such manner, as the surveyors shall direct, for a corner from which to make future surveys, and the point, or points, where the same may be found, shall be designated on the plat, or map.
- SEC. 4.** The plat, or map, after having been completed, shall be certified by the surveyor, and the county commissioners, and every other person, or persons, whose duty it shall be to comply with the foregoing requisitions, shall, at, or before, the time of offering such plat, or map, for record, acknowl-
- By whom any town, or addition thereto, may be laid out
- By whom surveyed, and what shall be set forth in the map, or plat
- In-lots, how numbered, &c.
- Out-lots, their size, number, & boundaries.
- Corners, marked, how and under whose direction; and to be designated on plat.
- Town plats, to be certified, acknowledged, and recorded.

edge the same, before any person authorized to take the same, a certificate of such acknowledgment shall, by the officer taking the same, be endorsed on the plat, or map, which certificate of the survey and acknowledgment, shall also be recorded, and form a part of the record.

SEC. 5. When the plat, or map, shall have been made out, and certified, acknowledged and recorded, as required by this act, every donation, or grant, to the public, or any individual, or individuals, religious society, or societies, or to any corporation, or bodies politic, marked, or noted, as such, on said map, or plat, shall be deemed in law, and in equity, a sufficient conveyance, to vest the fee simple of all such parcel, or parcels of land, as are therein expressed, and shall be considered, to all intents and purposes, a general warranty against such donor, or donors, grantee or grantees, for his, her, or their use, for the uses and purposes therein named, expressed, and intended to be, for the streets, alleys, ways, commons, or other public uses, in any town, or city, or addition thereto, shall be held, in the corporate name thereof, in trust to, and for, the uses, and purposes, set forth, expressed or intended.

Donations, or grants, made on plats, or maps, of towns, and the binding effect thereof.

SEC. 6. If the county, in which said town, or addition, is situated, shall not be organized, then, and in that case, the plat, or map, shall be recorded in the recorder's office of that county to which the county, in which said town is situated, shall, at the time, be attached for judicial purposes.

Towns, in unorganized counties, where to be recorded.

SEC. 7. If any county commissioners, or other person or persons, whose duty it is to comply with the requisitions of this act, shall neglect, or refuse, so to do, he, or they, shall forfeit and pay the sum of one hundred dollars, for each and every month, he, she, or they, shall delay a compliance.

Forfeiture for violating this act.

SEC. 8. If any county commissioner, or other person, or persons, shall dispose of, offer for sale, or lease, for any time, any out, or in-lots, in any town, or addition to any town, or city, or any part thereof, which shall, hereafter be laid out, until all the foregoing requisitions of this act shall have been complied with, every person so offending, shall forfeit and pay twenty-five dollars, for each and every lot, or part of a lot, sold or disposed of, leased, or offered for sale.

Additional forfeitures, as to the premature sale of lots.

SEC. 9. The county surveyor, who shall survey, lay out, and plat, any town, or addition, shall receive

Compensation of county surveyors.

such compensation as is prescribed by an act defining the duties and compensation of county surveyors.

Suits for forfeitures, &c., how brought; and receipts from treasurer, with whom filed.

SEC. 10. All forfeitures, and liabilities, which may be incurred, or arise, under this act, shall be prosecuted for, and recovered in, the name of the county treasurer, and any officer or officers, paying over any money to the said treasurer, under any of the provisions of this act, shall take his receipt therefor, and forthwith file the said receipt, with the clerk of the board of county commissioners, and the said clerk shall charge the amount of said receipt, in account against said treasurer, on the books of the county commissioners.

APPROVED, January 25, 1839.

## VAGRANTS.

AN ACT concerning Vagrants.

Who may be deemed and considered as vagrants.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That every person, who does, or is suspected to, get his livelihood by gaming, and every able bodied person, who is found loitering, and wandering about, and not having wherewithall to maintain himself, by some visible property, and who doth not betake himself to labor, or some honest calling, to procure a livelihood, and all persons who may become chargeable to the county, and all other idle, vagrants, dissolute persons, rambling about, without any visible means of subsistence, shall be deemed, and considered, as vagrants.

Proceedings against vagrants, before justices of the peace.

SEC. 2. When any such person is found, in any county, any justice of the peace shall, from information, or from his own knowledge, issue his warrant to the sheriff, or constable, to bring such person before him, and if, upon examination, it shall appear to such justice, that he comes within the description of vagrants, agreeably to this act, he shall commit him to the jail of the county, until the next district court, unless he enters into bond, payable to the county treasurer, in the sum of fifty dollars, with sufficient security, or securities, to be adjudged of by the justice, for his appearance before the said court, and to abide the determination thereof; if, upon examination, it appears to the said court, that such person is within the description, and is a minor,

In the district court, where the vagrant is a minor.

they shall direct the sheriff to bind him to some person of useful trade, or occupation, until he shall arrive at the age of twenty-one years, the said court shall direct the sheriff to hire him out for any term not exceeding nine months: *Provided*, however, That if such person have a wife, or family, within the Territory, he shall be set at liberty, upon his entering into bond, with approved security, payable to the county treasurer, to return to his wife and family, and follow some useful employment for their maintenance and support.

May be bound, or hired out.

Married vagrants, and their bond to return home, &c.

SEC. 3. The money, arising from the hire of any vagrant, shall be applied, by the court, towards the payment of his debts; but if he shall not be indebted, or owe to the amount of his hire, the same, or the balance thereof, shall be paid to such vagrant, at the time his or their service expires, unless he shall have a wife, or children, in which event it shall be applied to their use; when any vagrant shall have entered into a bond and security, as last mentioned to the county treasurer, and the penalty thereof shall become forfeited, the court shall direct an execution to issue thereupon, having first given ten days' notice to the party, or parties, by *scire facias* that such execution will issue against the goods and chattels, lands and tenements of such security, the sheriff shall make distress and collect the amount as on other executions, and the money arising therefrom, shall be applied toward lessening the county tax.

Vagrant's hire, how disposed of.

Forfeiture of vagrant's bond, and proceedings against his securities.

Money how applied.

SEC. 4. All the justices of the peace, within their respective districts, shall see that this act is executed, and all the sheriffs, and constables, within the several counties, shall give information, to such justices, of all vagrants that may be, within their knowledge, in their respective districts, and grand jurors, employed for any county, shall make presentment of all such persons, within the county, as they may suspect to be vagrants, agreeably to this act, and, upon such presentment, the court shall direct some justice of the peace to issue his warrant, to bring such suspected persons before him, and, if upon examination, it appears, that they come within the description of vagrants, the same steps shall be taken against them, as heretofore directed to be taken against vagrants.

Duties of all justices of the peace, sheriffs, constables and grand jurors, as to vagrants, or persons suspected of vagrancy.

APPROVED, January 24, 1839.

## VENDERS OF PROVISIONS, &amp;c.

AN ACT to punish the venders of unwholesome liquors and provisions.

- Penalties incurred by a violation of this act.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That if any butcher or other person shall sell, offer, or expose to sale, the flesh of any animal, dying otherwise than by slaughter, or slaughtered when diseased, or any contagious, or unwholesome flesh; or if a baker, brewer, distiller, or other person, shall sell, offer or expose to sale, any unwholesome bread, beer, or liquor whatsoever, he shall be adjudged to be guilty of a misdemeanor, and on conviction, shall be punished by fine for every such offence, in any sum not exceeding five hundred dollars, nor less than thirty dollars, recoverable by action of debt, with costs of suit, in the name of the United States of America, or by indictment, or information, in any court having competent jurisdiction to try the same, or by imprisonment not exceeding six months, or by both.
- Form of action, and costs.** SEC. 2. All fines, collected under the provisions of this act, shall be paid over by the officer collecting the same, to the treasurer of the county for the use of such county.
- Fines, to whom paid.** SEC. 3. This act to take effect, and be in full force, from and after its passage, but shall not vitiate, or render void, any prosecution under any previous act, but such prosecution shall be prosecuted, under the acts now in force, as though this act had not passed.
- Proceedings, under former acts.** APPROVED, December 29, 1838.

## VENUE.

AN ACT to provide for changing the venue, in civil, and criminal cases.

- A change of venue, in civil cases, in district court, when and for what causes allowed.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That in any civil cause, in law or equity, pending in any district court, either party may have a change of venue, when he fears he shall not receive a fair trial, for reason that the judge is interested, or prejudiced, or is related to, or shall have been counsel for, either party, or that the adverse party has an undue influence over the minds of the inhabitants of the county, wherein the action is pending, or that the inhabitants of such county are prejudiced against him.

SEC. 2. That the party desiring a change of venue, for any of the foregoing reasons, may apply to the court, in term time, or the judge thereof in vacation, by petition, setting forth the cause of the application, and praying a change of venue, accompanied by an affidavit verifying the facts in the petition stated, and such court, or judge, reasonable notice of the application having been given to the other party, or his attorney, shall award a change of venue to the nearest county where the causes complained of do not exist: *Provided*, That neither party shall have more than one change of venue.

Application, when, to whom, and how made.

Petition, how verified; change, to what county awarded.

Proviso.

SEC. 3. That in all such cases, where the judge is interested, or is related to, or shall have been counsel for, either party, the court may, in their discretion, in term time, without application from either party, award a change of venue, as aforesaid.

The court may award a change, without application.

SEC. 4. That, if any defendant, in any indictment, or information, in any district court, shall fear an unfair and partial trial, for reason that the judge is prejudiced, or that the minds of the inhabitants of the county are prejudiced against him, he, by applying as prescribed in section second of this act, reasonable previous notice being given to the attorney general, or district attorney, may have a change of venue awarded to the nearest county, as in the aforesaid section.

Change of venue, in criminal cases.

SEC. 5. That, when such applicant is in custody, or confined in jail, the court, or judge, shall make an order to the sheriff to remove the body of said applicant, to the common jail of the county to which the venue is changed, there to deliver him to the keeper of said jail, together with the warrant, by virtue of which he is confined, or in custody, not more than three days next before the first day of the term of said court, the sheriff shall obey such order accordingly, and shall endorse, on such warrant of commitment, the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to said keeper, who shall receive the same, and give to the sheriff a receipt therefor, and shall take charge of, and keep, the prisoner in the same manner as if he had originally been committed to his custody: *Provided*, That there shall be but one change of venue, in any criminal case.

When the application is in custody; order for removal of prisoner, warrant, &c.

Endorsement on warrant, receipt for the prisoner, and duty of jailor.

Proviso.

SEC. 6. That, when any judge shall award a change of venue in vacation, in any cause, he shall immediately transmit to the clerk of the county, wherein

Change, when allowed in vacation, duty of

- the judge and clerk. the cause is pending, the petition and affidavit, together with an order in writing, directing the change of venue, and such clerk shall file the same in his office, make out a copy thereof, and a full transcript of the record and proceedings, in such cause, and shall certify, and transmit the same to the proper court, together with all papers filed in the cause, and appertaining, or forming part of the record, including, in criminal cases, the indictment and recognizance of the party, and all witnesses, and the clerks of the court to which such cause is certified, shall file the same, and the cause shall be docketed by such clerk, and shall be proceeded in, and determined by the court, in all things, as well before and after judgment, as if it had originated therein.
- Transmission of the record, recognizances, indictment, &c. **SEC. 7.** That, when any change of venue shall be granted, in term time, the like proceeding shall be had, and duties performed by the clerks, and sheriffs, respectively, as in the preceding section.
- Duty of the clerk and court to whom the record is transmitted. **SEC. 8.** That the expenses attending a change of venue, in a civil case, shall be taxed by the clerk of the court from which the cause is certified, according to the rates established by law, for like services, and shall be paid by petitioner, and not taken as part of the costs in the suit, and if the petitioner shall neglect, or refuse, to pay the same, to such clerk, within twenty days after the change of venue is awarded, such clerk may make out a fee bill against such petitioner, and his security (if any), for costs, and deliver the same to any sheriff of any county in this Territory, who shall levy and collect the amount of such fee bill, and twenty per cent. thereon for the use and benefit of such clerk, in the same manner as on executions, and such sheriff shall be entitled to like fees as on executions: *Provided*, That where the venue is changed, without application from either party, the costs of such change shall abide the event of the suit.
- Change of venue, in term time. **SEC. 9.** That, when the venue shall be changed, in any criminal case, the parties, witnesses and all others, who may have entered into recognizances to attend the trial of such cause, having notice of the change of venue, shall be and are hereby required to attend at the time and place the trial is to be had, according to such change, and a failure to do so shall work a forfeiture of the recognizance.
- Expenses, by whom paid, in civil cases. **SEC. 10.** That when the venue is changed, in term time, in a criminal case, the attorney general, or dis-
- Neglect, or refusal, and remedy provided for the clerk in collecting costs. **Proviso, as to costs.**
- Notice of a change of venue, in criminal cases, and forfeiture of recognizance, as to witnesses, &c.
- Duty of district attorney.

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.

Justice shall issue his warrant, to whom, and its requirements.	said justice shall, thereupon, issue his warrant, directed to some constable of his township, or district, commanding him forthwith to summon three respectable householders of the neighborhood, if they cannot otherwise be had, whose duty it shall be to
Appraisal, and report.	proceed, without delay, to examine and appraise such boat, or vessel, her cargo, or tackle, rigging, and all other appendages, as aforesaid, and to make report thereof, under their hands and seals, to the justice issuing such warrant, as aforesaid, who shall enter the same, together with the affidavit of the taker up, at large, in his estray book, and it shall be the further duty of such justice, within ten days after the said
Copy of the proceedings, how, when, and to whom certified, and by whom recorded	proceedings shall have been entered on his estray book, aforesaid, to transmit a certified copy thereof to the clerk of the board of county commissioners, of the proper county, to be by him recorded in his estray book, and file the same in his office.
When appraisal does not exceed \$20.	<b>SEC. 2.</b> In all cases, where the appraisal of any such boat, or vessel, including her cargo, tackle, rigging, and other appendages, as aforesaid, shall not exceed the sum of twenty dollars, the taker up shall
Advertisement within 10 days.	advertise the same on the door of the court house, or in three other of the most public places in the county, within ten days after the justice's said certificate shall have been entered on the records of the board of county commissioners' court, and if no person shall ap-
Limitation, six months, in making claim.	pear to claim and prove such boat, or vessel, within six months from the time of the taking up as aforesaid, the property in the same shall vest in the taker up.
Where the value exceeds \$20 notice by whom, and how given.	But if the value thereof shall exceed the sum of twenty dollars, it shall be the duty of the clerk of the board of county commissioners' court, within twenty days from the time of the reception of the justice's said certificate, at his office, to cause an advertisement to be set up on the door of the court house, or at three other of the most public places in the county, and also a notice thereof to be published for three weeks successively in some public newspaper, printed in this Territory, and if the said boat, or ves-
Limitation 90 days.	sel, be not claimed and proven within ninety days after the advertisement of the same as aforesaid, it shall be the duty of the taker up to deliver the same
Duty of the taker up, and the sheriff.	to the sheriff of the county, wherein such boat or vessel may have been so taken up, who shall there-
Notice and terms of sale, and proceeds, where paid.	upon proceed to sell the same at public auction, to the highest bidder, for ready money, having first given ten days' notice of the time and place of sale,

and the proceeds of all such sales, after deducting the costs and other necessary expenses, shall be paid into the county treasury.

SEC. 3. If any person shall hereafter find any lost goods, money, bank notes, or other choses in action, of any description whatever, of the value of five dollars and upwards, it shall be the duty of such person, or persons, to inform the owner thereof, if known, and to make restitution of the same, without any compensation whatever, except the same be voluntarily given on the part of the owner, but if the owner be unknown, such person, or persons, shall, within five days after such finding, as aforesaid, take such goods, money, bank notes, or other choses in action, before some justice of the peace of the proper county, and make affidavit of the description thereof, the time and place when and where the same was found, that no alterations had been made in the appearance thereof, since the finding of the same; whereupon the justice shall enter a description of the property thus found, and the value thereof, as near as he can ascertain, in his estray book, together with the affidavit of the finder, to be taken as aforesaid, and shall also, within ten days after said proceeding shall have been entered on his estray book, as aforesaid, transmit to the clerk of the board of county commissioners, a certified copy thereof, to be by him recorded in his estray book, and file the same in his office.

