

REVISED STATUTES

OF THE

TERRITORY OF IOWA

Revised and Compiled by a Joint Committee of the
Legislature—Session 1842-'43

10,767

AND ARRANGED BY

THE SECRETARY OF THE TERRITORY

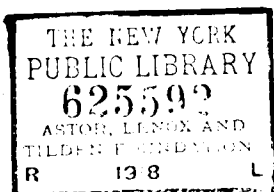
PUBLISHED BY AUTHORITY

IOWA CITY:
PRINTED BY HUGHES & WILLIAMS
1843

NEW YORK
PUBLISHED
BY
G. P. PUTNAM'S
SONS

Reprinted by Authority of the Thirty-Fourth General Assembly

DES MOINES
EMORY H. ENGLISH, STATE PRINTER
E. D. CHASSELL, STATE BINDER
1911



SECRETARY'S OFFICE,

July 1, 1843.

I do hereby certify that the Acts and Resolutions, hereinafter published, have been compared with the copies on file in this office, and that they correspond in every respect with said copies.

O. H. W. STULL,

Secretary of Iowa Territory.

NOV 21 1843
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CONCURRENT RESOLUTION

Relating to printing the early Iowa laws

WHEREAS, the supply has been exhausted and there is considerable demand for the laws hereinafter mentioned,

Be it resolved by the House of Representatives, the Senate concurring: That the secretary of state be and he is hereby authorized to have printed and bound in cloth one thousand each of the following:

The Iowa Code of 1851 in one volume.

The acts of the general assembly of Iowa enacted at each session, between the code of 1851 and the revision of 1860, in volumes of convenient size.

The revised statutes of the Territory of Iowa, 1843, in one volume.

The acts of the Territorial legislature of Iowa, commencing with the regular session of 1840 and ending with the last session prior to the adoption of the code of 1851, in volumes of convenient size.

That when published said volumes shall be sold at cost and shall be distributed for sale in the same manner that the code is now distributed, except that none of said volumes shall be distributed free to any county, town, township or city officer.

Adopted by 34th General Assembly, April 12, 1911.

CERTIFICATE.

STATE OF IOWA,
Office of Secretary of State.

I, W. C. Hayward, secretary of state of the state of Iowa, hereby certify that the acts and resolutions herein contained are copied from the authorized printed volume of "The Revised Statutes of the Territory of Iowa, 1843," and that the same is a full, true and complete copy thereof, except that the paging of the original volume is shown herein by inserting in brackets the number of the page on which appeared the matter immediately following.

In testimony whereof, I have hereunto subscribed my name and caused to be affixed the official seal of my office. Done at Des Moines, the capital of the state, this fourteenth day of November, A. D. 1911.

W. C. Hayward

Secretary of State.

[SEAL]

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DECLARATION
OF
INDEPENDENCE

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 those ends, it is right of the people to alter or 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 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 necessity which constrains them to alter their former system 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 legislatures—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 meantime, 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 harass 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.

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 coast, 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.

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.

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 inevitable interrupt our connections 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.

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 connection 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 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 PAINE,
ELDRIDGE GERRY.

RHODE ISLAND, ETC.

STEPHEN HOPKINS,
WILLIAM ELLERY.

CONNECTICUT.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

NEW YORK.

WILLIAM FLOYD,
PHILIP LIVINGSTON,

FRANCES 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.

CAESAR RODNEY,
GEORGE READ,
THOMAS M'KEAN.

DECLARATION OF INDEPENDENCE

MARYLAND.

SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHARLES CARROLL, OF CARROLLTON.

NORTH CAROLINA.

WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN.

SOUTH CAROLINA.

VIRGINIA.

GEORGE WHITE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

EDWARD RUTLEDGE,
THOMAS HEYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLESON.

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 to our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION 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.

SEC. 2. (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.

(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.

(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. 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. 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.

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

(5) The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 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.

(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 of 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.

(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.

(4) The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

(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.

(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.

(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.

SEC. 4. (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.

(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.

SEC. 5. (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 authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

(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.

(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.

(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.

SEC. 6. (1) The senators and representatives shall receive 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 arrest during their attendance at the session of their respective houses, and in going to and 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 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 emolument 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.

SEC. 7. (1) All bills for raising revenue shall originate in 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 of representatives and the senate, shall, before it become 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 the 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-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 concurrence of the senate and house of representatives 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 repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in case of a bill.

SEC. 8. (1) The congress shall have power 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;

(2) To borrow money on the credit of the United States;

(3) To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

(4) To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

(6) To provide for the punishment of counterfeiting the securities and current coin of the United States;

(7) To establish postoffices and postroads;

(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;

(9) To constitute tribunals inferior to the supreme courts; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

(10) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

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

(12) To provide and maintain a navy;

(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;

(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 the 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,

(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.

SEC. 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.

(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.

(3) No bill of attainder or ex post facto law, shall be passed.

(4) No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

(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.

(6) No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

(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.

SEC. 10. (1) No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything 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.

(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 and 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. (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:

(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.

(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.

(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.

(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 congress 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.

(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.

(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."

SEC. 2. (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 offenses against the United States, except in cases of impeachment.

(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.

(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.

SEC. 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.

SEC. 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.

SEC. 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 under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

(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.

(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.

SEC. 3. (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.

(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. (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.

SEC. 2. (1) The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

(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 service or labor: but shall be delivered upon claim of the party to whom such service or labor may be due.

SEC. 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.

(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.

SEC. 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.

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 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.

(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.

(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; anything in the constitution or laws of any state to the contrary notwithstanding.

(2) 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.

ARTICLE VII.

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.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON,
NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM,
RUFUS KING.

CONNECTICUT.

WM. SAMUEL JOHNSON,
ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WILLIAM LIVINGSTON,
DAVID BEARDLY,
WILLIAM PATTERSON,
JONATHAN DRAYTON.

PENNSYLVANIA.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,

GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOVERNEUR MORRIS.

DELAWARE.

GEORGE READ,
GUNNING BEDFORD, JR.
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

MARYLAND.

JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.

VIRGINIA.

JOHN BLAIR,
JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

CONSTITUTION OF THE UNITED STATES

18

SOUTH CAROLINA.

JOHN RUTLEDGE,
CHARLES COTESWORTH PINCK-
NEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.

WILLIAM FEW,
ABR. BALDWIN.

ATTEST,

WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION

ARTICLE I.

Congress shall make no law respecting an establishment 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,

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.

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.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

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 offense, 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.

ARTICLE VI.

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 defense.

ARTICLE VII.

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.

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

ARTICLE IX.

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 the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United 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 states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as 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.

If any citizens 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, NORTHWEST OF THE RIVER OHIO.

Be it ordained by the United States, in congress 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 estates both of resident and non-resident proprietors 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 intestate, 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 territory may be devised or bequeathed by wills in writing, 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 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.

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.

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. 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.

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.

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 to be adopted or made, shall have force in all parts 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.

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.

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 the 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.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation, of fidelity 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.

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 principals 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 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:

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.

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 offenses, 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 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.

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, authorized 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.

ARTICLE IV.

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 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.

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 contained 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.

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.*

ORGANIC LAW

AN ACT TO DIVIDE THE TERRITORY OF WISCONSIN, AND TO ESTABLISH THE TERRITORIAL GOVERNMENT OF IOWA.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

SECTION 1. 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 otherwise 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.

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 offenses against the laws of the said territory, and reprieves for offenses 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.

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; 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.

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. 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 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 township officers, and all county officers except judicial officers, justices of the peace, sheriffs, and clerks of 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.

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.

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 in 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 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, 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 clerks 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 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.

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 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.

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.

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 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.

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.

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.

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

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, A. D. 1838.

AMENDMENTS TO THE ORGANIC LAW

AN ACT to alter and amend the organic law of the territories of Wisconsin and Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That every bill which shall have passed the council and house of representatives of the territories of Iowa and Wisconsin shall, before it becomes a law, be presented to the governor of the territory; 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-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 journals of each house respectively. If any bill shall not be returned by the governor within three 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 assembly by adjournment prevent its return, in which case it shall not be a law.

SEC. 2. *And be it further enacted*, that this act shall not be so construed as to deprive congress of the right to disapprove of any law passed by the said legislative assembly, or in any way to impair or alter the power of congress over laws passed by said assembly.

Approved March 3, A. D. 1839.

AN ACT to authorize the election or appointment of certain officers in the territory of Iowa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That the legislative assembly of the territory of Iowa, shall be, and are hereby, authorized to provide by law for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors, within the said territory, in such way or manner, and at such times and places as to them may seem proper; and after a law shall have been passed by the legislative assembly for that purpose, all elections or appointments of the above-named officers thereafter to be had or made shall be in pursuance of such law.

SEC. 2. *And be it further enacted*, that the term of service of the present delegate for said territory of Iowa shall expire on the twenty-seventh day of October, eighteen hundred and forty; and the qualified electors of said territory may elect a delegate to serve from the said twenty-seventh day of October to the fourth day of March thereafter, at such time and place as shall be prescribed by law by the legislative assembly, and thereafter a delegate shall be elected, at such time and place as the legislative assembly may direct, to serve for a congress, as members of the house of representatives are now elected.

Approved March 3, A. D. 1839.

TREATY

BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC

The president of the United States of America, and the first consul of the French republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, *an.* 9. (30 September, 1800,) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th October, 1795, between his Catholic majesty and the said United States, and willing to strengthen the union and friendship which, at the time of the said convention, was happily re-established between the two nations, have respectively named their plenipotentiaries, to-wit: the president of the United States of America, by and with the advice and consent of the senate of the said states, Robert R. Livingston, minister plenipotentiary, and James Monroe, minister plenipotentiary and envoy extraordinary, of the said states, near the government of the French republic; and the first consul, in the name of the French people, the French citizen Barbe Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ART. 1. Whereas, by article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, *an.* 9, (1st October, 1800,) between the first consul of the French republic and his Catholic majesty, it was agreed as follows: "His Catholic majesty promises and engages, on his part, to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states." And whereas, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestible title to the domain and to the possession of the said territory: The first consul of the French republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States in the name of the French republic, for ever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above mentioned treaty concluded with his Catholic majesty.

ART. 2. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

ART. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ART. 4. There shall be sent by the government of France, a commissary to Louisiana, to the end that he do every act necessary, as well to receive, from the officers of his Catholic majesty, the said country and its dependencies, in the name of the French republic, if it thus has not been already done, as to transmit it, in the name of the French republic, to the commissary or agent of the United States.

ART. 5. Immediately after the ratification of the present treaty by the president of the United States, and in case that of the first consul shall have been previously obtained, the commissary of the French republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the president to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

ART. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements for the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France, or any of her colonies, loaded only with the produce or manufactures of France, or any of her said colonies, and the ships of Spain coming directly from Spain, or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted, during the space of twelve years, in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other greater tonnage, than those paid by the citizens of the United States. During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight, and navigation, of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

ART. 8. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

ART. 9. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French republic, prior to the 30th September, 1800, (8th Vendemiaire, 9,) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular convention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties, is in like manner approved, and will be ratified in the same form, and in the same time, and jointly.

ART. 10. The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the minister plenipotentiary, and sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto put their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French republic, and the thirtieth of April, 1803.

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| ROBERT R. LIVINGSTON, | [L. S.] |
| JAMES MONROE, | [L. S.] |
| BARBE MARBOIS. | [L. S.] |

CONVENTION

BETWEEN THE UNITED STATES OF AMERICA AND THE FRENCH REPUBLIC.

The president of the United States of America and the first consul of the French republic, in the name of the French people, in consequence of the treaty of cession of Louisiana, which has been signed this day, wishing to regulate definitively everything which has relation to the said cession, have authorized to this effect the plenipotentiaries, that is to say: the president of the United States has, by and with the advice and consent of the senate of the states, nominated for their plenipotentiaries, Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said United States, near the government of the French republic; and the first consul of the French republic, in the name of the French people, has named, as plenipotentiary of the said republic, the French citizen Barbe Marbois; who in virtue of their full powers, which have been exchanged this day, have agreed to the following articles:

ART. 1. The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to citizens of the United States.

ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable half yearly, in London, Amsterdam, or Paris, amounting, by the half year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place: the principal of said stock to be reimbursed at the treasury of the United States, in annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications. This stock shall be transferred to the government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the government of the United States.

It is further agreed that if the French government should be desirous of disposing of the said stock, to receive the capital in Europe, at shorter terms, that its measures for that purposes shall be taken so as to favor, in the greatest degree possible, the credit of the United States and to raise to the highest price the said stock.

ART. 3. It is agreed that the dollar of the United States specified in the present convention, shall be fixed at five francs 3333-100000 or five livres eight sous tournois.

The present convention shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

In faith of which, the respective Plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language; to which they have hereunto affixed their seals.

Done at Paris, the tenth of Floreal, eleventh year of the French republic, 30th April, 1803.

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| ROBERT R. LIVINGSTON, | [L. S.] |
| JAMES MONROE, | [L. S.] |
| BARBE MARBOIS, | [L. S.] |

STATUTES OF IOWA

CHAPTER 1.

ABATEMENT.

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

SECTION.

1. Pleas in abatement not to be received unless the party file an affidavit. If plea be insufficient plaintiff to have costs.
2. Suits against companies or associations not to abate because all the parties are not joined in the suit. Plaintiff to sue out a summons against the others, and upon the return thereof, insert their names and proceed as if included in the original suit. Not found to suggest their names, and proceed as in other cases. No other plea for non-joinder allowed.
3. Suit by a single woman not to abate on account of marriage. Proviso.

SECTION.

4. Suits not to abate by death of plaintiff or defendant. Executors to suggest such death on the record, which being done, action to proceed to final judgment. In suits against an administrator, when his letters of administration are revoked, how to proceed.
5. How to proceed in suits where two or more plaintiffs or defendants are joined, and one or more of them die.
6. 3d, 4th and 5th sections of this act applicable to appeals, etc.
7. Abbreviations not to prejudice or abate any writ or process.
8. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 [48] shall upon argument be determined insufficient, the plaintiff shall receive full costs to the time of overruling such plea.

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.

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 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 [49] 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.

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.

SEC. 6. The third, fourth, and fifth sections of this act shall be applicable to all appeals and writs of error.

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, A. D. 1838.

CHAPTER 2.

APPRENTICES, ETC.

AN ACT concerning apprentices and servants.

SECTION.

1. Persons apprenticed with consent of parents or guardians, to serve for the specified term.
Infants having no parents or guardians may bind themselves with the approbation of justices.
2. The father being incapacitated the mother may give her consent.
3. Apprentice refusing to serve may be committed to jail, by any justice upon complaint of master or mistress.

SECTION.

3. Age of apprentice or servant to be inserted in indentures.
4. Apprentice may be discharged upon proof of ill treatment by master or mistress, before two justices.
Parties aggrieved may appeal to district courts.
Court to hear and determine the matter, and award costs, and its decision to be final.
Apprentice being delinquent, court to extend the term of service.

[50] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. 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 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.

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.

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 [51] (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 misusage, 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 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 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. A. D. 1839.

[52] CHAPTER 3.

AMENDMENTS AND JEOFALLS.

AN ACT concerning amendments and jeofalls.

SECTION.

1. Misprision of clerk, etc., not to annul process or record.
Record and process may be amended before or after judgment.
2. Courts may examine records, pleas, etc., and amend misprision of clerks.
Defective records, pleas, to be reformed by the court.
3. Court may correct misprision of sheriffs and others, as well after judgment, as upon matter of law pleaded.
4. Decree, record or judgment not to be reversed for erasures or interlineations.
5. New entries by clerks not to impair pleas.
6. After verdict, judgment not to be stayed by any default.
When given to be in full force and strength.
7. After verdict judgment not to be reversed for lack of form, or default of any kind.

SECTION.

8. Or by any variance in form or lack of averment.
9. Or for default in form or entering pledges for misnomer, error in the sum or time, or for want of certain allegations, averments and entries.
10. In demurrer, court to decide only the causes of same, set forth by the party demurring.
Certain omissions and defects not causes of demurrer.
All omissions and defects save those set forth by the party demurring as cause for the same, may be amended after demurrer joined.
11. Judgments on confession, not to be reversed for defects which would have been cured by verdict.
12. This act to embrace writs of mandamus and quo warranto.
13. Courts to amend writs of error.
14. This act not to extend to criminal matters or qui tam cases.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 [53] 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.

SEC. 2. The court, in which any record, plea, process, declaration, count, warrant of attorney, writ, or panel, 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, panels, 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, panel, 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.

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

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.

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.

SEC. 6. If any issue has 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 mispleading, lack of color, insufficient pleading, or jeofail, or any miscontinuance or distinuance, 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.

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 of 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.

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.

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, inden-[55]-ture, or other deed of 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 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 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.

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 therefore no advantage or exception shall be taken of or for an immaterial traverse, 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 men-

tioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer, as aforesaid.

SEC. 11. Everything 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.

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

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.

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.

Approved January 24, A. D. 1839.

[57] CHAPTER 4.

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.

SECTION.

1. All controversies may be submitted to arbitration according to the provisions of this act.
2. Form of agreement and manner of acknowledging the same.
3. When specific demand is submitted it must be set forth in a statement annexed to agreement.
4. What demands may be submitted.
5. Submission may not be revoked without the consent of both parties.
6. Time when award shall be reported.
7. Delivery of the same to the court.
8. Court to have cognizance thereof.
9. Court may accept, reject or recommend the same to arbitrators.

SECTION.

10. When the award at any session of the court within the time limited, parties to attend without notice.
11. Majority of arbitrators may make award.
12. Arbitrators may award for costs, subject to the action of the court.
13. Party aggrieved by award have no appeal, but may bring writ of error.
14. Fees to justice of the peace, and in the district court.
15. Litigants may with the consent of the court, refer the cause to three persons.
16. Power and duty of referees in such cases.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 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 attorneys, 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 [58] 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:

— 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.

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.

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.

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.

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.

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.

SEC. 9. The award may be accepted or rejected by the court for [59] any legal and sufficient reason, or it may be recommitted to the same arbitrators for a rehearing by them; and when an award is accepted 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.

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 be-

tween 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.

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.

SEC. 12. If there is no provision in the submission concerning the costs of the proceedings, the arbitrators may make such an 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.

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.

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.

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 fil-[60]-ed in his office: provided, 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, A. D. 1839.

CHAPTER 5.

AGRICULTURE.

AN ACT for the encouragement of agriculture.

SECTION.

1. Money appropriated and to whom.
2. Time and manner of forming territorial society, and powers.
3. Other societies how organized, powers, limits and membership.
4. When amount of subscription is to be given to county society.

SECTION.

5. Officers of territorial society and duty of the same.
6. Abstract of expenditures to be transmitted to secretary of territory with a report to territorial society.
7. Executive committee to report to secretary of territory.
8. Ex-officio members.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the sum of twelve hundred dollars per annum, or such other sum as the congress of the United States may grant for that purpose, shall be and is hereby appropriated for the promotion of agriculture, and household manufactures in this territory, in the manner following, to-wit: The county of Clayton, thirty dollars; the county of Clinton, twenty dollars; the county of Cedar, thirty dollars; the county of Dubuque, seventy dollars; the county of Des Moines, one hundred and forty dollars; the county of Henry, eighty [61] dollars; the county of Jones, twenty dollars; the county of Jackson, thirty-five dollars; the county of Johnson, thirty-five dollars; the county of Linn, thirty dollars; the county of Lee, one hundred and forty dollars; the county of Louisa, forty-five dollars; the county of Muscatine, forty-five dollars; the county of Scott, forty-five dollars; the county of Washington, thirty-five dollars; the county of Jefferson, sixty dollars; the county of Van Buren, one hundred and forty dollars; Iowa territorial agricultural society, two hundred dollars.

SEC. 2. A territorial agricultural society, may be organized at the seat of government, in the same manner as county agricultural societies are now organized, and shall have the same privileges, and perform the same duties for the whole territory, and shall have its meetings and fairs, at such times and places, as the proper officers of the society may direct.

SEC. 3. Whenever the citizens of any township or townships, whether organized or not, shall desire to form an agricultural society, they shall be organized in the same manner as county societies are organized; shall be called together for the purpose of organization, at such time and place as those requiring the call shall direct; and shall have the same powers and duties for their respective limits, as county societies now have; territorial, county and township societies shall regulate the price of admission to membership, and the price of annual subscription.

SEC. 4. When any county agricultural society, now formed, or to be formed in this territory, shall raise by voluntary subscription any sum of money, the president and treasurer shall make and subscribe an affidavit of the facts of the formation of such society, and of their having raised a certain sum, specifying the amount thereof, which affidavit shall be filed with the secretary of the territory, who shall, if congress shall appropriate the sum herein mentioned, pay to the treasurer of the society a sum equal to the amount of such subscription, not exceeding the amount to which such society would be entitled, under the apportionment aforesaid; and when there are two or more societies in any

county, the said secretary shall divide the sum appropriated to such county among them: provided, each society shall raise, by voluntary subscription, a sum equal to the amount set apart for such county.

SEC. 5. The Iowa territorial society, and the several societies in counties now formed, or to be formed in this territory, shall annually elect such officers, as they may deem proper; and it shall be the duty of such officers, annually to regulate and award premiums, on such arti-[62]-cles, productions, and improvements, as they may deem best calculated to promote the agricultural, and household manufacturing interests of this territory; having especial reference to the net profits which accrue, or are likely to accrue, from the mode of raising the crops or stock, or the fabrication of the article, with the intention that the reward shall be given to the most profitable or economical mode of competition: provided, always, that before any premium shall be delivered to the person claiming the same, he shall deliver to the president of the society, as accurate a description of the process, in preparing the soil, raising the crop, or feeding the animal, as may be; also the product of the crop, or of increase in the valuation of the animal, with a view of showing accurately the profit of cultivating the crops or feeding and fattening the animal.

SEC. 6. The president of the territorial society, and the several presidents of the societies in counties who shall receive or expend any of the moneys hereby appropriated, shall annually, in the month of November, transmit to the secretary of the territory, a detailed account of the expenditures of all moneys, which shall come into their hands under this act, stating to whom and for what purpose paid, with the vouchers therefor; and said presidents of said societies in counties, shall annually transmit in the month of November, to the executive committee of the territorial society, all reports or returns which they may demand, and receive from the applicants for premiums, together with an abstract of their proceedings during the year.

SEC. 7. The executive committee of the territorial agricultural society, shall examine all reports and returns, made by the presidents of societies in counties, and condense and arrange the same, together with a report of their own proceedings during the year, to the secretary of the territory, in the month of December in each year.

SEC. 8. The presidents of the several county societies, or delegates from them, to be chosen annually for that purpose, shall be ex-officio members of the Iowa territorial agricultural society.

Approved February 18, A. D. 1842.

[63] CHAPTER 6.

AGRICULTURE.

AN ACT for the encouragement of agriculture and domestic manufactures.

SECTION.

1. Persons desirous to form a society how to proceed.
2. When may organize.
3. Officers of society and time and manner of electing them.
4. Society made a body politic.
" Name and style and powers.
5. Powers and duty of president and directors.

SECTION.

6. Seal.
7. Donations.
8. Pro tem president.
9. Powers and duties of societies availing themselves of the provisions of this act.
10. Appropriations specified.
11. Members may withdraw.
12. By-laws of society.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That whenever the citizens of any county shall be desirous to form a society for the promotion of agriculture and domestic manufactures, notice of a meeting to be held for this purpose, at the county seat, signed by three or more citizens of the county, shall be posted at three of the most public places therein, and at least thirty days antecedent to the time appointed for such meeting, or the notice may be published for three successive weeks in any newspaper printed within the county.

SEC. 2. If twenty or more of the citizens shall assemble in pursuance of notice given as aforesaid, they shall proceed to elect a chairman and secretary, after which a vote shall be taken on the question of incorporating themselves under the provisions of this act. And if it shall appear that the number voting in the affirmative is not less than twenty, an election shall be forthwith held by ballot for officers of the society, the chairman and secretary of the meeting acting as judges.

SEC. 3. The officers of the society shall consist of a president, vice president, treasurer, secretary and five directors, who shall hold their offices for one year and until their successors are chosen, and the annual election shall be held on a day to be appointed by the said president and directors, who shall likewise have power to appoint from time to time such subordinate officers as may by them be deemed necessary.

[64] SEC. 4. A certificate signed by the chairman and secretary of the meeting, of said election of president, vice president, treasurer, secretary and directors in conformity to this act, shall be recorded in the office of the county recorder within ten days after such election, and the society shall then be in law and in fact a body corporate and politic, by the name and style of "The society for the promotion of agriculture and domestic manufactures in the county of _____," or, if the society be established for agricultural purposes only, by the name and style of "The agricultural society of _____ county," and by such corporate name and style the members of the society and their successors, may, in law and equity, sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all suits, actions, complaints, pleas, causes, matters and demands, as fully and effectually, to all intents and purposes as any person or persons, or bodies corporate and politic, may or can do.

SEC. 5. The president and directors, or a majority of them, shall have power to make by-laws and to alter and repeal the same; to fill vacancies in their own

body, or in any office pertaining to the society, if such vacancy shall happen between the times of holding annual elections; to determine the amount of subscription to be annually paid by each member, which shall not exceed five dollars nor be less than one dollar; to provide for the admission of new members, and to fix the price or sum to be paid on their admission; to prescribe the mode of holding future elections, and the manner in which notice thereof shall be given; to call a special meeting of the society by advertisement in any newspaper of the county, or otherwise, whenever in the opinion of the said president and directors, or a majority of them, the same shall be necessary; and to appoint the days for the annual exhibition and distribute the premiums.

SEC. 6. The society shall have a common seal which the president and directors shall affix to all their official acts, and said seal may be altered or revoked by a vote of the members at any annual meeting and another instituted in lieu thereof.

SEC. 7. The society may receive donations of land, or other property, for the use of the society, provided, that no such corporation shall hold any greater amount of real estate than the value of one thousand dollars for a longer period than twelve months.

SEC. 8. The president or in his absence the vice president shall preside at the meetings of the directors, and have a casting vote on all [65] questions; and if both these officers shall be absent the directors may choose a president *pro tem.* from their own body.

SEC. 9. Every society availing itself of the provisions of this law shall at their discretion annually and publicly offer premiums for the introduction or improvement of any breed of useful animals, or of any tools or implements of husbandry—or for introducing, raising and preserving any valuable tree; or for the encouragement or advancement in any way of the several branches of agriculture or household manufactures. And such society shall annually in the month of November transmit to the treasurer of the territory an official statement of its expenditures, expressing the objects for which premiums have been awarded and to whom paid, accompanied by such general observations as may be deemed useful, which said statement it shall be the duty of the territorial treasurer to file in his office.

SEC. 10. No money shall be appropriated by any such society for any other purpose than the payment of premiums as laid down in the foregoing section, for publications on subjects therewith connected and the necessary contingent expenses of the society.

SEC. 11. No member of any society to be established under the provisions of this act shall be prevented from withdrawing therefrom, provided that notice of his intention be given to the treasurer and all dues paid.

SEC. 12. The by-laws to be made by any society under and by virtue of the authority herein contained, shall not in any manner contravene this act or any other law of this territory.

Approved January 13, A. D. 1843.

CHAPTER 7.

AGENT.

AN ACT to authorize boards of commissioners to appoint agents to dispose of real estate.

SECTION.

1. Board authorized to appoint agent.
2. Oath and bond of same.
3. Power and duty.

SECTION.

4. Commissioners to execute deeds.
5. Sales by agent made valid.
6. Act in force from time of passage.

[66] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. That the board of commissioners, of any county in this territory, be and they are hereby authorized, at their discretion, to appoint an agent to sell and dispose of the real estate belonging to any such county, in such manner as they may order and direct.

SEC. 2. That the said agent, before he enters upon the duties of his office, shall take an oath faithfully and impartially to perform the same, and shall give a bond in such penal sum, as the board of county commissioners may direct, to be approved of by them, and which shall be filed with the clerk of said board.

SEC. 3. That when any agent shall be appointed as provided in the first section of this act, shall sell and dispose of any real estate of such county, said agent shall immediately make out and deliver to the purchaser or purchasers, a certificate, and state therein the terms of said sale, the amount for which it was sold, the amount received, the amount unpaid, (if any) and the time when it will fall due, and the said agent shall, within ten days thereafter, deliver a copy of such certificate to the clerk of the board of county commissioners, of his proper county, at his office.

SEC. 4. That any board of commissioners, who shall have appointed an agent, according to the provisions of this act, shall, at their first session after the terms of sale shall have been complied with, as specified in any certificate of their agent, make out, execute, and deliver, on application at the office of the clerk of said board, a good and sufficient deed or deeds to the purchaser or purchasers for the same.

SEC. 5. That all sales heretofore made of any real estate, and deeds executed for the same by any agent having been duly appointed for that purpose, by the board of commissioners of any county in this territory, be and the same are hereby declared good and valid, and sufficient for the conveyance in fee simple, of such real estate.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved February 17, A. D. 1842.

[67] CHAPTER 8.

TERRITORIAL AGENT.

AN ACT entitled an act supplementary to an act providing for the appointment of a superintendent of public buildings at Iowa City, and the appointment of a territorial agent, and for other purposes.

SECTION.

1. Agent to sell forfeited lots.
2. To give certificate of final payment.
3. Agent to perform duties of commissioner in a certain case.

SECTION.

4. Certificates of final payment to be filed in secretary's office, when deed is to be made.
5. Duty and compensation of secretary.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That it shall be lawful for the territorial agent to sell at private sale, to any person or persons applying for the same, any forfeited and unsold lot or lots in Iowa City, for the price fixed upon such lot or lots, under the provisions of the ninth section of the act to which this is supplementary.

SEC. 2. That whenever full and final payment shall have been made for any lot or lots in Iowa City, the territorial agent shall give to the person or persons entitled thereto, a certificate of full and final payment for the same.

SEC. 3. That the duties required to be performed by the acting commissioner, in the act entitled "an act to grant certain lots of land in Iowa City for church and literary purposes," approved July 31, 1840, shall hereafter be performed by the territorial agent.

SEC. 4. That whenever any certificate of full and final payment for lots in Iowa City, shall be presented to the secretary of the territory, he shall file the same in his office and make out a deed of conveyance in accordance with such certificate, which deed of conveyance shall be sealed with the seal of the territory, signed by the governor and countersigned by the secretary, and when thus executed, shall convey to the grantee a title in fee simple to the lot or lots therein described.

SEC. 5. It shall be the duty of the secretary of the territory to keep a record in his office of all deeds of conveyance made out by him and executed according to the provisions of this act, and as compensation for the duties required of the said secretary under this section, he shall [68] be entitled to have and receive the sum of one dollar and fifty cents for each deed by him thus made out and recorded, to be paid by the territorial agent, out of any money in his hands arising from the proceeds of the sale of lots in Iowa City.

Approved February 17, A. D. 1842.

CHAPTER 9.

TERRITORIAL AGENT.

AN ACT to define the duties of territorial agent, and for other purposes.

SECTION.

1. Agent to perform the duties heretofore performed by superintendent.
2. Agent with two commissioners to revalue unsold lots in Iowa City and fix minimum price.
3. Commissioners to take oath, compensation, how paid.
4. Reserves to be surveyed into lots and out lots.
5. After notice given agent to sell the same at public sale.

SECTION.

6. Conditions of sale.
7. After public sale, agent to sell at private sale, proviso.
8. Application of proceeds of sale.
9. Further duties of agent relative to territorial debt.
10. May continue work on the capitol.
11. Compensation.
12. Offices of superintendent and director of penitentiary abolished.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That from and after the passage of this act it shall be the duty of the territorial agent to perform, in addition to the duties now required of him as agent, all the duties heretofore required by law of the superintendent of public buildings at Iowa City. And that the second section of an act, entitled "an act providing for the appointment of superintendent of public buildings at Iowa City, and the appointment of a territorial agent," approved January 14, 1841, be and the same is hereby repealed.

SEC. 2. It shall be the duty of the agent, in conjunction with two commissioners to be appointed by the governor, to revalue all the unsold lots, outlots, and forfeited lots, in Iowa City, and to affix on the lots an average minimum price of eighty dollars, and on the outlots a price corresponding with the price of lots aforesaid. The commissioners appointed as aforesaid shall, before entering upon the discharge of their duties as above stated, take and subscribe an oath for the faithful performance of their duties according to law. The revaluation aforesaid shall be made previous to the first of May next. Said commissioners shall receive for their services two dollars per day, for the time they are necessarily employed, to be paid by the territorial agent out of the proceeds of the sales of lots.

SEC. 3. It shall be the duty of the agent, before revaluing the lots as prescribed in the foregoing section, to cause to be surveyed into lots and outlots, as he may deem proper; the following reserves, as they appear on the town plat of Iowa City, viz: the promenade, lumber yard, quarry reserve, and governor's square, and after such survey shall have been made, the agent and commissioners aforesaid shall affix a valuation on such lots and outlots corresponding with the prices above stated.

SEC. 4. After the valuation of lots shall have been made as prescribed in the second section of this act, it shall be the duty of the agent to give notice that a public sale of lots will be held in Iowa City, in the month of May next, the day to be designated by the agent in said notice; at which time and place he shall offer, at public sale, to the highest bidder, all the unsold lots, outlots, and forfeited lots, in Iowa City; the above notice to be published in the newspapers published in Iowa City, for six weeks successively, previous to the day of sale. The conditions of sale to be not less than one-fourth, in cash, to be paid, one-

half of the said one-fourth in advance, and the other half of the said one-fourth in six months from the day of sale, the remainder to be paid in labor or materials on the capitol (the labor and materials to be such as the agent may prescribe) within six months from the day of sale, provided the agent shall require the same to be paid within that time.

SEC. 5. After all the unsold lots shall have been offered at public sale as aforesaid, the agent shall be authorized to sell, at private sale, any lot or lots that may remain unsold, at the minimum price affixed thereto, on the same conditions prescribed in the foregoing section of this act: provided, however, the agent may sell, at a discount of twenty per cent, any solid or unbroken blocks, and after payment shall have been made, the alleys or subdivisions of such blocks shall be used or vacated at the pleasure of the owner.

SEC. 6. That it shall be the duty of the territorial agent to set apart the proceeds of the sales of lots of 1840 and 1841, together with the proceeds of the cash sales hereafter to be made, or so much thereof as may be sufficient for that purpose, and faithfully apply the same to the redemption of the scrip issued by the said agent in 1841.

[70] SEC. 7. That it shall be the further duty of the said agent to conduct the business of his office, and to settle all accounts of his predecessors in office that remain unsettled at the passage of this act, in such manner as to settle and pay the debt or debts contracted with the Miners' bank of Dubuque with the least possible delay, and provide in future that there will be no danger of creating a territorial debt: provided, however, nothing in the two preceding sections shall be so construed as to authorize the issuing of any scrip to be redeemed by the territory, or future state of Iowa.

SEC. 8. That the agent may (if he can do so, and comply with the two preceding sections,) proceed with the work on the capitol, to enclose the north gable of the same, to finish the chimneys, and complete the first story above the basement, or so much thereof as the means at his command will enable him to do, and to do such other work as he may think proper.

SEC. 9. The territorial agent shall hereafter receive, annually, as a compensation for his services, a salary of eight hundred dollars.

SEC. 10. That the offices of director and superintendent of the penitentiary are hereby abolished, and that it is made the duty of the warden to perform the duties heretofore imposed on said director and superintendent, whenever any such services are necessary.

Approved February 13, A. D. 1843.

Chapter 10.

LEGISLATIVE ASSEMBLY.

AN ACT to authorize the legislative assembly to punish for contempt and to privilege the members from arrest.

SECTION.

1. Each house may punish by fine and imprisonment all persons not members for disorderly behavior in its presence, and may expel its own members. Proviso.

SECTION.

2. Members privileged from arrest.
3. Act in force from passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That each house of the legislative assembly [71] shall have authority to punish by fine and imprisonment every person not a member who shall be guilty of disrespect by any disorderly or contemptuous behaviour in its presence, or who, in any place where the legislative assembly is in session, shall enee, or who, in any place where the legislative assembly is in session, shall threaten harm to the body or estate of any of its members for anything said or done in the assembly, or who shall assault or arrest any witness or other person going or returning by order of either house, or who shall rescue any person arrested by order of either house of the assembly: and a majority of two-thirds of either house may expel a member of its own body: provided always, that the council shall have cognizance only of offenses committed as aforesaid against the council; and the house of representatives shall have cognizance only of offenses as aforesaid against the house of representatives: and provided, that the fine shall not exceed two hundred dollars and the imprisonment shall not exceed forty-eight hours for any one offense.

SEC. 2. *And be it further enacted*, that the members of the council and house of representatives shall be privileged from arrest, in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either house.

SEC. 3. This act to take effect and be in full force from and after its passage.

[Presented to the governor on the 25th of November 1839, and having remained with the governor three days, (Sundays excepted) the legislative assembly being in session this bill became a law November 28, 1839.]

CHAPTER 11.

LEGISLATIVE ASSEMBLY.

AN ACT to provide for the annual organization of the council and house of representatives of the territory of Iowa.

SECTION.

1. Secretary of former council to act as pro tem of succeeding.
2. To receive and file certificates of election for members.
- [72] 3. To call to order at certain time.
4. Committee of elections.
5. Election of officers.

SECTION.

6. Chief clerk of house of representatives of former session to act as pro tem of the succeeding.
7. To receive and file certificates of election for members.
8. To call to order at certain times.
9. Committee of elections.
10. Election of officers.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the secretary of the council in office on the last day of any session of the legislature, shall remain in office until the organization of the council of the succeeding annual session.

SEC. 2. That it shall be the duty of the secretary to receive and file all certificates of election issued for members of the council from the offices of the clerks of the board of county commissioners of the several counties in this territory, and make a roll of the members who, from such certificates, appear to have been elected members of said council.

SEC. 3. That the secretary, or if he should not be present, then some member or other person appointed by the members present, shall, at twelve o'clock meridian, on the day appointed for the meeting of the legislature, call the members, so enrolled, to order; the members shall then proceed to elect a president for the time being.

SEC. 4. That the council, when so organized, shall appoint a committee of elections by ballot or viva voce, as a majority present shall determine, to consist of five members, who shall forthwith proceed to examine the credentials of members and all contested elections, (if any,) and report the same to the council.

SEC. 5. That after the decision of all cases of contested elections, the council shall proceed to elect a president, secretary, and other officers to continue during the session.

SEC. 6. That the chief clerk of the house of representatives in office on the last day of any session of the legislature, shall remain in office until the organization of the house of representatives of the succeeding annual session.

SEC. 7. That it shall be the duty of the chief clerk to receive and file all certificates of election issued for members of the house of representatives from the offices of the clerks of the board of county commissioners of the several counties in this territory, and make a roll of the members who, from such certificates, appear to have been elected members of said house of representatives.

[73] SEC. 8. That the said chief clerk or if he should not be present, then some member or other person appointed by the members present, shall, at twelve o'clock meridian, on the day appointed for the meeting of the legislative assembly, call the members, so enrolled, to order; the members shall then proceed to elect a speaker for the time being.

SEC. 9. That the house, when so organized, shall appoint a committee of elections, by ballot or viva voce, as a majority present shall determine, to consist of five members, who shall forthwith proceed to examine the credentials of the members and all contested elections, (if any,) and report the same to the house.

SEC. 10. That after the decision of all cases of contested elections, the house shall proceed to elect a speaker, chief clerk, and other officers, to continue during the session.

Approved January 6, A. D. 1840.

CHAPTER 12.

LEGISLATIVE ASSEMBLY.

AN ACT fixing the time for the annual meeting of the legislative assembly.

SECTION.

1. Commencement of session.

SECTION.

2. To be held at Iowa City.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter the legislative assembly of this territory shall commence its annual session on the first Monday of December.

SEC. 2. That the next meeting of the legislative assembly shall be held in Iowa City, on condition that the public buildings at Iowa City shall be so far completed that the legislative assembly can be accommodated in said buildings, or that other sufficient buildings shall be furnished for the accommodation of the legislative assembly, rent free; and in either case, the governor shall issue his proclamation, informing the members of the legislature of the fact.

SEC. 3. All acts and parts of acts coming within the purview of this act are hereby repealed.

Approved January 13, A. D. 1841.

[74] CHAPTER 13.

LEGISLATIVE ASSEMBLY.

AN ACT to repeal an act entitled an act relating to officers of the legislative assembly.

SECTION.

1. Act repealed specified.

SECTION.

2. This act in force from passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the act approved the seventeenth day of February, eighteen hundred and forty-two, entitled an act relative to officers of the legislative assembly, be and the same is hereby repealed.

SEC. 2. This act to take effect from and after its passage.

Approved January 21, A. D. 1843.

CHAPTER 14.

ATTORNEYS.

AN ACT to fix the time for the first session of the supreme court of the territory of Iowa, and for other purposes.

SECTION.

1. See note.

SECTION.

2. Attorneys of district courts may practice in supreme court. Proviso.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1.

NOTE.—This section relative to the supreme court is made void by subsequent acts.

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 [75] 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, 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 session of the same, upon motion, be qualified and admitted, if such attorney shall be otherwise entitled to admission.

Approved November 28, A. D. 1838.

CHAPTER 15.

ATTORNEYS.

AN ACT to regulate the admission of attorneys.

SECTION.

1. Attorneys, etc., from other states admitted to practice in the courts of this territory upon certain conditions.
2. No other persons admitted without a license.

SECTION.

3. Mode of admission.
4. Clerks to keep record of same.
5. Attorneys to take oath.
6. License may be revoked upon certain conditions.
- " Proviso.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any attorney, counsellor of law, or solicitor in chancery, who may have been admitted and licensed to practice law in any other state or territory in the United States, may be admitted to practice law in the several courts of law and equity within this territory: provided, that any such applicant for admission as aforesaid, shall produce satisfactory evidence to the court of his previous admission as aforesaid, and correct moral character.

SEC. 2. That no person except as in first section provided, shall be admitted an attorney and counsellor of law within this territory, unless he shall have previously obtained a license for that purpose from any two of the judges of the supreme court, which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all superior and inferior courts of record in this territory. But no person shall be entitled to receive a li-[76]-cense as aforesaid, until he shall undergo a thorough and satisfactory examination by said judges, and produce satisfactory evidence of his correct, moral character.

SEC. 3. That all admissions to practice law within this territory, shall be by the supreme or district courts in session.

SEC. 4. That the clerks of the several courts of law and equity within this territory, are hereby required to keep a roll of every attorney and counsellor of law or solicitor in chancery who may be admitted to practice in their respective courts.

SEC. 5. That every attorney or counsellor of law who shall be admitted to practice as such before he receives his certificate of admission, shall take an oath to support the constitution of the United States, and faithfully to demean himself in the practice of his profession to the best of his knowledge and ability; and said oath shall be endorsed and certified on his certificate of admission by the clerk of the court before whom the oath was taken.

SEC. 6. The supreme or any district court may revoke the license granted to any attorney or counsellor of law, or may suspend any attorney or counsellor of law from practising as such for a limited time for any deceit, malpractice, or other gross misconduct, and each attorney and counsellor of law for any deceit, malpractice, or other gross misconduct, shall be liable in damages to the party injured thereby, and to such other punishment as may be provided by law: provided always, that every attorney, before his license shall be revoked, or before he shall be suspended from practising as aforesaid, shall receive a written notice from the clerk of the court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defense, and be allowed reasonable time to collect and prepare testimony for his justification.

Approved January 16, A. D. 1840.

[77] CHAPTER 16.

ATTACHMENT.

AN ACT allowing and regulating writs of attachment.

SECTION.

1. Writs of attachment to issue upon affidavit filed containing certain requisites.
2. Defendant may join issue on the facts set forth in the same upon the return of writ which shall be tried by jury.
3. Other cases in which writ may issue.
4. Amount of bail.
5. Writ not to issue in any case without bond, with approved security be filed for damages by wrongful suing out.
6. Service of writ.
7. Inventory and appraisal of property.
8. Rights of other claimants to be tested by jury.
9. Officer to act in accordance with verdict but such verdict not conclusive.
10. Property may be replevied upon giving bond to produce property to answer judgment.
11. Bond to be filed.
12. Conditions not broken by unavoidable accident to property.
13. Sheriff liable if he fail to take sufficient bond.
14. Property of a perishable nature may be sold.
15. Sheriff accountable for the proceeds.
16. Garnishee to be summoned.
17. To be examined on oath touching the sums due.

SECTION.

18. Failing to appear may be proceeded against for contempt.
19. When declaration must be filed.
20. Defendant not appearing clerk to prepare an advertisement.
21. Plaintiff to cause same to be published.
22. Failing to do so attachment to be dismissed.
23. Defendant may plead at any time before judgment.
24. Defendant failing to appear after public notice judgment to be entered.
25. Property to be sold, or if replevied plaintiff may sue on bond.
26. Demand not being satisfied second suit may be instituted.
27. Judgment against garnishee.
28. Garnishee failing to appear conditional judgment to be entered, and scire facias to issue.
29. Plaintiff may deny answers of garnishee, issue to be tried as between plaintiff and defendant.
30. Fees of garnishee for attendance and by whom paid.
31. Set-off.
32. Writ may be issued on Sunday.
33. Remedies for parties aggrieved.
34. Attachment not to be quashed for insufficiency of affidavit.
35. Writ may be issued against separate or joint estates or both.
- " Forms.
36. Repealing clause.

Be it enacted by the Council and House of Representatives [78] of the Territory of Iowa:

SECTION 1. 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:

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

scended so that the ordinary process cannot be served upon him. The facts and circumstances on which such belief is founded shall be distinctly stated and set forth in the affidavit.

SEC. 2. When a writ of attachment shall be sued out from any court of record of this territory, or from any justice of the peace, upon the return thereof the defendant may join issue on the facts and allegations set forth in the affidavit on which the attachment is sued out, and thereupon said issue shall be tried by a jury empaneled and sworn to try the same, in like manner as a jury is empaneled and sworn to try any other issue of fact in said courts. And if upon the trial of such issue the verdict of the jury shall be for the defendant, the court shall thereupon order that the attachment be forthwith dissolved.

SEC. 3. 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 requisites specified under the second head of the preceding section.

SEC. 4. 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 proceedings shall be the same as in actions founded on contract.

SEC. 5. 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 all damages to the defendant which he may sustain by a wrongful suing out of such writ of attachment.

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 lands, tenements, goods, chat-[79]-tels, rights, credits, moneys, or effects of said debtor, which may be found in his county, in whose hands soever the same may be found, or so much thereof as shall be sufficient to pay the debt sworn to as aforesaid, together with the interest and costs of suit.

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.

SEC. 8. When 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.

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 of the officer, or in his care, 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 said suit, and conditioned that said property, or its appraised value, shall be forthcoming to answer the judgment of the court in said suit.

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.

SEC. 12. Should the property 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.

SEC. 13. If the sheriff release the property without taking sufficient bond, he shall be liable to the plaintiff, in case judgment be rendered [80] against the defendant, for the appraised value of the property attached, or so much thereof as will satisfy said judgment and costs.

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, therefore, 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.

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.

SEC. 16. Upon affidavit filed in the office of the clerk who issued the writ of attachment aforesaid, at 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 that 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.

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 said defendant as aforesaid.

SEC. 18. If the said garnishee do not appear in court in compliance with said summons, he may be proceeded against by attachment as for 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 before the return day of said writ.

[81]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 is returnable, immediately after such time, 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.

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

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

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 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.

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 hereafter provided.

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 *feri 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.

SEC. 26. If the sum thus realized, together with that obtained from garnishees, in the maner 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.

SEC. 27. When a summons shall have been served upon any garnishee in the manner prescribed in section sixteenth, if he shall appear [82] 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.

SEC. 28. When such garnishee, having been duly summoned, shall fail to appear and answer in the manner provided in section eighteenth, the court shall direct a conditional judgment to be entered up against him to the full amount of the plaintiff's lawful 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.

SEC. 29. The plaintiff may deny the answers of any garnishee, or any part thereof, and 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, 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 jury (or the court, as the case may be,) shall assess the value thereof, and the judgment shall be for the amount in money.

SEC. 30. Garnishees shall be allowed fees for their travel and attendance at the rate of one dollar for each day's attendance, and mileage the same as wit-

nesses, to be paid by the defendant when they are indebted to him, and by the plaintiff when they are not indebted.

SEC. 31. 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 exists against the plaintiff or defendant in the suit.

SEC. 32. The writ of attachment, as authorized by this act, may be issued and served on Sunday: provided, in addition to the requisites pre-[83]-scribed in section first, the affidavit shall state that it would be unsafe to delay proceedings till Monday.

SEC. 33. 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.

SEC. 34. 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 bond: provided, a sufficient affidavit or bond shall be filed within a reasonable time after objections have been taken to those originally filed.

SEC. 35. Where 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.

FORMS.

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

WRIT OF ATTACHMENT.

TERRITORY OF IOWA, }
County of _____ } ss.

To the sheriff of said county:

WHEREAS, A. B. has stated on affidavit that J. S. is justly indebted to him in an amount not less than — dollars, (if the writ be issued in an action *ex delicto* it should state that) whereas in an action (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 (or as the case may be) the said J. S. is a non-resident, etc., etc., (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 as the case may be) according to the requirements of the first section of this act.

Therefore, these are in the name of the United States of America, to command you to attach the lands, tenements, goods, chattels, rights, credits, monies, and effects, of said J. S. wherever the same may be found in your county, or so much thereof as may be necessary to satisfy the amount above stated, together with interest and costs of suit, and [84] 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 of said court thereof, and have you then and there this writ. Witness, etc., etc.

SUMMONS TO GARNISHEES.

County } ss.

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. 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. M. 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. M. 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 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, etc., etc.

SEC. 36. An act allowing and regulating writs of attachment, approved January 7, 1839, is hereby repealed.

Approved February 16, A. D. 1843.

CHAPTER 17.

AUDITOR, ETC.

AN ACT providing for the appointment and duties of auditor of public accounts, and regulating the duties of territorial treasurer.

SECTION.

1. Appointment, bond and oath.
2. Penalty for breach of bond.
3. Auditor to sign warrants.
4. Treasurer to countersign.
5. Duty of treasurer on receiving an auditor's warrant, or money, on account of debts due the territory.
6. Auditor to keep accounts.
7. When to grant warrants.
8. Further duty of auditor.
9. To keep record.
10. How to proceed against collectors.

SECTION.

11. Treasurer to give additional bond.
12. Accounts, etc., to be delivered to successor.
13. Duties of treasurer.
- [85] 14. Further duties of the same
15. Suits—by whom instituted.
16. How to proceed when warrant is lost.
17. Compensation of auditor and treasurer.
18. Vacancy—how filled.
19. Certain act repealed, this to take effect from its passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall be appointed by the governor of the territory, as soon as he may think it necessary, by and with the advice and consent of the council, a territorial auditor, who shall hold his office for the term of one year, 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 governor 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 auditor of the territory of Iowa, and will deliver over to my successor all books, records, vouchers, papers, presses and furniture, appertaining to said office, whole, safe, and undefaced.

SEC. 2. That when any condition of said bond shall be broken by said auditor, the governor shall cause suit to be instituted against the auditor, and his surerties on his said bond, and one recovery thereon shall not render the bond void, but further breaches thereof may be prosecuted from time to time until the whole penalty be recovered.

SEC. 3. The auditor of public accounts shall, in all cases personally, sign all warrants for money on the treasurer of the territory, all tax receipts and all other papers necessary and proper for the auditor to sign.

SEC. 4. In all cases where warrants for money are issued by the auditor upon the territorial treasurer, the said warrants, before they are delivered to the person or persons for whose benefit the same are drawn, shall be presented by the auditor to the territorial treasurer, who shall personally countersign the same, and shall also enter in a book to be kept for that purpose by him, the date, amount, and the name of the person or persons to whom the same are made payable.

SEC. 5. Whenever any person shall pay to the territorial treasurer an auditor's warrant, or money, on account of any debt due the territory, or for taxes, the treasurer is required to give duplicate receipts for such payments, one of which receipts shall be filed in the auditor's office and entered in a book to be kept for that purpose, and the other [86] copy shall be countersigned by the auditor and delivered to the person making payment; and no receipt, unless it be so countersigned, shall be evidence of such payment.

SEC. 6. It shall be the duty of the auditor at all times to keep the accounts of the territory with any state or territory, and with the United States, with all public officers, corporations, and individuals having accounts with this territory. He shall audit all accounts of public officers who are to be paid out of the territorial treasury, and all persons authorized to receive money out of the treasury by virtue of an appropriation made or to be made by law.

SEC. 7. On ascertaining the amount due any person from the treasury, the auditor shall grant his warrant on the treasury for the sum due.

SEC. 8. The said auditor shall make a fair list of all accounts by him audited, in a book by him to be kept for that purpose, as also an account of all taxes or other moneys which may be due by any person to this territory, or which may be paid into the territorial treasury; he shall make out and present to each regular session of the legislative assembly, by the tenth day of the session, a report showing the amount of warrants by him drawn on the treasury, stating particularly on what account said warrants were drawn, to whom, and for what they were issued. He shall also report the amount of money received into the treasury, stating particularly the sources of revenue from which the same were derived.

SEC. 9. The said auditor shall keep a fair record of all warrants by him drawn, numbering the same, in a book to be kept for that purpose.

SEC. 10. When the auditor shall have made out abstracts of all sums due in the respective counties and sent them to the different collectors, he shall make out, in a book to be kept for that purpose, a fair account against such collector, a certified copy of which, with the seal of his office thereto attached, shall be sufficient for the attorney general or district attorneys to proceed by motion or action against such delinquent collectors and their securities before the dis-

trict court. All quietuses necessary to be granted shall issue by the auditor under his hand and seal of office.

SEC. 11. That the treasurer shall, whenever directed by the governor, give an additional bond with two or more securities to be approved of by the governor, in any amount not exceeding fifty thousand dollars, conditioned for the faithful performance of his duties, and for the delivery over to his successor of all books, records and papers appertaining [87] to his office, and all moneys in his possession as treasurer. The bonds of the treasurer and auditor shall be filed in the office of the secretary of the territory. And suit may be instituted on the bonds of the treasurer in like manner as on those of the auditor.

SEC. 12. If said treasurer die, resign, or be displaced, or otherwise cease to hold his office, then such treasurer, his heirs, executors or administrators shall regularly state the amount, and deliver the moneys and warrants, together with all books, records, memorandums, papers and instruments of writing of the territory in his or their possession, or which such treasurer shall have received and not paid out according to law, to the succeeding treasurer, who shall make report thereon to the legislative assembly. And the said report, if confirmed by the legislature, shall be a discharge of such treasurer's bonds, in which case they shall be given up to such treasurer, his heirs, executors or administrators.

SEC. 13. It shall be the duty of the territorial treasurer to receive the proceeds of all taxes and other public moneys of this territory, and safely keep the same. He shall not pay out of the treasury any money but on a warrant of the auditor, except the auditor's salary. He shall keep a regular and fair account of all moneys and revenues he receives and pays out agreeably to law, stating therein particularly on what account each particular sum was paid out or received, and the time when, and lay a copy thereof before the legislative assembly by the tenth day of any regular session.

SEC. 14. It shall be the duty of the treasurer to report quarterly to the auditor the amount of money which he may have received, stating on what account the same was paid into the treasury. He shall also report quarterly an account of payments out of the treasury, and deposit with the auditor all warrants which he may have paid or received, and take the auditor's receipt for the same, and it shall be the duty of the auditor to make entries of said reports in books to be kept by him for that purpose.

SEC. 15. It shall be the duty of the auditor to institute all suits and motions in favor of the territory.

SEC. 16. If any auditor's warrant shall be lost, mislaid or destroyed, so that the same cannot be presented for payment by the person entitled thereto, it shall be lawful for the auditor, at any time before such warrant shall be paid at the treasury, to issue a duplicate warrant to the person or persons having so lost any warrant as aforesaid, on such person filing with the auditor an affidavit in writing, sworn before [88] some justice of the peace or judge, stating the loss or destruction of any such warrant, and the auditor shall immediately certify the same to the treasurer, who shall thereby be authorized to pay any such duplicate warrant.

SEC. 17. The auditor and treasurer shall each receive one hundred dollars per annum for their services, and keep their offices at the seat of government: provided, that a further compensation may be allowed each by the legislature, if the amount of services seem to demand it.

SEC. 18. That whenever during the recess of the legislature, the office of auditor of public accounts or territorial treasurer shall become vacant by death, resignation or otherwise, the governor shall appoint such officer pro

tem. to fill such vacancy, whose term of service shall expire at the end of the next session of the legislative assembly.

SEC. 19. That sections second, third, and fourth of the act entitled "an act to provide for the appointment of a territorial treasurer, and defining his duties," approved January twenty-fourth, eighteen hundred and thirty-nine, be and the same are hereby repealed. This act to take effect and be in force from and after its passage.

Approved January 7, A. D. 1840.

CHAPTER 18.

AUDITOR AND TREASURER.

AN ACT regulating the salary of the auditor of public accounts and treasurer.

SECTION.

1. Compensation of auditor and treasurer.

SECTION.

2. Part of a certain act repealed.
3. Act in force from its passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the auditor of public accounts shall hereafter receive as compensation for his services, the sum of three hundred dollars annually, and that the territorial treasurer shall hereafter receive as a compensation for his services the sum of three hundred dollars annually; each of which said officers shall receive one-fourth of their respective salaries at the expiration of each and every [89] three months, out of any money in the territorial treasury not otherwise appropriated.

SEC. 2. That so much of the act entitled an act providing for the appointment and duties of auditor of public accounts, and regulating the duties of territorial treasurer, approved, January 7, 1840, as prescribes the amount which said officers shall receive for their services, be and the same is hereby repealed.

SEC. 3. This act to take effect, and be in force, from and after its passage.

Approved February 16, A. D. 1843.

CHAPTER 19.

AUCTIONEERS.

AN ACT to repeal an act entitled an act relating to auctioneers and auction sales.

Section—Act repealed.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the act, entitled an act, relating to auctioneers and auction sales, approved, January 17th, 1840, be and the same is hereby repealed.

Approved January 23, A. D. 1843.

CHAPTER 20.

ACTS AMENDED.

AN ACT to amend the several acts therein named.

| SECTION. | [90] SECTION. |
|--|--|
| 1. Certain words in the act relative to "water crafts found adrift, lost goods," etc., repealed. | 4. A certain act relative to execution of real and personal estate repealed. |
| 2. 1st and 3rd sections of an act relative to supreme court repealed. | 5. Relative to the alterations and amendments in this act. |
| 3. Certain alterations and amendments of the act relating to criminal proceedings made. | 6. Certain act relative to practice in the district courts, amended. |

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the words, "but when the animal taken up is suitable for the harness or saddle, no charge shall be allowed for keeping the same," in the twenty-sixth and twenty-seventh lines of the ninth section of the act entitled an act concerning water crafts found adrift, lost goods, and stray animals, approved, January 22nd 1839, be and the same are hereby stricken out.

SEC. 2. That the first and third sections of an act to amend an act fixing the terms of the supreme and district courts of the territory of Iowa, and for other purposes, approved, January 17th 1840, be and the same is hereby repealed.

SEC. 3. That chapters three, four, five and six, of an act entitled an act, regulating criminal proceedings, approved, January 4th, 1839, be reprinted, and that the fifth section of an act to amend an act, entitled an act, regulating criminal proceedings, approved, February 15th 1842, be reprinted, and placed at the end of the third chapter above named; and that the fourth, sixth, seventh, eighth, and ninth sections of the said act of the 15th of February, 1842, be reprinted and placed at the end of the sixth chapter above mentioned.

SEC. 4. That an act to amend an act subjecting real and personal estate to execution, approved February 17, 1842, be and the same is hereby repealed.

SEC. 5. That all the alterations and amendments herein provided for, shall be made in said acts, to be made in the sections and lines as they stand in the printed copies, and all parts of acts hereby directed to be stricken out are hereby repealed.

SEC. 6. The following shall be reprinted and added as additional sections to the act regulating practice in the district courts, passed at the present session of the legislative assembly, to-wit: the seventeenth and eighteenth sections of an act to amend the act, providing for the appointment of justices of the peace, etc., approved January 14, 1840; omitting in the second line of the said seventeenth section, the words, "or justice of the peace," and also "an act relative to writs of *scire facias* upon judgment in the district court, approved July 24, 1840; omitting the enacting clause.

Approved February 16, A. D. 1843.

[91] CHAPTER 21.

BAIL.

AN ACT concerning bail.

SECTION.

1. In actions on contract *capias* to be first process, upon affidavit containing certain particulars being filed.
2. May also issue in actions of trespass.
3. In such cases trespass and amount of damages must be stated in affidavit.
4. In other actions not to issue without order of judge of supreme court.
5. Order must be founded upon affidavit stating the nature of the injury.
6. Not to be made except for intentional injuries.
7. Amount of bail to be inserted in the order and endorsed on *capias*.
8. In other cases what shall be endorsed.
9. When proceedings shall not be deemed defective.
10. How *capias* to be served.
11. Defendant to be discharged on giving bond to sheriff.
12. If defendant be committed to jail the fact to be stated in the return.
13. Defendant may be discharged and securities released upon special bail being filed.
14. What persons shall not be permitted to be special bail.
15. Bail to be by recognizance.
16. In open court or before a justice of the peace.
17. Course to be pursued if bail be accepted to as insufficient.
18. In what the justification shall consist.

SECTION.

19. If not in open court justification to be by affidavit.
20. Defendant failing to appear sheriff and security may defend.
21. Judgment.
22. Remedy to sheriff and security.
23. For what amount executions may issue.
24. To be levied on defendants property if any.
25. Arrest or surrender of defendant to discharge sheriff and security.
26. To remain in custody.
27. Bail may surrender their principals, or he may surrender himself.
28. Surrender being certified, bail to be discharged.
29. Surrender before or after special bail.
30. Defendant to be discharged on filing recognizance and affidavit of justification.
31. Sheriff to discharge on being served with a copy of order.
32. Bail may arrest defendant.
33. *Capias* not valid in other counties without copy of bail bond accompanying it.
34. Defendant may be arrested by bail in any part of the territory.
35. Costs of surrender of defendant.
36. Plaintiff not entitled to bring suit on recognizance of bail.
37. What the bail may plead in action.
38. Bail released by death or surrender of defendant before judgment.
39. Special bail may have judgment against defendant.

[92] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. 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 (naming 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 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.

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.

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

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.

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.

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.

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 [93] on account thereof, provided said defendant be therein described with such accuracy as to leave no probable grounds for mistake.

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

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

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.

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.

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.

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.

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 enter-[94]-ed into before a justice of the peace as aforesaid, such bail shall justify in the first instance.

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.

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.

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.

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.

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

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.

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 [95] payment of the judgment, or until he be discharged by due course of law.

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.

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.

SEC. 28. Where such surrender shall have been made previous to the time of 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.

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.

SEC. 30. The sheriff, upon being served with said copy, shall forthwith discharge the said 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.

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.

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 [96] 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.

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

1. 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,

2. 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 services of either of said writs; and if any such defence be established, it shall entitle the said bail to a verdict.

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.

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 sheriffs return shall appear to have been collected from such bail on the original judgment.

Approved January 25, A. D. 1839.

BILLS OF EXCHANGE

[97] CHAPTER 22.

BANKING ASSOCIATIONS.

AN ACT to restrain unincorporated banking associations.

SECTION.

1. No persons to issue notes or bank bills without authority of law.

SECTION.

1. Penalty.
By whom and how recovered.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That no person, 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 offense, the sum of one thousand dollars, to be recovered by any person who shall sue for the 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.

Approved January 24, A. D. 1839.

CHAPTER 23.

BILLS OF EXCHANGE.

AN ACT concerning bills of exchange.

SECTION.

1. Foreign bills of exchange; when protested—how to be paid.

SECTION.

2. Inland bills of exchange protested, how to be paid.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 pay-[98]-ment, 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, 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, A. D. 1839.

CHAPTER 24.

BLACKS AND MULATTOES.

AN ACT to regulate blacks and mulattoes.

SECTION.

1. Conditions of settlement in this territory.
2. Failing to comply with these provisions, proceedings to be instituted against them.
3. Penalty for committing to prison without authority.
4. Penalty for hiring, etc., any negro before giving bond.

SECTION.

5. Servants of travelers and visitors exempt.
6. Sheriff to arrest and deliver to owners any blacks or mulattoes found in this territory, upon proper application of same.
7. District attorneys to prosecute, all violations of this act.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 [99] 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 behavior, 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 proper county, for the use of such negro or mulatto, in such manner as shall be directed by the board of county commissioners aforesaid.

SEC. 3. Any sheriff, or jailor, 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.

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.

SEC. 5. That the right of any person or persons to pass through [100] this territory with his, her, or their negroes or mulattoes, servant or servants, when emigrating or traveling to any other state, or territory, or country, or on a visit, is hereby declared and secured.

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.

SEC. 7. That it shall be the duty of 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.

CHAPTER 25.

BOATS AND VESSELS.

AN ACT to provide for the collection of demands against boats and vessels.

SECTION.

1. Cases in which boats or vessels shall be liable.
2. Suits, how instituted.
3. Complaint to be filed.
4. Demand set forth and verified.
5. Warrant to issue.
6. Proceedings in district court.
7. Who may plead in behalf of boat.
8. Time and manner of pleading.
9. Bond being executed to the plaintiff, boat to be discharged.
10. Boat or vessel may be sold to satisfy judgment.
11. Bond having been given execution to issue against principal and security.

SECTION.

12. Justices of the peace to have cognizance of cases under this act.
13. Proceedings before justice.
- [101] 14. On return of warrant justice to hear and determine complaint
15. Warrants, how served.
16. Such part or interest in boat to be sold as will satisfy judgment and costs.
17. Continuance of cause to be granted on good cause shown.
18. Continuance not to be granted to plaintiff.
19. Officers' fees.
20. Master or owner of boat may appeal or sue out a writ of error.
21. Limitation of actions.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That every boat or vessel used in navigating the waters of this territory shall be liable,

1. 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.

2. For all sums due for wharfage or anchorage of such boat or vessel within this territory.

3. 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,

4. 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.

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.

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.

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 [102] warrant, returnable 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.

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.

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.

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.

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.

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.

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, executions 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.

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.

[103] 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.

SEC. 15. All warrants issued by this act shall be served and returned as writs of attachment are served and returned.

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.

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.

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

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.

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.

Approved, December 20, 1838.

[104] CHAPTER 26.

BONDS, ETC.

AN ACT in relation to bonds and other securities.

SECTION.

1. What instruments shall be deemed valid and binding.
2. Security may be by bond unless otherwise directed.
3. Action for damages on breach of covenant.
4. County commissioners may maintain action.

SECTION.

5. In what name action may be prosecuted.
6. Clerk to furnish certified copy of bond.
7. Provisions of this act to be observed as far as practicable.
8. Rights saved.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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.

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.

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.

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 [105] have been made payable, and for the use of the actual party in interest.

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.

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.

SEC. 8. Nothing herein contained shall be construed to render invalid any instrument which would otherwise have been of binding efficacy, nor to prohibit any course of proceeding which would have been allowed had this act not taken effect.

Approved January 25, 1839.

CHAPTER 27.

CHANCERY.

AN ACT relative to proceedings in chancery.

SECTION.

1. Jurisdiction granted to district courts.
2. Special terms appointed.
3. Rules of proceeding established.
4. Applications.
5. Summons to defendants.
6. Its form, service and return.
7. Institution of suit, where there are several defendants.
8. Process, how served.
9. Defendants not found notice of petition to be published.
10. Costs in certain cases.
11. Proceedings against heirs.
12. Time of filing plea or answer.
13. Plea not filed decree rendered.
14. Issue taken in reply.
15. Demurrer and answer.
16. Plea or demurrer of defendant being overruled.
17. Costs of demurrer.
18. Replication or exceptions.
19. Exceptions filed, to answer referred to a master, and appeal therefrom.
20. Costs of reference.
21. Defendant sworn to his answer.
22. Answer relative to a new party.
23. Defendant may exhibit interrogatories to complainant, not answered petition dismissed.
24. Cross petition.
25. Orders, common or special entered.
26. Amendments.
- [106] 27. Issue.
28. True answer on all points.
29. Courts may direct issue to be tried by jury.
30. Pleadings, how served.
31. Depositions.
32. Witnesses.
33. Complainant failing to attend bill dismissed with costs.
34. Defendant failing, court to make decree.
35. Suits concerning land may be instituted.
36. Cases in which defendant may be charged with costs.

SECTION.

37. Security required of petitioner in certain cases.
38. Not given property sequestered.
39. Defendant, heirs or assignees may answer after decree. Proviso.
40. Defendant may file his petition for an account, etc.
41. Failing to adopt either measure decree to be confirmed.
42. Decree to have same force as a judgment.
43. All proceedings to be filed in clerks office.
44. Party failing to comply with decree, its operation.
45. Decree to operate as a lien must be recorded.
46. Decree for sale of mortgaged premises.
47. Sales of real estate made by sheriff.
48. Deeds, by whom executed.
49. Proceeds of sale.
50. If insufficient, execution to issue against other property.
51. Abatement of suits.
52. Proceedings when cause of action will not admit of survivorship.
53. Revival of suit.
54. Effect of parties failing to appear.
55. When persons interested may be entered as complainants.
56. Failing to do so, proceedings.
57. Rules of proceedings.
58. Power to make, amend or revoke.
59. Orders of reference and notice of same.
60. Enforcement of decrees.
61. Execution of process.
62. What interest subject to the payment of judgment or decrees.
63. Applications to court for that purpose.
64. Power of court to enforce all necessary transactions.
65. Sale of equitable interests.
66. Writ of attachment.
67. Appeal.
68. Notice of same.
69. Papers and record to be certified up.

| SECTION. | SECTION. |
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| 70. Not to operate as a stay without security from appellant. | 84. Test and service of writ. |
| 71. Proceedings if decree be affirmed. | 85. Attachment for contempt. |
| 72. No lien to be vacated by such an appeal. | 86. Motion to dissolve injunction or dismiss proceedings. |
| 73. Petition for a rehearing. | 87. Affidavits by complainant. |
| 74. Petition for a review. | 88. Terms imposed by court for an injunction. |
| 75. When may be filed as original. | 89. Writs of ne exeat. |
| 76. When filed with leave of court. | 90. Petition and affidavit necessary. |
| 77. Court in either may stay proceedings. | 91. In what cases writ shall not be granted. |
| 78. Motion for that purpose. | 92. When may be discharged. |
| 79. Security in case of stay. | 93. Perpetuation of testimony. |
| 80. Not stayed decree to be complied with. | [107] 94. Names and interrogatories and cross interrogations to be filed. |
| 81. Writs of injunction. | 95. Depositions to be evidence. |
| 82. Security given by applicant. | 96. Further proceedings in relation to depositions. |
| 83. Bond in case of stay. | |

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the several district courts, within the different counties of this territory, shall have exclusive original jurisdiction of all matters in chancery properly arising within their respective counties, in which a plain, adequate, and complete remedy cannot be had at law.

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

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

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

SEC. 5. Said clerk shall thereupon issue a summons to the defendants named in such petition, commanding them to appear at the next term of the court and answer the petition of the complainant. If the petition be filed in term time, the summons may be made returnable forthwith.

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.

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.

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.

[108] 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, contain-

ing 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.

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.

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.

SEC. 12. Where service shall have been effected 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.

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.

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.

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.

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

[109] 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.

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 masters report to the court.

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.

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.

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

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.

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.

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.

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

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

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

[110] 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.

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.

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.

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.

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 costs.

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 think equitable and just.

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.

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 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.

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.

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 [111] 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.

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, 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 proceeding 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 [112] 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.

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.

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.

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..

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.

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.

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.

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 [113] of such death, but no order or decree of the court shall bind a person not a party thereto.

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

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.

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.

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.

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.

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.

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 rea-[114]-sonable 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.

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.

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.

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.

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.

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.

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 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.

[115] 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.

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.

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.

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.

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.

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.

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.

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.

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.

SEC. 77. In either case the court, on motion, may at their discre-[116]-tion 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.

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.

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

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.

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.

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.

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.

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.

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

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.

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.

[117] 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.

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.

SEC. 90. No such writ shall be granted but upon petition filed, with an affidavit annexed of the truth of the allegation contained in said petition.

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.

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*.

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.

SEC. 94. Previous to the order for taking depositions to perpetuate testimony, the party applying 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.

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.

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 infirm-[118]-ity, 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.

Approved January 23, 1839.

CHAPTER 28.

CONSTABLES.

AN ACT for the election of constables, and defining their duties.

SECTION.

1. Election and number.
2. Oath, and before whom taken.
3. Bond and security.

SECTION.

4. Failing to give bond office to be vacated.
5. Duties.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 elected and duly qualified: provided, that if a vacancy shall happen, the county commissioners may fill such vacancy by appointment.

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 moneys which may come into my hands as such constable;" which oath or affirmation shall be taken before any [119] 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.

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.

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.

SEC. 5. It shall be the duty of every constable to apprehend and bring to justice all felons and disturbers 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 24, 1839.

COUNTY COMMISSIONERS

[120] CHAPTER 29.

COUNTY COMMISSIONERS.

AN ACT to legalize the acts of county commissioners.

SECTION.

1. Acts heretofore done made valid.
Proviso.

SECTION.

2. Transcripts from records evidence
in court.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all the acts of the respective boards of county commissioners within this territory, heretofore done or 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.

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.

Approved, January 25, 1839.

CHAPTER 30.

COUNTY COMMISSIONERS.

AN ACT making the clerk of the board of county commissioners, elective by the people.

SECTION.

1. Time of election, term of office, and
bond.
2. Places of holding elections.
3. Contested elections.

SECTION.

4. Forfeiture for failure to deliver over
books, papers, etc.
5. Repealing clause.

Be it enacted by the Council and House of Representatives [121] of the Territory of Iowa:

SECTION 1. That an election shall be held on the first Monday in August next, and on the first Monday in August, one thousand eight hundred and forty-four, and on the first Monday in August in every second year thereafter, in each county in this territory, for a clerk of the board of county commissioners; and the clerks so elected, shall continue in office for two years, and until their successors shall be elected and qualified to office; and previous to their entering upon the duties of their respective offices, they shall take and subscribe an oath, and enter into bonds as is now required by law.

SEC. 2. The election provided for in this act, shall be held at the same places, and conducted in all respects as is now provided for by the law regulating general elections; and vacancies shall be filled in the same manner, provided said board may appoint a clerk pro tempore, whose term of service shall continue until a clerk shall be elected and qualified as provided for in this act.

SEC. 3. In all contested elections of the before mentioned officers, it shall be settled as provided for in the act in relation to contested elections.

SEC. 4. Every clerk who shall neglect or refuse to deliver over to his successor in office, all papers, books, and moneys, in his possession, as well as all and everything appertaining to his office, shall forfeit and pay any sum not exceeding five hundred dollars, nor less than twenty-five dollars, to be recovered as in action of debt, in any court having jurisdiction of the same.

SEC. 5. All acts and parts of acts, authorizing the county commissioners to appoint clerks, be and the same are hereby repealed.

Approved, February 16, 1842.

CHAPTER 31.

COUNTY COMMISSIONERS.

AN ACT organizing a board of county commissioners in each county.

SECTION.

1. Board established and number of commissioners.
2. Manner of electing and term of service of commissioners.
3. Oath of commissioners.
- [122] 4. Made a body politic, style, powers and duty.
5. Time and place of meeting.
6. When a question shall be continued and vacancies in the board.
7. Board to inspect assessors books and levy tax.
8. To use a seal, further duties, penalty for neglect, etc.
9. What suits are and are not affected by this act.
10. Duties of the clerks of boards.
11. County orders and the payment of taxes.
12. To be received by collectors.

SECTION.

13. Collectors or other officers not to purchase at a discount.
14. Appeals from the decisions of the board to district court.
15. Rooms for district court to be provided by commissioners.
16. Books and stationery to be provided for county officers.
17. Board may hold extra sessions.
18. Elections of boards under former acts not vitiated by this.
19. Compensation of commissioners.
20. Oath and bond of clerk.
21. Suit may be instituted upon same.
22. Certified copy of valuation of taxable property by commissioners transmitted to territorial auditor by clerk.
23. County orders issued by clerk.
24. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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 commis-

sioner 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.

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 per-[123]-son 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 they shall have authority:

First. To provide for the erecting and repairing of court houses, jails and other necessary public buildings for the use of the county.

Second. To lay out, discontinue or alter county roads, highways and other ways, and to do all other necessary acts relating thereto.

Third. To license ferries and fix the rates of ferriage, and to grant licenses to innholders, retailers of spirits, and other liquors, and common vituallers, and to do all other acts relating to licensing houses which are or may be provided in the laws regulating licenses, except in the limits of such incorporated cities or towns as by law have or may have the power of regulating licenses.

Fourth. To fix the amount of taxes to be assessed according to the provisions of the revenue law, and cause the same to be levied and collected.

Fifth. To examine, allow and settle all accounts, of the receipts and expenditures of the money of the county.

Sixth. To have the care of the county property, and the management of the county funds and business, except in cases otherwise provided for; and they shall have no other powers except such as are or may be given 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 claim against such county: provided, that every person or persons having any claim or claims against any county shall first present the same to the board of county commissioners for payment, [124] and if any such person or persons shall feel aggrieved by the decision of said board, they shall have the right to appeal to the district court, as hereinafter provided in this act.

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 Monday in April, July, October and January, in each and every year, and may sit six days at the July term, and four days at each of the other terms if the business of the county shall

require it: provided, however, if the district court shall meet on any of the before mentioned days, the commissioners shall meet on the Monday preceding.

SEC. 6. 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 commissioners, 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: provided, such vacancy happen four months previous to any annual election.

SEC. 7. It shall be the duty of the board of commissioners, at their July 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.

SEC. 8. 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, which statement shall contain a full and particular description of each item, from whom, and on what account received, and to whom and on what account expended, together with an accurate statement of the actual condition of the finances of the county at the end of each fiscal year, including all debts and liabilities of every description, and the assets and other means to discharge the [125] same, and have the same set up at the court house door, and at two other public places in their county respectively, and publish in some newspaper in their county, if there be any, three weeks. And if the said commissioners, or either of them, after accepting their appointment shall neglect 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. 9. 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.

SEC. 10. It shall be the duty of the clerk 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; at the close of each term of said board, to furnish the county treasurer with a list of all orders passed to the credit of individuals during

the terms aforesaid, giving the number of the order, the name to whom payable, and the amount thereof, and it shall be the duty of the treasurer to list the same in an order book to be kept by him for that purpose, and to settle and pay such orders by seniority, or reserve funds for such payment, in all cases except where the same have been received in payment of taxes.

SEC. 11. 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 [126] 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 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.

SEC. 12. 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 persons taxes, due such county.

SEC. 13. 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 offense in a sum not exceeding five hundred dollars.

SEC. 14. 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 so 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. 15. 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.

SEC. 16. It shall be the duty of the board of commissioners to provide all books and stationery necessary for the use of said board; all books and stationery necessary for the use of the recorder of deeds, [127] county surveyors, and all books and stationery necessary for the use of the clerk of the district court, the probate court, and treasurer.

SEC. 17. 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: provided, that such extra sessions shall not exceed six days in any one year, 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.

SEC. 18. 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 during the term for which they were elected, and until their successors are elected and qualified.

SEC. 19. That the county commissioners shall receive two dollars and fifty cents per day, for every day necessarily employed under the provisions of law.