Bank notes, &c of what value, and to whom restored.

Compensation

Where owner is not known, duty of finder.

Affidavit, and its contents.

Duty of the justice herein.

Certificate, and transmission, of record.

SEC. 4. In all cases, where such lost goods, money, bank notes, or other choses in action, shall not exceed the sum of ten dollars in value, it shall be the duty of the finder, to advertise the same on the door of the court house, or in three other of the most public places in the county, and if no person shall appear to claim and prove such money, goods, bank notes, or other choses in action, within twelve months from the time of such advertisement, the right to such property, when the same shall consist in goods, money, or bank notes, shall be vested in the finder: But if the value thereof shall exceed the sum of ten dollars, it shall be the duty of the clerk of the board of county commissioners, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the court house door, or three other of the most public places in the county, and also a notice thereof to be published, for three weeks successively, in some

Where the value does not exceed \$10, duty of finder, as to notice.

Limitation, 12 months.

Where the value exceeds \$10.

Duty of the clerk, as to notice.

- Limitation, six months. public newspaper, printed in this Territory, and if the said goods, money, bank notes, or other choses in action, be not reclaimed within six months after the advertisement as aforesaid, it shall be the duty of the finder, if the property shall consist in money, or bank notes, to deliver the same to the county treasurer, after deducting the necessary expenses hereinafter provided for, if in bank bills, notes of hand, patents, deeds, patents mortgages, &c.. deeds of conveyance, articles of apprenticeship, mortgages, or other instruments of value, the same shall be delivered to the clerk of the board of county commissioners, to be preserved in his office, for the benefit of the owner, whenever legal application shall be made therefor. If in goods, wares, or merchandise, the same shall be delivered to the sheriff of the county, who shall thereupon proceed to sell the same at public auction to the highest bidder, for ready money, having first given ten days' notice of the time and place of such sale, and the proceeds of all such sales, after deducting the cost and other expenses, shall be paid into the county treasury.
- Deeds, patents mortgages, &c.. to whom delivered.
- Goods, wares, &c., to whom delivered, by whom sold, and notice of sale, &c.
- Proceeds where paid.
- Where the value is less than \$5, duty of the finder, and when the title may vest in him
- SEC. 5. In all cases where any vessel or water craft shall be taken up, or any goods, money, or bank notes, shall be found, as aforesaid, which shall be of a value less than five dollars, it shall be his duty to advertise the same by setting up three advertisements, in the most public places in the neighborhood, but in such cases the taker up, or finder, shall be required to keep and preserve the same in his or her possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily, whenever legal application shall be made for the same: *Provided*, It shall be done within three months from the time of such taking up, or finding, but if no owner shall appear to claim such property, within the time aforesaid, the exclusive right to the same shall be vested in the finder, or taker up.
- Horses, mares, &c.
- When, and by whom, stray horses, &c., may be taken before a justice of the peace.
- Affidavit, and what it shall contain.
- SEC. 6. Every person, being a householder, who shall take up any stray horse, gelding, mare, colt, mule, or ass, shall, within five days thereafter, take the same before some justice of the peace of the county, wherein such stray shall have been taken up: *Provided*, The same shall not have been previously proven by the proper owner, or owners, and a tender made for the compensation herein provided for, and make oath, before such justice, that the same was taken up at his or her plantation, or place

of residence, in said county, or otherwise, as the case may be, and that the marks, or brands, have not been altered by him, or her, or any other person, or persons, to his, or her knowledge, either before or after the same was taken up, the justice shall then issue his warrant, directed to a constable of his district, commanding him to summons three disinterested householders of the neighborhood, unless they can otherwise be had, to appraise such estray, and after they, or any two of them, have been sworn to appraise such estray, without partiality, favor, or affection, they shall forthwith proceed to appraise the same, and shall immediately make report thereof, in writing, under their hands and seals, to the said justice, in which they shall be required to set forth a description of the marks, natural and accidental, brands, color, and age of such horse, gelding, mare, colt, mule, or ass; and the said justice shall thereupon enter the same in his estray book, and transmit a certified copy thereof, under his hand and seal, together with the original return of the appraisers, to the clerk of the board of county commissioners of said county, within ten days thereafter, who shall enter the same in his estray book, and file the aforesaid transcript, and report of the appraisers, in his office, and the said clerk shall, within twenty days from the time of the reception of the justice's said transcript, cause an advertisement thereof to be set up on the door of the court house, or at three other of the most public places in the county, and also a notice to be published, for three weeks successively, in some public newspaper, printed in this Territory: *Provided*, The newspaper publication may be dispensed with in all cases, where the value of such estray shall not exceed the sum of fifteen dollars.

SEC. 7. Any person being a householder who shall take up any head of neat cattle, sheep, goat, or hog, shall, within five days thereafter, cause the same to be advertised in three of the most public places in the neighborhood, or township, and shall also, within ten days thereafter, unless such stray or strays, shall have been previously reclaimed, by the owner, go before some justice of the peace of the proper county, and make oath, as required in the taking up of an estray horse, whereupon such justice shall take from such taker up, upon oath, a particular description of the marks, brands, color, and age of such neat cattle, sheep, goat, or hog, and said

Warrant,

Appraisement,

And report.

Duty of justice.

Duty of clerk,  
as to entry, and  
notice.

Proviso.

Neat cattle, &amp;c.

Advertisement.

Affidavit, and  
description

Appraisalment.	justice shall also cause such stray, or estrays, last mentioned, as aforesaid, to be appraised, in like manner as is required to be done in the case of an stray horse, after which the same entries and proceedings shall be made as is required in the sixth section, except that it shall not be necessary to
Publication.	make publication, in a newspaper, where the valuation of the property shall not exceed the sum of fifteen dollars: <i>Provided</i> , That if two, or more, estrays, of the same species, are taken up, by the same person, at the same time, they shall, in all cases, be included in one entry, and in one advertisement, and in such cases the said justice, clerk, and appraisers, shall receive no more for their services than is allowed in cases where but one of the same
Proviso, as to number of estrays, and fees.	species is taken up: But, in all cases, where the value does not exceed the sum of five dollars, no further proceedings need be had, than for the justice to enter the same in his stray book, for which the justice shall be entitled to a fee of twenty-five cents; and when so posted and entered, the right, after the expiration of six months, shall vest absolutely in the taker up: But he shall be accountable for, and pay to each owner the appraised value of such animal, after deducting all lawful charges incident to taking up, and posting such stray, or estrays, and if the appraisement of an stray, or estrays, shall exceed five, and does not exceed ten dollars, the right therein shall be vested in the taker up, by his paying into the county treasury the appraised value thereof, at the expiration of six months, after the same shall be advertised.
Limitation, as to value,	
And as to time.	
Further, as to value, title and time.	
Horses, colts, &c., straying without the settlements, before whom taken,	SEC. 8. Any person, being a householder, finding any stray horse, gelding, mare, colt, mule, or ass, running at large, without any of the settlements in this Territory, may take up the same, and shall forthwith take such stray, or strays, before the nearest justice of the peace, and make oath as directed in the sixth section of this act, after which it shall be lawful for such persons, to post such stray, or strays, in manner and in form as in other cases: <i>Provided</i> , That nothing in this act contained shall be so construed as to authorize any person to take up, or stop, any stray animal, between the first day of May and the first day of November, unless the same be a work beast, and manifestly straying away from the owner.
And proceedings thereon.	
When estrays may not be taken up. Exception.	

SEC. 9. As a reward for taking up of all boats, and other vessels, and of estrays, and for finding of lost goods, money, bank notes, and other choses in action, there shall be paid by the owner, to the taker up, or finder, before restitution of the property, or proceeds thereof shall be made: For every horse, gelding, mare, colt, mule or ass, the sum of one dollar, except where the same may have been taken up out of the settlement, in which case the taker up shall be allowed the sum of three dollars; for each head of neat cattle, fifty cents, for every sheep, or goat, twenty-five cents; and for every hog, above six months old, the sum of ten cents; and, in all cases, where goods, money or bank notes, shall be found, the finder shall be entitled to ten per cent. upon the value thereof, in addition to which said allowance, the owner shall also be required to pay, to the taker up, or finder, all such costs, and charges, as may have been paid by him, or her, to the justice and clerk for their services, to be rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping, and taking care of such property, which last mentioned charge, in case the taker up, or finder, and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some justice of the peace of the proper county, whose decision, when made, shall be binding and conclusive on all parties: But when the animal taken up is suitable for the harness, or saddle, no charge shall be allowed for keeping the same, but no such animal shall be kept out of the county, where the same shall have been taken up, more than one week at any one time.

SEC. 10. In all cases where any stray animal shall be taken, as aforesaid, and no owner shall apply, or prove his, or her property, within one year after advertisement shall be made, as aforesaid, and the valuation exceed the sum of ten dollars, and no owner appear within the time aforesaid, the property may be vested in the taker up, by his paying the appraisement value into the county treasury, after deducting all necessary expenses, as hereinafter provided; but if the taker up, or finder, shall fail to comply, as aforesaid, then it shall be his duty to deliver the same to the sheriff of the county, who shall thereupon proceed to sell such stray, or strays, at public auction, to the highest bidder, for ready money, having first given ten days' public notice of

Compensation to finders, or takers up, of horses, &c., within the settlements.

Out of the settlement. Neat cattle, sheep, hogs, &c.

Goods, money, &c.

Costs and charges, repaid to, and by whom.

Disagreements how determined.

Animals suitable for harness.

When, and how, the property may vest in the finder, or taker up.

Upon his failure to comply, the sheriff is authorized to sell, &c.

Proceeds of sale, where paid.

the time and place of sale, and the money arising from the sale thereof, after deducting the costs and charges paid by the taker up, and reasonable expenses for keeping the same, together with all other costs and charges which may be incident thereto,

Proviso, in favor of the taker up, or finder.

shall be paid into the county treasury: *Provided*, That the taker up, shall, in all cases, have the privilege at the expiration of the year, as aforesaid, to pay into the county treasury the aforesaid value of such estray, after deducting the costs and charges aforesaid, and by so doing, shall acquire an absolute right to the property in such estray: *And provided*, That the taker up and treasurer cannot agree on the charges for keeping, it shall be assessed, as aforesaid, by two disinterested freeholders, which decision shall be binding.

Proviso, as to charges.

The proceeds of sale, when forfeited to the county, and for what purpose.

SEC. 11. The net proceeds of all such sales as may, at any time be made by the sheriff, in pursuance of this act, and all such money, and bank notes, as may be paid over to the county treasurer, as directed in the tenth section, shall remain in the hands of the county treasurer, in trust for the owner, if any such shall apply within one year from the time the same shall have been paid over, but if no owner shall appear, within the time aforesaid, the said money shall be considered as forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the county treasury, to be applied to the use of common schools, whenever applied for by law.

Unavoidable accidents, provided for.

SEC. 12. If the taker up of any stray animal, water craft, or lost goods, bank notes, or other choses in action, shall be faithful in taking care of the same, and any unavoidable accident shall happen thereto, without the fault or neglect of the finder, or taker up, before the owner shall have an opportunity of reclaiming the same, such taker up, or finder, shall not be accountable therefor: *Provided*, That in all cases of accident, as aforesaid, it shall be the duty of the taker up, or finder, within ten days thereafter to certify the same under his hand and seal, to the clerk of the board of county commissioners, who shall make an entry thereof in his estray book.

Notice of accidents by whom, when, and to whom, certified.

Forfeiture for removing property out of the Territory, that has been found, or taken up,

SEC. 13. If any person shall trade, sell, or carry out of the limits of this Territory, any such property as may, at any time, be taken up, or found, as aforesaid, except such animals as are suitable for the harness, or saddle, as aforesaid, before he, or she,

shall be vested with the right to the same agreeably to the provisions of this act, he, or she, so offending, shall forfeit and pay double the value thereof, to be recovered by any person who will sue for the same, in any court, or before any justice of the peace, having jurisdiction thereof, by action of debt, one half thereof shall go to the person suing, and the other half to the county, as aforesaid.

when, and in what cases incurred, and how recoverable.

SEC. 14. If any person shall take up any boat, or vessel, or any stray beast, or shall find any goods, money, bank notes, or other choses in action, and shall fail to comply with the requisitions of this act, every such person, so offending, shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace, by any person who will sue for the same, the one-half whereof shall be for the use of the person suing, and the other half to be deposited in the county treasury for the use of common schools: *Provided*, That nothing herein contained shall prevent the owner from having and maintaining his action against such person for the recovery of any damages he or she may sustain.

Forfeiture for failing to comply with this act, how recovered and applied.

Proviso, as to other damages.

SEC. 15. In all cases, where services shall be performed by any officer, or other person, under this act, the following fees or compensation shall be allowed, to wit: to the justice of the peace for administering the oath to the taker up, or finder, making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the board of county commissioners, fifty cents; to the clerk for taking proof of the ownership of the property, and granting a certificate of the same, twenty-five cents; for registering each certificate transmitted to him by the justice, as aforesaid, twelve and a half cents; for advertisements, including the newspaper publication, fifty cents; to the sheriff, on account of all sales made by him, in pursuance of this act, five per cent. on the amount; to the constable, for each warrant served on appraisers, twenty-five cents; to each appraiser, twenty-five cents; all which said costs and charges, with the exception of the justice's charge for granting a certificate of ownership, and the sheriff's commission, shall be paid by the taker up to the persons entitled thereto, whenever the services shall be performed:

Fees to officers.

To justices of the peace.

To the clerk of the board of commissioners.

To the sheriff.

To the constable and appraisers.

By, to whom, and when, paid.

Proviso, as to the publication of notice.

*Provided*, That in all cases, where it shall be necessary to make publication in a newspaper, the taker up, or finder, as the case may be, shall be required

- By, when, and to whom costs and charges shall be reimbursed. same, previous to the publication thereof; all which costs and charges shall be reimbursed to the taker up, or finder, in all cases where restitution of the property shall be made to the owner, or the same shall be delivered to the sheriff, to be sold, or where money, or bank notes, shall be paid into the county treasury, in addition to the reward to which such person may be entitled, for such taking up or finding as aforesaid.
- Reward. same, previous to the publication thereof; all which costs and charges shall be reimbursed to the taker up, or finder, in all cases where restitution of the property shall be made to the owner, or the same shall be delivered to the sheriff, to be sold, or where money, or bank notes, shall be paid into the county treasury, in addition to the reward to which such person may be entitled, for such taking up or finding as aforesaid.
- Examination. of estray book without fee or charge. SEC. 16. For the more speedy recovery of estrays, and other lost property, it shall and may be lawful, at all times for any person interested, to search and examine the estray book of the clerk for any information he or she may want, in relation to any property which may at any time have strayed away, or been lost, by any such person as aforesaid, for which said clerk shall be entitled to no compensation.
- When this act shall be in force. SEC. 17. This act to take effect, from and after the first day of May next.

APPROVED, January 22, 1839.

## WEIGHTS AND MEASURES.

AN ACT regulating weights and measures.

- Commissioners required to procure weights and measures, at the expense, and for the use of their respective counties. Description of measures. SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That the several boards of county commissioners, within this Territory, be, and they are hereby authorized, and required, to procure, for their respective counties, and at the expense of the same, a set of the following weights and measures, for the use of their county, that is: one measure of one foot, or twelve inches, English measure, so called; also, one measure of three feet, or thirty-six inches, as aforesaid; also, one half bushel measure, for dry measure, which shall contain one thousand seventy-five and one-fifth solid inches; also, one gallon measure, which shall contain two hundred and thirty-one solid inches, which measures are to be of wood, or any metal the court may think proper; also, one set of weights, commonly called avoirdupois weight, and sealed with the name, or initial letters of the county inscribed thereon; which weights and measures shall be kept by the clerk of the said court, of each and
- Of weights.
- By whom kept, and for what purpose.

every county in this Territory, for the purpose of trying and sealing the weights and measures, used in their counties.

SEC. 2. As soon as the several courts of county commissioners shall have finished the weights and measures as aforesaid, they shall cause notice thereof to be given at the court house door, for one month, and any person who shall thereafter buy, or sell, any commodity whatsoever, by measure, or weights, that shall not correspond with county weights, and measures, shall, for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars, for the use of the county where such offence shall have been committed, and also the costs, to be recovered before any justice of the peace for said county.

Notice, when, where, and by whom given, and for what length of time.

Penalty, how, and by whom incurred. Jurisdiction and costs.

SEC. 3. Every person desirous of having their weights and measures tried, by the county standard, shall apply to the clerk of the county commissioners, and, if he find it corresponds with the county standard, shall seal the same, with the seal provided for that purpose, and said clerk shall be allowed to demand and receive such fees, as now, or hereafter may be, allowed by law.

Comparison of weights and measures, with the county standards. Seal, and fees.

SEC. 4. This act to take effect and be in force, from and after its passage.

When this act to take effect.

APPROVED, January 4, 1839.

## · WILLS AND ADMINISTRATIONS.

AN ACT relative to Wills and Testaments, Executors and Administrators, and the settlement of estates.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa.* That any person having an estate in any lands, tenements, or hereditaments, or any annuity or rent charged upon or issuing out of the same, or any goods, or chattels, rights, credits, and choses in action, or in possession, and property of every description, whatever, may give or devise the same to any person by last will and testament by him or her lawfully executed.

Property may be devised by will legally executed.

SEC. 2. That every such last will and testament shall be reduced to writing, and signed by the testator or testatrix, or by some person in his or her presence, and by his or her direction, and attested

In what manner will to be attested.

- in the presence of the testator or testatrix by two or more credible witnesses, two of whom declaring on oath or affirmation, before the court of probate for the proper county, that they were present and saw the testator or testatrix sign said will, testament, or codicil, in their presence, or acknowledged the same to be his or her act and deed, and that they believe the testator or testatrix to be of sound mind and memory at the time of signing or acknowledging the same, shall be sufficient proof of the execution of said will, testament, or codicil, to admit the same to record: *Provided*, That no proof of fraud, compulsion, or other improper conduct be exhibited, which in the opinion of the court of probate shall be deemed sufficient to invalidate or destroy the same; and every will, testament, or codicil, when thus proven to the satisfaction of the court of probate, shall be recorded by the judge thereof in a book to be provided by him for that purpose, and shall be good and available in law for the granting, conveying, and assuring the lands, tenements, and hereditaments, annuities, rents, goods, and chattels therein, and thereby given, granted and bequeathed.
- To be recorded in probate office.** SEC. 3. That no last will and testament made by any infant, idiot, or person of insane memory, shall be valid in law.
- Will by infant, &c., not valid.** SEC. 4. It shall be the duty of each and every witness to any will, testament, or codicil, made and executed in this Territory as aforesaid, to be and appear before the court of probate, on the regular day for the probate of such will, testament, or codicil, to testify of and concerning the execution and validity of the same; and the said court of probate shall have power and authority to attach and punish by fine and imprisonment, or either, any witness who shall, without a reasonable excuse, fail to appear when duly summoned for the purpose aforesaid: *Provided*, The said punishment, by imprisonment, shall in no case exceed the space of twenty days, nor shall a greater fine be assessed for any such default than the sum of fifty dollars.
- Witnesses to appear and testify.** SEC. 5. When any will, testament, or codicil, shall be produced to the court of probate for probate of the same, and any witness attesting such will, testament, or codicil, shall reside without the limits of this Territory, it shall be lawful for the judge of probate to issue a *dedimus potestatem*, or commission annexed to such will, testament, or codicil, di-
- Failing to do so, may be fined, &c.**
- In what case dedimus may issue.**

rected to some judge, justice of the peace, mayor, or other chief magistrate of the city, town, corporation, or county, where such witness may be found, authorizing the taking and certifying of his or her attestation in due form of law. And if the person, to whom any such commission shall be directed, shall certify, in the manner that such acts are usually authenticated, that the witness personally appeared before him and made oath or affirmation that the testator or testatrix signed and published the writing annexed to such commission as his or her last will and testament, or that some other person signed it by his or her direction, that he or she was of sound mind and memory, and that he or she subscribed his or her name as a witness thereto in the presence of the testator or testatrix, and at his or her request, such oath or affirmation shall have the same operation, and the will shall be admitted to probate in like manner as if such oath or affirmation had been made in the court of probate from whence such commission issued.

SEC. 6. When any will, testament, or codicil shall be exhibited in the court of probate for probate thereof as aforesaid, it shall be the duty of the court to receive probate of the same without delay, and to grant letters testamentary thereon to the person or persons entitled, and to do all other needful acts to enable the parties concerned to make settlement of the estate at as early a day as shall be consistent with the rights of the respective persons interested therein: *Provided*, however, That if any person interested shall, within five years after the probate of any such will, testament, or codicil, in the court of probate as aforesaid, appear, and by his or her bill in chancery, contest the validity of the same, an issue at law shall be made up whether the writing produced be the will of the testator or testatrix, or not, which shall be tried by a jury in the district court of the county wherein such will, testament, or codicil shall have been proven and recorded as aforesaid, according to the practice in our courts of chancery in similar cases; but if no such person shall appear within the time aforesaid, the probate, as aforesaid, shall be forever binding and conclusive on all the parties concerned, saving to infants, *femes covert*, persons absent from the Territory, or *non compos mentis*, the like period after the removal of their respective disabilities. And in all such trials by jury as aforesaid,

Letters testamentary to be granted.

Within what time will may be contested.

Rights of infants and others saved.

the certificate of the oath of the witness at the time of the first probate shall be admitted as evidence, and to have such weight as the jury shall think it may deserve.

**Hand writing of deceased or absent witness may be proved.**

SEC. 7. In all cases where any one or more of the witnesses to any will, testament, or codicil, as aforesaid, shall die, or remove to some distant country unknown to the parties concerned, so that his or her testimony cannot be procured, it shall be lawful for the judge of probate, or other court having jurisdiction of the subject matter, to admit proof of the handwriting of any such deceased or absent witness as aforesaid, and such other secondary evidence as is admissible in courts of justice to establish written contracts generally in similar cases, and may thereupon proceed to record the same as though such will, testament, or codicil, had been proved by such subscribing witness, or witnesses, in his, her, or their proper persons.

**Wills executed out of the Territory may be recorded.**

SEC. 8. All will, testaments, and codicils, or authenticated copies thereof, proven according to the laws of any of the United States, or Territories thereof, or of any country out of the limits of the United States, and touching and concerning estates within this Territory, accompanied with a certificate of the proper officer or officers that said will, testament, codicil, or copy thereof, was duly executed and proved agreeably to the laws and usages of that state or country in which the same was executed, shall be recorded as aforesaid, and shall be good and available in law in like manner as wills made and executed in this Territory.

**Nuncupative wills,**

SEC. 9. A nuncupative will shall be good and available in law for the conveyance of personal property thereby bequeathed, if committed to writing within twenty days, and proven before the court of probate by two or more credible disinterested witnesses who were present at the speaking and publishing thereof, who shall declare on oath or affirmation that they were present and heard the testator pronounce the said words, and that they believed him to be of sound mind and memory, and that he or she did at the same time desire the persons present, or some of them, to bear witness that such was his or her will, or words to that effect, and that such will was made in the time of the last sickness of the testator or testatrix, on a voyage at sea, or in field of battle, or under such other circumstances that it could not be

reduced to writing by the testator, and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the said will was committed to writing within twenty days after the death of the testator or testatrix, and no proof of fraud, compulsion, or other improper conduct exhibited which in the opinion of said court shall be sufficient to invalidate or destroy the same; and all such wills, when proven and authenticated as aforesaid, shall be recorded by the judge of probate in like manner as other wills are directed to be recorded by this act: *Provided*, That no letters testamentary shall be granted on such will, until the expiration of sixty days after the death of the testator or testatrix.

To be recorded.

Proviso.

SEC. 10. In all cases where a nuncupative will shall be proved and recorded as aforesaid, the court of probate shall issue a citation to the heirs and legal representatives of the testator or testatrix, if they reside in the county, if not, then said court shall cause an advertisement to be inserted in some one of the newspapers printed in this Territory, notifying the said heirs and legal representatives of the testator or testatrix at what time and place letters testamentary will be granted upon such will, requiring them and each of them to appear and show cause, if any they have, why such letters testamentary, should not be granted, and if no sufficient cause be shown, letters shall be granted thereon as in other cases.

Court to issue citation to heirs, &c.

SEC. 11. If any beneficial devise, legacy, or interest shall be made or given in any will, testament, or codicil, to any person subscribing such will, testament, or codicil as a witness to the execution thereof, such devise, legacy, or interest shall, as to such subscribing witness and all persons claiming under him, be null and void, unless such will, testament, or codicil be otherwise duly attested by a sufficient number of witnesses, exclusive of such person, according to this act, and he or she shall be compelled to appear and give testimony on the residue of such will, testament, or codicil in like manner as if no such bequest or devise had been made. But if such witness would have been entitled to any share of the testators' estate in case the will, testament, or codicil was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise or bequest made to him or her as aforesaid.

Devise to a subscribing witness.

If debtor of testator appointed executor.

SEC. 12. In no case hereafter, within this Territory, where any testator or testatrix shall by his or her will appoint his or her debtor to be his or her executor or executrix, shall such appointment operate as a release or extinguishment of any debt due from such executor or executrix to such testator or testatrix, unless the testator or testatrix shall in such will expressly declare his or her intention to devise, bequeath, or release such debt, nor even in that case unless the estate of such testator or testatrix is sufficient to discharge the whole of his or her just debts, over and above the debt due from such executor or executrix.

Children born after execution of will.

SEC. 13. If after making a last will and testament, a child or children shall be born to any testator or testatrix, and no provision be made in such will for such child or children, the will shall not on that account be revoked, but, unless it shall appear by such will that it was the intention of the testator or testatrix to disinherit such child or children, the devises and legacies by such will granted and given shall be abated in equal proportions to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive out of the estate of such testator or testatrix, if he or she had died intestate.

Devisee, &c., dying before testator.

SEC. 14. Whenever a devisee or legatee in any last will and testament, being a child or grand child of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee shall take the estate devised or bequeathed, as the devisee or legatee would have done had he or she survived the testator or testatrix; and if there be no such issue at the time of the death of such testator or testatrix, the estate disposed of by such devise or legacy shall be considered and treated in all respects as intestate estate.

How a will, &c., may be revoked.

SEC. 15. No will, testament, or codicil shall be revoked otherwise than by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence, by his direction and consent, or by some other will, testament, or codicil, in writing, declaring the same, signed by the testator or testatrix, in the presence of two or more witnesses, and by them attested in his or her presence, and no words spoken shall revoke or annul any will, testa-

ment, or codicil, in writing, executed as aforesaid in due form of law.

SEC. 16. The courts of probate in each county in this Territory shall have jurisdiction and authority to hear and determine all causes, matters, and controversies, testamentary, which shall be brought before them, touching the proof of wills, testaments, and codicils, and may grant probate thereof, and shall hear and determine the right of administration of estates of persons dying intestate, and to do all other things touching the granting of letters testamentary, and of administration, and the settlement of estates. Jurisdiction of probate courts.

SEC. 17. All original wills, after probate thereof, shall be recorded and remain in the office of the judge of probate of the proper county, and authenticated copies thereof, certified under the hand and seal of the said judge, shall be admitted as evidence in any court of law or equity in this territory. Authenticated copies of wills to be evidence.

SEC. 18. If any testator or testatrix shall have a mansion-house or known place of residence, his or her will shall be proved in the court of probate of the county wherein such mansion-house or place of residence shall be; if he or she have no place of residence, and lands be devised in his or her will, it shall be proved in the court of probate of the county wherein the lands lie, or in one of them where there shall be land in several different counties; and if he or she have no such known place of residence and there be no lands devised in such will, the same may be proved either in the county where the testator or testatrix shall have died, or that wherein his or her estate, or the greater part thereof, shall lie. Where will to be proved.

SEC. 19. Any person or persons, who may have in his or her possession any last will or testament of another for safe keeping or otherwise, shall, immediately upon the death of the testator or testatrix, deliver up the said will to the court of probate of the proper county, and upon a failure or refusal so to do the court of probate may issue attachments and compel the production of the same, and the person or persons thus withholding any such will, testament, or codicil as aforesaid, shall forfeit and pay twenty dollars per month, from the time the same shall be thus wrongfully withheld, to be recovered by action of debt for the use of the estate by any person who will sue for the same in any court having jurisdiction thereof; and if any person to Court may compel production of will.

whom a will, testament, or codicil hath been or shall be delivered by the party making it for safe custody as aforesaid, shall alter or destroy the same without the direction of the said party, or shall wilfully secrete it for the space of six months after the death of the testator or testatrix shall be known to him or her, the person so offending, shall, on conviction thereof, be sentenced to such punishment as is or shall be inflicted by law in cases of larceny.

When letters of administration with will annexed may be granted.

SEC. 20. All persons named as executors in any will, testament, or codicil as aforesaid, shall, after the same shall be proved and admitted to record as before directed, be entitled to letters testamentary thereon, and where there shall be no executors named in such will, testament, or codicil, or the executor named therein shall die before having fully administered, or refuse to act, or be otherwise disqualified, letters of administration with the will annexed, shall be granted to such person or persons as may be entitled thereto, in all which cases copies of such wills, testaments, or codicils, shall go out with the letters.

Within what time will to be proved.

SEC. 21. It shall be the duty of the executor or executors of the last will and testament of any person deceased, knowing of his, her, or their being so named or appointed, within sixty days next after the decease of the testator or testatrix, to cause such will to be proved and recorded in the proper county as aforesaid, or to present said will and declare his or her refusal to accept of the executorship, and every such executor or executrix so neglecting his trust and duty as aforesaid, without just excuse for such delay to the satisfaction of the judge of probate, shall forfeit the sum of twenty dollars per month, from and after the expiration of the said term of sixty days, until he shall cause probate of said will to be made, or present the same as aforesaid, to be recovered by action of debt, for use of the estate, by any person who will sue for the same in any court having jurisdiction thereof.

Penalty for neglect.

To whom administration may be granted.

SEC. 22. Upon the refusal of the executor or executors to administer the estate, or upon non-qualification as aforesaid, the court of probate shall commit the administration of the estate of the deceased, with a copy of the will annexed, unto the widow or next of kin to the deceased, and upon the refusal, neglect, or incapacity to act of the widow or next of kin, the court of probate may grant such adminis-

tration to one or more of the principal creditors, and on their refusal to such other person or persons as the court shall think fit.

SEC. 23. The executor of an executor shall not, in Execution of an consequence thereof, be executor of the first testa- executor.  
tor.

SEC. 24. Persons of the age of seventeen years, of Who may be sound mind and memory, may be appointed execu- executors.  
tors, but should any person under the age of twenty-one years be appointed executor or executrix, the court of probate shall appoint some suitable person to manage and control the estate, under the direction of the court, until such executor or executrix appointed by the will shall attain the full age of twenty-one years; and all such persons, appointed to take charge of the estate during the minority of any such executor or executrix, shall for the time being give bond with security as in other cases.

SEC. 25. The power of the executor or executors Power of exe- over the testator's estate, before probate of the will and obtaining letters testamentary, shall extend to the burial of the deceased, the payment of necessary funeral charges, and the taking care of the estate, but in all such cases, if the will shall be rejected when presented for probate, and such executor thereby never qualify, he shall in nowise be liable as an executor of his own wrong, unless upon refusal to deliver up the estate to the person or persons authorized to receive the same: *Provided*. That this section shall not be construed to exempt any such person, claiming to be executor as aforesaid from liabilities for any waste or misapplication of such estate. Probate.

SEC. 26. Where two or more executors are ap- If one executor pointed in and by the same will, and one or more of the persons named as such shall die, refuse to take act.  
upon himself or herself such executorship, or be otherwise disqualified, letters testamentary shall be granted thereon to the other person or persons so named, not renouncing as aforesaid and not disqualified.

SEC. 27. Every executor, or administrator with Oath to be ta- the will annexed, at the time of proving the will and ken by execu- granting letters testamentary or of administration as aforesaid, shall take and subscribe before the tor, or admin- judge of probate the following oath, to wit: "I do istrator.  
solemnly swear (or affirm) that this writing contains the true last will and testament of the within named

A. B. deceased, so far as I know or believe, and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend and the law charge me, and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and abilities, so help me God." Which said oath shall be administered by the judge of probate, and be attached to and form a part of the probate of said will.