SEC. 20. That upon the taking effect of this act, the commissioners' clerk, in each of the counties in this territory, is hereby required to execute a bond with two or more securities, to the acceptance of the board of county commissioners of the proper county, in the penal sum of two thousand dollars, payable to the territory of Iowa, and conditioned for the faithful discharge of the duties of his office, and shall also take and subscribe an oath or affirmation, to be endorsed on said bond, that he will faithfully and impartially discharge the duties of his office to the best of his skill and ability; which bond so endorsed shall be deposited with the county treasurer and be by him carefully preserved.

SEC. 21. That suit may be instituted on such bond against the commissioners clerk and his securities, in the name of the territory of Iowa, and for the use of the territory, county or any party or person injured by the misconduct in office of said clerk, or by the omission of any duty required of him by law. The clerk of the board of county commissioners shall have the power to appoint a deputy, whose acts he shall be responsible for, and to administer all oaths necessary in the discharge of the duties of his office.

SEC. 22. The clerk of the board of commissioners for each county, shall on or before the tenth day of December, in each year, certify under his hand, and transmit to the auditor of public accounts, by mail, the aggregate valuation of the taxable property of the county, as taken from the corrected valuation of the assessment rolls for that year, as corrected and equalized by the commissioners.

[128] SEC. 23. That the clerk of the board of county commissioners is hereby authorized to issue county orders, when the proper voucher required by law is presented to him, in all cases where the amount to be paid is fixed by law, and shall file said voucher in his office.

SEC. 24. That all acts and parts of acts coming within the purview of this act, be and the same are hereby repealed.

Approved February 15, A. D. 1843.

CHAPTER 32.

COUNTY COMMISSIONERS.

AN ACT authorizing the several boards of county commissioners to grant permits for constructing dams across navigable rivers.

SECTION.

1. Permits granted, with proviso.
2. Persons applying for permit to give bond.
3. Liable to suit for obstruction of navigation.
4. Penalty for wilful injury to dams.
5. Location of dams.
6. Locks constructed.

SECTION.

7. Dams obstructing navigation declared nuisances.
8. Dams already constructed injuring navigation declared nuisances and abated.
9. Tax for permit.
10. Manner of obtaining it.
11. Act in force from passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the several boards of county commissioners in this territory, be and the same are hereby authorized and empowered to grant permits for the construction of dams across any navigable river within the limits of their respective counties, to any person or association of persons applying for the same, for any term of years not exceeding fifty, under such restrictions and regulations as hereinafter provided: provided, that no permit granted under the provisions of this act, shall authorize the person or persons obtaining the same, to obstruct in any manner the navigation of the river across which the dam is sought to be constructed, and the said boards of commissioners shall have and exercise a supervisory control over all dams in their respective counties, so as to provide, at all times, for the free [129] passage, without delay, of all steam, keel and flat boats, rafts and other water crafts.

Sec. 2. Before any permit shall be granted as aforesaid, the person or persons applying for the same shall enter into bond to the board of commissioners of the proper county, with good security, to be by the said board approved, in the penal sum of \$2,000 dollars, conditioned for the prompt payment of any and all damage sustained by any person or persons, in consequence of any obstruction to navigation occasioned by said dam, which bond shall be filed in the office of the clerk of said board, and upon a breach of its condition may be put in suit by any person injured thereby.

SEC. 3. Any person injured by any obstruction to navigation occasioned by the construction of any dam across any navigable river, shall be entitled to a judgment of double the amount of damage he may prove to have sustained, against the obligors in the bond mentioned in the next preceding section, and said judgment, when obtained, shall operate as a lien upon the property in the dam and mills and machinery connected therewith, from the time the damage was sustained until the satisfaction of such judgment: provided, that the suit for the recovery of damage sustained as aforesaid, shall be commenced within six months after the happening of the injury.

SEC. 4. And if any person shall wilfully and maliciously injure any dam across any river as aforesaid, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars, and in default of payment shall stand committed until the fine and costs

be paid, or otherwise discharged according to law, and shall moreover be liable in an action of trespass to the party injured in treble damages.

SEC. 5. No two dams shall be nearer than two miles of each other, unless the board of commissioners of the proper county, shall, for good cause, otherwise direct.

SEC. 6. Every dam authorized by this act shall contain a good and convenient lock, not less than thirty-five feet in width, and not less than one hundred and thirty-five feet in length, for the passage of steam, keel and flat boats, rafts, and other water crafts, which lock shall be the first part of the dam constructed.

SEC. 7. All dams constructed under the provisions of this act, which shall in any manner obstruct the navigation of any river, are hereby declared to be public nuisances, which may be abated in a summary [130] manner on application of the board of county commissioners to the district court, at the expense of the proprietors thereof, for which the obligors, in the bond hereinbefore mentioned, shall be liable.

SEC. 8. All dams now constructed, or to be constructed under any charter from the legislative assembly, now granted, across any navigable river in this territory (with the exception of those across Cedar and Skunk and also that part of Turkey running through Clayton county above the mouth of Volga) which occasion any obstruction to navigation, shall be abated in like manner, as in the next preceding section, if the obstruction complained of be not permanently removed within a reasonable time after complaint, and notice by the board of commissioners.

SEC. 9. The several boards of commissioners are hereby authorized to tax and receive for each permit, granted under this act, any sum not exceeding one hundred dollars, for the use of the county.

SEC. 10. Every person wishing to obtain a permit, under the provisions of this act, shall give thirty days public notice of his intended application for such permit, either in some newspaper published in the county, or by written advertisements posted up in three or more public places in said county.

SEC. 11. That this act shall take effect and be in force from and after its passage.

Approved February 15, A. D. 1843.

CHAPTER 33.

UNORGANIZED COUNTIES.

AN ACT in relation to that portion of country which is attached to the several organized counties in this territory for judicial purposes.

SECTION.

1. Rights of inhabitants.

SECTION.

2. Proviso.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all the country that is at present, or may hereafter be attached to any of the organized counties in the territory, be, and the same is hereby attached for revenue, election and [131] judicial purposes, and the inhabitants thereof shall be entitled to and enjoy all the rights and privileges of

the county or counties to which they are attached that they would be entitled to were they citizens proper of some organized county.

SEC. 2. Provided, that nothing herein contained shall be so construed as to authorize the authorities of any county in this territory to lay out or open any public road or highway, or to make any public improvement whatever, beyond the line to which the Indian title to the land has been or may hereafter be extinguished.

SEC. 3. This act to take effect from and after its passage.

Approved July 28, A. D. 1840.

CHAPTER 34.

UNORGANIZED COUNTIES.

AN ACT to establish new counties and define their boundaries in the late cession from the Sac and Fox Indians, and for other purposes.

SECTION.

1. Boundaries of Davis county.
2. Boundaries of Appanoose.
3. Boundaries of Wapello.
4. Boundaries of Kishkekosh.
5. Boundaries of Keokuk.
6. Boundaries of Mahaska.
7. Boundaries of Iowa.
8. Boundaries of Poweshiek.
9. Boundaries of Benton.

SECTION.

10. Boundaries of Tama.
11. Boundaries of Black Hawk.
12. Boundaries surveyed.
13. Justices of the peace appointed, their powers and duties.
14. May appoint constables.
15. Expenses of survey borne by new counties.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the following shall be the boundaries of a new county, which shall be called Davis, to-wit: beginning at the northwest corner of township seventy, north, range twelve west; thence west on the township line between township (70) seventy and (71) seventy-one to range sixteen west; thence south on said range line to the Missouri state line; thence east on said line to the southwest corner of Van Buren county line, thence north with said line to the place of beginning.

[132] SEC. 2. That the following boundaries shall constitute a new county to be called Appanoose, to-wit: beginning at the northwest corner of Davis, and running west on the township line dividing townships (70) seventy and (71) seventy-one to range twenty west, thence south on said range line to the Missouri state line, thence on said line to the southwest corner of Davis county, thence north to the place of beginning, which county with that of Davis and all the territory lying west of Appanoose, shall be attached to Van Buren county for judicial, revenue and election purposes.

SEC. 3. That the following boundaries shall constitute the boundaries of a new county which shall be called Wapello, to-wit: beginning at the northwest corner of Jefferson county, range (11) eleven and (12) twelve west, thence west on township line (73) seventy-three and (74) seventy-four to range line dividing ranges (15) fifteen and (16) sixteen; thence south on said line, to the northwest corner of Davis county; thence east, to the southwest corner

of Jefferson county; thence north, on range line dividing ranges (11) eleven and (12) twelve to the place of beginning.

SEC. 4. That the following boundaries shall constitute a new county, to be called Kishkeekosh, to-wit: beginning at the northwest corner of Wapello county; thence west, on township line dividing townships (73) seventy-three and (74) seventy-four, to range (20) twenty west; thence south on said line to the northwest corner of Appanoose county; thence on the township line dividing townships (70) seventy and (71) seventy-one; thence east, to the southwest corner of Wapello county; thence north, to the place of beginning; which county with that of Wapello and the territory lying west shall be attached to Jefferson county for judicial, revenue and election purposes.

SEC. 5. That the following shall be and constitute the boundaries of a new county, to be called Keokuk, to-wit: beginning at the northwest corner of Washington county, range ten west; thence west on township line dividing townships (77) seventy-seven and (78) seventy-eight, to range (14) fourteen west; thence south on said range line to township corners of townships (73) seventy-three and (74) seventy-four of ranges (13) thirteen and (14) fourteen west; thence east to the southwest corner of Washington county line; thence north to the place of beginning.

SEC. 6. That the following shall constitute and be the boundaries of a new county, to be called Mahaska, to-wit: beginning at the northwest corner of Keokuk county; thence west on township line dividing townships (77) seventy-seven and (78) seventy-eight, to range line eighteen; thence south, on range line dividing ranges (17) seventeen and (18) eighteen, to township corners (73) seventy-three and (74) seventy-four of ranges (17) seventeen and (18) eighteen; thence east on township line dividing townships (73) seventy-three and (74) seventy-four, to the southwest corner of Keokuk county; thence north, to the place of beginning; which county, with that of Keokuk and all the territory west, shall be attached to Washington county for judicial, revenue and election purposes.

SEC. 7. That the following shall constitute the boundaries of a new county which shall be called Iowa, to-wit: beginning at the corner of townships (77) seventy-seven and (78) seventy-eight, north of range (8) eight and (9) west; thence north on said line to corners of townships (81) eighty-one and (82) eighty-two; thence west to range (13) thirteen west; thence south, on said line to corners of townships (77) seventy-seven and (78) seventy-eight; thence east on township line dividing townships (77) seventy-seven and (78) seventy-eight to the place of beginning.

SEC. 8. That the following shall constitute the boundaries of a new county, which shall be called Poweshiek, to-wit: beginning at the northwest corner of Iowa county, thence west along the township line to range (17) seventeen west; thence south on said range line to corner of townships (77) seventy-seven and (78) seventy-eight of range (16) sixteen and (17) seventeen; thence east to the southwest corner of Iowa county; thence north to the place of beginning, which county with that of Iowa, shall be attached with all the territory west to Iowa county for judicial, revenue and election purposes.

SEC. 9. That the following boundaries shall constitute a new county and be called Benton, to-wit: beginning at the northwest corner of Linn county, thence west to range (13) thirteen west; thence south on said line to the corner of townships (81) eighty-one and (82) eighty-two of range (13) thirteen and (14) fourteen west; thence east to southwest corner of Linn county; thence north to the place of beginning.

SEC. 10. That the following boundaries shall constitute a new county, and be called Tama, to-wit: beginning at the northwest corner of Benton county, thence west to range (17) seventeen west; thence south to the corner of town-

ships (81) eighty-one and (82) eighty-two of range (16) sixteen and (17) seventeen west; thence east to the southwest corner of Benton county, thence north to the place of beginning, which county with that of Benton and the territory west, shall [134] be attached to Linn county for judicial, revenue and election purposes.

SEC. 11. That the following boundaries shall constitute a new county, and be called Black Hawk, to-wit: beginning at the northwest corner of Buchanan county, thence west to range fifteen west; thence south to the corner of townships (86) eighty-six and (87) eighty-seven, of range (14) fourteen and (15) fifteen west; thence east to the southwest corner of Buchanan county, thence north to the place of beginning, and that all the territory north and west be attached to Delaware county for judicial, revenue and election purposes.

SEC. 12. That so soon as the treaty made by Governor Chambers with the Sac and Fox Indians shall have been ratified by the United States senate, and the Indians removed from the late purchase, the board of county commissioners of each organized county to which any of the new counties is attached for judicial or other purposes, shall have the boundaries of any of the new counties surveyed and marked out as near as may be, to correspond with the spirit and meaning of this act; which boundaries shall remain as the county boundaries, until the country is surveyed by the United States, and that the township lines shall remain and be the county boundaries thereafter.

SEC. 13. That the governor of the territory be and he is hereby authorized to appoint and commission as many justices of the peace in any of the new counties established by this act, and elsewhere, within the boundaries of the territory of Iowa, as defined by the acts of congress, except in organized counties, as he may deem expedient, and each justice so appointed and commissioned, shall hold his office for the term of two years, and before entering upon the duties of his office, shall take an oath and enter into bond in the same manner as is required of justices of the peace elected in organized counties, so far as applicable; which bond shall run in the name of the board of commissioners and be approved by and filed in the office of the clerk of the district court of the county to which the district of country in which such justice may reside, may be attached for judicial and other purposes; and justices of the peace so appointed, commissioned and qualified, shall possess the same jurisdiction and powers in all cases whatsoever throughout the county or district of country for which they may have been appointed, as justices duly elected and qualified in organized counties possess.

SEC. 14. Each justice so appointed, commissioned and qualified, shall have the power of appointing two constables who shall take an oath and enter into bond in like manner as is required of constables [135] elected under the laws of the territory, so far as applicable, which bonds when executed to the approval of the justice, shall be filed in the office of the justice making the appointment.

SEC. 15. And it shall be the duty of the new counties, and they are hereby required to refund all moneys that the old counties may have expended in having their county boundaries surveyed.

Approved February 17, A. D. 1843.

CHAPTER 35.

COURTS.

AN ACT to repeal an act of the legislative assembly of the territory of Wisconsin, approved, January 19th, 1838.

SECTION 1—Act concerning district courts repealed.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That "an act to amend an act, entitled an act concerning the supreme and district courts, and defining their jurisdiction and powers," approved January 19, 1838, concerning the commencement of actions in the district courts, be and the same is hereby repealed.

Approved December 14, A. D. 1838.

CHAPTER 36.

COURTS OF PROBATE.

AN ACT for establishing courts of probate.

SECTION.

1. Courts established.
2. Appointment of judges, term of service, jurisdiction, oath of, etc.
3. Time of holding courts, proceedings, seal, etc.

SECTION.

4. Appeal to district court and writs of error.
5. Vacancies, how filled.
6. Fees and compensation.
7. Temporary seals.

[136] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. 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.

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, and by whom administered, to be filed in the office of the clerk of the district court, of the proper county.

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. 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.

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.

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 com-[137]-mission 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.

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.

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, A. D. 1839.

CHAPTER 37.

COURTS OF PROBATE.

AN ACT to amend an act establishing the court of probate.

SECTION.

1. Duty of judges relative to books, papers, etc.

SECTION.

2. Duty of judges, whose term expired before passage of this act.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That from and after the passage of this act, it shall be the duty of all judges of probate, their executors, or administrators, who now hold or may hereafter hold that office, to deliver over to the successors in office of the said judges of probate, all books and papers relating to said office of judge of probate in their possession, and upon failure to do so within five days after demand, by the successor of said judges of probate, they shall be liable to indictment and punishment by fine, not exceeding one thousand nor less than one hundred dollars.

SEC. 2. That it shall be the duty of all judges of probate, whose term of office expired before the passage of this act, to deliver over to their successors in office, all books and papers relating to their office, within five days after de-

manded by their successors, and upon their failure so to do, after such demand, they shall be liable to indictment, and the same punishment as is provided for in the first section of this act.

Approved, February 16, 1842.

[138] CHAPTER 38.

COURTS.

AN ACT fixing the terms of the supreme and district courts of the territory of Iowa, and for other purposes.

SECTION.

- 1 See note below.
2. See note below.
3. Counties composing the first, second and third districts.
4. Counties unorganized attached.
5. Provides for exchange of districts by

SECTION.

- Judges and absence or sickness of same.
6. Absence of judge.
7. See note below.
8. Special terms of court.
9. Act in force from its passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

NOTE.—The first and seventh sections of this act are made void by subsequent acts upon the same subject.

SECTION 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.

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.

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.

[139] 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. 8. Whenever the judge of any of said districts shall consider it necessary that a special term of the court should be held, in any of the counties in his district, for the trial of either criminal or civil causes he shall notify the sheriff of said county of the same, and it shall be the duty of said sheriff to put up, at each of the precincts in said county, a notice of the time when said court will commence, at least three weeks previous to said special term of the

court: provided, however, that said special term shall not conflict or interfere with the regular term of court, in any other county in said district. Jurors shall be chosen, and notified, as at the regular term of the courts.

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

Approved, January 21, 1839.

CHAPTER 39.

COURTS.

AN ACT to amend "An act fixing the terms of the supreme and district courts of the territory of Iowa, and for other purposes."

SECTION.

1. See note below.
2. Terms in first judicial district.

SECTION.

3. See note below.
4. Act in force from passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That, etc.—

NOTE.—The first and third sections of this act are made void by subsequent acts upon the same subject.

SEC. 2. The terms of the district court in the first judicial district shall be as follows:

In Des Moines on the third Mondays in February and October.

In Henry on the third Monday in March and first Monday in September.

[140] In Jefferson on the first Monday in April and second Monday in September.

In Van Buren on the second Monday in April and the third Monday of September.

In Lee on the fourth Monday in April and first Monday in October: provided, that all executions on judgments heretofore obtained in the county of Des Moines shall not be returnable till the first Monday of May next.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, January 17, 1840.

CHAPTER 40.

COURTS.

AN ACT to change the time of holding the district courts in the second and third judicial districts.

SECTION—Terms of third district—Note.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the terms of the district courts in the third judicial district shall commence in each organized county as follows, in each year: In

Jones county on the fourth Mondays in March and September; in Scott county on the first Mondays next after the fourth Mondays of March and September; in Clinton county on the second Mondays of April and October; in Jackson county on the third Mondays of April and October; in Clayton county on the fourth Mondays of April and October; in Du Buque county on the first Mondays of May and November.

Approved, July 22, 1840.

NOTE—The remaining sections of this act are made void by subsequent acts upon the same subject.

[141] CHAPTER 41.

COURTS.

AN ACT supplemental to an act fixing the terms of the district courts.

SECTION.

1. Additional terms to be held in Du-
buque county.

SECTION.

2. When act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall be holden in the county of Dubuque two terms of the district court, in addition to those terms now authorized by the act to which this is supplementary; one commencing on the first Monday in February—the other on the first Monday in August.

SEC. 2. This act to be in force from and after the first of March, eighteen hundred and forty-one.

Approved, January 7, 1841.

CHAPTER 42.

COURTS.

AN ACT to change the time of holding the district court in the second judicial district.

SECTION.

1. Terms in counties composing second
district.

SECTION.

2. Proceedings not to be void or abate
on account of change.
3. Act in force from passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the terms of the district court in the second judicial district, shall commence in each organized county as follows, in each year:

[142] In the county of Cedar, on the third Mondays in April and September.
In the county of Linn, on the fourth Mondays in April and September.

In the county of Johnson, on the first Mondays next after the fourth Mondays in April and September.

In the county of Washington, on the third Mondays next after the fourth Mondays in April and September.

In the county of Louisa, on the fourth Mondays next after the fourth Mondays in April and September, and,

In the county of Muscatine, on the fifth Mondays next after the fourth Mondays in April and September.

SEC. 2. No suits, writs, indictments, recognizances, informations, declarations, pleas, or other process, or proceedings returnable at or pending in the said district court, for any of the counties above named, shall abate, be made void, or in any wise affected in consequence of any change in the time of holding said court by the provisions of this act, but when the same may have been issued, or may have been returnable at any day in accordance with the time heretofore fixed for holding said court, they shall be considered returnable to the term of the courts respectively named in this act, and all jurors, witnesses, and other persons bound in any way, or summoned to appear before the courts mentioned above, at the next term thereof, shall be bound to appear at the time specified by this act as the time for holding said courts.

SEC. 3. This act shall take effect, and be in force, from and after its passage.

Approved, January 16, 1843.

CHAPTER 43.

SUPREME COURT.

AN ACT to provide for a special term of the supreme court, and to change the time of holding the annual session of the same.

SECTION.

1. Where held. Proviso.
2. When and where held after the year 1842.

SECTION.

3. Act in force from passage.

[143] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. That a term of the supreme court of the said territory, shall be holden at Iowa City, on the tenth day of January, A. D. 1842: provided, however, that this act shall not have such effect as to prejudice or affect the rights of any parties in any suit, action, process, matter or proceeding, now pending in said court, or returnable before the same at the next regular term thereof; but that all suits, actions, writs, process, and pleading now made returnable to said regular term of said court, shall be returned, have day, and be heard and tried at said next regular term, in the same manner as if this act had not been passed.

SEC. 2. *And be it further enacted,* that from and after the year eighteen hundred and forty-two, the annual term of the said supreme court shall be held at the seat of government, on the first Monday in January in each year.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved January 10, 1842.

CHAPTER 44.

COURTS.

AN ACT to authorize the clerks of the district courts of the territory of Iowa to appoint deputies.

SECTION.

1. Power of appointment.

SECTION.

2. Liable for acts of deputies.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the clerks of the several district courts in this territory shall have power to appoint deputies to discharge the duties of their office.

SEC. 2. That every clerk appointing a deputy under the provisions of this act, shall be liable for all the official acts of said deputy clerk. This act to take effect from and after its passage.

Approved, July 31, 1840.

[144] CHAPTER 45.

COURTS.

AN ACT requiring clerks of the district court to give bonds.

SECTION.

1. Bond to be given and approved by judge.

SECTION.

2. Action upon same for mal-practices of clerk.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That each and every clerk of the several district courts now in office, who have not already given bonds, shall on or before the first Monday of June eighteen hundred and forty-one, enter into bonds to the territory, with good security to be approved of by the judge in whose district such clerk resides, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office.

SEC. 2. That each and every clerk hereafter to be appointed, shall, before he enters upon his office, give a like bond to the territory; and any person aggrieved by the mal-practice of any such clerk may sustain an action thereon before any court of competent jurisdiction.

Approved, January 15, 1841.

CHAPTER 46.

JURISDICTION OF COURTS.

AN ACT defining the jurisdiction of the supreme and district courts.

SECTION.

1. Appellate jurisdiction of supreme court.
2. Powers.
3. Rules of practice, etc.
4. Sittings of court.
5. To have supervision of inferior courts and all other powers necessary to due execution of law.
6. Writs of error to the district courts, nature, time of taking, operation, etc., etc. Proviso.

SECTION.

7. Appeals from the district to the su-
[145] preme court, upon what
and when allowed, operation, time
of taking, hearing, etc.
8. Judgment of the supreme court, how
given, and its incidents.
9. District court when held, jurisdic-
tion, powers of judges, etc., etc.
10. Authority to hear and determine all
cases of crimes and misdemeanors.
11. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the supreme court of this territory shall exercise appellate jurisdiction, only as hereinafter provided, and shall have final and conclusive jurisdiction of all matters of appeal, writs of error upon law and in fact, or complaint from the judgments or decrees of any of the district courts of this territory, and from such other inferior courts as may hereafter be established by law, in all matters of law and equity, where the rules of law or the principles of equity appear, from the files, records or exhibits of any such court, to have been erroneously determined.

SEC. 2. The said supreme court is hereby empowered and authorized to take cognizance of all such causes as may be brought before them in manner aforesaid and to carry into complete execution all their judgments, orders, and decrees, according to the rules and principles of the common law and equity, and their judgments and decrees shall be final and conclusive on all persons concerned, in all cases where the amount in controversy does not exceed one thousand dollars.

SEC. 3. That said supreme court may, from time to time, institute such rules of practice, forms of process to be used, and rules for keeping the docket record, and proceedings of said court, as shall be by them deemed conducive to the administration of justice.

SEC. 4. If there shall not be a quorum of the justices of the supreme court on the first day of the term, the court shall stand adjourned, from day to day, for five days, and if, from any cause, said court shall not sit within that time, the court shall stand adjourned to the next court in course, and there shall be no discontinuance of any appeal, writ, or process, by reason thereof.

SEC. 5. The said supreme court shall have the general supervision of all inferior courts; to correct and prevent abuses where no other remedy is provided by law, and shall have authority to issue writs of error, certiorari, habeas corpus, procedendo, supersedeas, and all other writs which may be necessary for the due execution of law, the administration of justice and the perfect exercise of their jurisdiction.

SEC. 6. Writs of error, from the supreme court to the district [146] courts, shall be writs of right, and may be taken at any time within one year, after the rendition of any judgment or decree, by any party who may feel himself ag-

grieved by such judgment or decree, and if any such party, entitled to such writ of error, shall be an infant, feme covert, non compos mentis, or out of this territory, then in one year after the removal of such disability or return to the territory, writs of error may be sued out from the supreme court or any judge thereof in vacation, within the time aforesaid, and every writ of error when issued, shall operate as a supersedeas of the judgment to be removed: provided, the party, or some person in his behalf, procuring the same, shall give bond to the opposite party, with good security, to be approved of by said judge or by the clerk of the district court, where such cause was tried, conditioned duly to prosecute said writ of error, and to pay all costs, interest, and damages, and the principal debt in case the judgment or decree of the court below shall be affirmed; such bond shall be in a sum sufficient to cover principal, interest, costs, and damages, and upon filing said bond with the clerk of the district court, conditioned and approved as above, it shall be the duty of said clerk (if any execution has been issued in said cause) to issue a writ of supersedeas directed to the sheriff of the county, who shall stay all proceedings in his hands and file the same with the clerk who issued the same, and said clerk shall not issue execution thereafter unless ordered by a writ of procedendo from the supreme court.

SEC. 7. Appeals shall be allowed from the district court to the supreme court, upon all final judgments, and decrees in chancery, if prayed for at the time of the rendition thereof, when the sum in controversy, between the parties, for which such judgment or decree in chancery shall be rendered, shall amount, exclusively of costs, to the sum of twenty-five dollars, which appeal shall operate as a supersedeas of the judgment or decree appealed from, upon the appellant giving bond with security, as provided in the next preceding section, in cases of writs of error; and the party appealing or applying for a writ of error shall file a transcript of the cause with the clerk of the supreme court, and shall cause notice, in writing, to be served upon the adverse party, or his attorney, of his having taken the cause to the supreme court, by appeal or writ of error, (as the case may be) twenty days before the next succeeding term of the said supreme court, and if twenty days have elapsed from the time of serving said notice, and the first day of the supreme court, the court shall proceed to hear and determine said cause, whether the defendant in error appear or not; if twenty days do not in-[147]-tervene the cause shall be continued until the next term of the court, unless the defendant in error shall enter a voluntary appearance. Whenever the defendant in error resides out of the territory, and has no attorney therein, the plaintiff in error may cause publication of the cause to be made, according to such rules as the court may establish, and at the next term after such publication the court shall proceed to hear the cause in the same manner as if notice had been duly served.

SEC. 8. The supreme court shall give judgment according to the very right of the cause, and if the judgment shall be reversed from any informality or other proceeding, not requiring a new trial in the court below, they shall give judgment as the district court ought to have given, and issue execution in the same manner as the district court ought to have done, and on all appeals or writs of error, taken after the passage of this act, if the supreme court is satisfied the same was taken for delay only they may give damages thereon, exclusive of interest, not exceeding ten per cent. against the plaintiff in error or appellant. If the plaintiff in error or appellant shall not file a transcript of the cause on or before the third day of the next term, after the taking of the appeal or writ of error, the appellee or defendant may file a certificate of the clerk of the court below, that an appeal or writ of error has been taken in the cause, with the name or names of sureties in the appeal or writ of error, and the amount of said judgment and costs of suit, and thereupon it shall be the

duty of the supreme court to dismiss the appeal or writ of error with the same damages as in cases taken for delay.

SEC. 9. The district court shall be held at the court house in each county, and the judges thereof shall have jurisdiction over all matters and suits at common law and in chancery, arising in each county in their respective districts, when the debt or demand, or cause of action, shall amount to fifty dollars and upwards, and in all cases of appeal or certiorari, from a justice of the peace, judge of probate, or the board of county commissioners; and the said judges shall be conservators of the peace, and the said court, in term time, or any judge thereof, in vacation, shall have power and authority to award, throughout the territory, returnable to the proper county, writs of injunction, ne exeat, habeas corpus, quo warranto, mandamus, and all other writs and process which may be necessary to the due execution of the powers with which they are or may be invested.

SEC. 10. The said courts shall respectively have authority to hear and determine all cases of crimes and misdemeanors, whatsoever, that [148] may be committed in any county in this territory, that may be brought before them agreeable to the provisions of the laws of this territory and of the United States.

SEC. 11. That an act defining the jurisdiction of the supreme and district court, approved February 10, 1842, be and the same is hereby repealed.

Approved, February 3, 1843.

CHAPTER 47.

COURTS.

AN ACT regulating criminal proceedings.

SECTION.

22. Jurors, who shall be competent.
23. Persons excused from serving.
24. Grand jury selected.
25. Venire issued and returned.
26. Deficiency in pannel.
27. Foreman, power and duty.
28. Sufficient jury and indictment.
29. Names of witnesses to be endorsed on an indictment.
30. Fine for non-attendance as a grand juror.
31. District attorney may attend grand jury.
32. Compensation of jurors.
33. Grand jurors may be required to testify. See note before following section.
5. Grand jury to be sworn, provision for failure to summon juries, or cases arising after their discharge.

CHAPTER IV.

34. Indictments by grand jury to be filed and made public record.

SECTION.

35. Indictments not to be disclosed by grand jury in certain cases. Proviso.
36. Judges to give 35th section in charge to grand juries.
37. Limitation of indictments.
38. Place of indictment.
39. For offences on board of vessels.
40. When committed within a certain distance of county lines.
41. On the property of joint owners.
42. When crimes committed in one county and consummated in another.
44. Accessories.
45. When may be tried.
46. Charges and specifications in an indictment.
47. Mistakes or omissions to be amended.
48. What need not be stated.
49. What evidence necessary.
50. Clerical errors amendable.
51. Capias, and amount of bail.

SECTION.

- 52. To whom *capias* directed.
- 53. Recognizance and release of prisoner.
- 54. Court may take recognizance.
- 55. Clerk to issue subpoenas.
- 56. Where served and by whom.
- 57. Failure of officer to serve *capias* or subpoena, or witness to obey, fineable.
- 58. Dilatory pleas.
- [149] 59. Testimony by defendants.

CHAPTER V.

- 60. Change of venue.
- 61. Trial, jury drawn.
- 62. Challenge of jurors.
- 63. Challenge by either party, same as in civil cases.
- 64. Counsel assigned prisoner by the court in certain cases.
- 65. Persons not to be tried for felony unless personally present.
- 66. Accused may have a copy of indictment.
- 67. When admitted to bail and when discharged. Proviso.
- 68. Two or more persons jointly indicted, one may be discharged before evidence is closed, if insufficient to put him on trial.
- 69. When separate trial may be had.
- 70. Exceptions to the decision of the court may be taken. Proviso.
- 71. What proceedings necessary if taken by defendant.
- 72. When defendant need not find sureties.
- 73. Writ of certiorari.
- 74. Clerk to make return thereto.
- 75. Power of supreme court.
- 76. Writ of error, when not permitted.
- 77. In other cases to issue as a matter of course.
- 78. Applications for the writ.
- 79. Clerk to make returns thereto.
- 80. Stay of proceedings.
- 81. Defendant admitted to bail.
- 82. Proceedings if judgment be reversed or affirmed.
- 83. Arrest of judgment.

SECTION.

- 84. Defect in indictment not to arrest judgment.
- 85. Certified copy of proceedings to be evidence.
- 86. Fine a part of the sentence, defendant committed until paid.
- 87. Jury allowed to fix punishment in certain cases.
- 88. May separate for refreshment.
- 89. Offenders liable for costs when guilty.
- 90. Compensation of witnesses, by whom paid, etc.

CHAPTER VI.

- 91. What certain words in legislative acts shall be deemed to include.
- 92. Definition of "felony."
- 93. In what case process shall not be deemed void.
- 94. Penalty for failure to comply with recognizance.
- 95. Compliance with recognizance.
- 96. *Mittimus*.
- 97. Bail in capital and other cases.
- 98. Habeas corpus.
- 99. Recognizance, how taken.
- 100. Pardon and conditions.
- 101. Non-appearance, and breach of recognizance.
- 102. Criminal process, to whom directed.
- 103. When bail may surrender their principal.
- 104. Executions of orders and judgments.
- 105. Conviction in a criminal prosecution, no bar to civil action.
- 106. When action may be commenced.
- 107. Service of process.
- 108. Proceedings when two or more are tried jointly.
- 109. Power and practice of courts in criminal cases.
- 110. Certain acts repealed.
See note.
- 4. No bill of indictment quashed, on account of neglect of county commissioners, etc., etc.
- 6. Costs in event of the acquittal of person against whom rendered.
- 7. Bail in capital cases.

[150] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. That, from and after the first day of January next, the following code of criminal procedure shall be the established law of the territory.

NOTE—The 1st and 2nd chapters of this act, are omitted according to the provisions of the 3rd section of an act to amend the several acts therein named, approved, February 16, 1843. Chapter 26.

CHAPTER 3.

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.

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, practicing attorneys, physicians, surgeons, and teachers in colleges, academies and schools.

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.

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.

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

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 [151] 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.

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

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.

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.

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.

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.

NOTE—The following is the 5th section of an act, to amend an act regulating criminal proceedings, approved February 15th, 1842, and is added here in accordance with the provisions of "an act to amend the several acts therein named," approved, February 16th, 1843. See chapter as before.

SEC. 5. It shall be the duty of the district court to cause each member of the grand jury to be sworn and examined as to his qualifications to serve as a juror; and if the county commissioners' court shall neglect to make out and deliver to the clerk of the district court, a list of [152] the grand and petit jurors, it shall be the duty of the district court at any time during the term, to issue a venire to the sheriff to summon the proper number of grand and petit jurors; and if after the grand jury shall have been discharged, a case shall arise during the term of the court, requiring immediate investigation by the grand jury, it shall be in the power of the district court to have another venire issued, if in the opinion of said court, the public good shall require it.

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.

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.

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

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 offenses less than felony, within two years thereafter, but the time, during which the defendant shall not have been usually a resident within the territory, shall form no part of the said limitation.

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

SEC. 39. Where a person shall commit an offense within this territory, or aboard 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.

SEC. 40. Where an offense shall have been committed within five [153] hundred yards of the boundary line of two counties, the offender may be indicted in either of such counties.

SEC. 41. Where an offense shall be committed upon, or in relation to, the property of several joint owners, the indictment for such offense shall be sufficient if it allege such property to belong to any one or more of such owners, without naming them all.

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.

SEC. 43. Whenever by law an offense is indictable in any particular county, it may be charged in the indictment to have been committed within that county.

SEC. 44. Accessories before the fact shall be deemed principals, and may be charged in the indictment with having committed the principal offense. The indictment of such accessory may be found, either in the county where his own crime was perpetrated, or in that where the principal offense was committed.

SEC. 45. Accessories may be tried and punished, although the principal has not been arrested or tried, and although he may have been pardoned, or otherwise discharged.

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.

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.

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.

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.

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 is-[154]-sued 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.

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.

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.

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.

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

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

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.

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

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 [155] 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.

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.

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 panel or talesman, shall be present in the jury box, twelve of whom shall then be drawn as in civil cases.

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 offense 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.

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.

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

SEC. 65. Persons indicted for felony shall not be tried, unless personally present at the trial. For other offenses 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.

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 offenses, under like circumstances, he shall be discharged absolutely.

Provided, that in any of the above cases, [156] 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 offenses, 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 meantime, 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 attorney shall forthwith sue out a writ of *certiorari*, returnable to the supreme court.

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.

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.

SEC. 76. After judgment rendered on an indictment, except as pro-[157]-vided in the last section, a writ of error may be brought thereon by the defendant. 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.

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.

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.

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.

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.

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*.

SEC. 82. If the judgment below be affirmed, the sentence there pronounced shall be executed accordingly. 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.

[158] 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 offense, 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 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 [159] 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 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.

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.

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.

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.

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 [160] 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.

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.

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.

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.

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.

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, 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.

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.

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.

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.

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.

Approved, January 4, 1839.

[161]

Note.—The following are sections of the act alluded to in the note at the end of chap. 3, and are added here in accordance with the provisions of the "act to amend the several acts therein named," mentioned in that note:

SEC. 4. No bill of indictment shall be quashed, nor shall any judgment be averted by reason of a failure on the part of the county commissioners, to make out and deliver to the clerk of the district court, a certificate of the appointment of the grand jury, nor by reason of any other informality in selecting or summoning the grand jury; nor by reason of the neglect of the district court to have the prisoner duly arraigned; nor by reason of a failure on the part of the prisoner to plead not guilty: provided, said prisoner shall make his defence before the petit jury.

SEC. 6. No costs shall be rendered by the court, in the event of the acquittal of a person charged with a criminal offense against the private prosecutor, unless the court is satisfied that the prosecution is malicious, or the county or the territory; except that when any officer in arresting or endeavoring to arrest a person charged with a crime, shall go out of his county, he shall be allowed his necessary travelling expenses out of the county treasury.

SEC. 7. In capital cases the defendant shall be admitted to bail, unless indicted, and tried by the third term after his arrest; in other cases, under like circumstances, he shall be discharged absolutely, unless tried by the fourth term after his arrest: provided, that in any of the above cases, the delay of indictment or trial has not been occasioned by the defendant himself.

SEC. 8. When a pecuniary fine constitutes a portion of the punishment in case of conviction upon an indictment, the court may direct the defendant to stand committed for any period of time, not exceeding sixty days, in the jail of the county where the offence is tried, if there be a jail, and if there be none, in the jail of the next nearest county in which there may be a jail, unless the fine and costs are sooner paid.

SEC. 9. In trials for misdemeanors, the court may permit the jury to separate for food and refreshment; but in trials for felonies, the jury shall not be separated until there is no prospect of their agreement to a verdict, and it shall be the duty of the court to provide them all suitable refreshments.

[162] CHAPTER 48.

COURTS.

AN ACT supplemental to an act regulating criminal proceedings.

SECTION.

1. Power of justices to issue warrants to search for counterfeits.

SECTION.

2. Proceeding to be had.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when an affidavit is filed with a justice of the peace, stating that the affiant suspects and believes that counterfeit money, whether bank notes or coin, is concealed in any particular house or place, or about the person of anyone, and stating also that such affiant believes that such person knows it to be counterfeit, the justice if he thinks there is sufficient ground for such suspicion, shall issue his warrant to search for such property.

SEC. 2. That if such counterfeit money be found, then the same proceedings shall be had as is provided for in the second chapter of the act to which this is amendatory, providing for the arrest, examination, and entering into recognizance of prisoners in other cases.

Approved, February 17, 1842.

CHAPTER 49.

CRIMES AND PUNISHMENTS.

AN ACT defining crimes and punishments.

SECTION.

1. Murder defined.
2. Manner of killing.
3. Malice implied.
4. Time of death of the person injured, essential to constitute the crime.
5. Punishment for murder.
6. Manslaughter defined.
7. Voluntary manslaughter defined.
8. Must be the result of irresistible passion.
- [163] 9. Involuntary manslaughter defined.
10. Farther defined.

SECTION.

11. Time of death of person injured essential to constitute the crime.
12. Persons indicted for murder may be convicted of manslaughter.
13. Punishment for manslaughter.
14. Justifiable homicide defined.
15. Circumstances necessary to justify the act.
16. Killing another in self defense.
17. In what case an officer shall be justified.
18. Unavoidable necessity.