**Executors, &c.,  
to give bond.**

SEC. 28. All executors hereafter to be appointed, unless the testator or testatrix shall otherwise direct in the will, and all administrators with the will annexed shall, before entering upon the duties of their executorships and administrations respectively, enter into bond with good and sufficient security, to the judge of probate and his successors, to be approved by him, in a sum double the value of the estate, for the use of the parties interested, in the following form, to wit:

**Form.**

"Know all men by these presents, that we, A. B., C. D. and E. F. of the county of \_\_\_\_\_ and Territory of Iowa, are held and firmly bound unto G. H. judge of probate, in the penal sum of \_\_\_\_\_ dollars, current money of the United States, to be paid G. H. or his successors in office; for which payment, well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

**Condition.**

"The condition of the above obligation is such, that if the above bounden A. B. executor of the last will and testament of G. H. deceased (or administrator with the will annexed of G. H. deceased, as the case may be) do make or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements, and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have or shall come to the hands, possession, or knowledge of the said, A. B. or into the possession of any other person for him, and the same so made do exhibit in the court of probate for the said county

of — as required by law, and also make and render a fair and just account of his actings and doings as such executor (or administrator) to said court, when thereunto lawfully required, and well and truly fulfil the duties enjoined upon him in and by the said will, and shall moreover pay and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof, and as the law shall charge him, and shall in general do all other acts which may from time to time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue:" Which said bond shall be signed and sealed by the said executor (or administrator) and his securities, attested by the judge of probate, and filed in his office.

Bond to be  
filed.

SEC. 29. Where any testator or testatrix shall leave visible estate more than sufficient to pay all his or her debts, and by will shall direct that his or her executors shall not be obliged to give security, in that case no security shall be required, unless the court of probate shall see cause, from their own knowledge or the suggestions of creditors or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, in either of which cases such court may require security, and the same shall be given before letters testamentary shall be granted, notwithstanding any directions to the contrary in said will.

In what case  
security not to  
be required.

SEC. 30. If any person, named as an executor or executrix in any last will and testament, shall be, at the time when administration ought to be granted, under the age of seventeen years, or of unsound mind, or convicted of any crime rendering him or her infamous, or shall be a married woman, letters of administration or testamentary (as the case may require) may be granted in the same manner as if such person had not been named as such in such will, unless in the case of a married woman, her husband shall give bond with her as aforesaid, with two or more sufficient securities, to be filed as aforesaid. for her faithful performance as such executrix, and on all questions, touching such disqualification, the court of probate shall receive the like testimony as would be admissible in any court of law or equity in similar cases.

When execu-  
tor, &c., dis-  
qualified.

Pending any contest, court may appoint persons to preserve the estate

SEC. 31. During any contest in relation to the probate of any will, testament, or codicil, before the same shall be recorded, or until a will which may have once existed but shall have been destroyed, or shall be concealed, shall be established, and the substance thereof committed to record, with the proof thereupon taken, or during any contest in regard to the right of executorship, or to administer the estate of any person dying either testate or intestate, or whenever any other contingency may happen which shall be productive of great delay before letters testamentary or of administration can be issued upon the estate of such testator or intestate to the person or persons having legal preference to the same, the court of probate may appoint any person or persons as administrators to collect and preserve the estate of any such decedent, until probate of his will or until administration of his estate be granted, taking bond and security for collecting the estate, for the making an inventory thereof, and safe keeping and delivering up the same, when thereunto required by the said court of probate, to the proper executors or administrators whenever they shall be admitted and qualified as such.

Form of letters of administration to collect and preserve.

SEC. 32. The form of the letters to be granted to the person or persons so appointed to collect and preserve the estate of the decedent as aforesaid, shall be as follows, viz: "The Territory of Iowa to all to whom these presents shall come, greeting: Know ye, that whereas A. B. late of the county of \_\_\_\_\_, Territory of Iowa, deceased, as it is said, had at his, or her decease, personal property within this Territory, the administration whereof cannot be immediately granted to the persons by law entitled thereto, but which, if speedy care be not taken, may be lost, destroyed, or diminished; to the end therefore that the same may be preserved for those who shall appear to have a legal right or interest therein, we do hereby request and authorize C. D. and E. F., of the county of \_\_\_\_\_ and Territory aforesaid, to collect and secure the said property, wheresoever the same may be in this Territory, whether it be goods, chattels, debts, or credits, and to make or cause to be made a true and perfect inventory thereof, and to exhibit the same with all convenient speed to the court of probate of the said county of \_\_\_\_\_, together with a reasonable account of his collection, acts and doings in the premises aforesaid. Witness G. H.

judge of probate in and for the county of ———, at his office in ———, this ——— day of ——— A. D. 18—.

[SEAL.] G. H., Judge of Probate.

SEC. 33. Before letters of administration to collect shall be granted as aforesaid, the person or persons, so appointed as aforesaid, shall give bond, with good and sufficient security, to be approved by the court of probate, in the following form, to wit: Bond to be previously given.

“Know all men by these presents, That we, C. D., E F. and J. K., of the county of ———, and Territory of Iowa, are held and firmly bound unto G. H. judge of probate, in the penal sum of ——— dollars, current money of the United States, to be paid the said G. H. or his successors in office, for the payment of which, well and truly to be made and performed, we bind ourselves, our heirs, or executors and administrators jointly, severally, and firmly by these presents. Witness our hands and seals this ——— day of ——— 18—. The condition of the above obligation is such, that if the above bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator to collect the estate of A. B., late of the county of ———, deceased, and shall make or cause to be made a true and perfect inventory of all such goods, chattels, debts, and credits of the said deceased as shall come to his or her possession or knowledge, and the same in due time return to the office of the judge of probate of the proper county, and shall also deliver to the person or persons authorized by the said court of probate as executors or administrators to receive the same, all such goods, chattels, and personal estate as shall come to his or her possession as aforesaid, and shall in general perform such other duties as shall be required of him or her by law, then the above obligation to be void, otherwise to remain in full force and virtue.” Which said bond shall be signed and sealed by such administrator and his or her securities, attested by the judge of probate, and filed in his office. Form. Condition.

SEC. 34. Before any administrator to collect shall enter upon the duties of his appointment as aforesaid, he or she shall take and subscribe the following oath or affirmation before the judge of probate, to wit: “I do solemnly swear (or affirm) that I will well and honestly discharge the trust reposed in me, as collector, or administrator to collect, of the estate of A. B. deceased, according to the tenor and effect of the Oath to be taken and subscribed.

letters granted to me by the judge of probate of the said county of ———, to the best of my knowledge and abilities, so help me God:" which said oath shall be reduced to writing, subscribed by the party making it, and filed in the office of the judge of probate before whom the same shall be taken.

Powers granted to collector.

SEC. 35. Every collector, so appointed as aforesaid, shall have power to collect goods, chattels, and debts of the same deceased according to the tenor of the said letters, and to secure the same at such reasonable and necessary expense as shall be allowed by the court of probate, and the said court may authorize him or her, immediately after the inventory and appraisement of such estate, to sell such as shall be perishable, or may be injured by delay, and to account for the same, and for the whole trouble incurred by such collector, the court of probate may allow such commission, on the amount of the said personal estate, as shall be actually collected and delivered to the proper executor or administrator as aforesaid, as said court may deem just and reasonable: *Provided*, The same shall not exceed six per cent. on the amount stated in such inventory or bill of appraisement as aforesaid.

Suits not to abate by revocation of letters to collect.

SEC. 36. Every collector, appointed as aforesaid, shall have power to commence suits for debts due to the decedent, and to release the same on payment thereof, and no such suit shall abate by the revocation of the letters of such administrator to collect, or collector, but the same may be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary or of administration may be granted as aforesaid.

To deliver property to successor.

SEC. 37. On the granting of letters testamentary or of administration as aforesaid, the power of any such collector as may have been so appointed shall cease, and it shall be his duty to deliver, on demand, all the property and money of the deceased which shall have come to his hands or possession, saving such commission as may be allowed by the judge of probate as aforesaid to the person or persons obtaining such letters, and in case any such collector or administrator shall refuse or neglect to deliver over such property and money to such person or persons, when legal application shall be made therefor, such collector, so neglecting or refusing, shall be liable to pay twenty per cent. over and above the amount of all such property or money as shall come to his

Penalty for neglect.

hands by virtue of his said administration, and shall moreover forfeit all claim to any commission for collecting and preserving the estate; which said twenty per cent. together with all damages which may be sustained by reason of the breach of any bond which may at any time be given by any such collector, may be sued for and recovered by the person or persons to whom letters testamentary or of administration may be granted as aforesaid, for the use of the estate of such decedent.

SEC. 38. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate; but in all such cases the executor or executors, administrator or administrators with the will annexed, shall have the preference in administering on the same.

Estate real and personal not devised.

SEC. 39. If any lands, tenements, or hereditaments shall be charged with any debt or debts by any will, testament, or codicil, and the creditor, whose debt is so secured, shall attest the execution of the same, such creditor shall, notwithstanding, be admitted as a witness to the execution thereof.

Creditor may be a witness.

SEC. 40. Every devise of land, or any estate therein, or bequest of personal estate, to the wife of the testator, shall be a bar of her dower in lands, or share of the personal estate, unless it be otherwise expressed in the will, testament, or codicil.

Devise, &c., to wife to bar dower.

SEC. 41. A widow shall be debarred of her right of dower in the estate of her deceased husband in all cases where any provision shall be made for her in the testator's will as aforesaid, unless within six months, after the authentication or probate of the will, she shall deliver or transmit to the court of probate of the proper county a written renunciation, which may be in the following form, to wit: "I, A. B. widow of C. D., late of the county of \_\_\_\_\_, Territory of \_\_\_\_\_, do hereby renounce and quit all claim to any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law, and I do elect to take, in lieu thereof, my dower or legal share of the estate of my said husband." Which said letter of renunciation shall be filed in the office of the judge of probate, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provisions which may have been thus made for her in the will of any

Renunciation by widow, and within what time to be made.

- such testator, and by thus renouncing all claims to a devise or bequest as aforesaid, such widow shall thereupon be entitled to the one third part of the real estate of her said deceased husband for life, and one-third part of the personal estate forever, which shall remain after the payment of all just debts and claims against the estate of such testator.
- What she shall then be entitled to.** SEC. 42. In all cases where a widow shall renounce all benefit under the will, and the legacies and bequests therein contained to other persons, shall, in consequence thereof become diminished or increased in amount, quantity, or value, it shall be the duty of the court of probate, upon the settlement of such estate, to abate from or add to such legacies and bequests, in such manner as to equalize the loss sustained or advantage derived thereby, in a corresponding ratio to the several amounts of such legacies and bequests, according to the intrinsic value of each.
- When court to abate from or add to legacies, &c.**
- Widow liable for waste.** SEC. 43. If the widow commit waste in the lands and tenements, or the personal estate of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, if of real estate, or by the executor or administrator if of personal estate, and if she marry a second husband, he shall be answerable with her in damages for any waste committed by her as aforesaid before such second marriage, or by the husband himself after such marriage.
- Descents.** SEC. 44. Estates, both real and personal, of resident or non-resident proprietors in this Territory dying intestate, or whose estates, or any part thereof, shall be deemed and taken as intestate estate, and after all just debts and claims against such estate shall be paid as aforesaid, shall descend and be distributed to his or her children, in equal portions, the descendants of a deceased child or grand child taking the share of their deceased parent, by representation, in equal parts among them. And when there shall be no children of such intestate, or descendants of any child or children living at the time of his or her decease, the estate of said intestate shall belong to his or her father, if living, but if said intestate's father be not living, such estate shall belong to his or her mother, if living, and if neither of the parents of said deceased shall be living, such estate shall be equally distributed among the brothers and sisters of said deceased, the children or descendants of any deceased brother or sister taking the share of their deceased parent, by representation, in

equal parts among them. And if there be no children or descendants of any such deceased, and no parents, brothers, or sisters, and no descendants of any brothers or sisters, of said deceased, the estate aforesaid shall descend to, and be divided equally among, his or her next of kin, in equal degree, computing according the rules of the civil law. And in no case shall there be a distinction between the kindred of the whole and those of the half-blood; saving to the widow, in all cases, her dower, and to the husband his courtesy, according to the course of the common law.

SEC. 45. The widow, in all cases, shall be allowed to have and retain as her sole and separate property, one bed and bedding, the wearing apparel of herself and family, one milch cow and calf, her saddle and bridle, one horse, household and kitchen furniture sufficient for herself and family, and provisions for the same for one year; said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall in no case be subject to the payment of the debts of the deceased. In all cases where the intestate at his death shall leave no property of the description specified to the widow by this act, the widow shall be entitled to other property, or the value of the same in money, and it shall be the duty of the administrator, or judge of probate, to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money or other personal property at her election.

Property retained by widow, not subject to debts of deceased.

SEC. 46. Where any of the children of a person dying intestate, or their issue, shall have received from such intestate, in his or her lifetime, any real or personal estate by way of advancement, and shall desire to come into the partition or distribution of such estate with the other parceners or distributees, such advancement, both of real and personal estate, shall be brought into hotchpot, with the whole estate real and personal of such intestate; and every person so returning such advancement, as aforesaid, shall thereupon be entitled to his or her just proportion of said estate.

Hotchpot.—Proceedings thereon.

SEC. 47. If any man shall have one or more children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment be thereby legitimated, and capable in law to inherit and transmit inheritance as if born in wedlock.

Children born before marriage.

**Children of unmarried women not to be disinherited.** SEC. 48. If any single or unmarried woman, having estate either real or personal, in her own right, shall hereafter die, leaving one or more children deemed in law illegitimate, such child or children shall not on that account be disinherited, but they, and each of them, and their descendants, shall be deemed able and capable in law to take and inherit the estate of their deceased mother, in equal parts among them, to the exclusion of all other persons: *Provided*, That if there shall be no such child or children, or their descendants, then and in such case the estate of the intestate shall be governed by the rules of descent, as in other cases where illegitimates are excluded.

**Aliens may hold and transmit real estate.** SEC. 49. All foreigners, whether aliens, denizens, or naturalized citizens, may take and hold real and personal estate in this Territory, either by purchase or descent, and alienate and transmit the same to their heirs or assigns, whether such heirs or assigns be citizens of the United States or not, in the same manner as natural born citizens of the United States may or can do; and the children or next of kin of any such person dying intestate, and leaving estate either real or personal in this Territory, whether such children or kindred be citizens of the United States or not, shall be deemed and taken to come within the rule of descents hereinbefore described, and shall inherit such estate accordingly; saving to the widow of such alien, denizen, or naturalized citizen, in all cases, such dower, provision, and privilege as is or may be allowed by law in other cases.

**Equitable estates subject to dower.** SEC. 50. Equitable estates shall be subject to the widow's dower, and all real estate of every description contracted for by the husband in his lifetime, the title to which may be completed after his decease.

**Provision for posthumous children of intestates.** SEC. 51. In all cases where any person shall die intestate, leaving real or personal estate in this Territory, and a child or children shall be born unto him after his decease, within the usual time prescribed by law, such child or children shall come in for their just proportion of said estate, in all respects as though he, she, or they had been born in the lifetime of the intestate.

**To whom administration may be granted.** SEC. 52. Administration shall be granted to the husband upon the goods and chattels of his wife, and to the widow, or next of kin to the intestate, or some of them, if they will accept the same and are

not disqualified; but in all cases the widow shall have the preference, but if no widow, or other relation of the intestate, shall apply within sixty days from the death of such intestate, the court of probate may grant administration to any creditor or creditors who shall apply for the same; and in case no such application be made by any creditor or creditors, within fifteen days next ensuing the lapse of the said term of sixty days as aforesaid, administration may be granted to any person or persons whom the judge of probate may think will best manage the estate; and in all cases where such intestate shall have been a non-resident, or without a widow, next of kin, or creditors, in this Territory, but having property within the Territory, administration shall be granted to the public administrator of the proper county, and to no other person: *Provided*. That no administration shall in any case be granted until satisfactory proof be made before the court of probate, to whom application for that purpose shall be made, that the person, on whose estate letters of administration are requested, is dead, and died intestate so far as they have knowledge and believe.

Non-resident  
intestates.

Proviso.

SEC. 53. If any balance of any such intestate's estate, as may at any time be committed to any public administrator as aforesaid, shall remain in the hands of such administrator, after all just debts and charges against such estate shall have been fully paid, which shall have come to the knowledge of such public administrator, for two years after the administration of such estate shall have been committed to him as aforesaid, such administrator shall cause the amount thereof, with the name of the intestate, the time and place of his or her decease, to be published in some one of the public newspapers printed in this Territory, for eight weeks successively, notifying all persons having claims or demands against such estate to exhibit the same, together with the evidence in support thereof, before the court of probate of the proper county within six months after the date of such notice, or that the same will be forever barred; and if no such claim be presented for payment or distribution within the said time of six months as aforesaid, such balance shall be paid into the public treasury of said county, and the county shall be answerable for the same, without interest, to such person or persons as shall thereafter appear

Balance of in-  
testate's estate.

Amount and  
other particu-  
lars to be pub-  
lished.

to be legally entitled to the same, if any such shall ever appear.

Property of intestate to be secured by public administrator.

SEC. 54. Upon the death of any person intestate, not leaving a widow, or next of kin, or creditor, or creditors, within any county in this Territory, it shall and may be lawful for the public administrator of the county wherein such person may have died as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper for the protecting and securing the property and effects of such intestate from waste or embezzlement, until administration thereon shall be granted to the person entitled thereto as aforesaid; the expenses whereof shall be paid to such public administrator, upon the allowance of the court of probate, in preference to all other demands against such estate, funeral expenses excepted.

Letters testamentary, &c., to issue in the name of the Territory.

SEC. 55. All letters testamentary, letters of administration, either with or without the will annexed, letters of administration to collect, and *de bonis non*, writs, summonses, citations, subpœnas, and all other processes which may at any time be made or issued by the judge of probate in the discharge of his official duties, shall be made and issued in the name of the Territory of Iowa, bear test in the name of such judge, and be sealed with the seal of the said court of probate.

Evidence may be required of certain applicants for administration.

SEC. 56. Upon every application for letters of administration upon the goods and chattels, rights and credits of any person dying intestate, by any person not entitled to the same, as husband, widow, next of kin, creditor, or creditors, or public administrator, the court of probate, to which such application shall be made, shall, before the granting of administration to any such applicant or applicants, cause such applicant or applicants to produce satisfactory evidence that the person or persons having the preference have relinquished their prior right thereto: *Provided*, Such application shall be made within the space of seventy-five days next ensuing the death of any such intestate as last aforesaid; but if such application be made after the expiration of seventy-five days, it shall not be necessary to make such proof, and the judge of probate may proceed to grant letters to such applicant or applicants or any other person or persons as he may think fit.

Proviso.

SEC. 57. All letters testamentary, to be hereafter issued to executors under this law, shall be in the following form, to wit: Form of letters testamentary.

Territory of Iowa, }  
County of \_\_\_\_\_ } SCT.

The Territory of Iowa to all, to whom these presents shall come, greeting. Know ye, that whereas A. B. late of the county of \_\_\_\_\_ and Territory of \_\_\_\_\_ died on or about the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this Territory which may be lost, destroyed, or diminished in value if speedy care be not taken of the same; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament to execute the same, and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator, we do hereby authorize him, the said C. D., as such executor, to collect and secure all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his decease, in whatsoever hands or possession the same may be found in the Territory, and well and truly to fulfil and perform all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charge him, and in general to do and perform all other acts which now are or hereafter may be required of him by law. Witness E. F. judge of probate of the said county of \_\_\_\_\_, at his office in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

[Seal] E. F., judge of probate.

SEC. 58. The form of letters of administration, hereafter to be issued in this Territory, shall, as near as may be, be as follows, to wit: Form of letters of administration.

Territory of Iowa, }  
County of \_\_\_\_\_ } SCT.

The Territory of Iowa to all, to whom these presents shall come, greeting:

Know ye, that whereas A. B. of the county of \_\_\_\_\_ and State (or Territory) of \_\_\_\_\_ died intestate, as it is said, on or about the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, having at the time of his decease, personal property in this Territory which may be lost, destroyed, or diminished in value, if

speedy care be not taken of the same. To the end therefore that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint C. D. of the county of \_\_\_\_\_ and Territory of Iowa, administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease, with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this Territory, and in general to do and perform all other acts which now are or hereafter may be required of him by law. Witness E. F. judge of probate, in and for the county of \_\_\_\_\_ at his office in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

[Seal.] E. F., judge of probate.

And in all cases where letters of administration with the will annexed, letters of administration *de bonis non*, or letters of administration to any public administrator, shall hereafter be issued by any court of probate in this Territory, the same shall be issued in conformity with the foregoing forms as nearly as may be, taking care to make the necessary variations, additions, or omissions, to suit each particular case.

**Administrator to take an oath.** SEC. 59. The court of probate shall, in all cases, upon granting administration of the goods and chattels, rights and credits of any person dying intestate, require the administrator or administrators (public administrator excepted) to take and subscribe the following oath, to wit: "I do solemnly swear, or affirm, that I will well and truly administer all and singular the goods and chattels, right, and credits, and effects of A. B. deceased, and pay all just claims and charges against his estate, so far as his goods, chattels, and effects shall extend, and the law charge me, and that I will do and perform all other acts, required of me by law, to the best of my knowledge and abilities." Which said oath shall be reduced to writing, subscribed by the person taking the same before the said judge of probate, and filed in his office.

**And enter into bond.** SEC. 60. Each and every administrator, except as is hereinbefore provided for, shall, before entering upon the duties of his office, enter into bond, with good and sufficient security, to be approved by the judge of probate, in a sum double the value of the estate, and payable to the people of the Territory of Iowa, for the use of the parties interested, in the following form, to wit:

“Know all men by these presents that we, A. B., <sup>Form.</sup> C. D. and E. F. of the county of \_\_\_\_\_ and Territory of Iowa, are held and firmly bound unto the people of the Territory of Iowa, in the penal sum of \_\_\_\_\_ dollars, current money of the United States, for which payment, well and truly to be made and performed, we and each of us do bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents. Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—.

“The condition of the above obligation is such, <sup>Condition.</sup> that if the said A. B., administrator of all and singular the goods and chattels, rights and credits of J. R. deceased, do make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which shall come to the hands, possession, or knowledge of him the said A. B. as such administrator, or to the hands of any person or persons for him, and the same so made do exhibit or cause to be exhibited in the court of probate for the said county of \_\_\_\_\_ agreeably to law, and such goods and chattels, rights and credits, do well and truly administer according to law, and all the rest of the said goods and chattels, rights and credits which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the court of probate, shall deliver and pay unto such person or persons as may be legally entitled thereto, and further do make a just and true account of all his actings and doings therein, when thereunto required by the said court; and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A. B. do in such case, on being required thereto, render and deliver up the letters of administration granted to him as aforesaid, and shall in general do and perform all other acts which may at any time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue.”

Which said bond shall be signed and sealed by the said administrator and his securities, attested by <sup>In other cases same form of bond.</sup> the judge of probate, and filed in his office. And in all cases where bonds shall be taken from any administrator *de bonis non*, or in any other case where

a form shall not be prescribed in this act, the same shall be made as nearly as may be in conformity with the form above prescribed, with corresponding variations to suit each particular case.

Actions on  
bonds of execu-  
tors, &c.

SEC. 61. All bonds which may at any time be given by any executor or executors, administrator or administrators, either with or without the will annexed, or *de bonis non*, to collect, or public administrator may be put in suit and prosecuted against all or any one or more of the obligors named therein, in the name of the Territory of Iowa, for the use of any person or persons who may have been injured by reason of the neglect or improper conduct of any such executor or administrator as aforesaid, and such bond shall not become void on the first recovery thereon, but may be sued upon from time to time until the whole penalty shall be recovered: *Provided*, That the person or persons, for whose use the same may at any time be prosecuted, shall be liable for all costs which may accrue in the prosecution of the same; and certified copies of all such bonds, under the seal of the court of probate, shall be received as evidence to authorize such recovery in any court of law or equity having jurisdiction thereof in this Territory.

Certified copies  
to be evidence.

Records to be  
kept of all  
wills, adminis-  
trations,  
bonds, &c.

SEC. 62. The judges of the court of probate respectively shall make, keep, and preserve complete records of all wills, testament, and codicils, and the probate thereof; all letters testamentary and of administration, either with or without the will annexed, *de bonis non*, or to collect; all bonds taken of executors or administrators; all inventories, appraisements, and sale bills; and all other exhibits presented to and allowed by said courts, appertaining to the administration and settlement of estates, with an alphabet of reference to the page, names of parties, and amount of such exhibits, inventories, appraisements, and sale bills; and shall docket from time to time, upon their books of record, all matters and controversies that shall arise for a decision or adjudication before any of said courts, with the names of the parties litigant, the evidence adduced thereon, and the opinion or decision of the court, in order that there may be no difficulty in taking appeals therefrom; they shall record all letters testamentary and of administration before they are delivered out of their offices respectively, and shall certify at the foot, or on the back thereof, that the

same have been recorded according to law; they shall preserve all original wills, testaments, codicils, oaths, bonds, inventories, appraisements, and sale bills, accounts current, and transcripts of settlements, in proper order on file in their offices respectively, and copies of any of the aforesaid papers, or of such records, duly certified by the judge of probate, under the seal of said court, shall have the same force and effect as the originals in all courts of judicature in this Territory: *Provided*, it shall not be necessary to make a complete record of the proceedings, except on the request of one of the parties who shall pay for the same. Proviso.

SEC. 63. If at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereof granted according to law, such letters of administration shall be revoked and repealed, and letters testamentary, or of administration with the will annexed, shall be granted in the same manner as if the former letters had not been obtained. Administration to be revoked on production of will.

SEC. 64. In all cases when a will, testament, or codicil shall have been proved, and letters granted thereon as aforesaid, and such will shall thereafter be set aside or annulled by due course of law, the letters granted thereon shall be revoked and repealed, and administration *de bonis non* granted of the goods and chattels unadministered. If will set aside, administration *de bonis non* to be granted.

SEC. 65. The court of probate shall have power to revoke and repeal all letters testamentary, or of administration, granted to persons who shall become insane, lunatic, or of unsound mind, habitual drunkards, persons who may be convicted of any infamous crime, who waste or mismanage the estate, or who conduct themselves in such a manner as to endanger their co-executors, co-administrators, or securities; in all which cases the court shall summon the person or persons charged to be in default or disqualified as aforesaid, to show cause why such revocation should not be made; and when made, the reasons therefor shall be stated at large upon the record, and other letters granted to the next person or persons who shall, according to law, be entitled to the same. Cases in which letters testamentary, or adm'n. may be recorded.

SEC. 66. If any executor of any last will or testament, or administrator of an intestate estate, residing out of the Territory at the time of taking upon Other cases.

himself the execution of such trust, or after having done so, shall remove beyond the limits of this Territory, and shall refuse or neglect, after due notice from the court of probate, to render his accounts and make settlement of such estate with creditors, legatees, or heirs, or their legal representatives, the said court may in like manner revoke such letters, and grant other letters thereon to such person or persons as may be entitled to the same, and as to the said court shall seem mete.

Revocation of letters, death, or disqualification of executor, &c.

SEC. 67. Where the letters of one of several executors or administrators are revoked, or one or more of the executors or administrators shall die, or become disqualified, the court of probate may, in their discretion, join other administrators in their stead or place, and require additional bonds from such new administrator or administrators, or the survivor or survivors, or such as shall not have their powers revoked, shall proceed to manage the estate; and in case the letters of all of them shall be revoked, or all of said executors or administrators shall depart this life before final settlement and distribution of the estate shall have been made, administration with the will annexed, or as the case may require, shall be granted to the persons next entitled thereto; and in all cases where any such executor or administrator shall have his letters revoked as aforesaid, he shall nevertheless be liable on his bond to such subsequent administrator or administrators, or to any other person or persons aggrieved, for any mismanagement of the estate thus committed to his care as aforesaid; and such subsequent administrator or administrators may have and maintain actions of trover, debt, *detinue*, account, and on the case, against such former executor or administrator for all such goods, chattels, debts, and credits as shall have come to the possession of him or her, and which shall be withheld, or may have been wasted, embezzled, or misapplied, and no satisfaction made for the same.

Application of this act.

SEC. 68. All the provisions of this act, relative to an executor or administrator, shall apply and extend to an executrix or administratrix, executors or administrators, and *vice versa*, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party, is mentioned, the rule shall apply to a female, or two or more having a joint interest, so far as the rule can be with

propriety applied, and so far as is not otherwise directed.

SEC. 69. No executor or administrator, or security for an executor or administrator, shall be chargeable beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading, or false pleading of such executor or administrator.

SEC. 70. If any court of probate shall hereafter grant letters testamentary or of administration of the estate of any person deceased, without taking good security for the same as aforesaid, or if the security so taken shall afterward become insufficient, and in all cases where such security has been heretofore taken, and now has or shall hereafter become insufficient as aforesaid, it shall be lawful for the said court, on the application of any person entitled to distribution, a creditor, or otherwise interested in such estate, to require such executor or administrator to give other and sufficient security; and in default thereof, the letters testamentary or of administration shall be revoked, and administration granted to the person entitled to the same, according to the rules hereinbefore prescribed in the case of an administrator *de bonis non*; and all acts done and performed according to law, by the executor or administrator, whose letters testamentary or of administration may be revoked as aforesaid, prior to such revocation, shall be valid and effectual.

SEC. 71. When securities for executors or administrators, or their representatives, may conceive themselves in danger of suffering by the mismanagement of such executors or administrators, and petition the court of probate for relief, in writing, setting forth the cause of such apprehension, the said court shall examine such petition, and if the judge thereof shall deem the causes, therein stated and set forth, sufficient to entitle such petitioner or petitioners to relief, if true, he shall summon such executor or administrator to shew cause against such petition, and may thereupon dismiss the same, or direct such executor or administrator, in his discretion, either to give good counter security to save such petitioner or petitioners harmless, or to give a new bond in the like penalty as the first; and such new bond shall have relation back to the time of granting letters testamentary or of administration, and shall be as effectual, in every respect as if the same had been executed before such letters had been

Mission or mis-pleading of executor, &c.

Court may require further security.

In default, letters to be revoked.

Securities may petition for counter security.

New bond may be taken.

granted; and upon refusal or neglect to give bond *de novo*, or counter security, as aforesaid, the letters granted to such executor or administrator may be revoked, and letters of administration with the will annexed, or *de bonis non*, granted thereon as aforesaid.

Condition thereof.

SEC. 72. In all cases where a new bond shall be required to be given by an executor or administrator, as aforesaid, the formal part of the bond shall be as heretofore prescribed, with a condition thereto in the following form, to wit: "The condition of the above obligation is such, that whereas the above bound A. B., executor of the last will and testament of J. K. deceased, (or administrator of the goods and chattels, rights and credits of J. K. deceased), has heretofore executed a bond, payable to the Territory of Iowa, and conditioned for the discharge of his duties as executor or administrator as aforesaid, which said bond bears date on the — day of — A. D. 18—; and whereas, by an order of the court of probate, made on the — day of — A. D. 18—, other bond and security has been required of the said executor or administrator; now, therefore, if the said executor or administrator shall well and truly have kept and performed, and shall well and truly keep and perform, the condition of the bond first given as aforesaid, in all respects, and shall in all respects have performed, and shall continue to perform, the duties of his office as aforesaid, then this obligation to be void, otherwise to remain in full force and virtue." Which bond shall be signed, sealed, attested, and filed, in all respects as aforesaid.

Inventories, how taken and returned.

SEC. 73. In every case wherein letters testamentary, of administration, or of collection, are granted, it shall be the duty of the executor or administrator to make out a full and perfect inventory of all such real and personal estate, or of the proceeds thereof, as shall be committed to his superintendence and management, and as shall come to his hands, possession, or knowledge, whether the same shall consist in lands, tenements, hereditaments, annuities, or rents, or in goods or chattels, and rights and credits, particularly specifying the nature and amount of each, or both, as the case may require, and noting distinctly the amount in money on hand, the nature of each debt due to the deceased, and whether the same be safe, or doubtful, or desperate; which said inventory shall be returned to the office of the judge

of probate, within three months from the date of said letters testamentary, or of administration, as aforesaid.