SECTION.

19. Excusable homicide defined, instances and action upon the same.
20. Assault with intent to commit bodily injury, and its punishment.
21. Duelling and its punishment.
22. Death ensuing therefrom adjudged murder.
23. Certain provision relative to trial for violation 21st section of this act.
24. Rape defined.
25. Forcible marriage or defilement and their punishment.
26. Seduction of females of a certain age and its punishment.
27. Rape in the case of a child and its punishment.
28. Bigamy defined and its punishment.
29. Incest defined and its punishment.
30. Perjury defined and its punishment.
31. Subornation of perjury and its punishment.
32. Directions relative to trial for perjury or subornation of perjury.
33. Arson defined.
34. Its punishment.
35. Death ensuing from arson offender guilty of murder.
36. Burglary defined and its punishment.
37. Robbery defined and its punishment.
38. Robbery with intent to kill and its punishment.
39. Assault with intent to commit robbery.
40. Larceny defined.
41. Farther defined.
42. Taking away with intent to steal made larceny.
43. Value of property stolen when in notes, bonds, bills, drafts, etc.
44. Punishment and civil suit.
45. Petit larceny defined and its punishment.
46. Buying or receiving stolen goods and its punishment.
47. Persons charged may be tried before arrest of principal.
48. Property received shall be restored to owner.
49. Forgery defined and its punishment.
50. Maiming and its punishment.
51. Intent to kill, wound or maim, and its punishment.
52. Defacing or counterfeiting public seals and its punishment.
53. Competent witnesses to prove a forgery of notes or bills of chartered companies.
54. Counterfeiting coin and its punishment.

SECTION.

55. Counterfeiting, altering or disposing of counterfeit or altered bills of any bank and its punishment.
56. Altering or disposing of or circulating altered coin and its punishment.
57. Engraving or having in possession plates for counterfeiting bank notes and its punishment.
58. Knowingly circulating or attempting to circulate base coin or counterfeit bank notes and its punishment.
59. Fraudulent conveyances and its punishment.
60. Poisoning with intent to injure or kill and its punishment.
61. False imprisonment defined and its punishment.
- [164] 62. Kidnapping and its punishment.
63. Destroying and effacing deeds, etc., and its punishment.
64. Punishment for misprison of felony.
65. Punishment of officers or other persons aiding prisoners charged with felony to escape.
66. Punishment for aiding in or procuring the commission of any offenses made criminal by this act.
67. Place of trial of persons committing an act in one county which produces death in another.
68. Punishment of jailor for inhumanity or oppression to prisoners.
69. Punishment of persons resisting any officer in the discharge of his duty. Proviso.
70. Punishment for rescue of persons convicted of crimes punishable with death or otherwise.
71. Fine for rescue of persons from civil process.
72. Punishment for aiding prisoners to escape from jail.
73. Punishment of officer for refusing to arrest, etc.
74. Fine for compounding criminal offenses.
75. Conspiracy and its punishment.
76. Discretion of judge as to the duration of confinement, etc., for crimes made punishable by imprisonment under this act.
77. Degree of the crime of murder how determined, and sentence.
78. Manner in which the punishment of death shall be inflicted.
79. Effects of sentence upon persons convicted of crime under this act, and of pardon by Governor.

Second Class punished generally by imprisonment in county jail, or fine or both.

SECTION.

1. Clerks or servants, or private persons of officers of companies, embezzling the funds or goods, etc., of employers or companies, punished for feloniously stealing the same.
2. Punishment of carriers for embezzling goods, etc., entrusted to their care.
3. Fine and imprisonment of persons entering in the night time any dwelling, shop, or store, etc., with intent to commit violence.
4. Punishment for breaking open or entering any dwelling, shop, store, etc., in the day time, with intent to commit violence.
5. Fine and imprisonment of persons assembling with intent to do an unlawful act.
6. Duty of officers to disperse and arrest persons engaged in such unlawful assembling, and their power to call aid.
7. Persons refusing to disperse after proclamation, or committing any unlawful act afterwards, to be fined and imprisoned.
8. If an officer in the discharge of his duty should kill or injure any persons so unlawfully assembled, to be held guiltless.
9. Fine and imprisonment of persons for abusing officers in dispersing such assemblies.
10. Punishment of officers for receiving unlawful fees.
11. Punishment for obtaining money, etc., under false pretenses.
12. Punishment for unlawful exercise of office, or oppressive exercise of authority.
13. Punishment for encouragement of suits or quarrels.
14. Penalty for injuring, defrauding, or oppressing any person, by sheriff, constable, or other officers, in the [165] execution of his office.
15. Punishment for injuring, defacing or destroying any bridges, dams, houses, trees, cattle, horses or other property.
16. Punishment for injuring or destroying monuments, or tomb stones.
17. Punishment for disinterment of the dead.
18. Altering marks upon horses, cattle, etc., etc., and penalty.
19. Fine for refusing to aid an officer in apprehending persons charged with offenses, etc.

SECTION.

20. Menaces with intent to extort money, etc., and its punishment.
21. Punishment of persons living together in adultery or fornication.
22. Unmarried persons living together in adultery or fornication, and their punishment.
23. Punishment for libel.
24. Punishment of officers permitting prisoners to escape.
25. Punishment for rescue of persons charged with or convicted of crimes punishable with imprisonment.
26. Punishment for aiding persons confined to escape.
27. Attempt to influence jurors or witnesses corruptly, how punished.
28. Punishment of jurors or witnesses, for receiving bribe.
29. Persons refusing to bear testimony, may be imprisoned.
30. Punishment for bribe to any judge, justice of the peace, etc.
31. Fine for attempt to affect the escape of any person in charge of an officer, by bribe.
32. Firing woods and prairies, etc.
33. Fine for injuring or destroying orchard or ornamental trees.
34. Punishment for altering, defacing or destroying mile posts, finger boards.
35. Jailor suffering jail to become foul liable to indictment.
36. Lotteries of all kinds fineable.
37. Butchers punishable for selling unwholesome meats.
38. Punishment of constables for delay or neglect to serve warrant of justices of peace upon persons charged with offenses punishable with death.
39. Punishment for delay or neglect when offense charged is not punishable with death.
40. Where persons shall be confined when jail contains no cell.
41. All prosecutions under this act shall be by indictment before district court.
42. Prisoners may be compelled to labor.
43. How long party convicted may be confined.
44. Property of offender bound.
45. Clerk to issue executions for fines.
46. Fines to pass into county treasury.
47. Prosecutor admitted as witness.
48. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

That the following shall hereafter be the code of criminal jurisprudence in the territory of Iowa.

MURDER.

SECTION 1. Murder is the unlawful killing of a human being in the peace of the United States, with malice aforethought, and either express or implied.

[166] SEC. 2. The manner of the killing is not material, further than it may show the disposition of mind, or the intent with which the act was committed.

SEC. 3. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing manifest an abandoned and wicked disposition.

SEC. 4. In order to make the killing murder, it is requisite that the person injured die within a year and a day after the stroke received, or the cause of death administered, in the computation of which, the whole of the day on which the offense was committed shall be reckoned the first day.

SEC. 5. The punishment of every person convicted of the crime of murder, shall be death.

MANSLAUGHTER.

SEC. 6. Manslaughter shall consist in the unlawful killing of a human being without malice express or implied, and without deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible, in the commission of an unlawful act or a lawful act, without due caution or circumspection.

SEC. 7. 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, endangering the life or limb of such person.

SEC. 8. 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.

SEC. 9. 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 in a lawful act, which might probably 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 [167] being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

SEC. 10. The wilful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be adjudged manslaughter, and every person who shall administer to any woman, pregnant with a child, any medicine, drug, or substance whatever, or shall employ any other means with intent thereby to destroy such child, and thereby cause its death, unless the same shall be necessary to preserve the life of the mother, shall be deemed guilty of manslaughter.

SEC. 11. In order to make the killing 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 the cause of death was administered, shall be reckoned as the first.

SEC. 12. Any person may be convicted of manslaughter under an indictment for murder, if the evidence fails to prove the latter and establishes the former offense.

SEC. 13. Every person convicted of the crime of manslaughter, shall be punished by imprisonment at hard labor in the penitentiary, for a term not exceeding seven years, and fined in any sum not exceeding ten thousand dollars nor less than five hundred dollars.

JUSTIFIABLE HOMICIDE.

SEC. 14. Justifiable homicide shall consist in the killing of a human being in necessary self-defense, or defense 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.

SEC. 15. A bare fear of any of these offenses, to prevent which the homicide is alleged 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.

[168] SEC. 16. If a person kill another in self defense, 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 also appear 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.

SEC. 17. If any 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 any officer or private person attempt to take any person or persons charged with murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting, and other crimes 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.

SEC. 18. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertance 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 laws of the land.

EXCUSEABLE HOMICIDE.

SEC. 19. Excuseable homicide by misadventure, is when a person is doing a lawful act, without any intention 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 or master is moderately correcting a child, or an officer punishing his criminal, and happens to occasion death, it shall only be misadventure, for the act of correction was lawful; but if such parent or master exceed the bounds of moderation, or the officer exceed the sentence under which he acts, either in the manner, the instrument, or quality of punishment, and [169] death ensues, it will be manslaughter or murder, according to the circumstances of the case. And provided, that all other instances which stand upon the same footing of reason and justice, as specified in this section, shall be considered as excuseable homicide, and provided always, the homicide appearing excuseable or justifiable, the person or persons so indicted upon his, her or their trial shall be fully acquitted and discharged.

ASSAULT WITH INTENT TO INFLICT A BODILY INJURY.

SEC. 20. If any person or persons, in this territory, shall make 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 in the penitentiary, at hard labor, for a term not exceeding three years.

DUELLING.

SEC. 21. If any person shall challenge any other person to fight a duel in this territory, or elsewhere, such person being a resident of this territory, or shall accept 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, promote, or assist any duel, every such person so offending, upon conviction thereof, shall forfeit and pay any 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 any election within the same, and shall be imprisoned in the penitentiary, at hard labor, not less than one nor more than three years.

SEC. 22. Every person who shall fight a duel with any deadly weapon or weapons, and death ensues, shall be adjudged guilty of murder.

SEC. 23. On the trial of any person for any offense under the provisions of the twenty-first section of this act, if there was a written challenge to fight, or any other paper, it shall not be necessary, on the part of the prosecution, to produce such challenge or paper, but shall [170] be sufficient to prove that there was a challenge or agreement to fight, either verbal or written, or that such person did fight or did agree to fight, as the case may be.

RAPE.

SEC. 24. Rape is the carnal knowledge of a female, forcibly and against her will.

SEC. 25. Every person who shall take unlawfully and against her will, any woman, and by force, duress, or menace, compel her to marry him or to marry any other person, or to be defiled, such offender, upon conviction thereof, shall be punished by imprisonment in the penitentiary, and kept at hard labor, not more than twenty years nor less than ten years, and be fined in any sum not exceeding one thousand dollars.

SEC. 26. Every person who shall take away any female, under the age of fifteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution or concubinage shall, upon conviction, be imprisoned in the penitentiary, and kept at hard labor, not less than three nor more than ten years.

SEC. 27. That if any person shall have carnal knowledge of any woman, forcibly and against her will, or if any male person, of the age of fifteen years, and upwards, shall carnally know and abuse any female child under the age of ten years, with her consent, every such person so offending, shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than twenty nor less than three years.

BIGAMY.

SEC. 28. That if any married person having a husband or wife, living, shall marry any other person, every person so offending, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven years, nor less than one year; but nothing contained in this section shall be construed to extend to any person whose husband or wife shall be continually and wilfully absent for the space of five successive years, next before the time of such marriage, and unheard from during that time.

[171] INCEST.

SEC. 29. That if any step-father shall have sexual intercourse with his step-daughter, knowing her to be such, or if any step-mother and her step-son shall have sexual intercourse together, having knowledge of their relationship, or any father shall have sexual intercourse with his daughter, knowing her to be such, or if any brother and sister being of the age of sixteen years or upwards, shall have sexual intercourse together, having knowledge of their consanguinity, every step-father, step-daughter, step-mother, step-son, father, brother or sister so offending, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than ten nor less than three years.

PERJURY.

SEC. 30. That if any person on his or her oath or affirmation, in any action, plea, suit, bill, petition, answer, complaint, indictment, controversy, matter or cause depending, or which may depend in any of the courts of this territory, civil, criminal or military, on or in any affidavit or deposition, to establish any account stated, demand or bill of particulars, to be presented to any executor or administrator for settlement, or before any justice of the peace, referees, arbitrators, or before any other person having authority by the laws of this territory to administer an oath, or in or before the council or house of representatives of this territory, or any committee thereof, in any deposition or affidavit or other oath or affirmation taken or made pursuant to the laws of this territory, or of any resolution of the council or house of representatives of this territory, or of either of them, shall wilfully and corruptly depose, affirm

or declare any matter to be fact, knowing the same to be false, or shall in like manner deny any matter to be fact, knowing the same to be true, every person so offending shall be deemed guilty of perjury, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than ten years nor less [than] three years.

SEC. 31. That if any person shall persuade, procure or suborn any other person to commit wilful and corrupt perjury, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than ten years, nor less than three years.

SEC. 32. That in every indictment for perjury or subornation of [172] perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, avering such court or authority to have full power to administer the same, together with the proper averment or counts to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of any record or proceeding in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed.

ARSON.

SEC. 33. Every person who shall wilfully and maliciously set fire to or burn, or cause to be burned, any dwelling house or other house, the property of any person, or any state house, court house, prison, church, bridge or any other public building, although not herein specially named, or if any person shall wilfully and maliciously burn any steam boat or other vessel whatever, whether there be any person or goods on board or not, shall be deemed guilty of arson; and if any person shall wilfully set fire to his own buildings or other property, with the intent to burn the property of any other person, and the property or building of any other person shall thereby be burned, such person shall be deemed guilty of arson.

SEC. 34. Any person convicted of the crime of arson shall be imprisoned in the penitentiary and kept at hard labor, not less than one year nor more than ten years, and be fined in any sum not exceeding one thousand dollars.

SEC. 35. If any person shall lose his, her or their lives in consequence of any arson, the offender shall be deemed guilty of murder and punished accordingly.

BURGLARY.

SEC. 36. That if any person shall in the night time, wilfully, maliciously and forcibly break and enter into any dwelling house, kitchen, smoke house, shop, office, store house, ware house, malt-house, still house, mill, pottery, factory, water craft, school house, church or meeting house, or other house, with intent to rob, commit a rape, or with intent to steal property of any value, or to commit any felony, every person so offending shall be deemed guilty of burglary, and upon con-[173]-viction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than ten, nor less than two years.

ROBBERY.

SEC. 37. If any person shall forcibly and by violence, or by putting in fear, take from the person of another, any money or personal property of any value whatever, with intent to rob or steal, every person so offending shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned in the

penitentiary and kept at hard labor not more than fifteen years nor less than three years.

SEC. 38. If any person shall wilfully and maliciously, either in the day time or night season, enter any dwelling house or other house, as designed in the thirty-sixth section of this act, or any barn or stable, and shall attempt to kill, disfigure or maim any person, rob, stab, commit a rape or arson, every person so offending, his or her aiders or abettors, counsellors or procurers, on conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than ten years, nor less than three years.

SEC. 39. That if any person shall assault another with an intent to commit a murder, rape or robbery, upon the person so assaulted, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven years nor less than three years.

LARCENY.

SEC. 40. Larceny is the felonious stealing, taking and carrying, leading, riding, or driving away the personal goods and chattels of another, and shall embrace every theft which unlawfully deprives another of his money or other personal property, or those means and instruments by which the right and title to property, real and personal, may be ascertained.

SEC. 41. The felonious taking and carrying away from the possession (actual or constructive) or custody of another, any money, bank note, bond, bill, note, receipt or any instrument of writing whatever, although not herein specified or named, of value to the owner, shall be deemed larceny.

SEC. 42. The taking and removing away any goods and personal chattel whatever, with an intent to steal the same, whether the article stolen be in the immediate possession of the owner or not, or unless it shall [174] appear that the owner has abandoned his claim thereto, of the value of twenty-five dollars and upwards, shall be deemed larceny.

SEC. 43. If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order, or receipt, or any evidence of debt whatever, of any public security issued by the United States, or any scrip, or other public security issued by this territory, or any other state or territory, or of any instrument whereby any demand, right, or obligation may be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon, or secured thereby, and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be adjudged the value of the article stolen.

SEC. 44. Every person duly convicted of larceny shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven years nor less than one year, and shall restore to the owner the thing or property stolen, if the same can be had, and if the same cannot be had, then the person so convicted shall be liable to the owner in double the value thereof, but nothing in this act shall be so construed as to make any judgment of conviction evidence on the trial of any civil suit brought by the injured party for any recovery under the provisions of this act.

SEC. 45. If any person shall steal from any other person or persons, or from any dwelling house, or from any boat or water craft, or other place whatsoever, any moneys, goods, wares or merchandise, or other personal property, or thing, whatsoever, of a less value than twenty-five dollars, every person so offending, shall be deemed guilty of a petit larceny, and upon conviction thereof, shall restore to the owner or owners the thing or things so stolen, and be fined

in any amount not exceeding five times the amount of the value thereof, and be imprisoned in the jail of the county not exceeding thirty days, and until the fine and costs are paid if the same shall be paid within twenty days from the expiration of said imprisonment.

BUYING OR RECEIVING STOLEN GOODS, ETC.

SEC. 46. Every person who shall, for his own gain, or to prevent the owner from again possessing his property, buy or receive any stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, of the amount of twenty-[175]-five dollars and upwards, knowing the same to have been so obtained, shall, upon conviction, be punished as in cases of larceny.

SEC. 47. Any person charged with receiving stolen goods may be tried, convicted, and punished as well before as after the arrest or conviction of the principal.

SEC. 48. All property obtained by larceny, robbery, or burglary, shall be restored to the owner, 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, and any person losing property or any valuable thing, by larceny, robbery or burglary, may maintain his or their action against such felon, or against any person whatsoever, in whose hands or possession the same may be found.

FORGERY.

SEC. 49. That if any person shall falsely make, alter, forge or counterfeit any record, or other authentic matter of a public nature, or any character, letters patent, deed, lease, writing obligatory, will, testament, annuity bond, covenant, bank bill, or note for the payment of money, or other property, or any acceptance of any bill of exchange, or the number of any principal sum of any accountable receipt for any note or any order, or any warrant of request for the payment of money, or the delivery of goods and chattels of any kind, or any acquittance, or receipt, either for money or goods, or any acquittance, release or discharge of any debt, account, action, suit, or demand, or other thing, real or personal, or any plat, draft, or survey of land, or any transfer or assurance of money, stock, goods, chattels, or other property whatsoever, or any letter of attorney, or any power to receive money, or to receive and transfer stock or annuities, or to let, lease, or dispose of, alien, convey, or dispose of any goods or chattels, lands or tenements, or other estate, real or personal, or any bills drawn by the auditors of public accounts, for the payment of money of the treasury, with intent to damage or defraud any person or persons, body politic or corporate, or shall utter or publish as true and genuine or cause to be altered and published as true and genuine, any of the above named false, altered, forged or counterfeited matter, above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body corporate or politic, every person so offending shall be deemed guilty of forgery, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at [176] hard labor, for any space of time not more than twenty years nor less than three years.

MAIMING.

SEC. 50. That if any person shall voluntarily, unlawfully, and on purpose, cut or bite the nose, lip or lips, ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, ear or lip, cut or disable any limb or member of

any person, with intent to murder, kill, maim or disfigure such person, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than twenty years nor less than one year.

SEC. 51. If any person shall maliciously stab or shoot any other person, with intent to kill, wound or maim such person, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than twenty nor less than one year.

COUNTERFEITING PUBLIC SEALS.

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

TESTIMONY.

SEC. 53. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company, by the charter or act of incorporation, but the same may be proved by general reputation; [177] persons of skill shall be competent witnesses to prove that such bill or note, or other writing is forged or counterfeited.

COUNTERFEITING COIN.

SEC. 54. That if any person shall counterfeit any of the coins of the gold, silver or copper, currently passing in this territory, or shall alter or put off counterfeit coin or coins, knowing them to be such, or shall make any instrument for counterfeiting any of the coins aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession and secretly keep any instrument for the purpose of counterfeiting any of the coins aforesaid, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than fifteen nor less than one year.

SEC. 55. That if any person shall sell, barter, or in any manner dispose of any false, forged or counterfeited bank note or notes, or shall sell, barter or in any manner dispose of any counterfeit bank note or notes, the same not being filled up, or the signatures thereto forged or affixed, whether by single bill or by sheets, or shall sell, barter or in any manner dispose of any bank note or notes, the same being filled up, but having signatures of persons not the officers of the bank from which such note or notes purport to have been issued, or having the names of fictitious persons thereto, or if any person shall be detected with any such counterfeit or spurious bank note or notes in his possession for the purpose of selling, bartering or disposing of the same, or if any person shall make, alter, publish, pass, or put in circulation any note or notes, bill or bills,

purporting to be the note or notes, bill or bills, of a bank, company or association which never did in fact exist, such person or persons knowing at the time of publishing, passing or putting in circulation any such note or notes, bill or bills, that the bank, company or association purporting to have issued the same never did exist, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than fifteen years nor less than one year.

SEC. 56. That if any person shall gild any of the silver coins currently passing in this territory, or shall gild any other metal having the likeness and similitude of any of the coins currently passing in this territory, so as to give it the appearance of any of the gold coins of the United States, or any of the gold coins currently passing in this terri-[178]-tory, with intent to injure or defraud, or if any person shall pass or put in circulation any such false or gilded money, knowing that it is not genuine, the persons so offending, shall upon conviction thereof, be imprisoned in the penitentiary, and kept at hard labor, not more than fifteen years nor less than one year.

SEC. 57. That if any person shall engrave any plate for striking or printing any false or counterfeit bank notes, knowing it to be designed for that purpose, or shall knowingly have in his possession, and secretly keep, any plate for the purpose aforesaid; and if any person shall engrave, cut, indent, or cause any piece or pieces of brass, copper or any other metal for striking, printing, or altering any of the writing, printing or figures of any bank note or notes, bill or bills, knowing them to be designed for that purpose, or shall knowingly have in his possession, and secretly keep the same, for the purpose aforesaid, any person so offending, upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than fifteen nor less than one year.

SEC. 58. That if any person shall attempt to pass any base or counterfeit coin or coins, knowing them to be such, or shall attempt to pass any false, forged or counterfeit bank note or notes, knowing them to be such, every person so offending, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than fifteen years nor less than one year.

FRAUDULENT CONVEYANCES.

SEC. 59. That if any person or persons shall knowingly sell or convey any tract or tracts of land without having title to the same, either in law or equity, by descent, devise or evidence by a written contract, or by deed of conveyance, with intent to defraud the purchaser, every person so offending, upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than seven years nor less than one year; but nothing in this section shall be so construed as to prohibit any person or persons being the bona fide owners and occupants of improvements on the public lands from selling the same.

ATTEMPT TO POISON.

SEC. 60. That if any person or persons shall administer poison to another with intent to destroy or take the life of the person or persons [179] to whom the same shall be administered, or to do him or them any injury, or if poison shall be prepared with the intent aforesaid, and the same shall be taken by any person or persons whereby an injury to such person or persons may be done, every person so offending, their aiders and abettors, upon conviction

thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than fifteen years and not less than three years.

FALSE IMPRISONMENT.

SEC. 61. 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 in the penitentiary at hard labor not exceeding two years.

KIDNAPPING.

SEC. 62. 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 in the penitentiary at hard labor not exceeding ten years.

DESTROYING AND EFFACING DEEDS, ETC.

SEC. 63. 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 de-[180]-fraud, 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 in the penitentiary at hard labor for a term not less than one year nor more than five years.

MISPRISION OF FELONY.

SEC. 64. 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 in the penitentiary at hard labor not exceeding three years, and fined not exceeding five hundred dollars.

OFFICERS AND OTHER PERSONS AIDING ESCAPES.

SEC. 65. That if any of the assistants, guards or other officers of the penitentiary, or of any jail, or any other person whatsoever, shall procure, aid or abet any of the convicts or any other person imprisoned on a charge of felony confined therein, to escape therefrom, the person or persons so offending,

shall upon conviction thereof, be imprisoned in the penitentiary and kept at hard labor for any space of time not greater than the convict thus procured, aided or abetted to escape was originally sentenced for. And any person aiding or abetting the escape of such felon from jail as aforesaid, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than ten years nor less than one year.

SEC. 66. That if any person shall aid, abet or procure any other person to commit any of the offenses of this act made criminal, every person so offending, shall upon conviction thereof, be imprisoned in the penitentiary and kept at hard labor for any time between the respective periods for which the principal offenders could be imprisoned for the principal offense, or if such principal offender would on conviction be punished with death or imprisonment for life, then such aider, or abettor, or procurer, shall be imprisoned for life, or may be punished with death as the occasion may require.

SEC. 67. That if any person shall give any mortal blow or administer any poison to another, within any county in this territory with intent to kill, and the party so stricken or poisoned shall afterwards die thereof in another county or state, the person giving such mortal blow, or administering such poison, may be tried and convicted of murder or manslaughter, as the case may be, in the county where such mortal blow was given or poison administered.

JAILOR WHEN GUILTY OF OPPRESSION.

SEC. 68. Every jailor when guilty of inhumanity 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 and be removed from office.

OBSTRUCTING EXECUTION OF PROCESS.

SEC. 69. If any person or persons shall knowingly 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 not exceeding two years, and fined not exceeding three hundred dollars: provided, 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.

SEC. 70. 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 [182] same punishment that would have been inflicted on the person so set at liberty or rescued.

RESCUE FROM CIVIL PROCESS.

SEC. 71. 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.

ASSISTING PERSONS IN JAIL TO ESCAPE, ETC.

SEC. 72. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offense 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 imprisonment in the penitentiary, at hard labor, for a term not exceeding two years.

OFFICER REFUSING TO ARREST, ETC.

SEC. 73. 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 offense, 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 imprisonment not exceeding six months in the common jail.

COMPOUNDING CRIMINAL OFFENSES.

SEC. 74. If any person shall take money, goods, chattels, lands or other reward or promise thereof, to compound any criminal offense, 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, [183] or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

CONSPIRACY.

SEC. 75. If two or more persons shall conspire or agree, falsely and maliciously, to charge or indict any person for any criminal offense, each of the persons so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars and imprisonment not exceeding one year.

SEC. 76. That in all cases when any person shall be convicted of any offence by this act declared criminal, and made punishable by imprisonment in the penitentiary or county jail, the judge shall determine, from the nature of the case, for what period of time, within the respective periods prescribed by law, such convict shall be imprisoned, at hard labor, in the penitentiary, or confinement in the county jail, and shall moreover determine for what period of time (if any) such convict shall be kept in solitary confinement, in the cells of the penitentiary, without labor, and the court shall also render judgment against such convict for the costs of such prosecution, and award execution thereon against the goods and chattels, lands and tenements of said convict.

SEC. 77. That in all trials for murder, the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it be murder or manslaughter, and if such person be convicted, by

confession in open court, the court shall proceed, by examination of witnesses in open court, to determine the degree of the crime, and shall pronounce sentence accordingly.

SEC. 78. That the mode of inflicting the punishment of death, in all cases under this act, shall be by hanging by the neck until dead, and the sheriff, and in case of his death, inability, or absence, the coroner of the proper county, in which sentence of death shall be pronounced, by virtue of this act, shall be the executioner.

SEC. 79. That any person sentenced to be punished for any crime specified in this act (when sentence shall not have been reversed or annulled) shall be deemed incompetent to be an elector, juror, or witness, or to hold any office of honor, trust, or profit, within this territory, unless the said convict shall receive from the governor of the territory, a general pardon under his hand and the seal of the territory, in which case said convict shall be restored to all his civil rights and [184] privileges: provided, however, that such pardon shall not release such convict from the cost of his conviction.

SECOND CLASS PUNISHED GENERALLY BY IMPRISONMENT IN COUNTY JAIL OR FINE, OR BOTH.

SECTION 1. That if any clerk or servant of any private person or of any co-partnership, or if any officer, agent, clerk or servant of any incorporation or company, shall embezzle or convert to his own use, or fraudulently make away with or secret with intent to embezzle or fraudulently convert to his own use, without the consent of his master or employers, any money, goods, rights in action, or other valuable security or effects whatever, belonging to any other person, which shall come into his possession or under his care by virtue of his employment or office, he shall upon conviction, be punished in the manner prescribed by law, for feloniously stealing property of the value of the article so embezzled, taken or secreted of the value of any sum of money payable and due upon any right in action so embezzled.

SEC. 2. If any carrier or other person to whom any goods, money, right in action, or any valuable personal property or effects, shall have been delivered to be transported or carried for hire, or any person employed in such transportation or carrying, shall without the assent of his employer, take, embezzle or convert to his own use, such goods, money, right in action, property or effects, or any part of them, or any part thereof, and before delivery of such article at the place, or to the person entitled to receive the same, he shall upon conviction, be punished in the manner prescribed by law, for feloniously stealing property of the value of the article so taken, embezzled, converted or secreted.

SEC. 3. That if any person shall, in the night season, break open and enter any mansion, house, shop, store or any other house or building whatever, boat or other water craft in which any person shall reside or dwell, and shall commit or attempt to commit any personal violence or abuse, or shall be so armed with any dangerous weapon, as to indicate a violent intention, the person so offending, shall upon conviction thereof, be fined in any sum not exceeding three hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county, not exceeding thirty days, at the discretion of the court.

SEC. 4. That if any person shall in the day time, unlawfully break [185] open and enter any mansion, house, shop, store or other building, boat or other water craft, in which any person shall, or may dwell or reside, and shall commit or attempt to commit any personal abuse, he or she so offending, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars,

and be imprisoned in the cell of the jail of the county not exceeding twenty days.

SEC. 5. That if three or more persons shall assemble together with intent to do any unlawful act, with force and violence, against the person or property of another, or to do any unlawful act against the peace, or being lawfully assembled, shall agree with each other, to any unlawful act as aforesaid, and shall make any movement or preparation therefor, the persons so offending, shall each, on conviction thereof, be fined in any sum not exceeding two hundred dollars and be imprisoned in the cell of the jail of the county, not exceeding twenty days.

SEC. 6. That whenever three or more persons shall be assembled as aforesaid, and proceed to commit any of the offenses aforesaid, it shall be the duty of all judges, justices of the peace and sheriffs, constables and all ministerial officers, upon actual view, or as soon as may be on information, make proclamation in hearing of such offenders, in the name of the United States, to disperse and depart to their several homes or lawful employment, and if upon such proclamation, such persons shall not disperse and depart as aforesaid, it shall be the duty of such judges, justices of the peace and sheriffs, and all other ministerial officers respectively, to call upon all persons near, and if necessary throughout the county, to aid and assist in dispersing and taking into custody, all persons assembled as aforesaid, and military officers and others called on as aforesaid, and refusing to render immediate assistance, shall each upon conviction thereof, be fined in any sum not exceeding fifty dollars.

SEC. 7. That if any person shall forcibly obstruct any of the authorities aforesaid, or if any three or more shall continue together after proclamation made as aforesaid, or attempted to be made and prevented by such rioters, or in case of no proclamation, any three or more persons being assembled as aforesaid, shall commit any unlawful act as aforesaid, every such offender, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the cell of the jail of the county, not exceeding thirty days, and shall moreover find security for good behavior, and to keep the peace for a time not exceeding one year.

SEC. 8. That if any of the persons so unlawfully assembled, shall [186] be killed, maimed, or otherwise injured in consequence of resisting the judges or others in dispersing or apprehending, or in attempting to disperse and apprehend them, said judges, justices of the peace, sheriffs, and other ministerial officers, and others acting by their authority or the authority of either of them, shall be holden guiltless: provided, such killing, maiming or injury, shall take place in consequence of the use of necessary and proper means to disperse or apprehend any such persons so unlawfully assembled.

SEC. 9. That if any person shall abuse any judge or justice of the peace, resist any sheriff, constable or other officer in the execution of his office, the person so offending, shall on conviction thereof, be fined in any sum not exceeding two hundred dollars, or imprisoned in the jail of the county, not exceeding twenty days or both at the discretion of the court.

SEC. 10. That if any judge, justice of the peace, sheriff, coroner, constable, jailor or other officer of this territory, either judicial or ministerial, shall knowingly ask, demand or receive any fee or reward, to execute and do his duty, other than is or shall be allowed by the laws of this territory, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding two hundred dollars, or imprisoned in the jail of the county not exceeding twenty days, and be incapable of holding any office of profit or honor thereafter for the term of three years.

SEC. 11. That if any person shall, by false pretence or pretences, obtain from any other person, any money, goods, merchandise or effects, whatsoever,

with intent to cheat and defraud such person of the same, or shall fraudulently make and transfer any bond, bill, deed of sale, gifts, grants or conveyances, to defeat his creditors of their just demands, such person, so offending, shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, and imprisoned in the jail of the county not exceeding ten days.

SEC. 12. That if any person shall take upon himself to exercise or officiate in any office or place of authority in this territory, without being legally authorized, or if any person, by color of his office, shall wilfully and corruptly oppress any person, under pretence of acting in his official capacity, the person so offending, shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, or imprisoned in the jail of the county not exceeding ten days, or both, at the discretion of the court.

SEC. 13. That if any judge, justice of the peace, clerk of any court, [187] sheriff, coroner, constable, attorney or counsellor at law, shall encourage, excite and stir up, any suit, quarrel, or controversy, between two or more persons, with intent to injure such person or persons, such judge, justice of the peace, clerk, sheriff, constable, attorney, or counsellor at law, shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, and shall be answerable to the party in treble damages.

SEC. 14. That if any sheriff, coroner, constable, jailor, clerk, county recorder, county treasurer, or assessor, by color of or in execution of his office, shall designedly, wilfully, or corruptly injure, defraud, or oppress any person, or shall attempt to defraud, injure or oppress any person, such sheriff, coroner, constable, jailor, clerk, county recorder, county treasurer, or assessor, shall, upon conviction, be fined in any sum not exceeding two hundred dollars, and be answerable to the party injured, defrauded or oppressed, in treble damages.

SEC. 15. That if any person shall wilfully or maliciously cut down, break, level, demolish, or otherwise damage any bridge, embankment, or mill dam, or break and 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 ferry flat, or boat, or other vessel, for mischief, or shall unlawfully, wantonly, wilfully or maliciously kill, wound, disfigure, or destroy any horse, mare, filley, colt, ass, 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 thirty days, or both, at the discretion of the court.

SEC. 16. That if any person shall maliciously alter, or wilfully alter, deface, break down, or destroy any monument, or tomb stone, erected or set up to perpetuate the memory of any deceased person, every person so offending, shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, and be imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court.

SEC. 17. That if any person shall wantonly dig or take up any [188] corpse, or dead body, or shall aid, assist, or be in any way concerned, either in the attempt or in digging or taking up, or in carrying away such corpse or dead body, as aforesaid, without the knowledge and consent of the relatives or friends of the deceased; every person offending in any of the aforesaid instances, shall,

upon conviction thereof, be fined in any sum not exceeding one thousand dollars, and be imprisoned in the county jail not more than thirty days.

SEC. 18. That if any person shall wilfully and maliciously alter or deface any artificial ear mark or brand, upon any horse, mare, foal, filly, mule, ass, sheep, goat or swine, cow, ox, steer, bull or heifer, property of another, every person so offending, shall on conviction thereof, be fined in any sum not exceeding fifty dollars and be liable to the party in treble damages.

SEC. 19. That if any person having been called upon by the sheriff or other ministerial officer, in any county in this territory, to assist such sheriff or other officer in apprehending any person charged with, or convicted of any offense against any of the laws of this territory, or in securing such offender when apprehended, or in conveying such offender to the jail of the county, shall refuse to render such assistance, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding fifty dollars.

SEC. 20. That if any person shall knowingly send or deliver any letter or writing, with or without any name subscribed thereto, or signed with a fictitious name, containing wilful and malicious threats of injury of any kind whatever, or with intent, or for the purpose of extorting money or other valuable things from any person, every person so offending, shall upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars, or be imprisoned in the jail of the county not exceeding twenty days, or both, at the discretion of the court.

SEC. 21. That if any married woman shall hereafter desert her husband, live and cohabit with another man in a state of adultery, she shall upon conviction thereof, be imprisoned in the jail of the county not exceeding thirty days; and if any married man shall hereafter desert his wife and live and cohabit with any other woman in a state of adultery; or if any married man living with his wife shall keep any other woman and notoriously cohabit with her in a state of adultery, or if any unmarried man shall live and cohabit with a married woman in a state of adultery, every person so offending, shall on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be imprisoned in the jail of the county not exceeding thirty days, at the discretion of the court.

SEC. 22. That if any unmarried persons shall live and cohabit together in a state of fornication, such persons so offending, shall each, on conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the county jail not exceeding ten days.

SEC. 23. That if any person shall write, print or publish, any false or malicious libel of or concerning another, or shall cause or procure any such libel to be written, printed or published, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and moreover be liable to the party injured.

SEC. 24. That if any sheriff, coroner, jailor or other person whatsoever, having any offender in custody, charged with or convicted of any offense made punishable by the laws of this territory, shall voluntarily suffer such person to escape or go at large, every sheriff, coroner, jailor or other person so offending, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned not exceeding twenty days, or both, at the discretion of the court.

SEC. 25. That if any person shall rescue by force, or set at liberty any offender charged with, or convicted of any offense, by the laws of this territory made punishable with imprisonment, from any jail or other place of confinement, or from the custody of any officer or other person charged with the safe keeping of such offender, every person so offending, shall upon conviction thereof,

be fined in any sum not exceeding five hundred dollars, and be imprisoned in the jail of the county not exceeding sixty days.

SEC. 26. That if any person shall aid or assist any prisoner confined in any jail or other place of confinement, charged with, or convicted of any offense against the laws of this territory, to make his, her or their escape from such jail or place of confinement, although no escape be actually made, every person so offending, shall upon conviction thereof, be fined not more than five hundred dollars, nor less than fifty dollars, or be imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court.

SEC. 27. That if any person shall attempt to corrupt or influence any juror or witness, either by promises, threats, letters, money or other undue means, either directly or indirectly, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and imprisoned in the jail of the county not exceeding thirty days.

[190] SEC. 28. That if any juror or witness shall corruptly take and receive any money, goods, chattels or other reward, either directly or indirectly, in any action or suit instituted before any court having jurisdiction thereof, such juror or witness, so offending, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars, and imprisoned in the jail of the county not exceeding thirty days.

SEC. 29. That if any person legally called upon to give testimony before any court or other authority in this territory authorized to administer an oath and affirmation, shall refuse to take an oath or affirmation, such court or authority may commit the person refusing to prison until he or she shall consent to take such oath or affirmation; and after the person committed to the prison as aforesaid, shall have taken the oath or affirmation required, the court or authority aforesaid may moreover punish such person for such refusal, by a fine not exceeding twenty dollars.

SEC. 30. That if any person shall directly or indirectly, in any way or manner, give, promise, or contract to give any money or other valuable thing, with intent to obtain, procure or influence the opinion, judgment or decree of any judge or justice of the peace of this territory, or arbitrator in any action, plea, suit, complaint, indictment, controversy, matter or cause depending, or which shall depend before him or them, or before any court in this territory, every person so offending, shall upon conviction thereof, be fined in any sum not less than fifty nor more than one thousand dollars.

SEC. 31. That if any person by bribery, persuasion, or seduction, or any other arts or means whatever, attempt to prevail upon any ministerial officer or other person charged with the safe keeping of any person accused or convicted of any offense against the laws of this territory, to permit such person to escape from the custody of such officer or other person, every person so offending, shall upon conviction thereof, be fined in any sum not more than two hundred dollars, nor less than twenty-five dollars.