SEC. 74. On granting any letters testamentary or of administration as aforesaid, a warrant or warrants shall issue, under the seal of the court of probate, authorizing three persons of discretion, not related to the deceased, or interested in the administration of the estate, to appraise the goods, chattels, and personal estate of the deceased, known to them, or to be shown by the executor or administrator, which warrant shall be in the following form, to wit: "The Territory of Iowa to A. B. C. D., and E. F., of the county of \_\_\_\_\_ and Territory of Iowa, Greeting. This is to authorize you to appraise the goods, chattels, and personal estate of J. K., late of \_\_\_\_\_ deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath (or affirmation) hereto annexed, a certificate whereof you are to return annexed to an appraisement bill of said goods, chattels, and personal estate, by you appraised, in dollars and cents, and in the said bill of appraisement you are to set down, in a column or columns opposite to each article appraised, the value thereof. Witness S. M., judge of probate for the said county of \_\_\_\_\_ at his office in \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18— (SEAL) S. M., Judge of probate.

Appraisers to be appointed.

Warrant.

For which said warrant the said judge of probate shall receive the sum of fifty cents, and no more. And on the death, refusal to act, or neglect of any such appraiser, another warrant, in form as aforesaid, may forthwith issue in its stead.

Fee to judge.

SEC. 75. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath (or affirmation,) to be annexed to or endorsed on the warrant of appraisement as aforesaid, before any person authorized to administer an oath, viz: "You, and each of you, do solemnly swear (or affirm) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels, and personal estate of J. K., deceased, so far as the same shall come to your sight and knowledge, and that you will in all respects perform your duty as appraisers to the best of your skill and judgment." After which the said appraisers shall proceed as conveniently as may be to the discharge of their duty, and shall set down each article, with the

Oath to be taken by appraisers.

Their duty.

value thereof, in dollars and cents, as aforesaid. All the valuation shall be set down on the right hand side of the paper, in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up, and set at the foot of each column respectively.

Bill of appraisalment to be certified, &c.

SEC. 76. When the bill of appraisalment shall be completed, the appraisers shall certify the same under their hands and seals, with a certificate of the oath (or affirmation) to be taken by them, to be thereto annexed, and shall deliver the same into the hands of the executor or administrator, to be by him returned into the office of the judge of probate, within three months from the date of his letters testamentary, or of administration.

Inventories, &c may be given in evidence.

SEC. 77. Inventories, and bills of appraisalments, and authenticated copies thereof, may be given in evidence in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if any other testimony be given that the estate was really worth, or was *bona fide* sold for more or less than the appraised value thereof.

Inventory of further assets, how and when to be returned.

SEC. 78. Whenever personal property of any kind, or assets, shall come to the possession or knowledge of any executor or administrator, which shall not have been mentioned and included in the inventory and bill of appraisalment as aforesaid, an account or inventory of the same shall be returned to the office of the judge of probate, appraised by three disinterested sworn appraisers as aforesaid, within three months after discovery shall be made of the same.

Compensation to appraiser.

SEC. 79. Each and every appraiser, appointed under this act, shall be entitled to the sum of one dollar per day for each day's necessary attendance in making all such appraisements and bills thereof as aforesaid, to be allowed by the judge of probate, and paid upon his order by the executor or administrator, and charged to the account of the estate.

Widow may make her election touching her share of personal estate.

SEC. 80. When the estate of any testator or intestate shall have been appraised, and the same shall be ascertained to be entirely solvent and free from debt or incumbrance, or where there shall be a sufficiency of money or assets in the hands of the executor to pay such debts, independent of the property mentioned in such inventory and bill of appraisalment, it shall be lawful for the widow to make her election, whether she will take that part of the personal estate to which she may be entitled by right

of dower, or otherwise, out of the articles mentioned in such bill of appraisement according to the appraised value thereof, or the amount thereof in money, whenever the same shall be sold and the money collected therefor, or she may take a part in property, and a part in money, as she may prefer. And in all such cases it shall be the duty of the executor or administrator to notify the widow as soon as such appraisement shall be made, and to set apart to her such articles of property, not exceeding the amount to which she may be entitled, and as she may prefer or select, within thirty days after written application shall be made for that purpose by such widow; and if any such executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay for the use of such widow the sum of twenty dollars per month, for each month's delay to set apart said property so selected, after the said term of thirty days shall have elapsed, to be recovered in the name of the Territory of Iowa, for the use of such widow, in any court having jurisdiction of the same.

Executor, &c.,  
to notify widow and set  
apart property

SEC. 81. Executors and administrators shall, in addition to the inventory and bill of appraisement required to be made as aforesaid, make a further inventory from time to time of all monies, judgments, bonds, promissory notes, open accounts, or other evidences of debts; also of his titles to estates both real and personal, as well equitable as legal, specifying the kind, quantity, quality, situation, and value of such real estate, by what title held, and from whom purchased, if known, the debts appearing to be due, or to become due to such testator or intestate, the names of the persons by whom owing, date of the contracts, and amount of interest accruing on the same, with such other and further description of the estate, the books, papers, and evidences of title, so as to make the same as full and perfect as possible; which said inventory, when made, shall be filed in the office of the judge of probate as is required in other cases by this act.

Further inventories to be  
made from  
time to time.

SEC. 82. If any executor or administrator, or other person interested in any estate, shall state upon oath to any court of probate that they believe that any person has in possession, or has concealed or embezzled, any goods, chattels, moneys, or effects, books of accounts, papers, or any evidences of debt

Persons may  
be examined  
on oath touch-  
ing the concealment of  
property.

whatever, or titles to land, belonging to any deceased person, the court shall require such person to appear before them, by citation, and may examine him or her, on oath, touching the same; and if such person shall refuse to answer such proper interrogatories as may be propounded by the court, or person interested as aforesaid, or shall refuse to deliver up said property or effects as aforesaid, upon a requisition being made for that purpose, by an order of the said court of probate, such court may commit such person to jail until he or she shall comply with the order of the court therein.

Accounts sub-  
ject to inspec-  
tion.

SEC. 83. The books of accounts of any deceased person shall be subject to the inspection of all persons interested therein.

To what ex-  
tent executors  
&c. chargeable

SEC. 84. Executors and administrators shall be chargeable with so much of the estate, whether real, personal, or mixed, or the proceeds thereof, of their testator or intestate, as they, after due and proper diligence, shall recover and receive.

Sales of real  
estate to be  
valid.

SEC. 85. In all cases where power is or may be given in any will to sell and dispose of any real estate, or interest therein, and the same shall be sold and disposed of in the manner, and by the person, appointed in such will, the sale shall be good and valid; and where one or more executors shall depart this life before such sales be made, the survivor or survivors shall have the same power, and their sales shall be good and valid as though they all joined in such sale.

Property not to  
be removed  
beyond the lim-  
its of the Ter-  
ritory.

SEC. 86. No executor or administrator shall, under any pretence whatever, remove any property whatsoever, wherewith such administrator or executor may be charged by virtue of his letters, beyond the limits of this Territory; and in case any such executor or administrator shall remove such property, it shall be the duty of the judge of probate forthwith to revoke his letters, and to cause a suit to be instituted, on his bond, against him and his securities, for the use of the persons interested in the said estate; and the jury trying such cause shall, on satisfactory evidence of the removal of the property as aforesaid, render a verdict against the offender or offenders and his securities for the full value thereof, and such other damages as the parties interested may have sustained by reason thereof; and letters of administration on said estate shall issue to the next person, or persons, entitled as in other cases.

SEC. 87. The executor or administrator shall, as soon as convenient after making the inventory and appraisal as hereinbefore directed, sell at public sale all the personal property, goods, and chattels of the testator or intestate, not reserved to the widow as aforesaid, and also excepting specific legacies and bequests, when the estate is sufficient to discharge the debts over and above the specific legacies and bequests, upon giving three weeks' notice of the time and place of such sale, by at least four advertisements, set up in the most public places in the county where the sale is to be made, or by inserting an advertisement in the nearest and most public newspaper, printed in this Territory, to the place of such sale, at least four weeks successively, previous thereto, upon a credit of not less than six nor more than twelve months, by taking bond, with good security, of the purchasers at such sale: *Provided*, That such executor or administrator may make it a part of the condition of such sale, that purchases under the sum of five dollars shall be paid in hand: *And provided*, further, That if any testator shall direct that his estate shall not be sold, the same shall be preserved in kind and distributed accordingly, unless such sale should become absolutely necessary for the payment of the debts and charges against the estate of such testator.

SEC. 88. If any executor or administrator shall be of opinion that it would be of advantage to the estate of the testator or intestate to dispose of the crop growing at the time of his or her decease, the same shall be inventoried, appraised, and sold, at the same time and in the same manner as is directed in the preceding section; but if such executor or administrator shall believe that it would eventually be of more advantage to the estate to go on and finish the same previous to such sale, he shall be authorized so to do, and the proceeds of such crops, after deducting all necessary expenses for cultivating, gathering, and making sale of the same, shall be assets in the hands of such executor or administrator, and subject to the payment of debts and legacies and to distribution as aforesaid.

SEC. 89. In all public sales of property, made in pursuance of this act as aforesaid, the executor or executors, administrator or administrators, may employ the necessary clerks and a crier, who shall be

Sales between  
10 A. M. and  
6 P. M.

allowed such compensation, not exceeding two dollars per day, as the court of probate may judge reasonable, to be paid by such executors or administrators and charged to said estate. All such sales shall be made between the hours of ten o'clock, in the forenoon, and five o'clock, in the afternoon, of each day; and any such as shall be made before, or after the time herein limited, shall be void.

Sale bill to be  
certified and  
returned.

SEC. 90. All executors and administrators shall, immediately after making such sales as aforesaid, make or cause to be made a bill of the sales of said estate, describing particularly each article of property sold, to whom sold, and at what price; which sale bill, when thus made, and certified by the clerk of such sale and the crier thereof as true and correct, shall be returned to the office of the judge of probate, in the like time as is required in cases of inventories and appraisements.

Notice to per-  
sons having  
claims against  
deceased.

SEC. 91. It shall be the duty of all executors and administrators, as soon as they are qualified as such, to cause an advertisement to be published in the nearest newspaper printed in this Territory, for four weeks successively, notifying and requesting all persons, having claims against the deceased, to exhibit the same to such executor or administrator, or to the court of probate for the proper county, for settlement, within nine months from the date of such advertisement, in order that such executor or administrator may certainly know the number and amount of claims against said estate, preparatory to the liquidation and payment of the same, and also to enable him to ascertain whether the estate be insolvent or not: *Provided*, That if the appraised value of any such estate shall not exceed the sum of one hundred and fifty dollars, the notice aforesaid may be given by putting up advertisements in four of the most public places in the county.

Debts not due  
may be exhib-  
ited.

SEC. 92. Any creditor, whose debt or claim against the estate is not due, may nevertheless present the same for allowance and settlement, and shall thereupon be considered as a creditor under this act, and shall receive a dividend of the said testator's estate, after deducting a rebate of interest for what he shall receive on such debt, to be computed from the time of the actual payment thereof to the time such debt would have become due, according to the tenor and effect of the contract.

SEC. 93. No action shall be maintainable against any executor or administrator, for any debt due from the testator or intestate, until the expiration of one year after the taking out of letters testamentary or of administration, except as is herein excepted; nor shall any person, suing after that time, recover costs against such executor or administrator, unless a demand be proved before the commencement of such suit; but in all other cases, both executors and administrators shall be liable to pay costs as other persons.

When action may be maintained against executors, &c.

SEC. 94. When any executor or administrator, whose testator or intestate shall have died seized of any real estate in this Territory, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay the just claims against his or her estate, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and shall make out a petition to the district court of the county in which administration shall have been granted, stating therein what real estate the said testator or intestate died seized of, or so much thereof as will be necessary to pay his or her debts as aforesaid, and request the aid of the said court in the premises; and it shall also be the duty of such administrator or executor to give at least thirty day's notice of the time and place of presenting such petition, by serving a written notice of the same, together with a copy of said account and petition on each of the heirs, or their guardians, or devisee of said testator or intestate, or by publishing a notice in the nearest newspaper, for three weeks successively, commencing at least six weeks before the presenting of said petition, of the intention of presenting the same to the district court, for the sale of the whole, or so much of the real estate of the said testator or intestate as will be sufficient to pay his or her debts, and requesting all persons interested in said real estate to show cause why it should not be sold for the purposes aforesaid.

If personal estate insufficient to discharge debts.

SEC. 95. It shall be the duty of the said district court, at the time and place specified in the notice aforesaid, or at such other time as the said court shall appoint, to hear and examine the proof and allegations of such executor or administrator, and of all such other persons interested in said estate as may

District court may order sale of real estate.

think proper to resist such sale, and if, upon due examination, the said district court shall ascertain that the said personal estate of such testator or intestate is not sufficient for the payment of his or her debts, the said court shall order and direct the whole, if necessary, but if not, then so much of said real estate, from time to time, as will be sufficient to pay such debts, to be sold as is hereinafter directed, and when a part only of such estate is ordered to be sold, such order shall specify, as particularly as may be, the part so ordered to be sold: *Provided*, always, That where any houses and lots, or other real estate, are so situated that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, such court may, in its discretion, order the sale of the whole, or such part thereof as shall be necessary for the payment of debts, and the overplus arising from such sale shall be distributed among the heirs and devisees, or such other person or persons as may be entitled thereto.

Proviso, as to houses and lots.

By whom conveyances to be executed.

SEC. 96. All sales of such real estate, directed to be made as aforesaid, shall be made, and conveyances executed for the same, by the executor or administrator applying for such order; which said conveyances shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of such testator or intestate, and all other persons claiming by, through, or under him, her, or them.

In sales of real estate certain requisitions to be complied with.

SEC. 97. No lands or tenements shall be sold by virtue of any such order of the district court as aforesaid, unless such sale be at public vendue, and between the hours of ten o'clock, in the forenoon, and five o'clock in the afternoon, of the same day; nor unless the time and place of holding such sale shall have been previously published for the space of six weeks successively, by putting up notices thereof in at least four of the most public places in the county where such real estate shall be sold, and also by causing a similar notice thereof to be published in the nearest newspaper in this Territory; nor unless such real estate be described with common certainty in said advertisements; and if any executor or administrator, so ordered to make sale of any real estate as aforesaid, shall sell the same contrary to the provisions of this act, he shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in the name of the Territory of Iowa, for the use of any person interested who may prose-

cute for the same: *Provided*, That no such offence Proviso. shall be deemed to affect the validity of such sale: *And provided further*, That it shall be lawful for such Terms of sale. executor or administrator to sell the same on a credit of not less than six, nor more than twelve months, by taking bond, with good security, for the payment of the purchase money, and by taking a mortgage on said land.

SEC. 98. No part of the real estate of any testator Inventory, &c., to be filed before sale. or intestate shall be ordered to be sold, unless the executor or administrator applying for such order shall have made and filed an inventory, appraisement bill, and sale bill, in the office of the judge of probate; nor unless such executor or administrator shall have first applied the personal estate, or the proceeds thereof, or such part thereof as shall have come to his possession, towards the payment of the debts of the said testator or intestate.

SEC. 99. In all cases where a petition shall be presented for the sale of any real estate, and one or more of the devisees or heirs of the testator or intestate shall be infants, and without a guardian resident in the county in which such petition shall be preferred, the district court, to which the same shall be presented, shall appoint some discreet person as guardian *ad litem* for the purpose of appearing for, and defending the interest of such infant or infants in the proceedings therein. Petition for sale of real estate. Infant devisees or heirs.

SEC. 100. Any person or persons, claiming to be aggrieved by any judgment, decree, or order, for the sale of any such real estate as aforesaid, may appeal from the same to the supreme court of this Territory: Appeal to supreme court. *Provided*, Such appeal be entered during the term in which such judgment, decree, or order shall be made.

SEC. 101. When any real estate shall at any time be ordered to be sold, the moneys arising from such sales shall be received by the executor or administrator applying for such order, and shall be considered as assets in his or her hands for the payment of debts, and shall be applied in the same manner as assets arising from the sale of personal property. Proceeds of sales to be assets.