SEC. 32. That if any person shall wilfully and maliciously or carelessly set on fire, or cause to be set on fire any woods, prairies or other grounds whatever in this territory, other than his own, or shall intentionally permit the fire to pass from his own prairie or woods, to the injury of any other person or persons, every person so offending, shall on conviction thereof, for every offense, be fined in any sum not exceeding fifty dollars, and shall be liable to an action of the party injured [191] for the damages which he, she or they, may have sustained in consequence of such fire.

SEC. 33. That if any person shall wilfully and maliciously cut down, saw or bark, or otherwise kill or destroy any fruit or other tree or trees, in any nursery, garden, orchard or yard, or any living ornamental tree or trees, either

planted or preserved as such, being the property of another, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than five dollars; and the owner of the fruit or other tree or trees thus killed or destroyed, shall recover not less than double the value of the same from the person or persons killing or destroying said fruit or other tree or trees.

SEC. 34. That if any person shall wilfully and maliciously demolish any mileposts, or alter, or in any manner deface the same, or any mileboard, or any guide or finger board, at the forks of any public road, every person so offending, shall, upon conviction thereof, be fined in any sum not exceeding fifty dollars, and be imprisoned not exceeding ten days, at the discretion of the court.

SEC. 35. If any sheriff, jailor, or other person, having the care and custody of any jail, shall suffer the same to become foul or unclean, so that the health of any prisoner may be endangered, such sheriff, jailor, or other person, shall be liable to indictment, and on conviction shall be fined in any sum not exceeding one hundred dollars.

SEC. 36. If any person shall open, set on foot, carry on, promote, make or draw, publicly or privately, any lottery or scheme of chance of any kind or description, by whatever name, style or title the same may be denominated or known, or if any person shall by such ways and means expose or set to sale any house or houses, lands or real estate, or any goods or chattels, cash or written evidences of debt, or certificates of claims, or any thing or things of value whatever, or shall sell, vend, barter or dispose of any lottery ticket or tickets, order or orders, for any number of shares in any lottery or scheme of chance, or shall be in anywise concerned in any such lottery or scheme of chance, by acting as agent in this territory, for or on behalf of any such lottery or scheme of chance to be drawn or paid either out or within this territory, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding two hundred dollars, at the discretion of the court.

SEC. 37. If any butcher or other person shall knowingly sell or dispose of any unwholesome flesh of a diseased animal, or unwholesome [192] provision, he, she or they so offending, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

SEC. 38. When any warrant legally issued by any justice of the peace in this territory, in any criminal case, shall be delivered into the hand of any constable to serve the same immediately, and if such constable shall neglect or delay to serve any such warrant delivered to him as aforesaid, when in his power to serve the same, either alone or by calling upon assistance according to law, such constable shall, if the offense charged for which the warrant issued be punished with death or imprisonment in the penitentiary of this territory, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be imprisoned not exceeding thirty days.

SEC. 39. That if any constable shall be guilty, as specified in the preceding section, of neglect or delay in serving any warrant when the offense charged, for which such warrant may issue, be an offense not punishable by death or imprisonment in the penitentiary, upon conviction thereof, be fined in any sum not exceeding one hundred dollars.

SEC. 40. That when any jail in this territory shall not have a cell therein, then and in that case, when the court shall sentence any person or persons to imprisonment in the jail of any county, under the provisions of this act, the person or persons so sentenced, shall be confined in that part of the jail usually allotted to the confinement of criminals.

SEC. 41. That all prosecutions, under the provisions of this act, shall be by indictment before the district court, in the county where the offense shall have been committed, except in cases otherwise provided for by law, and all persons imprisoned under the same, shall be imprisoned in the jail of the proper county, except when otherwise provided by law.

PUNISHMENT BY IMPRISONMENT.

SEC. 42. In all cases of imprisonment for offenses 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 con-[193]-victs, to secure them, without cruelty, by ball and chain or block, and also to have a sufficient guard to prevent their escape.

PUNISHMENT BY FINE.

SEC. 43. 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.

PROPERTY OF OFFENDER BOUND.

SEC. 44. The property, real and personal, of every person charged under this act, shall be bound at least so far as will be sufficient to pay to the extent of his condemnation.

EXECUTION TO ISSUE FOR FINES.

SEC. 45. 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 the duty of the sheriff to make due return of all executions, and pay over all moneys so collected, without delay, into the county treasury of the proper county, unless otherwise directed by this act.

SEC. 46. That all fines and forfeitures incurred under this act, shall be paid into the county treasury where the crime was committed.

SEC. 47. That in all cases under the provisions of this act, where the prosecutors name is endorsed and the bill found a true bill by the grand jury, the prosecutor or injured party may be admitted as a witness, and his credibility left to the jury.

SEC. 48. That the act, entitled an act, defining crimes and punishments, approved January 25, one thousand eight hundred and thirty-nine, be and the same is hereby repealed; provided, that any person or persons who may have committed any crime, punishable under the provisions of the act hereby repealed, prior to the taking effect of this act, shall be prosecuted and punished according to the act hereby repealed, in the same manner such person or persons might or ought to be prosecuted and punished if this act had not been passed.

Approved, February 16, A. D. 1843.

[194] CHAPTER 50.

CRIMES AND PUNISHMENTS.

AN ACT to repeal the forty-second section of an act entitled an act defining crimes and punishments, passed at the session of 1842 and '3.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the forty-second section of the above entitled act be and the same is hereby repealed.

Approved, February 17, A. D. 1843.

CHAPTER 51.

CORONERS.

AN ACT relative to coroners and their duties.

SECTION.

1. Election, term of office, bond, etc.
2. To perform the duties of sheriff in certain cases.
3. Cases mentioned.
4. Cases continued.
5. Inquest upon dead bodies.
6. To summon jury.
7. Duty of constables and jury, and forfeiture for failure to perform the same.
8. Oath of jury.
9. Witnesses.
10. Oath of witnesses.
11. Testimony to be reduced to writing.

SECTION.

12. Verdict and form.
13. Witnesses to recognize when jury find that murder, manslaughter or assault has been committed upon deceased.
14. Coroner to cause accused to be arrested.
15. Burial of the body of stranger.
16. Magistrate to act in case of the absence of the coroner.
17. When burial to take place and expenses of same.
18. Not to be buried without notice.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall be elected in each of the organized counties of this territory, at the time and place of holding the general election, a coroner, who shall hold his office for two years and [195] until his successor is elected and qualified. He shall, before exercising any of the duties of his office, take an oath faithfully to fulfill the duties of such office; and when called upon to exercise the duties of sheriff, he shall execute such bond and security as the clerk of the district court may require.

SEC. 2. It shall be the duty of the coroner to execute all process in his county, in all cases when just exception can be taken to the sheriff or his deputy, or when there is no sheriff.

SEC. 3. In all cases upon affidavits being made and filed in any court of record in this territory, of the partiality, prejudice, consanguinity or interest of the sheriff, or of the deputy of the sheriff of any county when suit is about to be brought or shall have been commenced, it shall be the duty of the clerk

to issue and direct original or other process in the suit that would regularly go to such sheriff or deputy, to the coroner, who shall execute the same and attend to the same throughout, in the same manner as the sheriff could or ought to have done.

SEC. 4. The partiality, prejudice, consanguinity or interest of the sheriff or deputy, shall not be cause for change of venue, but the coroner shall perform the duties above described, or if there should be no coroner, some proper person to be appointed by the clerk, shall supply the place of the sheriff in like manner as the coroner is hereby required to do.

SEC. 5. That coroners shall take inquest upon the view of the dead bodies of such persons only as shall be supposed to have come to their death by violence or undue means, and not when the death is believed to have been and evidently was occasioned by casualty.

SEC. 6. That as soon as any coroner shall have notice of the dead body of any person, supposed to have come to his death by violence or undue means, found or lying within his county, he shall make his warrant to any constable of the county where such body is, requiring such constable forthwith to summon six good lawful men of the county, to appear before such coroner at the time and place expressed in such warrant, and the warrant may be issued with or without a seal, and in substance as follows:

TERRITORY OF IOWA, }
County, } SS.

To any constable of said county greeting: In the name of the United States of America, you are hereby required to summon immediately six good and lawful men of your county, to appear before me, one of [196] the coroners of said county, at the dwelling house of.....(or describe the place where to meet,) then and there to inquire upon the view of the body of.....there lying dead, and by what means he came to his death. Hereof fail not.

Given under my hand the.....day of.....A. D. 18.....

CORONER.

SEC. 7. That the constable to whom such warrant shall be directed and delivered shall forthwith execute the same, and shall, at the time mentioned in the warrant, repair to the place where the dead body is, and make return thereof to the coroner, and of his doings thereon under his hand; and any constable who shall unnecessarily neglect or fail to execute or return such warrant shall forfeit the sum of ten dollars; and if any person summoned as a juror, shall fail to appear without a reasonable excuse therefor, he shall forfeit the sum of five dollars; which forfeitures may be recovered to the use of the county, with costs of suit, by action of debt, or on the case, to be brought by the coroner.

SEC. 8. That when the jurors summoned appear, the coroner shall call over their names, and then in view of the body he shall administer to them the following oath:

“You solemnly swear that you will diligently inquire, and true presentment make on behalf [of] the United States of America, when, and how, and by what means the person whose body here lies dead came to his death; and you shall return a true inquest thereof according to your knowledge and such evidence as shall be laid before you, so help you God.” If the six jurors shall not all appear, the coroner may require the constable or any other person whom he shall appoint to return jurors from the bystanders to complete that number.

SEC. 9. The coroner may issue subpoenas for witnesses returnable forthwith, or at such time and place as he shall therein direct. The persons served with such subpoenas shall be allowed the same fees, and their attendance may be enforced in the same manner by the coroner, and they shall be subject to

the same penalties as if they had been served with a subpoena in behalf of the United States of America, to attend a justice's court.

SEC. 10. That an oath to the following effect shall be administered to the witnesses by the coroner: "You solemnly swear that the evidence you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God."

[197] SEC. 11. That the testimony of all witnesses examined before any inquest shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses respectively giving it in.

SEC. 12. That the jury, upon inspection of the dead body and after hearing the testimony and making all needful inquiries, shall draw up and deliver to the coroner their inquisition under their hands, in which they shall find and certify when, how, and by what means the deceased person came to his death, and his name, if it was known, together with all the material circumstances attending his death; and if it shall appear that he was murdered the jurors shall further state who were guilty either as principal or accessory, if known, or were in any manner the cause of his death, which inquisition may be in substance, as follows:

".....ss. An inquisition taken at, incounty, on the.....day ofA. D. 18 , before.....one of the coroners of the said county ofupon the view of the body of (or a person) there lying dead, by the oath of the jurors whose names are hereunto subscribed, who being sworn to inquire on behalf of the United States of America, when, how, and by what means the said.....came to his death, upon their oaths do say (then insert when, how and by what person, means, weapon or instrument he was killed,) in testimony whereof the said coroner and jurors of the inquest have hereunto set their hands the day and year aforesaid."

SEC. 13. That if the jury find that any murder, manslaughter, or assault has been committed on the deceased, the coroner shall bind over by recognizance such witnesses as he shall think proper to appear and testify at the next court to be held in the same county at which an indictment for such offense can be found; he shall return to the same court the inquisition, written evidence, all recognizances and examinations by him taken; and may commit to the jail of the county any witnesses who shall refuse to recognize in such manner as he shall direct.

SEC. 14. That if any person, charged by the inquest with having committed such offense, shall not be in custody, the coroner shall have the same power as a justice of the peace, to issue process for his apprehension; and such warrant shall be made returnable before any justice of the peace, or other magistrate or court having cognizance of the case, who shall proceed therein in the same manner that is required of justices of the peace in like cases.

SEC. 15. That when any coroner shall take an inquest upon the [198] view of the dead body of a stranger, or being called for that purpose shall not think it necessary, on view of such body, that any inquest should be taken, he shall cause the body to be decently buried, and all expenses of the inquisition and burial shall be paid by the county in which such dead body shall be found.

SEC. 16. That in case of the absence of the coroner, any magistrate being notified of any dead body as before mentioned, shall be authorized and required to perform the duty of the coroner as pointed out in this act.

SEC. 17. That the coroner, as soon as the verdict of the jury shall have been rendered, shall take immediate measures to have the body buried, the expense attending the burial to be paid out of the deceased person's estate, if sufficient there be, if not by the county: provided however, that if the friends of the de-

ceased shall request to have the body to bury at their own expense, the coroner shall deliver it to them.

SEC. 18. It shall not be lawful for any person to bury, or cause to be buried, the body of any person whatsoever that may have come to its death by unlawful violence or other suspicious cause, without first giving notice to the coroner of his county of such death, or in case the coroner is absent or cannot be had, to some justice of the peace. Every person so offending, shall be liable to the sum of fifty dollars, to be recovered before any proper tribunal, one-half to the use of the county, and the other half to the use of any person who will sue for the same.

Approved, December 23, A. D. 1839.

CHAPTER 52.

ILLEGITIMATE CHILDREN.

AN ACT to provide for the support of illegitimate children.

SECTION.

1. Warrant to bring accused father before a justice, and proceedings before the same.
2. Mother neglecting, county commissioners to bring suit against the father for support of the child.
3. Proceedings, in case accused father fails to appear before justice.
4. Accused pleading not guilty to be tried by jury, mother admitted as a [199] witness. Proviso.
5. Order for maintenance when defend-

SECTION.

- ant is found guilty, and security for the same.
6. Continuance of bonds for the appearance of the accused, until mother can attend.
7. Accused not appearing, scire facias to issue against sureties.
8. Failing to show cause, judgment entered against them.
9. Order for maintenance to be recorded installments recovered by execution.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That on complaint made to any justice of the peace in this territory, by any woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, accusing any person of being the father of such child, the justice shall take such accusation in writing, and thereupon issue his warrant, directed to the sheriff or one of the constables of his county, commanding him forthwith to bring such accused person before such justice to answer to such complaint, and on return of such warrant, the justice, in presence of such accused person, shall proceed to examine the complainant on oath respecting her cause of complaint. And such accused person, shall be allowed to ask, by himself, or his counsel, such complainant, under her oath or affirmation, any reasonable questions necessary to his justification, and such questions and answers, with every other part of the examination, shall be reduced to writing by the justice. And if, on such examination, such accused person, shall satisfactorily appear to be the father of the child he shall pay or cause to be paid to the woman so complaining, such sum or sums of money or other property as she may agree to receive in full satisfaction, and shall further enter into a bond with the board of county commissioners of the county in which such woman shall reside, and their successors in office, conditioned to save such county free from all charges

towards the maintenance of said child. And in case such person shall so comply with the requisitions of this act, then the justice shall discharge such person, on his paying the costs of prosecution.

SEC. 2. When any woman has a bastard, and neglects to bring suit for the maintenance of such child, or commences a suit and fails to prosecute to final judgment, the county commissioners interested in the support of such child, when sufficient security is not offered for the support of such child to save the county from expense, shall bring a suit, in behalf of such county, against him who is accused of being the [200] father of such child, or may take up and prosecute a suit begun by the mother of the child.

SEC. 3. In case such accused person does not comply with the provisions contained in the first section of this act, the justice to whom such complaint was made shall bind such person in a recognizance to the next district court, with sufficient security, in a sum not less than one hundred dollars nor more than five hundred dollars, to answer such accusation and to abide the judgment of court therein; and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

SEC. 4. When such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue, the examination of such accused person before the justice shall be given in evidence, and the mother of such child shall be admitted as a competent witness and her credibility left with the jury: provided, on the trial of the issue the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the child, also any variation in her testimony before the justice and that before the jury, and also any other confession of her at any time, which does not agree with her testimony on any other plea or process made in behalf of such accused person.

SEC. 5. In case the jury find the defendant guilty, or such accused person, before the trial, shall confess in court that the accusation is true, he shall stand charged with the maintenance of such child, in such sum or sums as the court may order and direct, with judgment of costs of prosecution, and moreover be liable to the suit of the complainant for damages, and the court shall require such person to give security to perform the aforesaid order. And in case the reputed father shall refuse or neglect to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the proper county, there to remain until he shall comply with the order of the court, or until such court shall, on sufficient cause shown, direct him to be discharged.

SEC. 6. If it shall happen, at the time of holding such court, that the woman be unable to attend, the court shall order a renewal of the bonds of recognizance that the accused person shall be forthcoming at the next court, at which the mother of the said child shall be able to attend, and the continuance of said bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the [201] same force and effect as a recognizance taken in court for that purpose.

SEC. 7. Whenever any recognizance which shall have been entered into by any person charged with being the father of an illegitimate child, as provided for by this act, shall be forfeited, by reason of the person not appearing to answer to said charge, it shall be the duty of the court to order a scire facias to issue against the sureties in said recognizance, commanding them to show cause at the next term of the court why judgment shall not go against them for the amount of said recognizance.

SEC. 8. If, upon the return of said scire facias served, or two returns if not found, the said sureties shall fail to show cause why the same shall not be

done, the court shall enter judgment against said securities, in the same way and manner as they would have done against the principal had he appeared and confessed himself to be the father of said child: provided, that they shall in no case be made liable to pay more for the support of the said child than the amount of the penalty of said recognizance.

SEC. 9. In all cases where the defendant shall be adjudged to be the father of the child, the order for its maintenance shall be entered, in the nature of judgment, upon the record, the different installments becoming due at the time the court may direct. And whenever any of the installments shall become due, and shall not be immediately paid, the same shall be collected by execution against the principal and securities as in other cases.

Approved, January 4, A. D. 1840.

CHAPTER 53.

CARRIERS.

AN ACT for the relief of certain carriers.

SECTION.

1. Contract not complied with, carrier to have a lien upon goods.
2. No action of replevin, etc., sustained until after payment.

SECTION.

3. Lien to continue thirty days.
4. Act not to effect existing rights.
5. Act in force from passage.

[202] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. That hereafter, when any person or persons, upon request or by agreement, shall carry any goods or freight from any one point in this territory to another by land or water, for any commander or captain of any steamboat or other vessel, it shall be lawful for said carrier or carriers to retain the possession of said goods until payment or tender of payment is made according to the contract made in such case either by said commander or his agent.

SEC. 2. That no action of replevin, trover and conversion, or trespass, shall be commenced or sustained by any person against said carrier for said goods until after payment or tender thereof is made as aforesaid.

SEC. 3. That said carrier or carriers shall not retain possession of said goods more than thirty days, without commencing a suit for his pay, which may be done by the ordinary suit of attachment before the proper tribunal, in the county in which such person may live. Said carrier shall keep said goods from being spoiled by exposure.

SEC. 4. That this act shall not be so construed as to take away the right of any person to proceed by attachment against any boat or vessel as is now provided by law: provided, that when any person has commenced suit one way, it shall be a bar to the other until the one first commenced is duly discontinued.

SEC. 5. This act to take effect from and after its passage.

Approved, January 13, A. D. 1840.

CHAPTER 54.

CONVEYANCES.

AN ACT to regulate conveyances.

SECTION.

1. Lawful seizing defined.
2. The term "heirs" not necessary to fee simple.
3. Subsequent estate to pass.
4. Claimant not in possession, may sell interest in estate.
5. Interest in real estate granted to two or more persons to be a tenancy in common.
6. Effects of the words "grant, bargain, and sell" in conveyances.
7. Proof or acknowledgment before [203] whom taken.
8. Officer taking acknowledgment to grant certificate and endorse the same upon the back of the acknowledgement.
9. How tested.
10. Person offering to make acknowledgment to be personally known by one taking the same.
11. Requisites of certificate.
12. Execution, how proved.
13. Witness to be known, or.
14. Certificate not to be granted unless.
15. What to set forth in proof.
16. Proof by hand writing when allowed.
17. Requisites to the granting of certificate.
18. What to set forth in proof.
19. Subpoena issued for witnesses to instrument.
20. Dower, how relinquished.
21. Relinquishment before whom taken.
22. Not to be taken unless such married woman be known.

SECTION.

23. Certificate of relinquishment.
24. Conveyance by feme covert.
25. Operation of covenants.
26. Acknowledgment of a married woman, by whom may be taken.
27. Not to be taken unless personally known to persons taking the same.
28. Certificate of acknowledgment, what to set forth.
29. Deeds to be recorded.
30. Filing the same to be notice.
31. Not valid except between the parties until deposited for record.
32. Letters of attorney.
33. When revoked.
34. Deeds in accordance with this act may be evidence.
35. Deed lost record may be proof.
36. Neither conclusive.
37. Not to be received if proof was taken upon the oath of an incompetent witness.
38. Real estate what to include.
39. Deeds for lands in this territory, acknowledged in another effectual and valid.
40. Deeds confirmed and declared valid.
41. Deeds for lands in this territory which have been acknowledged and proved in another declared valid.
42. Execution and delivery of deed prima facie evidence of the same.
43. All instruments conveying real estate proved according to the provisions of this act good and valid.
44. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when any person becomes seized of any real estate, to the use, confidence or trust of any other person, civil or natural, the person who has such use, confidence or trust, in fee simple, for term of life, or of years, or otherwise, or in remainder or reversion, shall be deemed forthwith in a lawful seizin estate and possession of the same real estate, remainder or reversion in such like estates, and after the same quality, manner, form and condition as he is in the use, confidence or trust.

SEC. 2. The term "heirs" or other words of inheritance shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate hereafter executed, shall pass all the es-[204]-tate of the grantor, unless

the intent to pass a less estate, shall appear by express terms, or be necessarily implied in the term of the grant.

SEC. 3. If any person shall convey any real estate by a conveyance purporting to convey the same, in fee simple absolute, and shall not at the time of such conveyance, have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired, shall immediately pass to the grantee; and such conveyance shall be as valid as if such legal estate had been in the grantor, at the time of the conveyance.

SEC. 4. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein, in the same manner and with like effect, as if he was in the actual possession thereof.

SEC. 5. Every interest in real estate, granted or devised, to two or more persons, (other than to executors and trustees as such,) shall be a tenancy in common, unless expressly declared in such grant or devise, to be in joint tenancy.

SEC. 6. The words grant, bargain and sell, in all conveyances in which any estate of inheritance, in fee simple, is limited, shall unless restrained by express terms, contained in such conveyance, be construed to, be the following express covenants on the part of the grantor, for himself and his heirs to the grantee, his heirs and assigns.

1. That the grantor was, at the time of the execution of such conveyance, seized of an indefeasible estate, in fee simple, in the real estate thereby granted.

2. That such real estate was, at the time of the execution of such conveyance, free from incumbrance, done or suffered by the grantor, or any person claiming under him.

3. For further assurance of such real estate, to be made by the grantor and his heirs to the grantee, his heirs and assigns, and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance.

4. Every instrument in writing that conveys any real estate or whereby any real estate may be affected in law or equity, shall be acknowledged or proved and certified in the manner herein prescribed.

SEC. 7. The proof or acknowledgment of every such instrument shall be taken by some one of the following courts or officers:

1. If acknowledged or proved within this territory, by some court having a seal, or some judge, justice or clerk thereof, or some justice of the peace or notary public

[205] 2. If acknowledged or proved before a justice of the peace, residing in another, and different county from the one wherein such real estate is situated, a certificate of the clerk of the district court of said county, shall accompany such instrument, certifying that said person, before whom the acknowledgment or proof was taken, was at the time of taking such acknowledgment or proof, an acting justice of the peace of such county.

SEC. 8. Every court or officer shall take the proof or acknowledgment of any such instrument in writing, or the relinquishment of the dower of a married woman on any conveyance of the real estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on such instrument or conveyance.

SEC. 9. Such certificate shall be,

1. When granted by a court, under the seal of the court.

2. When granted by the clerk of a court, under the hand of the clerk, and seal of the court of which he is clerk.

3. When granted by an officer who has a seal of office, under the hand and official seal of such officer.

4. When granted by an officer who has no seal of office, under the hand of such officer.

SEC. 10. No acknowledgment of any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be taken, unless the person offering to make such acknowledgment shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, or shall be proved to be such by at least, one credible witness.

SEC. 11. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least one witness, whose name shall be inserted in the certificate.

SEC. 12. The proof of the execution of any instrument in writing, that conveys any real estate, or whereby any real estate may be affected in law or equity shall be,

1. By the testimony of a subscribing witness, or,

2. When all the subscribing witnesses are dead or cannot be had, by evidence of the hand writing of the party and of at least one [206] such witness shall be personally known to at least one judge of the court, or to the officer taking the proof, to be the person whose name is subscribed to the instrument as a witness thereto, or shall be proved to be such by at least two credible witnesses.

SEC. 14. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person who executed the same; that subscribing witness, given by at least two credible witnesses to each signature.

SEC. 13. No proof by a subscribing witness shall be taken, unless such person executed the instrument, and that such witness subscribed his name thereto as a witness thereof.

SEC. 15. The certificate of such proof shall set forth the following matter:

1. The fact that such subscribing witness was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to such instrument as a witness thereto, or was proved to be such by at least one witness, whose name shall be inserted in the certificate.

2. The proof given by such witness, of the execution of such instrument, and of the facts that the person whose name is subscribed to such instrument as a party thereto, is the person who executed the same, and that such witness subscribed his name to such instrument as a witness thereof.

SEC. 16. No proof, by evidence of the hand writing of the party and of a subscribing witness, shall be taken, unless the court or officer taking the same shall be satisfied that all the subscribing witnesses to such instrument are dead, or cannot be had to prove the execution thereof.

SEC. 17. No certificate of any such proof shall be granted, unless at least two credible witnesses shall state, on oath, that they personally knew the person whose name is subscribed thereto as a party, well know his signature, stating their means of knowledge, and believe the name of the person subscribed thereto as a party, was subscribed by such person, nor unless at least two credible witnesses shall, in like manner, state that they personally knew the person whose name is subscribed to such instrument as a witness, well know his signature,

stating their means of knowledge, and believe the name subscribed thereto as a witness, was thereto subscribed by such person.

SEC. 18. The certificate of such proof shall set forth the names of [207] the witnesses examined, the fact that such witnesses were sworn, and the evidence required by the last preceding section to be by them given.

SEC. 19. Upon the application of any grantee in any instrument in writing required by this act to be recorded, or of any person claiming under such grantee, verified by the oath of the applicant, that any witness to such instrument, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any court or officer authorized to take the proof of the instrument, may issue a subpoena requiring such witness to appear before such court or officer and testify, touching the execution thereof.

SEC. 20. A married woman may relinquish her dower in any of the real estate of her husband, by any conveyance thereof, executed by herself and husband, and acknowledged and certified in the manner hereinafter prescribed.

SEC. 21. Such relinquishment shall be taken before some court or officer authorized by this act, to take the proof or acknowledgment of instruments in writing, conveying real estate or affecting the same.

SEC. 22. No such relinquishment shall be taken unless such married woman shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such, by at least one credible witness, nor unless she shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned, freely, and without compulsion, or undue influence of her husband.

SEC. 23. The certificate of such relinquishment shall set forth that such married woman was personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance, or was proved to be such by at least one witness, whose name shall be inserted in the certificate; that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination, apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely, and without compulsion, or undue influence of her husband.

SEC. 24. A married woman may convey any of her real estate, by [208] any conveyance thereof, executed by herself and husband, and acknowledged by such married woman, and certified in the manner hereinafter prescribed, by some court, authorized by this act, to take and certify such acknowledgment.

SEC. 25. No covenant, expressed or implied, in any such conveyance, shall bind such married woman or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs, all her right and interest expressed to be conveyed in such conveyance.

SEC. 26. Any court, or person, authorized by this act, to take the proof or acknowledgment of any instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, may take and certify the acknowledgment of a married woman to any such conveyance of her real estate.

SEC. 27. No such acknowledgment shall be taken unless such married woman shall be personally known to at least one judge of the court taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by at least one credible witness, nor unless such married woman shall be made acquainted with the contents of

such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same freely, and without compulsion, or undue influence of her husband.

SEC. 28. The certificate of such acknowledgment shall set forth that such married woman was personally known to at least one judge of the court granting the same, to be the person whose name is subscribed to such conveyance, as a party thereto, or was proved to be such by at least one witness, (whose name shall be inserted in the certificate,) and that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination apart from her husband, that she executed the same freely, and without compulsion, or undue influence of her husband.

SEC. 29. Every instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, proved or acknowledged, and certified in the manner above prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

SEC. 30. Every such instrument in writing, certified and acknowledged in the manner herein above prescribed, shall from the time of filing the same with the recorder for record, impart notice to all per-[209]-sons of the contents thereof, and all subsequent purchasers and mortgagees shall be deemed in law and equity to purchase with notice.

SEC. 31. No such instrument in writing shall be valid, except between the parties thereto and such as have actual notice thereof, until the same shall be deposited with the recorder for record.

SEC. 32. Every letter of attorney, or other instrument in writing, containing a power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another, any instrument in writing that conveys any real estate, or whereby any real estate may be affected in law or equity, shall be acknowledged or proved, and certified and recorded as other instruments in writing, conveying or affecting real estate, are required to be acknowledged, or proved, and certified and recorded.

SEC. 33. No such letter of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

SEC. 34. Every instrument in writing, conveying or affecting real estate, which shall be acknowledged or proved, and certified as hereinbefore prescribed, may, together with the certificate of acknowledgment, proof or relinquishment, be read in evidence without further proof.

SEC. 35. Where any such instrument is acknowledged, or proved and certified and recorded in the manner hereinbefore prescribed, and it shall be shown to the court that such instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or a transcript of such record, certified by the recorder, under the seal of his office, may be read in evidence, without further proof.

SEC. 36. Neither the certificate of the acknowledgment, or of the proof of any such instrument in writing, nor the record, or transcript of the record of such instrument shall be conclusive, but the same may be rebutted.

SEC. 37. If the party contesting the proof of any such instrument shall make it appear that such proof was taken upon the oath of an incompetent witness, neither such instrument, nor the record thereof, shall be received in evidence until established by other competent proof.

SEC. 38. The term real estate, as used in this act, shall be construed [210]-ed as co-extensive in meaning, with lands, tenements, and hereditaments, and as embracing all chattels real.

SEC. 39. This act shall not be so construed as to embrace within its provisions last wills and testaments.

SEC. 40. That all deeds and conveyances of lands, tenements or hereditaments, situated, lying, and being within this territory, which shall hereafter be made and executed in any other territory, state, or country, whereby such lands, tenements, or hereditaments shall be conveyed, in whole or in part, or otherwise affected or incumbered, in law, may be acknowledged, proved and certified, according to, and in conformity with, the laws and usages of the territory, state or country, in which such deeds or conveyances were acknowledged or proved, or in which they shall be acknowledged or proved; and all such deeds and conveyances are hereby declared effectual and valid, in law, to all intents and purposes, as though the same acknowledgment had been taken, or proof of execution made, within this territory, or in pursuance of the laws thereof, and such deeds and conveyances so acknowledged or proved as aforesaid, may be admitted to be, and shall be, recorded in the respective counties in which such lands, tenements or hereditaments do, or may, lie.

SEC. 41. That all deeds and conveyances of lands, tenements and hereditaments, situate, lying, and being within this territory, which have been acknowledged or proved, within any other territory, state or country, according to, and in compliance with, the laws and usages of such territory, state or country, and which deeds or conveyances have been recorded within this territory, be and the same are hereby confirmed and declared effectual and valid, in law, to all intents and purposes, as though the said deeds or conveyances, so acknowledged, or proved and recorded, had, prior to being recorded, been acknowledged or proved within this territory.

SEC. 42. The execution and delivery of any deed or conveyance of any lands, tenements or hereditaments, in any court of law or equity, in this territory, shall be considered prima facie evidence of its execution and delivery, and the party denying the same, his agent or attorney, shall deny the same by his oath or affidavit, when the party introducing such deed shall prove the execution and delivery as in other cases.

SEC. 43. That all instruments of writing conveying any real estate, or whereby any real estate may be affected, either in law or equity, [211] that have been proved or acknowledged, according to the foregoing provisions of this act, shall be good and valid.

SEC. 44. That an act entitled an act to regulate conveyances, approved January 4, 1840, and an act to amend an act regulating conveyances, approved January 13, 1841, be and the same are hereby repealed.

Approved, February 16, A. D. 1843.

CHAPTER 55.

CRIMES AND MISDEMEANORS.

AN ACT in relation to the safe custody of persons arrested for crimes and misdemeanors.

SECTION.

1. Persons arrested for crimes in one county, may for safe custody, be transferred to another.
2. By whose direction.
3. When direction to be given.
4. Sheriff to make transfer.

SECTION.

5. Confinement of prisoner.
6. Sheriff may call aid in making transfer.
7. Expenses of transfer by whom borne.
8. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any person arrested on a charge of any crime or misdemeanor, committed in any county of this territory, who might legally be confined in the jail of said county, may for safe custody be transferred to the jail of any other county, in the manner provided for in this act.

SEC. 2. Such transfer may be made by the direction of any judge of the supreme court, or of any justice of the peace of the county wherein the offense shall have been committed.

SEC. 3. Before making the direction for such transfer, said judge or justice of the peace shall require satisfactory proof that the prisoner cannot be retained in safe custody in the county where the offense was committed.

SEC. 4. Upon receiving such direction in writing, signed by the officer making the same, the sheriff shall forthwith transfer the person to the jail of the county specified in said direction, and shall leave with [212] the jailor of that county a copy of the original mittimus, together with a copy of the directions aforesaid.

SEC. 5. The prisoner shall then be safely retained in the jail to which he shall have been removed, in the same manner as though the offense had been committed in that county, until demanded by the sheriff of the proper county for trial, or until he shall have been otherwise lawfully discharged.

SEC. 6. The sheriff of the proper county, in removing the prisoner to and from the jail as aforesaid, may call to his aid any necessary assistance or use any other needful precaution, the same as though he were within his own county, and should an escape happen he may pursue and retake the prisoner in any portion of this territory.

SEC. 7. The expenses of the transfer and confinement of the prisoner as aforesaid, shall be borne by the county wherein the offense was committed.

SEC. 8. That an act in relation to the safe custody of persons arrested for crimes and misdemeanors, approved November 26, 1839, and an act to amend an act, entitled an act, in relation to the safe custody of persons arrested for crimes and misdemeanors, approved February 10, 1842, be and the same are hereby repealed.

Approved, January 18, A. D. 1843.

CHAPTER 56.

COSTS AND FEES.

AN ACT concerning costs and fees.

SECTION.

1. Fees of clerk of district courts.
Fees of clerk of supreme court.
Sheriff's fees.
Fees of county commissioner's clerk.
Coroner's fees.
Fees of masters in chancery.
Fees of justices of the peace in civil cases.
Fees of justices of the peace in criminal cases.
Fees of constables in civil and criminal cases.
Witnesses' fees.
Jurors' fees.
Fees of notary public.
Fees of judges of probate.
County surveyors fees.
2. Party in civil case, in whose favor judgment is given to recover costs.
3. In suits for breach of law when judgment is rendered against, he is liable for costs.
- [213] 4. Fees to be paid by party requiring the services.
5. Officers being required to set up or advertise notices, to be allowed for it.
6. To be allowed for services performed, not enumerated in this act such fees as the courts may tax.

SECTION.

7. Table of fees to be set up in each office.
8. Fine of officer for taking greater fees than are allowed by this act.
9. Bill of particulars to be made out by officer.
10. Fees of witnesses to be paid in advance if required.
11. Citizens of this territory to have free access to records without tax.
12. Record books of court, by whom paid for.
13. Certain officers and persons only to have claim against the territory for services performed in any other than the supreme or district courts.
14. Compensation of sheriff for attendance upon the supreme court.
15. Compensation of sheriffs for attendance upon district courts. Proviso.
16. Fees for recording of deeds and mortgages.
17. County commissioners to tax fees to defray expenses of petit juries—Proviso.
18. Repealing clause.
19. Act in force from 20th day of February, 1843.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That from and after the taking effect of this act, the fees and compensation to the several officers and other persons hereinafter mentioned, shall be as follows:

IN THE DISTRICT COURTS OF THE TERRITORY, THE CLERKS' FEES IN ALL CASES TO WHICH THE SAME MAY APPLY RESPECTIVELY.

| | |
|---|---------------------------------|
| For issuing and sealing every writ not exceeding three hundred words.. | \$.50 |
| For each additional folio of one hundred words..... | .12 ¹ / ₂ |
| Docketing case first time | .12 ¹ / ₂ |
| Each subsequent time | .12 ¹ / ₂ |
| Entering judgment on a suit without process..... | .25 |
| Entering cause on judgment docket..... | .18 ³ / ₄ |
| Entering each order or rule of court for every continuance, rule to plead, default to plead, retraxit, non suit or discontinuance, or any other order actually entered in the progress of a suit..... | .18 ³ / ₄ |

| | |
|---|-------------------|
| Filing each paper in a suit, except appeals from justices, and in no case shall such fees exceed twenty-five cents..... | .06 $\frac{1}{4}$ |
| Filing all papers in appeal or certiorari from justices..... | .06 $\frac{1}{4}$ |
| [214] Issuing bail piece when required..... | .25 |
| Entering special bail..... | .18 $\frac{3}{4}$ |
| Swearing and empaneling each jury..... | .18 $\frac{3}{4}$ |
| Administering oath to each witness on trial..... | .06 $\frac{1}{4}$ |
| Entering verdict of jury and judgment..... | .50 |
| Entering satisfaction of judgment..... | .06 $\frac{1}{4}$ |
| Issuing writ of execution..... | .25 |
| Taxing costs..... | .25 |
| Entering exonerator..... | .06 $\frac{1}{4}$ |
| Entering surrender..... | .06 $\frac{1}{4}$ |
| A commission to take depositions..... | .50 |
| All motions in one suit..... | .18 $\frac{3}{4}$ |
| All the rules in one suit..... | .18 $\frac{3}{4}$ |
| If there be only one..... | .06 $\frac{1}{4}$ |
| A venire for a jury..... | .25 |
| Making a complete record in each cause when ordered by the court for every one hundred words..... | .10 |
| Copy of record when required for one hundred words..... | .10 |
| Every certificate when required with seal of court..... | .37 $\frac{1}{2}$ |
| A subpoena to include all the witnesses called for at the time of issuing.. | .25 |
| Filing record of appeal, writ of error, supersedeas, certiorari or habeas corpus..... | .06 $\frac{1}{4}$ |
| Assessment of damages..... | .18 $\frac{3}{4}$ |
| A subpoena in chancery..... | .37 $\frac{1}{2}$ |
| Filing each bill, answer, replication or other pleading in chancery..... | .06 $\frac{1}{4}$ |
| Copy of paper not herein provided for, every one hundred words..... | .10 |
| For administering oath in naturalization cases..... | .06 $\frac{1}{4}$ |
| Filing the same..... | .06 $\frac{1}{4}$ |
| Certificate of application..... | .50 |
| Certificate of naturalization..... | .50 |
| Taking a recognizance..... | .12 $\frac{1}{2}$ |
| Issuing and recording marriage license..... | 1.00 |
| Each bond required by law..... | .50 |

No fees shall be paid or demanded from grand or petit jurors or witnesses, for issuing a certificate entitling them to fees as such. The county commissioners may allow the sheriff and clerk of the district court, any sum not exceeding thirty dollars per annum, for services in criminal cases, where the party is acquitted.

[215] CLERK OF SUPREME COURT FEES.

| | |
|---|-------------------|
| For issuing and sealing every writ..... | \$1.00 |
| Docketing cause each time..... | .12 $\frac{1}{2}$ |
| Entering cause on judgment docket..... | .25 |
| Entering each order, motion or rule..... | .20 |
| Filing each paper..... | .10 |
| Entering judgment..... | .50 |
| Entering non suit, discontinuance, dismissal or nolle prosequi..... | .12 $\frac{1}{2}$ |
| Entering satisfaction of judgment..... | .12 $\frac{1}{2}$ |
| Entering return of execution..... | .12 $\frac{1}{2}$ |
| Taxing costs..... | .25 |
| Copy of record or paper per 100 words..... | .15 |

COSTS AND FEES

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| | |
|---|------|
| Certificate with seal | .50 |
| Taking bond | .50 |
| Assessment of damage | .25 |
| Entering cause on court calendar | .12½ |
| Entering appearance of parties | .12½ |
| Signing final record | .20 |
| Making complete record for every hundred words..... | .15 |

And for all services not specified in the above list, he shall receive such compensation as shall be allowed the clerk of the district court for like services.

SHERIFF'S FEES.

| | |
|---|--------|
| For serving any writ and the return thereof, (subpœnas excepted) for one defendant | \$.50 |
| Each additional defendant | .25 |
| Every commitment to prison | .25 |
| Discharge from prison | .25 |
| Attending with a person before a judge or court, when required, per day, at any time not a regular term of court..... | 1.00 |
| Mileage in going with such person before said judge and returning per mile | .04 |
| Serving a writ of possession or restitution..... | .50 |
| Serving the same with a posse comitatus..... | 1.50 |
| Copy of paper required by law, for each 100 words..... | .10 |
| Serving and returning a subpœna for each person therein named..... | .18¾ |
| Calling a jury in each cause..... | .12½ |
| [216]Summoning a grand and petit jury, to be paid out of the county treasury, for each panel..... | 8.00 |
| Traveling fees in cases required by law, going and returning, per mile.... | .04 |
| Selling land or other property on execution, per day..... | 1.00 |
| Making and executing a deed for land sold on execution..... | 1.00 |
| Serving one person with an order of court, besides mileage..... | .12½ |
| Summoning a jury in cases of forcible entry and detainer..... | 1.50 |
| Serving an execution or order for the partition of real estate or assigning dower, besides mileage | .50 |
| Each appraiser of real and personal estate, per day..... | .50 |
| Each bond required by law | .25 |
| For collecting and paying over all sums under two hundred dollars, two and a half per cent; for all sums over two hundred dollars and less than five hundred dollars, two per cent; and for all sums over five hundred dollars, one per cent. | |
| Returning a writ not served | .06¼ |
| Receiving prisoner on surrender by bail..... | .25 |
| Taking new bail | .25 |
| Dieting a prisoner to be paid out of the county treasury, when prisoner is insolvent, per day | .25 |

The sheriffs shall be allowed by the county commissioners a sum of money not less than ten nor more than fifty dollars, for services rendered the county in delivering notices and duties of that character for which no specified sum is provided by law. No sheriff shall directly or indirectly, charge or receive any mileage on process issued from any foreign county, except for the number of miles actually traveled.

FEES OF COUNTY COMMISSIONERS' CLERK.

| | |
|---|---------------------------------|
| For services in recording proceedings in term time, per diem..... | \$2.00 |
| For entering other records and accounts necessary to be kept in his office, for each folio of one hundred words..... | .10 |
| For making calculation and carrying out the amount of taxes on the as- sessment roll, per diem | 2.00 |
| For each county order issued by him | .05 |
| For making out abstracts of assessment roll, for every one hundred words, three figures counting one word | .08 |
| For each bond for constable or other officer, drawn by him, to be paid by such officer | .25 |
| [217] Administering oath of office and certifying same..... | .25 |
| To filing all returns of a general or special election..... | .50 |
| For each certificate and seal..... | .25 |
| For recording certificate of estray animals from justices of the peace, for each certificate | .18 ³ / ₄ |
| Taking and filing an affidavit and entering the same, and proof of an estray | .37 |
| For advertisement of estrays | .25 |
| Copy of any paper or record when required, for each one hundred words. | .10 |
| For making out plats of each township for assessor..... | 1.00 |
| For filing each paper required to be filed..... | .05 |
| For each blank form for assessor, per quire..... | .50 |
| For collectors' precept and sealing same..... | .25 |
| For granting and issuing permit or license..... | .75 |
| For each advertisement of general or special elections..... | .12 ¹ / ₂ |

CORONER'S FEES.

| | |
|---|--------|
| For view of each body and for taking and returning inquest, to be paid by the deceased estate when solvent | \$5.00 |
| Every subpoena, warrant or venire | .25 |
| For all other services the same fees as is allowed to sheriffs in similar cases. | |

FEES OF MASTERS IN CHANCERY.

| | |
|---|---------------------------------|
| For attending and hearing every argument on any subject referred to him, and reporting thereon | \$2.50 |
| Reporting when proceedings are exparte..... | .75 |
| Administering each oath | .06 |
| Taking depositions, every one hundred words..... | .12 ¹ / ₂ |

FEES OF JUSTICES OF THE PEACE IN CIVIL CASES.

| | |
|---|-----------------------------------|
| For docketing each suit | \$.06 ¹ / ₄ |
| For summons or warrant | .12 ¹ / ₂ |
| Precept for jury | .12 ¹ / ₂ |
| Every subpoena including all witnesses asked for at the time..... | .18 ³ / ₄ |
| Swearing a jury | .12 ¹ / ₂ |
| [218] Entering a verdict..... | .12 ¹ / ₂ |
| Entering judgment | .12 ¹ / ₂ |
| Taking and certifying any acknowledgment..... | .25 |
| Administering each oath | .06 ¹ / ₄ |
| Issuing fee bill | .12 ¹ / ₂ |
| Every rule of reference | .12 ¹ / ₂ |

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|--|------|
| Every continuance or adjournment, at the request of either party..... | .12½ |
| Taking depositions, for every one hundred words..... | .10 |
| Certifying the same..... | .12½ |
| Taking bail, recognizance or security..... | .25 |
| Every discontinuance or satisfaction..... | .12½ |
| Entering amicable judgment..... | .25 |
| Transfer of judgment..... | .12½ |
| Marrying and making return thereof..... | 2.00 |
| Filing each paper required to be filed..... | .04 |
| Opening judgment after default..... | .12½ |
| Taxing costs..... | .12½ |
| Issuing writ of attachment..... | .25 |
| Taking bonds for same..... | .25 |
| For holding inquisition in cases of forcible entry and detainer, in addition to other fees, per day..... | 1.00 |
| Writ of restitution including execution for costs..... | .25 |
| Rule to take deposition when the witness is out of the territory..... | .37½ |
| For every execution..... | .25 |
| Transcript of judgment, for every hundred words..... | .10 |
| For hearing any matter wherein a jury is called..... | .25 |
| For administering an oath out of court, and mileage..... | .12½ |
| Copy of the proceedings in any case when demanded for an appeal or any other purpose, for every one hundred words..... | .10 |
| Certificate thereof..... | .10 |
| Affidavit for attachment..... | .10 |
| Swearing each witness..... | .06¼ |
| For renewing execution..... | .06¼ |

FEES OF JUSTICES OF THE PEACE IN CRIMINAL CASES.

| | |
|--|--------|
| For warrant or search warrant..... | \$.25 |
| Commitment to jail..... | .12½ |
| [219] For affidavit..... | .12½ |
| Taking recognizance..... | .25 |
| Entering judgment for fine or punishment..... | .25 |
| Order of discharge to jailor..... | .25 |
| And in all cases mileage, when justices are called from their offices, per mile..... | .04 |

For other services, fees as in civil cases.

FEES OF CONSTABLES IN CIVIL AND CRIMINAL CASES.

| | |
|---|--------|
| For serving summons, for each person therein named..... | \$.25 |
| For serving warrant..... | .25 |
| Copy of every summons or warrant..... | .10 |
| Traveling to and from place of service to place of return per mile..... | .04 |
| When two or more persons are served, mileage to be computed only from the most remote place unless they are in opposite directions. | |
| Summoning a jury..... | .50 |
| Attending the same on trial..... | .25 |
| For serving execution besides mileage..... | .25 |
| Advertising and selling property besides mileage..... | .50 |
| For advertising without selling..... | .25 |
| For notifying plaintiff of service, besides mileage..... | .18¾ |
| Return of execution when no levy is made..... | .06¼ |

COSTS AND FEES

| | |
|--|-------------------|
| Each notice of attachment being issued, besides mileage..... | .12 $\frac{1}{2}$ |
| Bond for the same..... | .25 |
| For serving attachment, besides mileage..... | .25 |
| On all sums collected on execution and paid over, four per cent. | |
| Serving subpoena besides mileage | .12 $\frac{1}{2}$ |
| Posting and copying attachment | .18 $\frac{3}{4}$ |
| Commitment to prison besides mileage..... | .25 |

WITNESSES' FEES.

| | |
|--|--------|
| Each witness for a day's attendance before the district court..... | \$1.00 |
| Attendance before a justice of the peace for every day..... | .50 |
| Mileage, for each mile coming to and returning from his or her place of residence to the place of trial..... | .04 |

[220] The successful party shall in no case recover the costs of more than two witnesses against the other party, unless the court or justice of the peace shall deem and certify a greater number to be necessary for proving any one fact.

JURORS FEES.

| | |
|---|--------|
| Grand jurors per day, when paid by the county..... | \$1.25 |
| Petit jurors per day | 1.25 |
| Traveling to and from court per mile..... | .04 |
| And all necessary expenses for ferriage in traveling to and from court. | |
| Jurors each day before a justice of the peace..... | .50 |

FEES OF NOTARY PUBLIC.

| | |
|--|-------------------|
| For every protest of a bill of exchange or promissory note, registering seal or other services | \$.75 |
| Attesting letters of attorney and seal..... | .50 |
| Noting a bill of exchange for non-acceptance or non-payment..... | .25 |
| Drawing and taking proof of acknowledgment of any legal instrument, not exceeding two pages | 1.00 |
| Notarial affidavit to an account under seal..... | .25 |
| Registering protest of a bill of exchange, or promissory note, for non-acceptance or non-payment | .50 |
| Certifying power of attorney | .25 |
| Drawing and certifying affidavit | .25 |
| Each oath or affirmation | .06 $\frac{1}{4}$ |
| Being present at demand, tender or deposit, and noting the same..... | .37 $\frac{1}{2}$ |
| Every certificate with seal annexed..... | .25 |

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

FEES OF JUDGES OF PROBATE.

| | |
|--|--------|
| For granting letters of administration or probate of will..... | \$.50 |
| When the same are contested | 1.00 |
| Hearing complaint against spendthrift or lunatic..... | 1.00 |
| Appointing guardian to minors, lunatic, or spendthrift..... | .50 |
| Decree for probate of a will..... | .50 |
| [221] When contested | 1.00 |
| Decree for settlement of an estate..... | .50 |
| Order of distribution | .50 |
| Examining and allowing inventory, for first page..... | .25 |

COSTS AND FEES

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| | |
|--|------|
| Each succeeding page | .10 |
| Any writ or process issued under seal | .25 |
| Examining and allowing accounts not exceeding one page..... | .25 |
| Each additional page | .10 |
| Warrant to appraise or divide estates..... | .25 |
| Issuing commission to receive and examine claims of creditors when an estate is represented to be insolvent | .25 |
| Allowing an appeal | .25 |
| Approving securities of executor or administrator..... | .25 |
| Assigning personal estate to widow..... | .25 |
| Assignment of dower in real estate..... | .25 |
| Disallowance of application for letters of administration or probate of will to be paid by the losing party..... | .50 |
| For every continuance when asked by a party..... | .12½ |
| Order for sale of personal estate..... | .25 |
| Certificate of necessity for sale of real estate..... | .25 |
| Extending letters of administration | .25 |
| Granting a reference of executors or administrators account or allowing report thereon | .50 |
| For bonds upon letters of administration, or appointment of guardian.... | .50 |
| Probate of will and letters testamentary thereon..... | .50 |
| Drawing a decree respecting the probate of a will or codicil..... | .50 |
| Bond for the execution..... | .25 |
| Drawing order of distribution | .25 |
| A quietus | .25 |
| Filing each paper | .06¼ |
| Administering an oath | .06¼ |
| Recording all papers, required by law to be recorded, for one hundred words | .10 |
| Appeal or other bonds | .25 |
| 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 of an insolvent estate | .25 |
| A citation or summons for the first person named therein..... | .25 |
| Each other person named therein | .12½ |
| [222] Entering and filing a caveat | .12½ |
| To apportion an insolvent estate among the creditors..... | .62½ |
| Seal to an exemplification..... | .12½ |
| 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 |

But no fee shall be demanded for taking from the files in his office, or transferring to the place of 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 SUREYORS' FEES.

| | |
|---|--------|
| For surveying and platting town lots, for each lot..... | \$.25 |
| For every other service, per diem..... | 3.00 |
| Certified copy of survey | .25 |
| Certified plat of survey..... | .25 |

SEC. 2. That in all cases, unless otherwise provided, the party in whose favor judgment is given, shall recover costs, and the supreme court, district and justice courts, respectively, may give or refuse costs at their discretion, upon all motions.

SEC. 3. In all prosecutions in the name of the United States or of an individual, for the breach of any law of this territory, when judgment is rendered against the defendant, such defendant shall be liable for the costs.

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.

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 an 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.

SEC. 6. For all services required to be performed by law, and not herein enumerated, the officer performing the same, shall be allowed [223] such reasonable fees as the supreme or district courts may tax therefor.

SEC. 7. 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.

SEC. 8. 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, when the business for which such fees are chargeable shall not have been actually done and performed, such officer, for every such offense, 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.

SEC. 9. 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.

SEC. 10. The traveling fees 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 one day, 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.

SEC. 11. Every citizen of this territory shall have free access to all public records without being taxed therefor.

SEC. 12. The clerk of the supreme court shall procure good and well bound books for the records of said court, to be approved by the judges of the supreme court, the expense of which shall be paid out of the territorial treasury.

SEC. 13. 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 [224] of Iowa, which officer and persons are designated in the succeeding section.

SEC. 14. The sheriff shall be allowed one dollar and fifty cents per diem for every day he shall attend upon the supreme court, and one deputy sheriff, in

the absence of the sheriff, shall be allowed one dollar and fifty cents per day, which compensation shall be paid from the territorial treasury.

SEC. 15. The sheriffs in the several counties in this territory, shall be allowed for every day such sheriff shall attend the district court one dollar per day, and in the absence of the sheriff, one deputy sheriff shall be allowed one dollar per day for the days 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 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. 16. 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.

SEC. 17. That it shall be the duty of the county commissioners at their next meeting after the passage of this act, to order the clerk of the district court to tax in the bill of costs of all suits now instituted or hereafter instituted, a docket fee to defray the expenses of the petit jury, and their contingent expenses of the court not exceeding two dollars and fifty cents, to be paid by the party instituting the suit at the time thereof, or by giving security to be approved of by the clerk for the payment of costs as in other cases, which fee when collected shall be paid into the treasury quarterly; but such docket fee shall be taxed in the bill of costs and paid by the losing party: provided, however, nothing in this section shall be so construed as to authorize the collection of any docket fee in any county wherein the session of the district court shall not exceed one week.

SEC. 18. That the act approved January 23, 1839, and February 15, 1842, relating to costs and fees, and all other acts contravening the provisions of this act be and the same are hereby repealed.

SEC. 19. This act to take effect, and be in force, from and after the 20th day of February, 1843.

Approved February 11, A. D. 1843.

[225] CHAPTER 57.

DEPOSITIONS.

AN ACT regulating the mode of taking depositions, and to provide for the perpetuation of testimony.

SECTION.

1. Deposition of non-resident witnesses.
2. Of resident witness.
3. Oath of witness, certificate annexed to deposition and return made—Proviso.
4. Depositions taken as provided in this act may be read in evidence.
5. Officers taking depositions authorized to issue subpoenas.
6. Compensation to witnesses.
7. When deposition to be rejected as informal.
8. Seals not to be broken but by permission of court. Proviso.

SECTION.

9. May be read by either party.
10. Proceedings to perpetuate testimony.
11. Notice to be given in such cases to persons interested.
12. Persons interested may attend and cross examine deponents, certificate of person taking the same to be annexed, etc.
13. Testimony may be read in case of death, etc., of deponent. Proviso.
14. Acts repealed. Proviso. When this act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 enclosed with, or attached to said commission, both on part of the plaintiff and defendant, [226] 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 any 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.

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 depositions to annex at the foot thereof a certificate subscribed by himself or themselves, stating that it was [227] 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.

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.

SEC. 5. Each and every commissioner or commissioners, 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 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 traveling 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 any wise 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 [228] 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 offense for the clerk to break open any such deposition, as aforesaid, where it is doubtful from the endorsements made thereon whether the same be a deposition or not, but in such case it shall not be proper for such clerk to permit any person to examine any deposition which may be thus opened by mistake, until permission shall have been first given by the court as aforesaid.

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.

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.

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 [229] 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, or 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, addressed 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, 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, 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 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 [230] 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 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 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.

SEC. 14. The act, entitled "an act concerning depositions," approved April 12, 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, 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, A. D. 1838.

CHAPTER 58.

DISTRICT PROSECUTORS.

AN ACT providing for the appointment of district prosecutors, and defining their duties.

SECTION.

1. District prosecutor in each judicial district.
2. Their duties.
3. Oath and bond.

SECTION.

4. Vacancies, how filled.
5. To give their advice to officers in their respective districts. Compensation.

[231] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. 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.

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, A. D. 1839.

[232] CHAPTER 59.

ELECTORAL DISTRICTS.

AN ACT to district the territory of Iowa into electoral districts, and to apportion the representatives of each.

SECTION.

1. Districts constituted.
2. Districts specified and apportionment of members.

SECTION.

3. Act of 1839 repealed.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the following shall constitute the electoral districts of the territory of Iowa, for the election of members of the council and house of representatives, and that each district shall elect and send to the legislative assembly, in manner directed by law, the number of members in this act apportioned to each.

SEC. 2. That the county of Lee shall form the first electoral district, and shall be entitled to two members of the council, and three members to the house of representatives;—the county of Van Buren and the country thereunto attached, shall form the second electoral district, and shall be entitled to two members of the council, and three members of the house of representatives;—the county of Des Moines shall form the third electoral district, and shall be entitled to one member of the council, and five members of the house of representatives;—the county of Henry shall form the fourth electoral district, and shall be entitled to one member of the council, and three members of the house of representatives;—The county of Jefferson shall form the fifth electoral district, and shall be entitled to one member of the council and one member of the house of representatives;—the counties of Louisa and Washington shall form the sixth electoral district, and shall be entitled to one member of the council, and two members to the house of representatives—the county of Louisa shall elect one, and the county of Washington one of said members;—the counties of Muscatine and Johnson shall form the seventh electoral district, and shall each elect one member to the house of representatives, and two members to the council;—the counties of Cedar, Jones, and Linn shall form the eighth electoral district, and shall be entitled to one [233] member of the council, and two members of the house of representatives;—the counties of Scott and Clinton shall form the ninth electoral district, and shall be entitled to one member of the council, and two members to the house of representatives;—the counties of Dubuque, Jackson, Delaware, Clayton, and the country thereunto attached, shall form the tenth electoral district, and shall be entitled to two members of the council, and three members of the house of representatives—the county of Jackson shall elect one, and the counties of Dubuque, Delaware, Clayton, and the country thereunto attached, shall elect two of said members to the house of representatives.

SEC. 3. That the act entitled “an act to district the territory of Iowa into electoral districts and to apportion the representatives of each, approved January 21, 1839,” be and the same is hereby repealed.

Approved July 30, A. D. 1840.

DISTRIBUTION LAW

CHAPTER 60.

ELECTORAL DISTRICTS.

AN ACT to amend an act to district the territory of Iowa into electoral districts, approved July 30, 1840.

SECTION.

1. Ninth district divided.

SECTION.

2. When act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the county of Clinton be and is hereby set apart from the county of Scott, in the election of members to the house of representatives, and shall be entitled to one member, and Scott county to one member, and the two shall elect one member to the council, as directed in the act to which this is an amendment.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved February 10, A. D. 1842.

[234] CHAPTER 61.

DISTRIBUTION LAW.

AN ACT to provide for receiving the proportion of money to which Iowa will be entitled under the distribution law.

SECTION.

1. Treasurer to receive amount.

SECTION.

2. Subject to appropriations by assembly.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the treasurer of the territory be and he is hereby authorized to receive from the proper authorities of the United States, all sums of money to which said territory may be entitled under the provisions of the act of congress, of the fourth of September, 1841, entitled "an act to appropriate the proceeds of the sales of the public lands," etc.

SEC. 2. And the said treasurer is hereby required to keep all sums of money received as aforesaid, subject to appropriations hereafter to be made by the legislative assembly.

Approved February 17, A. D. 1842.

CHAPTER 62.

DEBTS OF TERRITORY.

AN ACT to provide for the payment of the debts of the territory.

SECTION.

1. Treasurer to give notice that the debts will be paid, and manner of doing it.

SECTION.

2. Certificate of balance due to be given.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the treasurer of the territory be and he is hereby authorized and required to give four weeks' notice in some newspaper published at Iowa City, to all persons who hold claims against the territory, except those the payment of which is otherwise [235] provided for by law, to make out and file with him, on or before the first day of May next, a full statement of their respective claims. The treasurer, at the date last aforesaid, shall proceed to examine the said claims, and allow the same so far as he may believe them to be correct, and shall pay the same, pro rata, out of the funds arising from the proceeds of the sale of the public lands, under the distribution law.

SEC. 2. That the treasurer shall give to each person entitled to it, a certificate of any balance which may remain due to said person from the territory, after the dividend provided for in the preceding section.

Approved February 17, A. D. 1843.

CHAPTER 63.

IMPRISONMENT FOR DEBT.

AN ACT to abolish imprisonment for debt.

SECTION.

1. When a person may be arrested upon an original mesne or final process and required to give bail.
2. Undertaking of bail in civil action.
3. Scire facias issued against bail and execution awarded.
4. A return if not found upon two writs of scire facias to be considered a due execution of the same.

SECTION.

5. What shall be adjudged a good defence of bail against scire facias.
6. Choice of proceedings given to bail, against whom a right of action has accrued.
7. Act of 1840 repealed.
8. When this act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That no person shall be arrested upon any original, mesne, or final process, or required to give bail, unless upon an affidavit being filed with the clerk of the court or justice of the peace, from which such process is to be issued, stating that the plaintiff verily believes that the person against whom such process is about to issue, will leave the territory or remove his property out of the same, before judgment can be obtained, or otherwise abscond so that

the process of the court, after judgment cannot be executed, and upon such affidavit being filed, the clerk shall endorse that bail is required, and in what sum.

SEC. 2. That when any person may be held to bail in any civil ac-[236]-tion, the undertaking of the bail shall be, that the defendant shall not remove his property or effects out of this territory, until the plaintiff's judgment, if one shall be recovered, is discharged.

SEC. 3. That upon a return of no property found on any fieri facias, directed to the proper county, it shall be lawful for the plaintiff to cause a scire facias, to issue against the bail, suggesting that the defendant has removed his property or effects out of this territory, and should the bail not answer the scire facias, upon due execution thereof, or should it appear to the satisfaction of the court upon issue joined that the defendant has removed his property or effects out of this territory, after the undertaking of such bail, and that the plaintiff's judgment remains unsatisfied, judgment of execution shall be awarded against the bail, for the amount of the original judgment, or so much thereof as may remain undischarged.

SEC. 4. That a return of not found upon two writs of scire facias, directed to the proper county shall be considered a due execution of the scire facias authorized by this act.

SEC. 5. That upon the trial of any scire facias, herein directed to issue, the defendant shall be allowed to plead, and prove that the defendant in the original action was insolvent at the time said bail was given, and if that fact be proven, it shall be adjudged a good defense.

SEC. 6. That in all cases whenever a right of action against bail in any suit may have heretofore accrued, the party to whom the same shall have so accrued, may have his election, to proceed by an action on the bail bond or by a scire facias, as above provided, so that the same be adapted to the circumstances of the case.

SEC. 7. That an act to abolish imprisonment for debt, approved January 17, 1840, be and the same is hereby repealed.

SEC. 8. This act to take effect and be in force, from and after its passage.

Approved February 8, A. D. 1843.

[237] CHAPTER 64.

DOGS.

AN ACT to prevent injury by dogs.

SECTION.

1. Owner of dog or dogs known to kill or injure domestic animals liable to damages.
2. Persons justified in killing dogs

SECTION.

- found worrying or injuring domestic animals.
3. Act in force from May.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That if any dog or dogs shall kill or injure any sheep, lamb or other domestic animal, the owner or harbinger of any such dog or dogs, shall be

holden for all damages which may be sustained thereby, to be recovered at the suit of the party injured, before any justice or court having cognizance.

SEC. 2. That it shall be lawful for any person or persons, forthwith to kill, wound or destroy any dog or dogs, which may be found worrying or injuring any sheep, lamb or other domestic animal: provided, that nothing in this act shall be so construed as to justify any person in killing any dog that may be set on any trespassing animal, found within or without the inclosure of any person.

SEC. 3. This act shall take effect and be in force, from and after the first day of May next.

Approved February 16, A. D. 1843.

CHAPTER 65.

DIVORCE AND ALIMONY.

AN ACT relative to divorce, alimony and other purposes.

SECTION.

1. Jurisdiction of district courts, bill of complaint, affidavit and place of trial.
2. Causes for divorce.
3. Act to apply to residents only.
- [238] 4. Mutual crime or collusion of parties to defeat the bill.
5. Alimony and maintenance of children.
6. Rights by marriage forfeited.
7. Decree rendered when defendant fails to answer upon proper notice.
8. Court may decree or compel an appearance.

SECTION.

9. Husband abandoning his wife.
10. Husband abandoning or refusing to support his wife may be held to bail.
11. Undertaking of bail.
12. Proceeding against a non-resident defendant.
13. Wife obtaining a divorce, estate by marriage to revert.
14. Testimony, how given.
15. Parties aggrieved may appeal.
16. Repealing clause.
17. When act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the district courts as courts of chancery, shall have original jurisdiction in all cases of divorce and alimony, and guardianship connected therewith, and the like process and proceedings shall be had in all such cases as are had in other cases in equity. The bill of complaint shall be accompanied by an affidavit annexed thereto, that the facts stated in said bill are true according to the best knowledge and belief of complainant, that the complaint is not made by collusion between the complainant and the defendant, nor through fear, restraint or out of levity, for the mere purpose of being separated from each other, but in sincerity and truth, for the reason mentioned in said bill. The proceedings shall be in the county where the complainant resides, and the process of the court may be directed into any other county in the territory, where the defendant may reside.

SEC. 2. That divorces from the bonds of matrimony, may be decreed for the following causes:

1. Where either of the parties at the time of the marriage was impotent.

2. Where either party had a lawful husband or wife living at the time of the marriage.

3. If either party shall have committed adultery subsequent to the marriage.

4. Where either party shall wilfully desert the other and absent him or herself, without reasonable cause, for the space of one year.

5. Where either party shall be convicted of felony or infamous crime.

6. Where either party shall be addicted to habitual drunkenness, provided that said habitual drunkenness shall be contracted after marriage.

[239] 7. Where either party shall be guilty of such cruel and barbarous treatment as to endanger the life of the other.

8. When either party shall offer such indignities to the person of the other as shall render his or her situation intolerable. In all such cases the innocent and injured party may obtain a divorce from the bonds of matrimony, but no such divorce shall affect the legitimacy of children.

SEC. 3. That no person shall be entitled to divorce from the bonds of matrimony, who has not resided in this territory six months, next preceding the time of filing the bill therefor, unless the offense complained of was committed in this territory, or whilst one of the parties resided therein.

SEC. 4. That if it shall appear in evidence to the court that the offense or injury complained of shall have been occasioned by the collusion of the parties, or done with an intent to procure a divorce, and that the complainant consented thereto, or that both the parties have been guilty of adultery, then no divorce shall be decreed, and every such bill shall be dismissed with costs against the complainant.

SEC. 5. That whenever a divorce, as aforesaid, shall be decreed, the court shall make such order and decree touching the estate and property of the parties, the alimony and maintenance of the wife, the guardianship, custody, care, and maintenance of children, as from the nature of the case and circumstances of the parties may appear to the court equitable and just. When the wife is complainant the court shall order the defendant to give security for such alimony and maintenance as shall be decreed against him, and upon his neglect or refusal to give the security required, or upon the default of him or his security to pay or provide such alimony or maintenance, the court shall award execution for the collection thereof, or may proceed to enforce the performance of the order or decree of said court by a sequestration of property or by such other lawful ways and means as accord with the usages and practice of courts of equity. And the said courts on the application of either party may make such alterations from time to time in the alimony or maintenance allowed as may be proper, and may order any reasonable sum to be paid for the support of the wife during the pendency of her application for a divorce.

SEC. 6. That whenever a divorce from the bonds of matrimony shall be decreed, the guilty party shall forfeit all right acquired by virtue of such marriage.

SEC. 7. That when the defendant to any bill of divorce is a non-[240]-resident of the territory at the time of filing the bill, or where a subpoena has been issued and returned non est, the complainant may have an order of publication for a decree pro confesso, issued by the clerk of the court where the petition is pending: provided, the order for publication be published, in some newspaper printed in the territory, for eight successive weeks, next before the succeeding term of said court. And in all cases if the defendant does not appear and answer said bill upon the return of such order, upon proof being made of the good conduct of the complainant and to satisfy the court that the complainant is the innocent and injured party, the said court shall proceed to a final decree, in the same

manner and with the same effect, as if the defendant had appeared and answered the complainant's bill.

SEC. 8. That when a subpoena has been personally served upon any defendant to a bill of divorce, and such defendant fail to appear and answer said bill, the court may either render a decree, pro confesso, or compel an appearance and answer, by attachment.

SEC. 9. That when the husband, without good cause, shall abandon his wife, and neglect or refuse to provide for her maintenance and support, the district court, upon a petition being filed by the wife, supported by competent proof of such desertion and neglect, or refusal to provide for her support, or the support of his children, shall have power to decree such support and maintenance for such wife, and the children by that marriage, out of his property, and for such length of time as the nature and circumstances of the case may require, and may compel the defendant to give security to abide by and perform the decrees of the court in the case; and the court shall have power, from time to time, to alter and change such allowance as shall be equitable and just under the circumstances of the parties, and to enforce their orders and decrees in all such cases as is hereinbefore provided.

SEC. 10. That when the husband is about to abandon, or has abandoned, his wife with the intention of leaving the territory, and neglect or refuse to provide for her support, or the support of his children, upon a statement filed by her of that fact, with the clerk of the district court, supported by the affidavit of two creditable witnesses, the clerk shall thereupon issue a *ca-pias* to hold the said husband to bail, and endorse thereon that bail is required, and in what sum, according to the circumstances of the case.

SEC. 11. That when the husband is held to bail the undertaking of the bail shall be that the defendant appear at the next term of the district court, to abide by and perform the decrees of the court in the case. [241] and at the next term of the court such order shall be taken in the premises as is provided for in the ninth section of this act.

SEC. 12. That in all cases of proceeding against a non-resident defendant for divorce, the plaintiff may cause personal service of the bill and subpoena to be made on the defendant by some disinterested person, and by proof of service so made by the affidavit of the person making the same, or by his testimony in open court, the plaintiff may proceed to a decree in the same manner as if publication had been duly made and the defendant had not appeared: provided, such service shall have been made in time for the defendant to reach the place where the suit is pending by traveling at the rate of twenty miles per day, before the decree is made.

SEC. 13. That when a wife shall obtain a divorce from the bonds of matrimony all the estate and property that came to the husband by virtue of such marriage, that remains undisposed of at the time of filing of the bill, shall revert to, and be settled in the decree of divorce upon the wife and children, if there be any by the marriage. And if any part of such estate or property be invested in other property, the court shall decree the value thereof out of the estate or property in which the same may have been thus invested.

SEC. 14. That in all cases of divorce the testimony in behalf of either party may be taken and certified as is required in other causes in chancery, or the same may be given *viva voce* on the trial of any such cause.

SEC. 15. That if either party shall feel aggrieved by any final order or decree of the district court in any case of divorce, the party so aggrieved may appeal to the supreme court as in other cases in chancery.

SEC. 16. That an act concerning divorces approved, December 29, eighteen hundred and thirty-eight, and an act relative to divorce, alimony, and other

purposes, approved, January 17, 1840, and an act to amend an act relative to divorce, alimony, and for other purposes, approved, February seventeenth, eighteen hundred and forty-two, be and the same are hereby repealed: provided that nothing in this act shall in any wise effect any petition for divorce and alimony now pending in the courts of this territory.

SEC. 17. This act to take effect, and be in force, from and after its passage.

Approved January 20, A. D. 1843.

[242] CHAPTER 66.

EDUCATION.

AN ACT confirming grants of property made for the encouragement of education, and for other purposes.

SECTION.

1. Gifts and grants heretofore made to be recorded.
2. Donations made by private individuals to be made to county commissioners. Proviso.

SECTION.

3. Trespassers upon grant liable for damages.
4. Grants perverted or abandoned to vest in county, unless otherwise directed by donor.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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.

[243] 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.

SEC. 4. When any gift or grant, as aforesaid, shall be perverted or used for any other purpose than 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, A. D. 1839.

CHAPTER 67.

FOREIGN EXECUTORS.

AN ACT to regulate the institution of suits by foreign executors, administrators and guardians, within this territory.

*SECTION.

1. Foreign executor or administrator allowed to prosecute suits in the territory.
2. Required to produce certified copies of letters of administration.

SECTION.

3. Letters being recorded to have full power as if granted in this territory.
4. When act to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when any letters testamentary or of administration may have been or shall be granted on the estate of any deceased person who may have been a resident in any one of the United States or territories thereof, except this territory, any person or persons to whom either of said letters may have been or shall be granted shall be enabled to prosecute suits in any court in this territory, in the same manner as if such letters had been granted to such person or persons by any court in this territory.

[244] SEC. 2. That such person or persons shall, upon the trial of any suit in this territory instituted under such letters, produce a copy of the same authenticated by the certificate of the officer who may have granted the same, or his successor in office, under the official seal of his court, that such letters were granted in conformity with the laws of the state or territory where the same were granted. And such letters, when so certified and produced, shall be conclusive evidence of the ability of such person to institute such suit.

SEC. 3. Any foreign executor or administrator may produce his letters testamentary or of administration to any court of probate in any county in this territory, wherein there is any estate belonging to the testate or intestate, and have the same recorded therein, and thereafter shall be as fully empowered to administer upon the estate of his testate or intestate within this territory, as if letters testamentary or of administration had been originally granted by some court of probate within this territory.

SEC. 4. This act to take effect from and after its passage.

Approved December 20, A. D. 1839.

CHAPTER 68.

ELECTIONS.

AN ACT providing for and regulating general elections.

SECTION.

1. County officers.
2. Delegate to congress members of the legislature and county officers.
3. Appointments of judges, clerks of election, notice of appointment, etc.
4. Three notices for each precinct to be delivered to sheriff. Form of same, poll books, etc.
5. Notices to be posted up by sheriff.
6. Vacancy in office of judges, how filled.
7. Oath to be taken by judges.
8. By whom administered.
9. Opening of the polls, proclamation of the same.
10. Manner of voting.
11. Place of voting and punishment for voting more than once.
12. Qualifications of voters and fine for voting without the requisite qualifications.
13. Constables to attend at elections for preservation of order.
14. Examination of poll books and certificates of election. Disposition of poll books and punishment for neglect.
- [245] 15. Opening of returns, abstracts,

SECTION.

- certificate of election, tie, compensation of judges, etc.
16. Decision to be by lot when two or more have an equal number of votes for the same office.
17. Returns to be made to the secretary. Votes for delegate canvassed, etc.
18. Messenger employed to procure returns.
19. Resignation, vacancies, etc., how filled.
20. Proceedings in case of contested elections, for legislative assembly.
21. Proceedings in case of contested election for coroner, county commissioners, etc.
22. Fine and punishment of judges for illegal and improper discharge of duties of their office.
23. If two or more counties united, votes to be counted in senior county.
24. Vacancy in the office of member of council or house of representatives.
25. Compensation of judges.
26. When county or district divided before election to fill vacancy.
27. When and where returns to be made in cases as above.
28. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall hereafter be elected in each organized county in this territory, three county commissioners, one sheriff, one coroner, one county recorder, one county treasurer, collector, one judge of probate, one county surveyor, and one county commissioners' clerk, who shall be elected and hold their offices as hereinafter provided.

SEC. 2. That an election for members of the house of representatives, for county treasurer, collector, and county commissioners shall take place on the first Tuesday of October, eighteen hundred and forty-three, and on the same day in every year thereafter. An election for delegate to congress and county surveyor, shall take place on the first Tuesday in October, eighteen hundred and forty-three, and on the same day in every second year thereafter. An election for members of the council, sheriff, commissioners' clerk, coroner and recorder, shall take place on the first Tuesday in October, eighteen hundred and forty-four, and on the same day in every second year thereafter. An election for judges of probate, shall take place on the first Tuesday in October, eighteen hundred and forty-three, and on the same day in every third year thereafter.

SEC. 3. That the county commissioners, shall respectively at their regular annual session in July preceeding the general election, where the counties are not organized into townships, 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 [246] 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 judges so appointed, and it shall be the duty of the sheriff, within twenty days after the receipt of the said notice, to serve said notice upon each of the said judges of election; but in all organized townships, the trustees of said townships shall act as judges of all elections held under the provisions of this act, and the township clerk shall act as one of the clerks of said election, taking to his assistance some suitable person, to be approved of by said trustees. 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 civil officers to be held at their respective precincts, until other judges shall be appointed, as hereinbefore directed, and the said clerks of election may continue to act as such, during the pleasure of the judges of election. And the county commissioners shall, from time to time, fill all vacancies which may take place in the office of judges of election, at any election precinct within their respective counties.

SEC. 4. That the clerks of the several boards of county commissioners shall, at least fifty days previous to any general election, make out and deliver to the sheriffs of their respective counties 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 —— Tuesday 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 shall be the duty of the clerk 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. 5. And the sheriff aforesaid, to whom such notice shall be delivered as aforesaid, shall post up in three of the most public places in each town or district the notices referring to such town or district, [247] 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 case 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. 6. If any person appointed or elected to act as judge 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, 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 the 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 elected as aforesaid.

SEC. 7. Previous to the 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 to the best of my ability, I will studiously endeavor to prevent fraud, deceit or abuse, in conducting the same.

SEC. 8. In case there shall be no justice of the peace, or judge, 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 judge of the election, and they are hereby empowered to administer the oath or affirmation 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.

SEC. 9. That 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 [248] the polls 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 an hour before the time for closing the polls shall arrive, as the case may require. And, 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 polls, 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 polls will be closed in half an hour.

SEC. 10. The manner of voting shall be by the electors approaching the ballot box at any time when the poll is opened, and by presenting their ticket to one of the judges who shall deposit the same immediately into a ballot box prepared for that purpose, and the clerk shall take down the name 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, for the same officer, 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 offense 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 [249] to 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——, in the territory of Iowa, a citizen of the United States, that my place of residence has been 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 either of said judges, or any other person, who shall have voted at such election, shall still doubt the legality of such vote, the judges may propound such interrogatories to the person so offering to vote, touching his competency, as they may deem proper; and if the person so offering to vote, shall take such oath or affirmation, and make full and satisfactory answers to such interrogatories, 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, or make full and satisfactory answers to such interrogatories, 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 an 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.

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.

SEC. 14. The votes shall be publicly examined, and counted immediately after the close of the polls, and the clerks shall set down in [250] their poll books, the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive, and that whenever the judges of said election shall, upon canvassing the votes find two or more votes folded together, the said judges shall in that case reject all votes thus folded, the number being expressed in words at full length; such entry to be made as nearly as circumstances will admit, in the following form, to wit:

At an election held at the house of ——, in —— town or district, in the county of ——, and territory of Iowa, on the —— day of —— A. D. ——, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit: A. B. had —— votes for delegate to congress. C. D. had —— votes for member of

the council. E. F. had ——— votes for member of the house of representatives. G. H. had ——— votes for coroner. J. K. had ——— votes for county commissioner; and in the same manner for any other officer voted for. Certified by us,

ATTEST.