SEC. 102. Whenever an estate is found to be insolvent, it shall be so entered of record by the judge of probate, and after such order, so made, no action shall be maintained against the executors or administrators, except at the costs of the party suing; but persons entitled shall receive their proportions of said estate in the manner herein provided for; and When estate insolvent.

whenever the real estate shall be required to be sold for the payment of debts, no suit shall be maintained until the money is received for such real estate, and an order made by said court, directing the executor or administrator to pay out the same as required in this act; and the court of probate may make all necessary orders to coerce the executor or administrator to make immediate application to the district court for the sale of such real estate.

How demands  
to be classed.

SEC. 103. All demands against the estate of any testator or intestate shall be divided into classes in manner following, to wit: 1st. All funeral and other expenses attending the last sickness shall compose the first class. 2d. All expenses of proving the will and taking out letters testamentary, or of administration, and settlement of the estate, and the physician's bill in the last illness of the deceased, shall compose the second class. 3d. Where any executor, administrator, or guardian has received money as such, his executor, or administrator, shall pay out of his estate the amount thus received and not accounted for, which shall compose the third class. 4th. All other debts and demands of whatsoever kind, without regard to quality or dignity, which shall be exhibited within two years from the granting of letters as aforesaid, shall compose the fourth and last class. All demands, not exhibited within two years as aforesaid, shall be forever barred, unless such creditor shall find other estate of the deceased not inventoried or accounted for by the executor or administrator, in which case his claim shall be paid *pro rata* out of such subsequently discovered estate, saving, however, to *femes covert*, infants, persons of unsound mind, or imprisoned, or beyond the seas, the term of two years, after their respective disabilities shall be removed, to exhibit their claims.

Not exhibited  
within two  
years to be  
barred.

Proviso.

How claims  
may be exhib-  
ited.

SEC. 104. The manner of exhibiting claims against the estate of any testator or intestate may be by serving a notice of such claim on the executors or administrators, or presenting them the account, or filing the account, or a copy thereof, with the judge of probate.

Powers grant-  
ed to courts of  
probate.

SEC. 105. The courts of probate in their respective counties shall have concurrent power with the district courts of adjudicating and allowing or rejecting claims exhibited against estates, not exceeding one hundred dollars, and on all sums above

twenty dollars either party may have a jury, and for that purpose said court of probate shall have power to summon witnesses, to grant orders for taking depositions in the manner prescribed in courts of law, and to make all such other orders in the premises as may be necessary; and persons having claims as aforesaid, having given the executor or administrator ten days notice of the time they intend to present the same to the said court, the court, upon examination, shall allow or reject such claims: *Provided*, The court may allow further time for either party to produce other or further evidence in his favor: *Provided*, also, That judgments regularly obtained, and a copy thereof duly certified and filed with the court of probate, shall be taken as duly proven; and all instruments in writing, signed by the testator or intestate, if the hand writing be proven, and nothing be shown to the contrary, shall be deemed duly proved.

SEC. 106. In no case shall any person, making a claim against the estate of any testator or intestate, be permitted to prove the same by his or her oath. Claim not to be proved by oath of party.

SEC. 107. All claims and demands against estates, when allowed by the court of probate as aforesaid, shall be classed and paid by the executor or administrator in the manner provided by this act, commencing with the first class; and when the estate is insufficient to pay the whole of the demands, such demands, in any one class, shall be paid *pro rata*, whether the same shall be due by judgment, writing obligatory, or otherwise, except in such cases as shall be herein excepted. Claims, when allowed, to be classed.

SEC. 108. When any executor or administrator shall have any demand against his testator or intestate's estate, he shall be required to file his demand with the court of probate, as other persons, and the court shall appoint some discreet person to appear and manage the defence of the estate; and upon a final hearing, said court shall allow said demand, or such part thereof as shall be legally established, or reject the same, as to said court shall appear just. Should an executor or administrator appeal in such case, the court of probate shall appoint some person to defend as aforesaid. Demand of executor, &c., to be filed.

SEC. 109. The court of probate shall make an entry of all demands allowed against estates, and file and preserve the papers belonging to the same, and shall also class said demands as is required by this act; Demands allowed, to be entered and classed.

and when any executor or administrator shall pay any claim before the same is allowed as aforesaid, said court shall require such executor or administrator to establish the validity of such claim, by the like evidence as is required in other cases, before the same is classed and he credited therewith.

Courts to provide books.

SEC. 110. The judge of the court of probate shall provide well bound books, and enter therein the accounts of executors and administrators, so as to make a complete record of all accounts allowed, and all settlement of said estate made in said court.

When administration accounts to be exhibited for settlement.

SEC. 111. All executors and administrators shall exhibit accounts of their administration, for settlement, to the court of probate, from which the letters testamentary or of administration were obtained, at the first term thereof, which shall happen after the expiration of one year after the date of their letters as aforesaid, and in like manner every twelve months thereafter, or sooner if required, until the duties of their administration be fully completed.

If moneys insufficient, creditors to be paid *pro rata*.

SEC. 112. Upon each and every settlement of the accounts of any executor or administrator, as provided by this act, it shall be the duty of the court to ascertain the whole amount of moneys which shall have come into the hands of such executor or administrator, belonging to the estate of the deceased, and the whole amount of debts established against such estate; and if there be not sufficient to pay the whole of the debts, the moneys aforesaid shall be appropriated among the several creditors, *pro rata*, according to their several rights, as established by this act; and thereupon the court shall make an order, directing such executor or administrator to pay the claims which have been allowed by the court, according to such apportionments; and the court, upon each and every settlement, shall proceed in like manner until the whole debts be paid, or the assets exhausted.

When abstracts of debts, &c., and of lands, to be presented to district court.

SEC. 113. Whenever it shall appear that the personal estate of any person deceased is insufficient to discharge the debts of such estate, and there is real estate belonging to the same, the court of probate shall make out such an abstract, from its records, of the debts and credits of such estate, and of the lands owned by such testator or intestate, from the inventory of such estate, whether the title be complete or

not; which abstract shall be presented to the district court, by the executor or administrator, who may then obtain an order to sell the same in the manner hereinbefore directed; and the proceeds of such sale shall be assets in the hands of such executor or administrator for the payment of debts, and be subject to the same order by the court of probate, in the payment of debts, as other assets.

SEC. 114. If any executor or administrator shall fail or refuse to pay over any moneys or dividend to any persons entitled thereto, in pursuance of the order of the court of probate lawfully made, within thirty days after demand made for such moneys or dividend, the court of probate, upon application made, shall attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law; and, moreover, such failure or refusal on the part of such executor or administrator shall be deemed and taken in law to amount to a *devastavit*, and an action upon such executor's or administrator's bond, and against his or their securities, may be forthwith instituted and maintained; and the failure aforesaid, to pay such monies or dividend, shall be a sufficient breach to authorize a recovery thereon.

Proceedings  
against delin-  
quent execu-  
tors or adm'rs.

SEC. 115. Whenever it shall appear that there are sufficient assets to satisfy all demands against the estate, the court of probate shall order the payment of all legacies mentioned in the will of the testator, the specific legacies being first satisfied.

Payment of le-  
gacies.

SEC. 116. Where any heir of an intestate has received money, goods, chattels, or real estate, from such intestate, if the amount so received shall be charged to such heir by said intestate, the same shall be taken into computation in making distribution of the estate, upon being brought into hotchpot as aforesaid: *Provided*, That an heir, who has received from the intestate more than his share, shall in no case be required to refund.

Money, &c.,  
received from  
intestate, to be  
taken into ac-  
count.

Proviso.

SEC. 117. Executors and administrators shall not be compelled to pay legatees or distributees, until bond and security be given, by such legatees or distributees, to refund the due proportion of any debt which may afterwards appear against the estate, and the costs attending the recovery thereof; such

Bonds of lega-  
tees or distri-  
butees

bond shall be made payable to such executor or administrator, and shall be for his indemnity, and filed in the court of probate.

In what case moneys to be refunded by distributees, &c

SEC. 118. Where, at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded for the payment of debts, it shall be the duty of the court of probate, on application made, to apportion the same among the several legatees or distributees, according to the amount received by them, except the specific legacies, which shall in no case be required to be refunded, unless the residue be insufficient to satisfy such debts; and if any distributee or legatee shall refuse to refund, according to the order of the court of probate, made as aforesaid, within sixty days thereafter, and upon demand made, such refusal shall be deemed a breach of his bond given to the executor or administrator as aforesaid, and an action may be instituted thereon to the use of such party entitled; and in all cases, where there may be no bond, an action of debt may be maintained against such distributee or legatee, and the order of the court of probate shall be evidence of the demand.

Action by one executor, or administrator, against another.

SEC. 119. When there are two or more executors or administrators of an estate, and any one of them take all or a greater part of such estate, and refuse to pay the debts of the testator or intestate, or refuse to account with the other executor or administrator, in such case the administrator or executor so aggrieved may have his action of account, or suit in equity, against such delinquent executor or administrator, and recover such proportionate share of said estate as shall belong to him; and every executor, being a residuary legatee, may have an action of account, or suit in equity, against his co-executor or co-executors, and recover his part of the estate in his or their hands; and any other legatee may have the like remedy against the executors: *Provided*, That before any action shall be commenced for legacies as aforesaid, the court of probate shall make an order directing them to be paid.

Actions that survive.

SEC. 120. Actions of trover, *detinue*, or replevin, shall survive for and against executors and administrators, and may be maintained in the same manner, and with like effect, as such actions could be for or against their testator or intestate, if living.

SEC. 121. When the mortgagee of any lands or tenements shall die, leaving minor heirs, the executors or administrators of such mortgagee shall be, and they are hereby authorized, on receiving the amount due the estate of such deceased mortgagee, to release to the mortgagor the legal title of the said mortgaged premises, and such deed of release shall be valid.

SEC. 122. Real estate may be mortgaged or leased by executors or guardians: *Provided*, Such mortgage or lease shall not be for a longer term than until the heir entitled to such estate shall attain the age of twenty-one years, if a male, or eighteen years, if a female.

SEC. 123. Before any mortgage or lease shall be made as aforesaid, the executors or guardians shall petition the court of probate for an order authorizing such mortgage or lease to be made, and which the court may grant, if the interests of the estate require it: *Provided*, That the executor or guardian, making application as aforesaid, upon obtaining such order, shall enter into bond, with good security, faithfully to apply the moneys, to be raised upon such mortgage or lease, to the payment of the debts of the testator, or for the benefit of the ward or wards of such guardian: and all moneys, so raised, shall be assets in the hands of such executor for the payment of debts, and shall be subject to the order of the court of probate in the same manner as other assets, or shall be applied to the use of such ward or wards where the same shall be received by a guardian as aforesaid.

SEC. 124. Executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per centum on the whole amount of personal estate, and not exceeding three per cent on the money arising from the letting of land, or from the sale of the same, with such additional allowances, for costs and charges in collecting and defending the claims of the estate, and disposing of the same, as shall be reasonable.

SEC. 125. If any executor or administrator shall fail to comply with the provisions of this act, or shall fail to comply with any or all of the covenants in his bond, an action may be forthwith instituted and maintained upon such bond against the principal, or securities, or both; and the failure aforesaid shall be a sufficient breach to authorize a recovery, in the

Release of legal title by executor of mortgagee.

Real estate may be mortgaged, &c.

If authorized by probate court.

Executor, &c., to give bond.

Moneys so raised to be assets.

Compensation to executors and administrators.

Actions against executors, &c., and securities.

same manner as though a *devastavit* had been previously proved against such executor or administrator.

Appeals allowed from probate courts.

SEC. 126. Appeals shall be allowed from all judgments, orders, or decrees of the court of probate, to the district court, in favor of any person who may consider himself or herself aggrieved by any judgment, order, or decree of the court of probate as aforesaid, and from the district court to the supreme court, as in other cases.

Within 90 days from rendition of judgment.

SEC. 127. Appeals from the court of probate shall be taken within ninety days from the rendition of the judgment or order appealed from, and not thereafter. The party appealing shall make out and tender to the judge of probate, within the time aforesaid, a statement in the nature of a bill of exceptions, setting forth each item, opinion, or decision objected to, and the order, judgment, or decree of the court thereon, and the judge of probate shall sign and seal the same; and he shall thereupon make out a transcript of the records and proceedings relative to the items, opinions, or decrees, so excepted to and appealed from, and transmit the same to the clerk of the district court, who shall docket the same.

Court of probate to suspend proceedings.

SEC. 128. When an appeal shall be taken to the district court as aforesaid, the court of probate shall suspend all proceedings upon such claim or matter in controversy, until decision shall be had thereon; the district court, in all cases of appeal, shall proceed *de novo* as to the judgments and orders appealed from, and claims for debts may be tried by a jury as in other cases. Where the judgment of the court of probate shall be affirmed upon such appeal, the clerk of the district court shall certify the same to the court of probate. Where the judgment aforesaid shall be reversed, the district court shall proceed to give such judgment as the court of probate ought to have given, and the same shall be certified to the court of probate, and said court shall enter the same upon its records, and shall proceed therein agreeably to the order or decision of the district court.

If judgment affirmed.

If reversed.

Appellant to give bond.

SEC. 129. The party appealing, as aforesaid, shall, at the time of taking such appeal, file with the judge of probate a bond, with good security, payable to the Territory, conditioned to prosecute his appeal, and to pay all costs should the judgment be affirmed, and

said bond may be put in suit for the use of the party entitled to such costs.

SEC. 130. The courts of probate, respectively, shall have power to enforce due observance of all orders, decisions, judgments, and decrees, which shall at any time be made in the discharge of their official duties, and may issue attachments for any contempt offered such court, or its process, by any executor, administrator, witness, or other person or persons, and may fine and imprison, or either, all such offenders, in the same manner as the district courts may or can do in all similar cases, except in such cases as have been hereinbefore provided for: *Provided*, That the fine inflicted in such cases shall in no instance exceed the sum of fifty dollars, nor shall any such imprisonment be extended beyond the term of twenty days.

Power of probate courts to enforce observances of order &c.

Proviso.

SEC. 131. For the purpose of enabling the courts of probate respectively to execute the powers vested in them by this act, it shall be the duty of the sheriff of each county in which such courts shall be held, when required by the judge of probate, to attend all regular and special sittings of said court, either by himself or deputy, and to keep and preserve good order in the same; and also to serve and execute all writs of attachment, summons, subpoenas, citations, notices, and other process, which may at any time be legally issued by such judge of probate, and to make due return thereof. And all such sheriffs shall be entitled to the same fees and compensation as are or may be allowed, for the time being, for the performance of similar services in the district courts, to be taxed and allowed by the court of probate against the county, party liable, or delinquent (as near as may be applicable), according to the rules and practice of the district courts respectively.

Sheriff to attend probate court when required.

And serve process.

Compensation.

SEC. 132. And whereas it may be often necessary to enable the representatives of persons deceased to perform the engagements entered into by such deceased persons for the transfer of real estate, *Therefore, be it further enacted*, That whenever it shall be represented and made to appear to the district court of the proper county, by any person or persons contracted with, by bond, covenant, or other contract, in writing, that a deceased testator or intestate, in his or her lifetime, entered into such bond, covenant, or contract, to convey some real estate to him, or her, but was prevented by death, and that such person or persons contracted with, as aforesaid, have on his,

Contracts by testator, &c., in relation to real estate, may be perfected by executor or administrator.

her, or their part performed, or stand ready to perform, the condition of such bond, covenant, or contract made with the deceased, the said court may (after due notice to all concerned shall have been given, by personal service of summons, if such persons concerned reside in the county wherein such representation is made, and if such persons concerned shall not reside in such county, then by an advertisement, printed in the nearest newspaper of general circulation, for six weeks successively) grant license to, and empower the executors or administrators of such deceased obligor, covenantor, or contractor, to make and execute such conveyance or conveyances, to such person or persons contracted with as aforesaid, as it shall appear the said obligor, covenantor, or contractor, would by his bond, covenant, or contract, be obliged to make and execute, in case he, she, or they were living at the time of the performance of the conditions of the bond, warrant, or contract, by the contractors on their part making reasonable allowance for any alterations, improvements, or injuries, that may be made or done in the same estate since such contract was made, as the said court may award; which conveyance or conveyances, when duly acknowledged, and recorded in the registry of deeds for the county where such estate shall lie, shall be good and valid, and the moneys or consideration paid for such estate, if not paid to the deceased contractor during his lifetime, shall be assets in the hands of the said executors or administrators, and be apportioned among the representatives of the deceased: *Provided*, That the summons, in this section mentioned, shall be served upon the persons concerned at least thirty days before the term of the court at which such license or power is granted as aforesaid.

Service of  
summons.

Plaintiff, &c.,  
dying before  
judgment, executor or administrator may be a party to the suit.

SEC. 133. In all actions now or hereafter pending in the supreme court or any of the district courts in this Territory, by appeal, continuance, or otherwise, if the plaintiff or defendant, appellant or appellee, complainant or respondent, shall die before final judgment, the executor or administrator of such deceased person (in case the cause of action doth in law survive), may, upon motion, and suggesting the death of the deceased, become a party to such suit, and shall have full power to prosecute or defend such suit to final judgment; and if the executor or administrator of such deceased party, after taking upon himself the trust, shall neglect or refuse to become

a party to the suit, the court, before whom such cause shall be pending, may enter up judgment against the goods and estate of the deceased party, in the same way and manner as judgment might have been, in case the executor or administrator had voluntarily, after such death, made himself a party to the suit: *Provided*, always, That such executor or administrator be duly served with a notification from the clerk of the court, where such suit is pending, fourteen days beforehand.

SEC. 134. In all cases where executors and administrators have been heretofore appointed, and who shall not have completed their respective administrations or executorships before this act shall take effect, such executors or administrators shall be deemed to be within the provisions of this act, in relation to the revocation of their powers, giving of new or additional bonds, bonds to save securities harmless, and in relation to the payment of debts to creditors, and the remainder of the estate to distributees, and in relation to performance of their duties generally, wherever the provisions of this act shall be deemed applicable: and the courts of probate, in such cases, shall cause the settlements to be made, and the administration completed, according to the rules and regulations herein prescribed, without delay: *Provided*, That no executor or administrator shall be liable for any act done or performed by him, as such, in conformity with the existing laws, or such laws as may be in force at the time this act takes effect.

SEC. 135. That after the taking effect of this act, all acts, and parts of acts, coming within the purview, or conflicting with this act, are hereby repealed.

SEC. 136. This act to take effect from and after the first day of May next.

APPROVED, January 25, 1839.

## WORSHIPING CONGREGATIONS.

AN ACT to preserve good order in all worshiping congregations in this Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That any person who shall, by menace, profane swearing,

Notice.

Administra-  
tions, &c., not  
completed  
when this act  
shall take ef-  
fect.

Proviso.

Repealing  
clause.

How the mis-  
demeanor.

- herein mentioned, may be committed.
- Selling liquors, within what distance; exception, as to tavern keepers.
- Penalty.
- Jurisdiction, and duty of justices of the peace.
- Defendant may have a trial, by jury, of six, or twelve men.
- Discretion of jury, as to the fine, on conviction, or plea of guilty.
- Collection of the fine; with whom deposited, and the purpose to which it shall be appropriated.
- Appeal to the district court, allowed.
- vulgar language, or any disorderly, or immoral conduct, interrupt and disturb any congregation, or collection of citizens assembled together for the purpose of worshiping Almighty God, or who shall sell, or attempt to sell, or otherwise dispose of, ardent spirits, or liquors, or any article which will tend to disturb any worshiping congregation, or collection of people, within two miles of such place, unless the person, so selling, or disposing of said spirituous liquors, or articles, shall be regularly licensed to keep a tavern, or grocery, and shall sell the same at his said tavern, or grocery, to travelers, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding fifty dollars.
- SEC. 2. Justices of the peace respectively, in their several counties, shall have jurisdiction of the aforesaid offence, and may, on view, or upon information, on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him, to answer such charge.
- SEC. 3. Any person who shall be accused as aforesaid, if he choose it, shall have the cause tried by a jury, of six lawful jurors, and, if he shall insist, by a full jury of twelve, who shall be summoned to try the cause, and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than is stated in the first section of this act, upon which the justice, before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine, and costs, and proceed to collect the same, without delay, and (when said fine shall be required), to pay it over, without delay, to the treasurer of the proper county, taking his receipt therefor, and which receipt shall be filed with the clerk of the board of county commissioners, after which the said fine, or fines, which may be thus deposited, shall be subject to the control of said court, and appropriated to the education of any poor orphan child, or children, of the proper county.
- SEC. 4. Any person, who may consider himself, or herself aggrieved by the judgment of the justice, may appeal to the district court of the county, and may remove the same, as in cases of assault and battery.

APPROVED, January 24, 1839.

# RESOLUTIONS.

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## RESOLUTION—No. 1.

*Resolved*, That Messrs. Clarke and McKenney, publishers of the Territorial Gazette in this city, be employed to publish the journal of the proceedings of the House of Representatives in pamphlet form, and that they be paid the same prices as are paid to the printers of Congress for such work. And that Russell and Reeves, of Du Buque, be employed to print the Laws passed at the present session on the same terms, and that the said Russell and Reeves be required to enter into bonds, with good and sufficient security, to the Secretary of the Territory, in the sum of five thousand dollars, to have the same ready for delivery on the first day of May, A. D. 1839.

Provisions for the employment, and compensation, of Territorial printers, for the session of 1838-'39.

Bond and security.

APPROVED, November 27, 1838.

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## No. 2.

*Resolved, by the Council and House of Representatives of the Territory of Iowa*, That a committee of one member of the Council, and two members of the House of Representatives, shall be appointed, to repair, forthwith, to the Miners' Bank of Du Buque, in this Territory, and then, and there, proceed to examine all the books, papers, accounts, certificates, and the amount of silver, gold, and bankable paper, and other money in the vaults of said Bank; also, the amount of money on deposit, and every other act, or acts, of said bank, which relates, or may relate, in any manner, to the fiscal management of the same; And the said committee, who shall be appointed under this resolution, are hereby empowered and authorized to examine, under oath, to be administered by the chairman of said committee, the President, Cashier, or any other officer of said bank, upon any matter which may relate, in any way, to the management of the same; and if the said President, Cashier, or other officer, to whom an oath shall be administered, as aforesaid, shall swear, or affirm

Committee to examine the affairs of the Miners' Bank of Du Buque, and the powers and duties of said committee.

Report.

falsely, in answer to any interrogatories propounded by said committee, or to any affidavit required by said committee, such President, Cashier, or other officer, shall be deemed to have committed the crime of perjury, and shall be punished as the laws of this Territory require: And the said committee shall have power to send for persons and papers, and examine such person, or persons, under oath, administered as aforesaid, and after such committee have examined the condition, and affairs of said Bank, as herein directed, they shall, as soon as possible, report the same to the Council and House of Representatives of this Territory.

APPROVED, November 29, 1838.

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No. 3.

Territorial seal.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the seal, submitted to the Legislative Assembly, by the Secretary of the Territory, be adopted as the great seal of the Territory of Iowa.

APPROVED, January 4, 1839.

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No. 4.

Enacting clause.

*Resolved, (the Council concurring herein.)* That the enacting clause of all laws passed, by the Legislative Assembly of Iowa, shall be as follows: "*Be it enacted by the Council and House of Representatives of the Territory of Iowa.*"

APPROVED, January 4, 1839.

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No. 5.

Seals for the supreme court, district courts, courts of county commissioners, and courts of probate.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the Secretary of the Territory is hereby empowered and authorized, to employ Mr. Wm. Wagner, forthwith, to engrave an appropriate seal for the supreme court of this Territory, also a seal for the United States district court, in each county, where said court has been, or may be organized, during the present session of the Legislature, also, a seal for the county

commissioner's court, in each organized county, and also a seal for the probate courts in each county, in this Territory, and the said Wm. Wagner shall receive for the execution of said seals the sum of \_\_\_\_\_ dollars for each seal, to be paid out of any moneys in the Territorial Treasury not otherwise appropriated, when said seals shall be delivered, and approved, by the Secretary of the Territory. Their delivery and approval.

APPROVED, January 4, 1839.

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No. 6.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That Messrs. Russell and Reeves, publishers of the laws passed at this session, be required to furnish, for the use of this Territory, 2,000 copies, and that they prefix, to each copy, the Constitution of the United States, the Declaration of Independence, the Organic Law of the Territory of Iowa, and the Ordinance of 1787, respecting the North-West Territory. Laws of 1838-'39, number of copies, &c.

APPROVED, January 4, 1839.

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No. 7.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the judges of the supreme court be requested to furnish this Legislative Assembly, during its present session, with such bills, as will, in their opinion, form a proper code of jurisprudence for Iowa, and regulate the practice of the courts thereof. Judges of the supreme court, and a code of laws.

APPROVED, January 4, 1839.

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No. 8.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the thanks of the Assembly of Iowa be presented, through the Secretary of said Territory, to Dr. O. Fairchild, of Cincinnati, Ohio, for his valuable presents of maps to the Library of said Territory. Thanks to Dr. Fairchild.

APPROVED, January 4, 1839.

## No. 9.

Miners' Bank,  
allowance to  
committee, of  
\$100 each.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the committee, appointed under a joint resolution of both Houses, to repair to the Miners' Bank of Du Buque, and investigate the affairs and condition of the same, be allowed the sum of one hundred dollars, each.

APPROVED, January 12, 1839.

## No. 10.

Whereas, The country purchased of the Sac and Fox Indians, in the month of October, 1837, is rapidly settling, with a respectable and meritorious class of citizens, who are opening farms, and making improvements, of various kinds, which must necessarily be subject to be divided, and otherwise injuriously affected, by the lines of the public surveys, and thereby occasioning much loss, and ground of difficulties, of a serious character, to the pioneers of a new country, therefore,

Appropriation  
for further sur-  
veys of pub-  
lic lands, in  
this Territory.

*Be it resolved, by the Council and House of Representatives of the Territory of Iowa,* That our Delegate in Congress be requested to solicit, and use his best exertions to obtain, an appropriation for the survey of all the unsurveyed lands in the Territory of Iowa, to which the Indian title has been extinguished.

*And be it further resolved,* That the Governor of this Territory be requested to forward three copies of these resolutions, one to our Delegate in Congress, one to the Speaker of the House of Representatives, and one to the President of the United States.

APPROVED, January 12, 1839.

## No. 11.

Whereas, The supreme court of the Territory of Iowa, have appointed Charles Weston reporter of the decisions of the said court, and whereas the said reports are absolutely necessary for the use of the Legislative Assembly of this Territory, and the people at large, and whereas the organic law has made no provision for the salary of said reporter, or compensation for his important services—Therefore,

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the Hon. William W. Chapman, our Delegate in Congress, be, and he is hereby instructed, to use his exertions to procure the organic law of this Territory to be so amended, as to allow a reporter of the supreme court for said Territory a salary of four hundred dollars, annually, and that a copy of this resolution and preamble be forwarded immediately to the President of the United States, and to our Delegate in Congress, by the Secretary of the Territory.

Compensation  
for the services  
of the reporter  
of the decisions  
of the supreme  
court.

APPROVED, January 18, 1839.

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No. 12.

*Resolved, by the Council and House of Representatives of the Territory of Iowa,* That the Hon. William W. Chapman, our Delegate in Congress, be instructed to ask a donation, of at least four sections of land, on which to locate the seat of government of the Territory of Iowa, to be selected by the commissioners appointed by the Legislative Assembly of Iowa, to locate the seat of Government of said Territory.

Land for the  
seat of govern-  
ment.

APPROVED, January 21, 1839.



# APPENDIX.

## NATURALIZATION OF ALIENS.

AN ACT to amend the acts concerning Naturalization.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the second section of the act, entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act entitled "An act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be, and the same are hereby, repealed.

Second section of the act of 14th April, 1802, and 22d of March, 1816, repealed.

SEC. 2. *And be it further enacted,* That any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided,* That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted: and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses: and such continued residence within the limits, and under the jurisdiction of the United States, when satisfactorily

Any alien being a free white person, who was residing within the limits of the United States between the 14th April, 1802, and 18th June, 1812 to become a citizen.

Proviso, whenever any person without a certificate of such declaration of intention, &c.

proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

APPROVED, May 24, 1828.

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## ARTICLES OF CONFEDERATION, AND PERPETUAL UNION,

*Between the States of New Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

### ARTICLE I.

The style of this confederacy shall be, "THE UNITED STATES OF AMERICA."

### ARTICLE II.

Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

### ARTICLE III.

The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

### ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, (paupers, vagabonds, and fugitives from justice excepted), shall be entitled to all privileges and immunities of free citizens in the sev-

eral States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any State to any other State, of which the owner is an inhabitant: *Provided also*, That no imposition, duties or restriction, shall be laid by any State on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor, in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor, or Executive power of the State from which he fled, be delivered up, and removed to the State, having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

#### ARTICLE V.

For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech, and debate in Congress, shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

## ARTICLE VI.

No State, without the consent of the United States, in Congress assembled, shall send an embassy to, or receive an embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince or State; nor shall any person, holding any office of profit or trust under the United States or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade, nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled; and then only against the kingdom or state, and the subjects thereof, against which war has been so declared and under such regulation as shall be established by the United States in Congress assembled; unless such State be infested by pirates; in which case, vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or

until the United States in Congress assembled, shall determine otherwise.

ARTICLE VII.

When land forces are raised by any State for the common defence, all officers of, or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII.

All charges of war and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State granted to, or surveyed for, any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall, from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ARTICLE IX.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances: *Provided*, That no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: *Provided*, That no members of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear, and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall, in like manner, be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, “well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.” *Provided also*, That no State shall be deprived of Territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdiction, as they may respect such lands and the States which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade, and managing all affairs with the Indians, not members of any of the States: *Provided*, That the legislative right of any State within its own limits be not infringed or violated—establishing or regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expences of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated, "*A Committee of the States*," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside: *Provided*, That no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States, an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers

and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled, but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped, in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same; in which case, they shall raise, officer, clothe, arm and equip, as many of such extra number as they judge can be safely spared; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, or borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate: and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

#### ARTICLE X.

The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the

powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI.

Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII.

All bills of credit emitted, monies borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof, the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Every State shall abide by the determination of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every State.

And whereas, it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation, and perpetual union: KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which, by the said

confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands, in Congress, done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the Independence of America.

*On the part and behalf of the State of New Hampshire.*

Josiah Bartlett, John Wentworth, Jr. Aug. 8, 1778.

*On the part and behalf of the State of Massachusetts-Bay.*

John Hancock, Francis Dana,  
Samuel Adams, James Lovell,  
Elbridge Gerry, Samuel Holton.

*On the part and behalf of the State of Rhode Island and Providence Plantations.*

William Ellery, John Collins,  
Henry Marchant,

*On the part and behalf of the State of Connecticut.*

Roger Sherman, Titus Hosmer,  
Samuel Huntington, Andrew Adams,  
Oliver Wolcott,

*On the part and behalf of the State of New York.*

James Duane, Wm. Duer,  
Fra. Lewis, Gouv. Morris.

*On the part and behalf of the State of New Jersey.*

Jno. Witherspoon, Nath. Scudder, Nov. 26, 1778.

*On the part and behalf of the State of Pennsylvania.*

Robt. Morris, William Clingan,  
Daniel Roberdeau, Joseph Reed, 22 July, 1778.  
Jona. Bayard Smith,

*On the part and behalf of the State of Delaware.*

Thos. McKean, Feb. 13, 1779. Nicholas Van Dyke.

John Dickinson, May 5th, 1779.

*On the part and behalf of the State of Maryland.*

John Hanson, March 1, 1781. Daniel Carroll, do.

*On the part and behalf of the State of Virginia.*

Richard Henry Lee, Jno. Harvie,  
John Banister, Francis Lightfoot Lee.  
Thomas Adams,

*On the part and behalf of the State of North Carolina.*

John Penn, July 21st, 1778. Jno. Williams.  
Corns. Harnett,

*On the part and behalf of the State of South Carolina.*

Henry Laurens, Richard Hutson,  
 William Henry Drayton, Thomas Hayward, jun.  
 Jno. Matthews,

*On the part and behalf of the State of Georgia.*

Jno Walton, 24th July, 1778, Edwd. Langworthy.  
 Edwd. Telfair,

[NOTE.—From the circumstance of delegates from the same State having signed the articles of confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in Congress, after they had been authorized by their constituents.]



# GENERAL INDEX

TO THE

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