A. B. }
C. D. } Judges of Election.
E. F. }

G. H. }
I. K. } Clerks of Election.

The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of county commissioners of the county in which such election is held, and the packet thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, and deliver to the said clerk of the board of county commissioners, at his office within nine days from the close of the polls, and the other poll books shall be deposited with one of the judges of election, to be determined as aforesaid, and the said poll books shall be subject to the inspection of any elector, who may wish to examine it; and if any judges or clerks of election, at which he shall have served as judge or clerk, to carry the poll book of such election to the board of commissioners, shall fail or neglect to deliver such poll book to said clerk, within the time prescribed by law, safe with the seal unbroken, he shall for every such offense 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.

SEC. 15. On the ninth day after the close of the election, or sooner if all the returns be received, the clerk of the board of county commis-[251]-sioners, taking to his assistance two justices of the peace of his county, shall proceed to open said returns, and make abstracts of the votes in the following manner: the abstract of 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 out a certificate of election to each of the persons having the highest number of votes for 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 council or house of representatives, the clerk of the board of county 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 of the election returns of any general or special election, to make out his certificate, stating therein their 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 their compensation aforesaid to be paid out of the county treasury.

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 hereinbefore 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 abstract, and transmit it by mail to the secretary of the territory, and it shall be the duty of the secretary, with the marshal of the territory, or his deputy, in the presence of the governor, to proceed within forty days after the election, and sooner if all the returns be received, to canvass the votes given for delegate to congress, and [252] 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 of the election, the said secretary shall forthwith send a messenger to 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 a member of the council or house of representatives of the legislative assembly, coroner, or county commissioners, 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 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 election, in his county or district, 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.

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 in-[253]-tends to contest, or leave a notice thereof at his usual place of residence within thirty-five days after the day of the 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 depositions, 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 a choice of the 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 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: provided 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 justice, 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 justice 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 tri-[254]-al, by the person who served or delivered the same, or its service proved, and a certificate of such proof endorsed thereon by said justice, and the notice transmitted with the other documents, to the president of the council or speaker of the house of representatives, to which ever body the person whose election is contested belongs.

SEC. 21. When any candidate shall desire to contest the validity of any election, or the right of any person declared to be duly elected to hold and exercise the office of coroner, or county commissioner, or any county office, such candidate so contesting 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.

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 or counties last established, shall within twelve days after the day of election, attend at the office of the clerk of the board of county 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 clerk shall immediately make out a certificate of the election of the person or persons having the highest number of votes in such counties, for members of the council or house of representatives of the legislative assembly; which certificate shall be delivered to the persons 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.

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 [255] 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 fraud, corruption or partiality in any matter or things related 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 county 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 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 to be paid into the county treasury.

SEC. 24. 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, 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 [256]-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 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 clerks office, the sum of five cents per mile for going and returning.

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 decided 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 as to permit any person to vote, so residing within the said limits, who has not the other qualifications of a voter.

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 boards 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 clerk of the board of county commissioners of the different counties, in which such election may have been held.

SEC. 28. That all acts and parts of acts coming within the purview of this act, be and the same is hereby repealed. This act to take effect and be in force from and after the first day of July next.

[257] CHAPTER 69.

RIGHT.

AN ACT to amend an act entitled an act to allow and regulate the action of right and the action of ejectment.

SECTION.

1. Return of writs.
2. Time of return to be considered the appearance term.
3. Writ of error to the supreme court, time and manner of obtaining the same.
4. Defendant not liable for damages

SECTION.

- when any valuable improvements have been made.
5. Rights of defendant pending the action.
6. Operations of this act.
7. When in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter when any person shall commence an action of right, or an action of ejectment, to obtain the possession of lands or tenements, the summons or writ required by the acts to which this is amendatory, shall be returnable to the next term of the district court, after the issuing of said summons or writ.

SEC. 2. That the term to which said summons or writ is made returnable, shall be considered as the appearance term, at which term the court may require the defendant or defendants to file his or their plea or pleas, but no trial shall be had at the appearance term.

SEC. 3. That the defendant or defendants, in the above named actions of right or ejectment, shall have the right, if judgment be rendered by the district court against him or them, to assign causes of error as he or they may think proper, and remove said cause to the supreme court of this territory, within eighteen months after the judgment is rendered in the district court, by filing a bond to pay the costs if the judgment below should be affirmed, and after any defendant shall have filed a bond, as aforesaid, no writ, turning the defendant out of possession, shall be issued until the cause shall be tried

by the supreme court, and if any writ, as aforesaid, shall have been issued, it shall be forthwith returned to the clerk of the district court, and after said bond is filed, as aforesaid, it shall be a supersedeas, and no execution for [258] costs shall issue until said cause shall be decided by the supreme court.

SEC. 4. That no defendant or defendants in the above named actions shall be liable for any damages to the plaintiff, nor in any action for mesne, profits, or damages, for use and occupation, if it shall appear on the trial of said cause that said defendant or defendants has or have made valuable improvements on said tract or tracts of land, the possession of which is sought to be recovered by the plaintiff or plaintiffs.

SEC. 5. That during the pendency of any action of right or ejectment, the defendant or defendants shall have the right to use enough of timber for fire wood, and to make such repairs as the premises may require.

SEC. 6. That this act shall not affect any right of action already accrued to any person, nor shall it effect any tenancy existing between any private individuals or private corporation, nor shall it effect or have any force over contracts, either verbal or written, between land lords and tenants hereafter to be made, but that the land lords may have the benefit of the act allowing and regulating the action of right or ejectment, as though this act had never been enacted.

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

Approved February 16, A. D. 1843.

CHAPTER 70.

EJECTMENT.

AN ACT to allow and regulate the action of ejectment.

| SECTION. | SECTION. |
|---|--|
| 1. When ejectment may be maintained. | 12. Plaintiff prevailing, amount of dam- [259] ages recovered. Proviso. |
| 2. The same. | 13. Verdict when right of plaintiff expires before the trial of suit. |
| 3. Executors or administrators may maintain action of ejectment. | 14. Judgment against the defendant. |
| 4. Action by whom brought. | 15. Writ of possession given and its operation. |
| 5. Person through whom defendant claims made co-defendant. | 16. Judgment in all cases unless otherwise provided for, shall be for recovery of premises with damages and costs. |
| 6. Plaintiff's declaration. | 17. Trespass, in the cases mentioned in the 2d section may be maintained. |
| 7. Declaration as executor. | 18. Limitation of action. |
| 8. Plea of general issue by defendant. | |
| 9. Operation of plea. | |
| 10. What shall be shown to entitle plaintiff to recover. | |
| 11. What to be shown, when action is brought against a co-tenant. | |

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. The action of ejectment may be maintained in all cases where the plaintiff is legally entitled to the possession of the premises.

SEC. 2. The action of ejectment may also be maintained in all cases where the plaintiff claims the possession of the premises, under or by virtue of,

1. Any entry made with the register and receiver of the proper land office of the United States.

2. A pre-emption right under the laws of the United States.

3. Where an improvement has been made by him on any of the public lands of the United States, whether the lands have been surveyed or not, and where any person other than those to whom the right of action is given by the preceding clauses of this section, is in possession of such improvements.

SEC. 3. The administrator or executor of any person who may have heretofore died, or who may hereafter die, who may have in his life time made improvements on any of the public lands of the United States, whether he had a right of pre-emption to such improvements or not, under the laws of the United States, or whether the lands on which such improvements may have been made have been surveyed or not, may maintain an action of ejectment for the recovery of such improvements to the same extent, and with the same restrictions as provided by the preceding section for their testator or intestate.

SEC. 4. The action of ejectment shall be brought and prosecuted in the real names of the parties thereunto, and may be brought against the person in possession of the premises claimed, or his lessor or both.

SEC. 5. The person from or through whom the defendant claims title to the premises, may, on his motion, be made a co-defendant.

SEC. 6. It shall be sufficient for the plaintiff to aver in his declaration, that on some day therein to be specified, he was entitled to the possession of the premises, describing them, and being so entitled to [260] the possession thereof, that the defendant afterwards, on some day to be stated, entered into such premises and unlawfully withholds from the plaintiff the possession thereof, to his damage in any sum he may claim.

SEC. 7. In an ejectment brought by an executor or administrator, under the provisions of this act, it shall be sufficient for the plaintiff to aver in his declaration, that on the day therein specified, his testator or intestate was in possession of the premises, describing them, and by virtue of such possession such plaintiff, on some day to be stated, became entitled to the possession of said premises as executor or administrator, and that on some day thereafter, the defendant entered into and took possession thereof to his damage any sum he may claim.

SEC. 8. The defendant may plead the general issue to any action of ejectment, or he may plead his defense specially; and all pleadings and proceedings in the action shall be conducted as in personal actions, except when it is otherwise prescribed. The general issue shall be that the defendant is not guilty of unlawfully withholding the premises from the plaintiff as alleged against him.

SEC. 9. Such plea shall put in issue every matter required to be established by the plaintiff on the trial to entitle him to recover, and the defendant may, under such plea, give in evidence any matter in bar of the action.

SEC. 10. To entitle the plaintiff to recover, it shall be sufficient for him to show that at the time of the commencement of the action the defendant was in possession of the premises claimed, and that the plaintiff had title thereto, or had the right to the possession thereof, as is declared by this act to be sufficient to maintain the action of ejectment.

SEC. 11. If the action is brought by a joint tenant or tenant in common against his co-tenant, the plaintiff shall also be required to show on the trial

that the tenant actually ousted him, or did some act amounting to a total denial of his right as such co-tenant.

SEC. 12. If the plaintiff prevail in the action, he shall recover by way of damages the rents and profits down to the time of recovering the same, except where the plaintiff or those under whom he claims title, may have entered in any land office of the United States within this territory, the improvements of the defendant, and the action is brought to recover the possession of such improvements, in which case the plaintiff shall recover no damages.

SEC. 13. If the right of the plaintiff to the possession of the premises expires after the commencement of the action, and before the trial, [261] the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

SEC. 14. If judgment should be rendered against the defendant, the judgment shall be for the recovery of the premises, and a writ of inquiry shall be awarded to assess the damages.

SEC. 15. When the judgment is both for the recovery of the possession of the premises and for the damages, the plaintiff may have a writ of possession which shall command the officer to whom it may be directed to deliver to the plaintiff the possession of the premises, and shall also command him to levy and collect the damages and costs as in executions on judgments in personal actions. Where the judgment for the plaintiff is only for damages and costs, executions may be issued thereon as on judgments in personal actions.

SEC. 16. In all cases where no other provision is made the judgment, if for the plaintiff, shall be for the recovery of the premises and the damages and costs.

SEC. 17. An action of trespass may be maintained in all the cases enumerated in the second section of this act.

SEC. 18. No action of ejectment, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff or his testator, or intestate has been five years out of possession.

Approved February 16, 1843.

CHAPTER 71.

EVIDENCE.

AN ACT to authorize evidence by the oath of parties.

SECTION.

1. Party in suit to be witness for his antagonist.
2. Deposition of non-resident party to be taken, by whom may be used.
3. Opposite party may be sworn. Re-

SECTION.

- fusing to testify, party offering demand or set off his own witness.
4. Limitation of evidence.
5. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That either party in any suit in any court [262] within this territory, such suit being founded on contract, may cause the opposite party or any person of such party to be subpoenaed as a witness in the same manner, and with like effect as any other person. If the party after being personally

subpœnæd, fail to attend the trial personally, and such failure be not accounted for, the court may allow the other party to be sworn and examined as a witness in all cases, and with like effect as if the subpœnæd party had been personally present and had refused to testify.

SEC. 2. And when either party to any such suit is a non-resident of the territory, the opposite party may cause the deposition of such non-resident party to be taken, in the same manner and under the same regulations (as far as applicable,) as the depositions of other witnesses are taken: provided, that such deposition when taken may be used in evidence by either party: and provided further, that if any such non-resident party refuse to testify, then upon this fact appearing to the court where the suit is pending, the opposite party may be sworn and examined as a witness.

SEC. 3. If no evidence shall be 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 court shall upon the application of the party offering such demand or set-off, order the opposite party or any person of such party, to be sworn in relation thereto; if the party thus required refuse to testify, the court shall allow the party offering such demand or set-off to be sworn and examined in relation to the same matter.

SEC. 4. After the examination of either party, no further evidence shall be given in relation to such demand or set-off, by the party swearing the witness.

SEC. 5. An act entitled an act to authorize evidence by the oath of parties, approved December 23, 1839, and an act entitled an act supplementary to an act entitled an act to authorize evidence by the oath of parties, approved January 28, 1842, be and the same are hereby repealed.

Approved January 20, 1843.

[263] CHAPTER 72.

FERRIES.

AN ACT to regulate ferries in certain cases.

SECTION.

1. When charters forfeited, towns to keep ferry.
2. Privileges of town, etc.
3. County commissioners to license ferries.

SECTION.

4. Location of ferries.
5. New licentiate to purchase boats of former proprietors.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter, when any charter that shall have been granted or that may hereafter be granted to any person, to keep a ferry across the Mississippi river, at any incorporated city or town in this territory, shall, by reason of nonuser or misuser of such franchise, be, by a competent tribunal declared forfeited, that to prevent a public inconvenience, it shall be competent for the corporation of such city or town to take charge of such ferry, to provide suitable water crafts, and keep the ferry in a proper manner until another charter can be obtained from the legislative assembly.

SEC. 2. That any such corporation, during the time they shall have such ferry in their charge, shall be entitled to like privileges and liable in like manner for the faithful keeping thereof as the person was to whom such charter had been granted. And such corporation may charge and receive like rates of ferriage.

SEC. 3. That the several boards of county commissioners are hereby empowered to grant licenses for keeping ferries on said Mississippi river, at such places as are not provided for by charter in like manner and under like regulations provided in this act, and the "act to regulate ferries," approved December twentieth, eighteen hundred and thirty-eight.

SEC. 4. That no license shall be granted to keep a ferry on said Mississippi river, within two miles of any other licensed or chartered ferry.

SEC. 5. That in all cases in this territory, if the board of county commissioners shall, at any time, grant a license to a person who has not before kept the ferry, the said grantee shall purchase the boats of [264] the previous keeper, at the appraisal of three disinterested persons appointed by said board, if such appraisers shall adjudge said boats to be good and sufficient for the use of said ferry.

Approved January 8, A. D. 1840.

CHAPTER 73.

FERRIES.

AN ACT to regulate ferries.

SECTION.

1. Ferry shall not be kept without license.
2. Person applying for license, to prove that he had given public notice of his intention to apply.
3. Conditions upon which county commissioners may grant license. Proviso.
4. Persons owning on both sides of a stream to have exclusive right to ferry. Proviso.
5. Duties of persons obtaining license, and forfeiture for neglect. Fine for demanding unlawful ferriage.
6. Rate of ferriage fixed.
7. Fine for keeping ferry without license.

SECTION.

8. Suits under this act, how brought, by whom prosecuted.
9. Forfeiture by non-user or mis-user, when near or in a corporation, to be kept by same until a new charter is granted.
10. Privileges and duties of corporations in such cases.
11. County commissioners may grant licenses for ferries on the Mississippi.
12. Limitation of locations and proviso.
13. Duty of county commissioners relative to rates of ferriage on ferries kept by authority of legislature.
14. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 board of commissioners of the proper county, for the purpose as hereinafter provided.

SEC. 2. That the person applying for such license shall produce satisfactory evidence to the board of commissioners by the affidavit of the applicant or other-

wise, 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 [265] the board of commissioners, of his intention to apply to such board of commissioners for a license to keep a ferry.

SEC. 3. That the board of commissioners 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 paying into the county treasury of the proper county, a sum to be fixed by the board of commissioners, not less than two nor more than fifty dollars annually, and on the applicants producing the county treasurer's receipt for the payment of the sum so fixed, he or she shall receive from the clerk of the board of commissioners, a license under the seal of the board of commissioners, for a time not exceeding the term aforesaid, for which he or she shall pay the clerk the sum of one dollar: provided, that all ferries so established, shall not be nearer than one mile of each other; except when the board of commissioners shall deem it indispensably necessary to the public convenience: provided further, that said board of commissioners may, when they think the public good requires it, grant permits to any individual, to keep skiffs alone, for the benefit of persons traveling on foot, and receive such pay therefor as the board may think proper, the said board of commissioners taxing the applicant for any such permit, such sum as they may deem proper.

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 board of commissioners 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.

SEC. 5. That every person obtaining a license to keep a ferry, (except a skiff or canoe 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 [266] 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 offense, 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 offense, a sum of 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.

SEC. 6. That the board 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 clerks of said board of commissioners 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.

SEC. 7. That if any person shall keep a ferry and receive pay without being duly authorized, the person so offending, shall for every such offense 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.

SEC. 8. That all actions or suits brought under the provisions of this act, shall be in the name of the United States of America, 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 the boards of commissioners shall, in like manner return 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.

[267] SEC. 9. That hereafter when any charter that shall have been granted, or that may hereafter be granted, to any person to keep a ferry across the Mississippi river at any incorporated city or town in this territory, shall, by reason of nonuser or misuser of such franchise, be, by a competent tribunal, declared forfeited, that to prevent a public inconvenience it shall be competent for the corporation of such city or town to take charge of such ferry, to provide suitable water crafts and keep the ferry in a proper manner until another charter or license can be obtained, and said corporation shall be entitled to the license for the same, if desired by the proper authorities of said city or town.

SEC. 10. That any such corporation during the time they shall have such ferry in charge, shall be entitled to like privileges and liable in like manner for the faithful keeping thereof, as the person was to whom such charter had been granted, and such corporation may charge and receive like rates of ferriage.

SEC. 11. That the several boards of county commissioners are hereby empowered to grant licenses for keeping ferries on said Mississippi river, at such places as are not provided for, by charter, in like manner and under like regulations provided in this act.

SEC. 12. That no license shall be granted to keep a ferry on said Mississippi river within two miles of any other licensed or chartered ferry: provided, this act shall not be so construed as to extend the present chartered limits of any ferries on the Mississippi river.

SEC. 13. That the several boards of commissioners of the counties of this territory are hereby empowered and required to regulate and establish the rates of ferriage on every ferry in their respective counties, kept by authority of a charter from a legislative assembly, and that the duty of the clerks of said boards in such cases shall be the same as that prescribed in the eighth section of this act.

SEC. 14. That all acts or parts of acts contravening the provisions of this act be and the same are hereby repealed.

Approved February 16. A. D. 1843.

[268] CHAPTER 74.

FUGITIVES FROM JUSTICE.

AN ACT to authorize the arrest and detention of fugitives from justice, from other states and territories of the United States.

SECTION.

1. Process for apprehension by justice of the peace.
2. Proceedings before the same.
3. May commit fugitive.
4. Bail.

SECTION.

5. District attorney to be notified, and his duty to notify the governor.
6. When may be discharged.
7. Justice to make return to court, duty of the court in such case.
8. Act, when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That justices of the peace shall have power to issue process for the apprehension of any person charged, in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found within this territory.

SEC. 2. The proceedings before the justice shall be in all respects similar to proceedings prescribed by the statute for arresting and committing persons accused of committing offenses within this territory.

SEC. 3. If, from the examination before the justice, it shall satisfactorily appear that such person has committed a criminal offense, and is a fugitive from justice, such magistrate, by warrant reciting the accusation, shall commit such fugitive from justice to the common jail, there to be detained for such time, to be specified in said warrant, as the said justice shall deem reasonable, to enable such fugitive to be arrested by virtue of the warrant of the executive of this territory, according to act of congress, upon the requisition of the executive authority of the state or territory in which such fugitive committed such offense, unless such person shall give bail as in this act is provided for, or until he shall be discharged according to law.

SEC. 4. The person thus arrested may give bail in such sum as by the justice shall be deemed proper, conditioned that he will appear before such justice at such time as to the said justice shall seem reasonable, and will deliver himself to be arrested upon the warrant of the executive of this territory.

[269] SEC. 5. The justice before whom such person shall have been examined and committed, shall cause written notice to be given to the district attorney of the district in which such justice resides, of the name of such person and the cause of his arrest. The said district attorney shall, immediately thereafter, cause notice to be given to the governor of the state or territory having jurisdiction of the offense so charged to have been committed by such person, to the end that a demand, in pursuance of the act of congress, may be made for the arrest and surrender of said person.

SEC. 6. The person thus arrested, detained, or bailed, shall be discharged from such detention or bail, unless at or before the expiration of the time designated in the warrant of commitment, or in the condition of the bail bond, he shall be demanded or arrested by such warrant of the executive of the territory.

SEC. 7. It shall be the duty of the justice to make return to the next district court of the county, of his proceedings in the premises. It shall be the duty of the said district court to inquire into the cause of the arrest and detention

of such person, and if such person is in custody, or the time for his arrest as designated in the condition of the bail bond has not elapsed, the said district court in its discretion, may discharge the said person from detention, or may order the said bail bond to be cancelled, or may continue his detention for a period beyond the time specified in the warrant of commitment, or may order new bail to be given, conditioned for the surrender of said person at a time shorter or longer than the time designated in the bail bond taken by the said justice, and if said person is in custody may take bail, conditioned for his appearance before said court, to be surrendered at such time as to said court may seem reasonable and proper.

SEC. 8. This act to take effect from and after its passage.

Approved January 9, A. D. 1840.

[270] CHAPTER 75.

FRAUDS.

AN ACT to prevent frauds.

SECTION.

1. Parol leases to have effect of leases at will only.
2. When otherwise.
3. No lease to be assigned but by deed.
4. Agreements must be in writing.
5. Declarations of trusts void unless in writing.

SECTION.

6. Judgment lien on real estate to be recorded.
7. Contracts over thirty dollars to be in writing.
8. Contracts for sale of personal property to be in writing.
9. Same to be recorded.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all leases, estates, interest of freehold or term of years, or any uncertain interest of freehold or term of years, or any uncertain interest of, in or out of any messuages, lands tenements or hereditaments, made or created by livery and seizen only or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken, to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.

SEC. 2. Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term, shall amount unto two-third parts, at least, of what the rent of the premises is really worth.

SEC. 3. And moreover, that no leases, estates or interest of freehold, or of term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall at any time be assigned or granted, unless it be by deed or note in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized by writing, or by act or operation of law.

SEC. 4. No action shall be brought whereby to charge any execu-[271]-tor or administrator, or upon any special promise, to answer damages out of his own

estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of any other person, or charge any person upon any agreement in consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement which is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some note or memorandum thereof shall be in writing, and signed by the party to be charged thereby, or some person by him thereunto lawfully authorized.

SEC. 5. All declarations or creations of trust or confidence of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party, who by law may be entitled to declare such trust or confidence, or by his last will in writing, or else the same shall be utterly void and of none effect: provided always, that when any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise, or result by the implication or construction of law, or be transferred or extinguished by any act or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this act had never been passed, anything herein contained to the contrary notwithstanding.

SEC. 6. Judgments in the district and supreme courts of this territory, shall have the operation of, and shall be liens upon the real estate of the person or persons against whom such judgments may be rendered, from the day of the rendition thereof, in the county within which such judgments may be rendered; and it shall be the duty of the clerks of such courts, when applied to by any person interested in any judgment rendered by any of the courts aforesaid, to make out and deliver to such applicant an attested copy of the record of such judgment, authenticated by the seal of such court, which attested copy may be by such person filed in the office of any clerk of the district court within this territory; and when so filed, the said clerk in whose office the same may be filed, shall record the same among the records of the court of which he is clerk, and enter the same on the judgment docket; and such attested copy, when so filed, recorded and entered as aforesaid, shall operate as a lien upon the estate of the person or persons against whom such judgment may have been rendered, situate in the county in which the same may have been so filed as [272] aforesaid, recorded and entered in the same manner, and to the same legal extent that the same would have done had such judgment been originally rendered in the district court of such county; which lien shall operate from the day of filing, recording and entering such copy as aforesaid. But no execution shall ever issue upon such attested copy, although the record thereof shall have the same force and effect in every other point of view, as any other record of such court might or could have.

SEC. 7. No contract for the sale of any goods, wares or merchandise, for the price of thirty dollars or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain, be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

SEC. 8. That from and after the passage of this act, no bill of sale or other conveyance of personal property, where the vendor shall retain the actual possession of the property so conveyed, shall be good and valid in law to pass any right to such property against existing creditors or subsequent purchasers, without notice, unless the bill of sale or other instrument of writing conveying the same be acknowledged before some justice of the peace for the county

where the same is executed and recorded, within ten days, in the office of the recorder of deeds for the county where the holder of the property resides.

SEC. 9. *And be it enacted*, that the recorders of deeds in the several counties in this territory, be and they are hereby required, to record all such conveyances of personal property, in a separate book to be kept by them for this purpose; and for the recording of any such conveyances of personal property, the recorder shall receive the same fees for every one hundred words as they are entitled to receive for recording other deeds.

Approved January 16, A. D. 1840.

[273] CHAPTER 76.

GAMING.

AN ACT to prevent and punish gaming.

SECTION.

1. Debts contracted by gaming void and frustrate.
2. Persons so losing money or other things, or any other person may sue for and recover the same.
3. Persons liable to be sued, compelled to answer bill for discovery, proviso.
4. Penalty for betting or playing.
5. Loser and winner each to be fined.
6. Penalty for deceit and fraud in gaming.

SECTION.

7. Keepers of gaming tables punished for the same.
8. Tavern keeper permitting gaming to forfeit license and pay fine.
9. Recovery of fines under this act.
10. Indictments not to be quashed for want of form.
11. This act to be given in charge to grand jurors.
12. Fines to whom and when paid.
13. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities whatsoever, after the taking effect of this act, when the whole or any part of the consideration of such promise, agreement, conveyance, or security, shall be for money, or other valuable thing whatsoever, won, laid, or betted, at cards, dice tables, or any other game or games whatsoever, or at any cock-fighting, or any other sport or pastime, or on any wager whatsoever, or for the reimbursing or repaying any money lent or advanced at the time of such play, bet or wager, so to be betted or wagered, shall be utterly void, frustrate, and of none effect to all intents and purposes whatsoever, any law, custom, or usage to the contrary notwithstanding.

SEC. 2. That if any person or persons whatsoever, at any time, by playing at any game or games whatsoever, or by betting on the hands or sides of such as do play at any game or games, shall lose, to any one or more persons so playing or betting, any sum of money, or other valuable thing, and shall pay or deliver the same or any part thereof, the person or persons so losing, and paying, or delivering the same, shall be at liberty, within six months next following, to sue for and re-[274]-cover the money, or other valuable thing, so lost and paid or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, by action of debt founded on this act, to be prosecuted in any court, or before any justice of the peace in this territory, having

jurisdiction thereof, in which action it shall be sufficient for the plaintiff to allege that the defendant is indebted to the plaintiff, or received to the plaintiff's use, the money so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him according to the form of this act, without setting forth the special matter; and in case the party so losing such money or other thing as aforesaid, shall not within the time aforesaid, bona fide, without covin or collusion, sue, and with effect prosecute, for the money or other thing so lost and paid or delivered, it shall and may be lawful to and for any other person or persons, by any such action or suit as aforesaid, to sue for and recover the same, with costs of suit, against any such winner or winners as aforesaid, to the use of the person or persons suing for the same.

SEC. 3. That every person who, by virtue of this act, shall or may be liable to be sued for moneys or other things so won as aforesaid, shall be compelled to answer upon oath such bill or bills in chancery, preferred against him or them for discovering the money or things so won at play as aforesaid: provided, however, upon discovery and repayment of the money or other things so to be discovered and repaid as aforesaid, the person or persons discovering and repaying the same, with costs, shall be acquitted, indemnified, and discharged from any other or further forfeiture, punishment, or penalty, which he or they may have incurred by playing for or winning such money or other thing so discovered and repaid.

SEC. 4. That if any person or persons shall at any time play for money or property in any tavern, grocery, or race field, or in any booth, arbor, or out house, connected with any tavern, grocery, or race field, or at any other public place, at any game or games whatsoever, except games of athletic exercise, or shall bet on the hands or sides of such as do play as aforesaid, such person or persons, upon conviction thereof, shall forfeit and pay a sum not exceeding fifty nor less than twenty dollars, and shall be bound to their good behavior, with sufficient security, in the sum of fifty dollars, for the term of twelve months, and if any person or persons shall give such security, and afterwards, within that time, shall play for, or bet, any money, or other valuable thing [275] whatsoever, such playing, or betting, shall be deemed a breach of good behavior, and a forfeiture of the recognizance given for the same.

SEC. 5. That if any person, by playing, or betting, at any game or wager whatsoever, at any time, shall lose or win, to or from another, any sum of money, or other article of value, the loser and winner shall each, on conviction, be fined in a sum not less than twenty nor more than fifty dollars, and shall moreover be bound to his or her good behavior for one year.

SEC. 6. That if any person or persons whatsoever, do or shall at any time or times, by fraud, shift, cozenage, circumvention deceit, unlawful device, or evil practice whatsoever, in playing at or with cards, dice, or any other game or games, or in or by bearing a share or part in the stakes or wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, win, obtain, or acquire, to themselves any sum or sums of money, or other valuable thing or things whatsoever, every person so winning by such ill practice, and being thereof convicted, upon indictment, shall be fined not less than five dollars, nor more than five hundred dollars, and shall moreover be bound to his good behavior in such sum, and with such security, as the court may approve, for the term of one year.

SEC. 7. That all and every keeper or keepers, exhibitor or exhibitors of either of the gaming tables, commonly called billiard tables, or faro bank, or any other gaming table, or bank of the same or like kind, under any denomination whatsoever, who shall allow betting on the same, shall, on conviction thereof, be fined in a sum not less than fifty dollars, nor more than two hun-

dred dollars, for every such offense, and shall moreover find security for his or their good behavior for the term of one year, in the sum of five hundred dollars, and if he or they shall afterwards, within that time, keep or exhibit either of the said gaming tables or banks, or other gaming tables or banks, under any denomination whatsoever, or shall play at any game or games prohibited by this act, such keeping, exhibiting or playing, shall be deemed a breach of good behavior, and a forfeiture of the recognizance given for the same.

SEC. 8. That if any keeper or keepers of a tavern, grocery, or other house of public resort, shall suffer any game or games, prohibited by this act, to be played at or within such tavern, grocery, or other house of public resort, or in any out house appendant thereto, every such keeper or keepers shall, on conviction, forfeit and pay a sum not less than fifty dollars, nor more than two hundred dollars, and if any licensed tavern keeper shall be convicted of suffering such gaming in his or [276] her house, he or she, in addition to the penalty hereby imposed, shall moreover forfeit his or her license for keeping such tavern, and shall not be re-licensed, as a tavern keeper, for one year from the date of such conviction.

SEC. 9. That all fines and forfeitures, imposed by this act, shall be recoverable by indictment, in any court of record within this territory, or before a justice of the peace, where the fine cannot exceed the sum of fifty dollars; but any person considering himself or herself aggrieved by the judgment of any such justice, convicting such person of any of the offenses mentioned in this act, may appeal to the next term of the district court, to be holden for the county wherein such conviction may happen: provided, the person or persons so appealing shall, within ten days after such conviction, enter into recognizance before such justice, in the sum of one hundred dollars, with one or more sufficient securities, in a like sum, conditioned that the defendant will make his personal appearance before the district court to which such appeal is taken, on the first day of the next succeeding term thereof, and not depart from said court without the leave thereof, and as soon as such recognizance shall have been entered into, such justice shall cause to come before him all the material witnesses on the part of the United States, who shall severally be recognized in the sum of fifty dollars each, conditioned that they appear before the court to which such appeal is taken, on the first day of the succeeding term thereof, and not depart from such court without the leave thereof, and on such appeal, such other and further proceedings shall be had, by indictment and trial of such offender, as in other cases.

SEC. 10. That no indictment for any of the offenses mentioned in this act shall be quashed, or judgment thereon arrested, for any supposed defect, or want of form: provided, sufficient be set out herein to enable the court to render the judgment thereon according to the very right and justice of the case.

SEC. 11. That the presiding judge, in all the district courts within this territory, shall constantly give this act in charge to the grand jurors of their county, at the time such grand jurors shall be sworn.

SEC. 12. That all fines and forfeitures imposed by the authority of this act, shall be collected and paid over, in cash, to the treasurer of the proper county, within twenty days after the collection thereof, to be applied to school purposes.

SEC. 13. That all acts and parts of acts coming within the purview of this act, shall be and the same are hereby repealed: provided, that [277] nothing in this act contained shall be so construed as to repeal any acts or parts of acts relating to offenses committed or done before the commencement of this act.

Approved February 13, A. D. 1843.

CHAPTER 77.

HABEAS CORPUS.

AN ACT relative to habeas corpus.

SECTION.

1. Who may have benefit of this writ.
2. Application to be by petition.
3. Application to officer out of county.
4. What to set forth in petition.
5. Writ to be granted without delay.
6. Form of writ.
7. Want of form shall not vitiate, if, etc.
8. Penalty for refusal of writ.
9. What to be stated in return of writ.
10. To bring in body.
11. Person refusing to obey, attachment to issue, and to be committed.
12. Sheriff failing, coroner may serve attachment.
13. Precept to bring in party, may also issue.
14. Posse comitatus.
15. Cause of restraint examined.
16. When prisoner to be discharged.
17. When to be discharged from custody by virtue of civil process.
18. Officer may remand to custody or bail.
19. Or otherwise commit.
20. Temporary custody.
21. Persons interested in continuing imprisonment to have notice before discharge.
22. Party in custody may deny facts in the return.

SECTION.

23. Proceedings when party cannot be brought before the officer on account of sickness.
24. Order of discharge enforced by attachment.
25. Order of discharge evidence in action for escape.
26. Elusive transfer a misdemeanor.
27. Aid a misdemeanor.
28. Punishment.
29. Officer authorized to issue warrant for trial of prisoner when.
30. When to contain order for arrest.
31. Like return and proceedings as on habeas corpus.
32. Person having custody may be committed.
33. Refusing copy, penalty.
34. When returnable.
35. Certificate of allowance.
36. Habeas corpus, how served.
37. Same.
38. Charges to be paid by petitioner.
39. When writ returnable.
40. Common law abrogated except so much as necessary to carry out provisions of this act.
41. This act not to restrain powers of court.

[278] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. [That] every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of habeas corpus according to the provisions of this act, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

SEC. 2. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his behalf, as follows: to any judge of the supreme or district courts, or any supreme court commissioner, being within the county where the prisoner is detained, or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

SEC. 3. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence,

that there is no officer in such county authorized to grant the writ, or if there be one, that he is absent, or has refused to grant such writ, or from some cause to be specially set forth is incapable of acting, and if such proof be not produced, the application shall be denied.

SEC. 4. The petition must state in substance,

1. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties, if their names are known, or describing them, if they are not.

2. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party.

3. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof must be annexed, or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

4. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

5. It must be verified by the oath of the party making the application, or some other person.

SEC. 5. Any officer empowered to grant any writ applied for under this act, to whom such petition shall be presented, shall grant such writ without delay.

SEC. 6. Every writ of habeas corpus issued under the provisions of this act, shall be substantially in the following form: "The United States, to the sheriff of, etc., (or to A. B.) You are hereby commanded to have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged before E. F., judge of the district court, (or supreme court commissioner, as the case may be,) at etc. on etc., (or immediately after the receipt of this writ,) to do and receive what shall then and there be considered concerning the said C. D.; and have you then and there this writ. Witness, etc.

SEC. 7. Such writ of habeas corpus shall not be disobeyed for any defect of form, it shall be sufficient,

1. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

2. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

SEC. 8. If any officer authorized by the provisions of this act to grant writs of habeas corpus, shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offense to the party aggrieved, one thousand dollars.

SEC. 9. The person upon whom any such writ shall have been duly served, shall state in his return plainly and unequivocally,

1. Whether he has or has not the party in his custody, or under his power or restraint.

2. If he have the party in his custody, or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

3. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the officer before whom the same is returnable.

[280] 4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return must be signed by the person making the same, and, except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

SEC. 10. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

SEC. 11. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this act, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order that may be made by such officer in relation to the person for whose relief such writ shall have been issued.

SEC. 12. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own.

SEC. 13. The officer by whom any such attachment may be issued, may also at the same time, or afterwards, issue a precept to the same sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person until he shall be discharged, bailed or remanded, as such officer shall direct.

[281] SEC. 14. In the execution of such attachment or precept, or of either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

SEC. 15. The officer before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

SEC. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint under which he is held.

SEC. 17. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases:

1. Where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum, or person.

2. Where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged.

3. Where the process is defective in some matter of substance required by law, rendering such process void.

4. Where the process, though in proper form, has been issued in a case not allowed by law.

5. Where the person having the custody of the prisoner under such process is not the person empowered by law to detain him; or,

6. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

SEC. 18. If it appear that the party has been legally committed for any criminal offense, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offense, although the commitment be irregular, the officer before whom such party shall be brought shall proceed to let such party to bail, if the case be bailable and good bail be offered, or if not, shall forthwith remand such party.

SEC. 19. If the party be not entitled to his discharge and be not bailed, the officer shall remand him to the custody or place him under [282] the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

SEC. 20. Until judgment be given upon the return, the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care or under such custody as his age and other circumstances may require.

SEC. 21. When it appears from the return to any such writ that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, if to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

SEC. 22. The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath, and thereupon such officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

SEC. 23. Whenever from the sickness or infirmity of the persons directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the officer before whom the writ is made returnable, the party in whose custody he is, may state that fact in his return to the writ,

verifying the same by his oath; and if such officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return and to dispose of the matter; and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the officer shall grant a writ of discharge, commanding those having such person in their custody to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined and is not entitled to be bailed, such officer shall cease from all further proceedings thereon.

SEC. 24. Obedience to any writ of discharge or to any order for the discharge of any prisoner granted pursuant to the provisions of this [283] act, may be enforced by the officer issuing such writ or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience shall forfeit to the party aggrieved one thousand two hundred and fifty dollars, in addition to any special damages such party may have sustained.

SEC. 25. No sheriff or other officer shall be liable to any civil action for obeying any such writ or order of discharge, and if any action shall be brought against such officer for suffering any person committed to his custody to go at large pursuant to any such writ or order, he may with his plea of the general issue give notice of the same in bar of such action.

SEC. 26. Anyone having in his custody or under his power, any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this act, who with intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

SEC. 27. Every person who shall knowingly aid or assist in the violation of the last preceding section, shall be deemed guilty of a misdemeanor.

SEC. 28. Every person convicted of any offense under either of the three last sections, shall be punished by fine or imprisonment, or both, at the discretion of the court in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months.

SEC. 29. Whenever it shall appear by satisfactory proof that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the territory, or suffer some irreparable injury before he can be relieved by the issuing of a habeas corpus, any officer authorized to issue such a writ may issue a warrant under his hand and seal, reciting the facts, and directed to any sheriff, constable or other person, commanding such officer or person to take such prisoner and forthwith to bring him before such officer to be dealt with according to law.

SEC. 30. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offense committed in the taking or de-[284]-taining of such prisoner, the warrant shall also contain an order for the arrest of such person for such offense.

SEC. 31. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

SEC. 32. If the person having such prisoner in his custody shall be brought before such officer as for a criminal offense, he shall be examined, committed,

bailed or discharged by such officer in like manner as in other criminal cases of the like nature.

SEC. 33. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

SEC. 34. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may require.

SEC. 35. Every such writ shall be endorsed with a certificate that the same has been allowed, and with the date of such allowance, which endorsement shall be signed by the officer allowing the writ.

SEC. 36. Every writ of habeas corpus issued pursuant to this act, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with any under officer or other person of proper age, having charge for the time of such prisoner.

SEC. 37. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined.

SEC. 38. Every officer allowing a writ of habeas corpus directed to any other than a sheriff, coroner, constable, or marshal, may, in his discretion, require as a duty to be performed in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges so to be paid, [285] which shall not exceed the fees allowed by law to sheriffs for similar services.

SEC. 39. If the writ be returnable at a certain day, such return shall be made, and such prisoner shall be produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours, and the like time shall be allowed for every additional twenty miles.

SEC. 40. The provisions of the common law in regard to the writ of habeas corpus, treated of in this act, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this act, in all cases therein provided for.

SEC. 41. Nothing contained in this act shall be construed to restrain the power of any court to issue a writ of habeas corpus when necessary, to bring before them any prisoner for trial in any criminal case lawfully pending in the same court, or to bring in any prisoner to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

Approved January 16, A. D. 1840.

CHAPTER 78.

INSANE PERSONS.

AN ACT concerning insane persons.

SECTION.

1. Bargain and sale, etc., by insane persons void.
2. Duty of district courts in relation to insane persons. Jury. Appointment of guardians, duty, etc.
3. Court may order sale of real and personal estate, etc.

SECTION.

4. Suits, etc., to be suspended till the appointment of guardian.
5. Insane persons having no property to have the benefit of the poor laws of this territory.

[286] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. 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.

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 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.

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.

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.

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 per-[287]-sons concerned, are directed to govern themselves according to the provisions of the laws for the relief of the poor.

Approved January 19, A. D. 1839.

CHAPTER 79.

INSANE PERSONS.

AN ACT for the benefit of insane persons.

SECTION.

1. Probate courts to appoint guardians.
2. Court to examine into insanity.
3. Duty of court.
4. Costs how to be paid.
5. Costs in certain cases.
6. Guardian to enter into bonds, same to be filed.
7. Duty of guardians.
8. How to act in certain cases.
9. To collect and take care of goods.
10. To make out inventory of real estate.
11. Subsequent inventory.
12. How each to be attested.
13. Guardian to prosecute actions.
14. To collect debts, etc.
15. Further powers of probate court.
16. Personal estate insufficient to pay debts, how to proceed.

SECTION.

17. Sale of real estate and proceeds.
18. Court to execute deed.
19. Court may set aside proceedings.
20. Guardian to render account.
21. Process against ward, how served.
22. Proceedings when ward has recovered his reason.
23. Death of ward.
24. Courts may remove guardian, etc.
25. Expenses, how and by whom paid.
26. Lunatic to have benefit of poor laws.
27. Expenses of insane person recovered by county against person legally bound for their support, etc.
28. Maintenance of insane persons.
29. Repealing section.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the several probate courts in their respective counties in this territory, shall have power to appoint guardians to take the care, custody and management, of all insane persons, who are incapable of conducting their own affairs, and their estates, real and personal, and to provide for the safe keeping of such persons, the maintenance of themselves and families, and the education of their children.

SEC. 2. That if any person shall give information in writing, under his hand, to the judge of said court, that any person in their county is [288] or has become insane, and pray that an inquiry thereof be had, such court, if satisfied that there is good cause for the exercise of his jurisdiction, shall cause the said person to be brought before such court, and inquire into the facts by a jury, if the facts be doubtful.

SEC. 3. If it be found by the jury that the person so brought before the court is of unsound mind, and incapable of managing his own affairs, the court shall appoint a guardian for the person, and of the estate of such insane person.

SEC. 4. When any person shall be found to be insane, or coming within the provisions of this act, the cost of the proceedings shall be paid out of his estate; or if that be insufficient, by the county.

SEC. 5. If the person alleged to be insane shall be discharged, and it shall be thought by the court or jury (if a jury be called) that there was no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and an execution may issue for the same.

SEC. 6. Every such guardian so appointed, shall, before entering upon the duties assigned him, enter into bond to the board of county commissioners, in such

sum, and with such security, as the court shall approve, conditioned that he will take proper care of such insane person, and manage and minister his effects to the best advantage, according to law; and that he will faithfully discharge all duties as such guardian which may by law, or by the order, sentence or decree of any court of competent jurisdiction, devolve upon him; which bond shall be filed in the office of the probate court, and a copy thereof, duly certified, shall be evidence in all respects as the original.

SEC. 7. It shall be the duty of every such guardian, within twenty days after his appointment, to cause a notice thereof to be published in some newspaper printed in this territory, or otherwise publish such notice at such time and place, and in said manner, as the court shall direct.

SEC. 8. Every such guardian shall take charge of the person of such lunatic; and if it be thought necessary for the safety of his person, or the person or property of others, it shall be the duty of such guardian to confine or guard such insane person.

SEC. 9. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects, and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

SEC. 10. Within forty days after his appointment, such guardian shall make out and file in the office of the probate court by which he [289] was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come to his view.

SEC. 11. And if, after having filed such inventory, it shall be found that there is other property belonging to said estate, it shall be the duty of guardian to make out and file an additional inventory, containing a just and full amount of the same, from time to time, as the same may be discovered.

SEC. 12. All such inventories shall be made in the presence of, and attested by two credible witnesses of the neighborhood, and shall be verified by the oath of the guardian.

SEC. 13. It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter, to be commenced by, or on account of his ward, and to defend all actions pending or which may be brought against such ward.

SEC. 14. Every such guardian is authorized and required to collect all debts due or becoming due to his ward, and give acquittances and discharges thereof, and adjust, settle and pay all demands due and becoming due from his ward, so far as his estate and effects will extend.

SEC. 15. Every probate court shall have power to make order for the restraint, support, and safe keeping of such person, for the management of his estate, and the support and maintenance of his family and education of his children, out of the proceeds of his estate; to set apart and reserve, for the use of such family, any property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage, any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

SEC. 16. Whenever the personal estate of such person shall be found to be insufficient to meet the foregoing requisitions, it shall be the duty of such guardian to lay the same before the probate court by whom he was appointed, setting forth the particulars relative to the estate, real and personal, of such person, and the debts by him owing, accompanied by a correct and true account of his own doings therewith; whereupon it shall be the duty of such court

to make an order, directing the mortgage, lease, or sale, at his discretion, of the whole or such part of the real estate as may be necessary.

SEC. 17. The court making such order shall direct the time and terms of such sale, mortgage, or lease of such estate, and the manner in which the proceeds shall be applied; and shall give due notice thereof, [290] together with a full description of the property to be thus disposed of, at which time and place it shall be the duty of the guardian to execute the order of said court, and to make a full report of his doings therein, which report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser thereof; or if otherwise disposed of, that he is not directly or indirectly interested personally in the agreement.

SEC. 18. When any such sale, mortgage or lease, is approved of by the court ordering the same, as having been performed according to law, and not under such circumstances as to operate prejudicial to the interest of such ward, it shall be the duty of the court to execute a deed, mortgage, or other instrument of writing, which shall be as valid and effective in law as if executed by such ward when of sound mind and discretion.

SEC. 19. If such report be disapproved of by said court, as not doing justice to said ward, the court may set aside the proceedings, and proceed in like manner as if no sale had been made.

SEC. 20. Every such guardian, as often as required by the court appointing him, shall render a true and perfect account of his guardianship.

SEC. 21. No such ward shall be held to bail, or his body be taken in execution, in any civil action; and in all actions commenced against him the process shall be served upon his guardian; and in all judgments against such ward (or his guardian as such) the execution shall be against the property of the ward only, and in no case against his body, nor against that of his guardian, nor the property of said guardian, unless he shall have rendered himself liable thereunto, by false pleading or otherwise.

SEC. 22. Whenever the court shall receive information that such ward has recovered his reason, he shall immediately inquire into the facts; and if he finds that such ward is of sound mind, he shall forthwith discharge such person from care and custody; and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to such ward.

SEC. 23. In case of the death of any such ward, while under guardianship, the power of the guardian shall cease, and the state descend and be disposed of in the same manner as if said ward had been of sound mind; and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his legal representatives.

[291] SEC. 24. The several probate courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or for disobedience to any lawful order, and appoint another in his place; whereupon such guardian shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

SEC. 25. All the expenses of taking care of such insane person and the management of his estate, shall be paid out of his estate, if it be sufficient; if not, out of the county treasury.

SEC. 26. If the estate of such lunatic be insufficient for his maintenance, and the maintenance of his family, he shall be entitled to all the benefits of the laws of this territory for the relief of paupers, in which case it shall be the duty of the court of probate to issue an order to the overseer of the poor, requiring him to take charge of such person according to the provisions of the

laws of this territory for the relief of paupers; which overseer shall have power to arrest and confine such person, if necessary, until the next ensuing session of the board of county commissioners, at which time it shall be the duty of said board to dispose of the same as may to them seem right and proper, consistent with the principles of humanity and justice.

SEC. 27. In all cases of appropriation out of the county treasury for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who by law is bound to provide for the support and maintenance of such insane person, if there be any such of ability to pay the same.

SEC. 28. The father or mother of such insane person shall maintain them at their own charge, if of sufficient ability; and if not, then the children, grandchildren, or grandparents, shall, if of sufficient ability, maintain them at their own charge.

SEC. 29. That all acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

Approved January 14, A. D. 1841.

[292] CHAPTER 80.

INDIANS.

AN ACT to prohibit and punish the sale of intoxicating liquors to Indians.

SECTION.

1. Fine and imprisonment for selling, etc.,
2. Officers under pain of forfeiture of their offices to make complaint of all violations of this act; and the

SECTION.

- judges to give it in charge to grand juries.
3. Act of January 1839 repealed. Proviso.
4. When act to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That if any tavern keeper, grocery keeper, or other person or persons, shall sell, 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; every such person so offending, shall be deemed guilty of misdemeanor, and upon conviction thereof, by indictment in any court having competent jurisdiction to try the same, shall forfeit and pay for the use of the county in which the offense may have been committed, a fine of not less than one hundred dollars, and not more than five hundred dollars, and shall stand committed in the jail of the county where the indictment may have been found, if there be a jail in said county, and [if] there be none, then in the next nearest county jail, for a period of six calendar months unless the fine and costs be sooner paid.

SEC. 2. All sheriffs, constables, and justices of the peace within the territory, are hereby authorized, and under the penalty of forfeiting their respective offices, required to make complaint of such violations of this law as come within their knowledge, and the judges of the several district courts in the territory are hereby required to give this act in special charge to grand juries.

SEC. 3. That the act, entitled an act to prevent the selling of spirituous liquors to the Indians, approved, January 3, 1839, be and the same is hereby repealed: provided, that the provisions of this section shall not be construed to affect in any manner, any indictment or other process now pending in any court in this territory for a violation of the provisions of the act of the third of January, 1839, nor to prevent [293] the prosecution and punishment of any offense against the provisions of the act aforesaid, committed previous to the taking effect of this act.

SEC. 4. This act to take effect from and after the first day of May next.

Approved January 23, A. D. 1843.

CHAPTER 81.

INTEREST.

AN ACT regulating interest on money.

SECTION.

1. Creditors may receive six per cent when no other interest is agreed upon.
2. Parties may agree upon interest not exceeding ten per cent.
3. Six per cent allowed on moneys due on judgment, etc., from time of rendition until satisfied.

SECTION.

4. No greater sum than this act allows shall in [any] case be taken.
5. Person paying greater may recover the amount above.
6. Persons offending against this act shall be compelled to answer on oath any bill for discovery exhibited against them.
7. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate of interest is agreed upon, for all moneys after they become due by any instrument of the debtor in writing, or money lent, or money due, or settlement of accounts from the day of liquidating or ascertaining the balance due thereon, or money received for the use of another, and retained without the owner's knowledge of the receipt thereof, on money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts, and on all other moneys, due and to become due, for the forbearance of payment whereof an express promise to pay interest has been made.

SEC. 2. The parties may agree in writing for the payment of interest not exceeding ten per centum per annum on money due or to become due upon any contract whether under seal or not.

[294] SEC. 3. Interest shall be allowed on all moneys due, on judgments at law, or decrees in equity, from the day of the rendition thereof until satisfaction be made by payment or sale of property, at the rate of six per centum per annum.

SEC. 4. No person or corporation shall directly or indirectly take or receive in money, goods or things in action, or in any other manner, any greater sum or value for the loan or forbearance of any money, goods or things in action than is in this act prescribed.

SEC. 5. Every person who, for any such loan or forbearance, shall pay any greater sum or value than is in this act allowed to be received, or his personal representatives may recover in an action against the person who shall have taken or received the same, or his personal representatives the amount of money so paid or value delivered above the rate aforesaid, if such action be brought within one year after such payment or delivery.

SEC. 6. Every person offending against the provisions of this act, shall be compelled to answer on oath any bill that may be exhibited against him in chancery, for the discovery of any such sum of money, goods or things in action so taken, accepted or received in violation of the provisions of this act or any of them.

SEC. 7. All acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

Approved February 9, A. D. 1843.

CHAPTER 82.

IMMORAL PRACTICES.

AN ACT for the prevention of certain immoral practices.

SECTION.

1. Fine for engaging in common labor, fishing, shooting, etc., on the Sabbath day.
2. Fine for selling intoxicating liquors on the Sabbath.

SECTION.

3. Fine for swearing within hearing of any religious assemblage.
4. Fines, how collected and to what applied, limitation of suit, etc.

Be it enacted by the Council and House of Representatives [295] of the Territory of Iowa:

SECTION 1. That if any person of the age of fourteen years or upwards, shall be found on the first day of the week commonly called Sunday, rioting, quarreling, fishing, shooting, or at common labor, (works of necessity and charity only excepted) he or they shall be fined in any sum not exceeding five dollars: provided, nothing herein contained shall be so construed as to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent persons from traveling, watermen from landing their passengers or freight, or ferrymen from conveying any person over the waters on such day.

SEC. 2. That if any grocery keeper or other person shall sell or barter any spirituous liquors on the first day of the week, commonly called Sunday, (except prescribed by a physician, or if such grocery keeper or other person shall know that such spirituous liquors are wanted to be used as medicine) such grocery keeper or other person so offending, shall be fined in any sum not exceeding five dollars.

SEC. 3. That if any person of the age of fourteen years and upwards, shall profanely curse or damn, or profanely swear by the name of God, Jesus Christ or the Holy Ghost, in any court of justice or within hearing of any religious assemblage, each and every person so offending, shall be fined in any sum not exceeding one dollar, nor less than twenty-five cents for each offense.

SEC. 4. That all fines accruing under the provisions of this act, shall be collected in the name of the United States as in other cases of a breach of the peace, and be paid into the township treasury for the use of common schools in the township in which the offense shall have been committed, (excepting in such counties as have not been organized into townships) in which case the fines aforesaid shall be paid over to the county treasurer for the use aforesaid, within thirty days after collected, and if any officer fail to pay over such fine by him collected agreeably to the provisions of this act, such officer shall for any such neglect, forfeit and pay into the treasury aforesaid, double the amount of any such fine or fines by him collected, to be recovered in a summary way before any justice of the peace having cognizance of the same, at the suit of the township or county treasurer, as the case may be: provided, that all prosecutions under the provisions of this act, shall be commenced within ten days after the offense is committed, except prosecutions against justices of the peace for not paying over any fine or fines as aforesaid.

Approved February 10, A. D. 1843.

[296] CHAPTER 83.

JURORS.

AN ACT concerning grand and petit jurors.

SECTION.

1. Who shall serve as jurors and who shall be exempt.
2. Grand jury selected by county commissioners, their numbers, summons, how and when served.
3. Foreman of grand jury, his powers and duties, indictments, etc.
4. Oath of grand jury.
5. Oath of petit jurors in criminal cases.
6. Two grand jurors necessary in making presentment.
7. Petit jurors selected by county commissioners, their numbers, summons, how and when served.
8. Manner of selecting petit jury.

SECTION.

9. Duty of sheriff in selecting jury and penalty for neglect.
10. Manner of filling vacancies in jury occasioned by the non-attendance of persons first selected.
11. Fine of grand and petit jurors for non-attendance unless good cause shown against it.
12. Sickness or death of jurors provided for.
13. Compensation of jurors, how and by whom paid.
14. Jurors privileged from arrest except in certain cases.
15. Duty of county commissioners in selecting juries.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, counsellors 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, practicing 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.

[297] 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.

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.

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 unpresented 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."

[298] 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."

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.

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.

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 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.

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.

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 [299] 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 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.

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.

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.

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 [300] be entitled to receive pay as a juror of the district court of the United States.

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 offenses, 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.

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.

Approved January 4, A. D. 1839.

CHAPTER 84.

JURISDICTION.

AN ACT to define the jurisdiction of the several counties in this territory that front upon the Mississippi river.

SECTION 1.—Establishing jurisdiction on Mississippi river.

WHEREAS, Doubts have arisen whether the jurisdiction of the several counties in the territory of Iowa that front upon the Mississippi river extends to the eastern shore of said river, concurrently with any other state or territory, so far as the said river shall form a common boundary between this territory and any other conterminous state or territory, under the act of congress, approved March 30, 1839, chapter 91—therefore,

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

That from and after the passage of this act, all the counties in this territory, that are now formed, or which may hereafter be formed, in any part of said territory, fronting eastward upon the Mississippi river, shall have and exercise jurisdiction, for all civil and criminal purposes, upon the Mississippi river concurrently with any [301] other conterminous state or territory so far, and to such extent as the said river shall form a common boundary between the territory of Iowa and any other such conterminous state or territory.

Approved July 24, A. D. 1840.

CHAPTER 85.

FOREIGN JURISDICTION.

AN ACT to prevent the exercise of foreign jurisdiction within the limits of the territory of Iowa.

SECTION.

1. Exercise of foreign jurisdiction, how punished.
2. Accepting office from any authority

SECTION.

other than Iowa or U. S., how punished.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That if any person shall exercise, or attempt to exercise, any official functions, or shall officiate in any office or situation within any part of the present jurisdiction of this territory, or within the limits of any of the counties therein as at this time organized, by virtue of any commission or authority not derived from this territory or under the laws of this territory, or under the government of the United States, every person so offending; shall, for every such offense, on conviction thereof before any court of record, be punished by a fine not exceeding one thousand dollars, or by imprisonment at hard labor not exceeding five years, or both at the discretion of the court.

SEC. 2. That if any person residing within the limits of this territory shall accept of any office or trust from any state or authority, other than the government of the United States or the territory of Iowa, every person so offending shall be fined not exceeding one thousand dollars or imprisoned five years, at the discretion of the court before which any conviction may be had. This act to take effect and be in force from and after its passage.

Approved July 31, A. D. 1840.

[302] CHAPTER 86.

JUSTICES OF THE PEACE.

AN ACT to provide for the election of justices of the peace, to prescribe their powers and duties and to regulate their proceedings.

SECTION.

- ARTICLE I.
1. Time and place of electing justices in organized precincts.
 2. In unorganized precincts.
 3. Term of office.
 4. Justice to reside in precinct for which he was elected.
 5. Number of justices.
 6. Manner of conducting election for justices.
 7. To take oath and give bond and form of each.
 8. Qualifications to hold the office.

SECTION.

9. Who shall not hold it.
10. Division of precinct not to effect duties of justice.
11. Vacancies filled by appointment of county commissioners.
12. When person to be considered legal justice.
13. Disposition of papers by a justice resigning or becoming disqualified.
14. Forfeit for failure to comply.
15. Jurisdiction of justices.
16. Power.
17. Persons arrested to give security.

SECTION.

18. Recognizance to be certified to next district court.
19. When justice may punish for contempt.
20. Limitation of same.
21. Person not to be punished until heard in his defense.
22. When convicted record to be made up.
23. What warrant of commitment to set forth.
24. Justice found guilty of bribery, etc., to be removed from office.
25. Court before whom tried to enter up order of removal.
26. Justice may grant subpoenas.
27. To hold court for the trial, certain actions.
28. Actions specified.
29. What justice shall not have cognizance of.
30. Where action cognizable before justice to be brought.
31. Action by attachment when brought.
32. When brought, when served persons jointly liable.
33. Justice being interested or absent suit to be brought before justice of adjoining county.

ARTICLE II.

1. Docket of justice, what entered therein.
2. Items how entered.
3. Suits, how instituted before justice.
4. Plaintiff to file cause of action.
5. May be required to give security for costs.
6. Loss or destruction of any instrument of writing upon which suit is founded, to be proven.
7. Process by justice.
8. To whom directed.
9. Service.
10. When justice may issue a warrant.
11. Service of warrant.
12. Trial to be had immediately.
- [303] 13. Justice may empower any suitable person to execute process in absence of officers.
14. Defendant paying amount of claim and costs, suit to be discontinued.
15. Amount to be endorsed upon summons, writ, etc.
16. Return of process.
17. Penalty for failure to execute or return process.
18. Authority of constables in serving process.

SECTION.

ARTICLE III.

1. Plaintiff over twenty-one years may conduct his own suit.
2. Justice may appoint person to conduct suit for a minor.
3. Defendant over twenty-one years may conduct his own suit.
4. Guardian for infant defendant to be appointed.
5. Authority of agent to be proven, unless admitted.
6. Justice to wait one hour for appearance of parties after return of summons.
7. Set off allowance except in two cases.
8. Notice of set-off to be given and bill of items.
9. If instrument establishing set-off be lost, how to proceed.
10. Judgment in case of set-off.
11. Judgment against executors in set-off.
12. In suit of trespass justified by title, justice to cease proceedings and return to district court.
13. Suit to be continued in district courts.
14. Justice may adjourn a cause. Proviso.
15. May adjourn sixty days on application of either party and longer with consent of both.
16. Application for adjournment on account of absence of testimony, how sustained.
17. Extent of adjournment and costs of same, by whom borne.
18. Party applying may be required to give security.
19. Causes by warrant adjourned, defendant to be discharged.
20. If by request of defendant, to remain in custody, unless he enter into recognizance.
21. Subsequent adjournment.
22. When plaintiff may recover upon recognizance.

ARTICLE IV.

Of Witnesses and Depositions.

1. Subpoena for witness.
2. By whom served.
3. Attendance compelled by attachment. Proviso.
4. By whom executed.
5. Fine of witness for non-attendance, refusal to answer.
6. Fine may be remitted upon good cause shown.

SECTION.

7. Party neglecting to appear liable for damages.
8. Deposition taken upon notice.
9. Notice to be served upon opposite party three days before taking.
10. Service of notice to be in like manner as summons.
11. How taken.
12. To be read on trial upon certain conditions.

ARTICLE V.

Of judgments on non-suits and by default and of trials.

1. Suit to proceed on defendant failing to appear within one hour after return time of process, or adjourned time, manner.
2. In all cases not specially provided for, if plaintiff fail to appear, judgment of non-suit rendered against him.
- [304] 3. Power of justice to set aside judgment of non-suit, etc., etc.
4. New trial granted, notice to be served upon opposite party.
5. Suit by summons or warrant to be determined on return of same, unless cause be adjourned.
6. Both parties appearing, trial to proceed and suit to be determined.
7. Cause may be tried by jury upon demand of either party.
8. Number jurors.
9. How summoned.
10. Execution of summons.
11. Oath and duty of Jury.
12. Objection to witnesses to be determined by justice.
13. Execution of writings establishing set offs.
14. Executors and administrators.
15. Verdict.
16. When jury may be discharged and new called.
17. Non-attendance of jurors and penalty.

ARTICLE VI.

Of judgments and filing transcripts thereof and the stay of execution.

1. Judgments by confession.
2. Requisites necessary.
3. Judgments may be set off.
4. Transcripts thereof.
5. Execution for balance due.
6. Change of venue, for what causes and how granted.
7. Judgment by non-suit, confession, etc., when entered.

SECTION.

8. Jurisdiction and release of excess, etc.
9. Stay of execution.
10. Security thereon.
11. Form of recognizance.
12. Expiration of stay, judgment not paid, execution to issue against principal and bond.
13. Judgment for bail on motion.
14. Execution revoked when judgment stayed.
15. Transcripts of judgment certified and filed.
16. To operate as a lien, etc., etc.
17. Transcript of judgment from one justice to another to enforce execution.
18. Execution failing against principal, judgment creditor may proceed against bail, when moved away, by transcript as in other cases.
19. Official certificate of justice upon judgment good evidence in any court in territory.

ARTICLE VII.

Of executions and proceedings thereon.

1. Execution.
2. To whom directed, against what, when returnable.
3. May be renewed, how, and for how long.
4. Levy, notice and description of goods.
5. Sale and return of execution and money.
6. Constables not to purchase, etc.
7. Insufficiency of goods, and summons to garnishees, etc.
8. Defendant unable, plaintiff to pay costs.
9. Garnishee to be summoned and examined touching indebtedness to defendant.
10. Judgment rendered against garnishee if indebted to defendant.
11. Proceedings of constable when goods levied on are claimed by a third person.
12. Claim to be tried at once.
13. Justice to determine cause unless jury be required.
- [305] 14. Judgment for claimant, goods to be delivered to him, etc.
15. Claimant may resort to any other legal remedy.
16. Moneys paid to constable, effect, and remedy against same.
17. Process against constable in certain cases.

SECTION.

18. Requirements of summons.
19. Proceedings, penalty and appeal.
20. Party injured may elect remedy against constable.

ARTICLE VIII.

Of appeals and proceedings thereon in the district court.

1. Appeal to district court.
2. Requisites to be complied with.
Time to be made.
Recognizance and security.
3. Form of recognizance.
4. Allowance of appeal, entry and stay.
5. Constable on notice of appeal to release property taken in execution.
6. After appeal, justice to file with clerk of district court, all the papers relating to suit.
7. Proceedings thereon.
8. Compulsory return.
9. Justice failing to allow appeal without good cause district court may compel allowance.
10. Return of justice amended.
11. And perfection of recognizance.
12. When appeals determined.
13. Notice by appellant, when given and to whom.
14. Failing to give notice, cause to be continued.
15. Cause of action set-off, etc., in district court.
16. Judgment in district court.
17. Execution.
18. Judgment for security on motion.

ARTICLE IX.

Certiorari.

1. Person aggrieved may remove judgment to district court.
2. Writ of certiorari to issue, certain conditions being complied with.
3. Duty of justice to make special return of facts.
4. Power of district court to compel return.
5. Judgment.
6. If judgment by justice be collected, restitution awarded.

ARTICLE X.

Regulating the Action of Replevin.

1. When action may be brought.
2. Cross replevins shall not be brought.
3. Affidavit required.
4. Requirements of writ.
5. Bond, security and condition.
6. Execution of writ.
7. Plea and issue.

SECTION.

8. Failure of plaintiff and its effects.
9. Judgment in such case and its incidents.
10. Remedy of officers injured.
11. Suit upon bond.
12. Officers' liabilities.

ARTICLE XI.

Of Attachments.

1. Attachments in what cases granted.
2. Cause of action. Affidavit, and its requisites. Proviso.
3. Issue, return and proceedings on writ.
4. Manner of serving writs, garnishee, property, etc., attached, and credits.
5. Bond and condition from third persons.
6. From defendant.
7. Sale of perishable property.
8. Notice to be given to absent defendant.
9. When and how given, and how proved.
10. Judgment by default.
- [306] 11. And its effect.
12. When and in what cases attachments may be dissolved.
13. Effects of dissolution.
14. Answers of garnishee.
15. Persons shall not be garnisheed for debts due to another for daily labor.
16. Judgment against garnishee by default and its effects.
17. Final judgment against garnishee.
18. Plaintiff may deny answer of garnishee, etc.
19. Issues and trial between plaintiff and garnishee.
20. Satisfaction by garnishee.
21. Warrant against third person indebted to defendant upon affidavits of other persons than plaintiff.
22. Arrest and its operation.
23. May be required to give bond and security.
24. In default of bond may be committed.
25. When bond and security required of plaintiff, its condition.
26. Avoiding debts, petition and notice.
27. Petitioner's oath denying original cause of action, plaintiff required to prove demand.
28. Set off or collateral avoidance.

SECTION.

29. When execution may be awarded.
General and special executions.
Against garnishee.
30. Compensation of officer.

ARTICLE XII.

Forcible entry and detainer.

1. Entry to be made in a lawful and peaceable manner.
2. Forcible entry and detainer within the meaning of this act.
3. Unlawful detainer.
4. What the preceding sections of this act comprehend.
5. Acts made cognizable before a justice of the peace.
6. Complaint of forcible entry and detainer made, justice to summon before him the person complained of.
7. Form of summons.
8. When and how served.
9. Jury to be summoned and number.
10. Form of venire.
11. Jury wanting in number to be completed by constable or sheriff.
12. Return of venire.
13. Plaintiff not appearing, to be non-sued.
14. Defendant not appearing, justice to adjourn or otherwise at his discretion.
15. May compel attendance of witnesses.
16. Jury to be sworn.
17. Plaintiff to support complaint.
18. Defendant found guilty, writ of restitution to issue.
19. Verdict.
20. Defendant not guilty, plaintiff to pay costs.
21. Proceedings before justices to be docketed.
22. Justice may grant a new trial upon good cause shown.
23. Merits of title not to be enquired into.
24. Three years' peaceable possession a bar to complaint.
25. Remedy under this act applied to public lands.
26. Extent of land legal owner entitled to, against the wrong-doer.
27. Who may enter upon such lands.
28. This act not to bar action of trespass, etc.
29. Form of writ of restitution.
30. Appeal to district court.
31. District court to act as if it had had original jurisdiction.

SECTION.

32. Appealing party to give bond for pros-[307]-ecution of suit, etc.
33. When appeal prayed for.
34. When appeal not allowed.
35. Justice to certify copy of his docket and all papers relating to suit, to district court.
36. Lien upon lands for costs.

ARTICLE XIII.

Proceedings in case of breach of the peace.

1. Summary process.
2. Exceptions.
3. Complaints and warrant; by whom executed.
4. Arrest on view or from personal knowledge, aid and assistance.
5. Summary mode.
6. Trial when postponed, security, etc.
7. When committed.
8. Breach of recognizance.
9. Want of jurisdiction; how remedied.
10. Witnesses, etc.
11. Jury trial and its incidents.
12. Complainant liable for costs.
13. Judgment, fine, costs, and execution.
14. Imprisonment and discharge, costs and privileges.
15. Appeals to district court, recognizance.
16. Appeals, when returnable.
17. Recognizance of witnesses, entries, affidavits, etc.
18. Trial on the merits, costs, etc.
19. Judgment when affirmed.
20. Def't and securities.
21. When prosecutor to pay costs.
22. Execution.
23. General rules governing proceedings before justice.
24. Duty of justice as to fines, constables' liabilities.
25. Penalty for refusing or failing to perform duty.
26. Fines and penalties, how recovered.
27. Verbal notice to witnesses good as summons.

ARTICLE XIV.

Proceedings to prevent the commission of offenses.

1. Warrant for arrest of accused upon affidavit of any individual.
2. Examination, witnesses.
3. Accused required to enter into recognizance.
4. Bail and discharge of person committed.

SECTION.

5. Duty of sheriff when prisoner wishes to give bail.
6. Transcript of proceedings, etc. to be filed in clerk's office, penalty for failure to do so.
7. District court to investigate the matter.

ARTICLE XV.

Preliminary proceedings when offenses have been committed.

1. When offenses have been committed, warrant to be issued for arrest of person accused.
2. Power of officer in making arrest in any other county.
3. Recognizance of witnesses.
4. Search warrant may be issued, not to be executed in the night time.
5. Proceedings when property is found.
6. Ownership established, to be given up.
7. Warrant to search for counterfeit money.
8. Proceedings when found.
9. Statement of prisoner.
10. Testimony may be reduced to writing.
11. Witnesses may be removed.
12. On sufficient grounds, recognizance of prisoners required.
13. Of witnesses.
14. Recognizance by other person when witness infant, etc.
- [308] 15. When prisoner to be committed. Proviso.

ARTICLE XVI.

Forms to be used in civil cases.

No.

1. Summons.
2. Writ of replevin.
3. Warrant.
4. Subpoena.

SECTION.

5. Venire for a jury.
6. Writ of attachment.
7. Oath of jury.
8. Oath of witness.
9. Affirmation of a witness.
10. Oath of voir dire.
11. Form of judgments.
12. Judgments in assumpsit.
13. Defendant not appearing.
14. General judgment.
15. Jury trial and judgment.
16. Judgment in replevin for plaintiff.
17. Execution.
18. When security has been given for stay of execution in judgment against the principal and security.
19. Form of execution containing a garnishee clause.
20. Scire Facias (on transcript).

Forms in breaches of the peace.

1. Warrant.
2. Venire for a jury.
3. Constable's return.
4. Oath of jurors.
5. Verdict of jury.

In proceedings to prevent the commission of offenses.

1. Affidavit.
2. Warrant.
3. Recognizance.
4. Mittimus or commitment.
5. Subpoena when offenses have been committed.
6. Affidavit.
7. Warrant.
8. Recognizance.
9. Search warrant.
10. Mittimus.

SEC. 2. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa, as follows, to-wit:

ARTICLE I.

Of the election, powers, and duties of justices of the peace.

SECTION 1. The qualified voters of each township organized by law in this territory, shall, at the time and place of holding the annual township elections, elect the justices of the peace for their respective townships.

SEC. 2. The qualified voters of each election precinct in every county not divided into organized townships shall at the time and place of holding the annual election for the choice of county officers and members of the legislative assembly, elect the justices of the peace for their respective precincts. And if, in any such county, the boundaries [309] of the election precincts are not already

established, it is hereby made the duty of the board of commissioners to establish and make known such boundaries in such manner as they may deem proper.

SEC. 3. Each justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified.

SEC. 4. Each justice of the peace shall reside in the township or precinct for which he was elected during his continuance in office.

SEC. 5. Every justice heretofore elected and qualified shall continue to act until his term of office expires, and until his successor shall be duly elected and qualified.

SEC. 6. Each township and each precinct shall have two justices of the peace: provided, that four justices of the peace may be elected in the township of Burlington, in the county of Des Moines; four in the city of Dubuque, in the county of Dubuque; four in the town of Fort Madison, in the county of Lee; three in the township of West Point, in said county of Lee; three in the city of Keosauqua, in the county of Van Buren; three in the town of Bloomington, in the county of Muscatine; three in the town of Iowa City, in the county of Johnson; three in the town and precinct of Fairfield, in the county of Jefferson; three in the town of Belview, in the county of Jackson, one of whom, at least, shall reside within the corporate limits of said town of Belview; and three in Centre township, in the county of Cedar, one of whom at least, to reside within the limits of the town of Tipton, and three in Rochester township, in the county of Cedar, one of whom shall reside within the limits of the town of Rochester.

SEC. 7. The election of justices of the peace shall be conducted as other elections, and the returns thereof made within nine days after the election, to the clerk of board of commissioners of the proper county, who shall open and count the same in the presence of two justices of the peace, and determine from the returns who are duly elected, and shall issue certificates of election accordingly, which certificates may be in the following form:

TERRITORY OF IOWA, }
County } ss.

I hereby certify that at an election held on the _____ day of _____ in the year _____ in the township (or precinct, as the case may be) of _____ in said county, A. B. was duly elected a justice of the peace.

In testimony whereof I have hereunto set my hand with the seal of the board of commissioners hereto affixed, this _____ day of _____ in the year _____.
Signed

C. D., Clerk of the Board of Commissioners for said county.

[310] SEC. 8. Every person elected a justice of the peace shall, within twenty days after receiving his certificate, take and subscribe the following oath: I, A. B., do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the laws of this territory, that I will administer justice without respect to persons, and faithfully and impartially discharge and perform all the duties incumbent upon me as a justice of the peace, according to the best of my understanding.

Signed,

A. B.

TERRITORY OF IOWA, }
County } ss.

Subscribed and sworn to before me this _____ day of _____ 18 ____.

Signed,

C. D., Clerk of the district court for said county.

Or as the case may be, any other person authorized to administer oaths, which oath shall be endorsed on the back of the certificate of election, and together with the certificate filed in the office of the clerk of the district court of the proper county, and every person elected a justice of the peace shall, at the time

of filing his oath of office with the clerk, enter into bond to the board of commissioners of the proper county, with good security, to be, by the said clerk of the district court, approved in the sum of five hundred dollars. Conditioned that he will faithfully pay over all money that may come into his hands by virtue of his office as justice of the peace, said bond may be in the following form:

Know all men by these presents that we A. B., C. D. and E. F. are held and firmly bound unto the board of commissioners of the county of _____ in the territory of Iowa, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, sealed by us, and dated this _____ day of _____ A. D. 18_____.

Whereas the said A. B. has been duly elected a justice of the peace in and for the township (or precinct as the case may be) of _____ and county of _____ in said territory for the term of two years from the _____ day of _____ in the year _____.

Now the condition of the above obligation is such that if the said A. B. shall well and truly pay over, according to law, all moneys which may come into his hands by virtue of his said office, then this obligation to be void, otherwise to be and remain in full force.

Signed

A. B., Seal.
C. D., Seal.
E. F., Seal.

[311] Said bond shall be filed in the office of the clerk of the district court, and any person aggrieved by a breach of the condition thereof, may either by suit upon the bond or by motion in the district court of the proper county, have judgment against the justice and his securities for such sum as he may show himself entitled to, and with costs and interest thereon at the rate of fifty per cent per annum, and upon any such judgment no stay of execution shall be allowed.

SEC. 9. No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, and who has not been a resident of the county in which he is elected six months next before his election.

SEC. 10. No sheriff, coroner, or clerk of any district court shall hold the office of justice of the peace.

SEC. 11. When a township or precinct shall be divided, and any justice of the peace of the original township or precinct, shall fall into the new township or precinct, he shall continue to discharge the duties of a justice of the peace until his term of office expires.

SEC. 12. All vacancies existing in the office of the justice of the peace, whether happening by death, resignation, or otherwise, may be filled by appointment, by the board of commissioners of the proper county; every person so appointed shall hold his office until the next election, and is required to qualify in the same manner as if he had been elected to the office of justice of the peace under the provisions of this act.

SEC. 13. Every person eligible to the office of justice of the peace, who has received a certificate of election or appointment, and who has taken the oath and given the bond prescribed by law, shall be deemed a legal justice of the peace.

SEC. 14. Whenever a justice of the peace shall resign, move out of the township or precinct for which he was elected or appointed, or be otherwise disqualified, he shall immediately thereafter deliver to the next nearest justice of the peace, in the same township or precinct, 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; and in case of death of any justice of the peace, his legal representative, within twenty days after the issu-

ing of letters testamentary, or of administration, shall hand over the records, and all papers relating thereto of his testator or intestate, to some neighboring justice of the peace of the township or precinct wherein the deceased lived and executed his office.

[312] SEC. 15. Every person whose duty it is to comply with the requisition of the next preceding section, shall forfeit and pay, for the use of the county for every three months neglect to comply, the sum of fifteen dollars to be recovered at the suit of any person.

SEC. 16. The jurisdiction of justices of the peace shall be co-extensive with their respective counties.

SEC. 17. Justices of the peace shall have power—

1. Jointly and severally to cause to be kept all laws made for the preservation of the peace.

2. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail, or bail them as the case may require.

3. To arrest and cause to come before them persons who attempt to break the peace, or who are not of good fame, and compel them to give security for their good behavior, to keep the peace, or both.

SEC. 18. If such persons refuse or neglect to give security they shall be committed until they find the same.

SEC. 19. 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.

SEC. 20. In the following cases, and no other, a justice of the peace may punish, as for contempts, persons guilty of the following acts:

1. Disorderly, contemptuous, and insolent behavior towards such justice of the peace whilst engaged in the trial of a cause, or in rendering a judgment, or in any judicial proceeding which shall tend to interrupt such proceedings, or impair the respect due to his authority.

2. Any breach of the peace, noise, or other disturbance, tending to interrupt the official proceedings of such justice.

3. Resistance, unlawfully offered, in the presence of the justice, to the execution of any lawful order or process, issued by him.

4. For the disobedience of any process, issued by him, requiring the attendance of a witness.

SEC. 21. Punishments for contempts, in the foregoing cases, may be by fine not exceeding thirty dollars, or by imprisonment in the county jail, not exceeding five days, at the discretion of the justice, but no person shall remain in prison for the non-payment of a fine.

SEC. 22. No person shall be punished for a contempt before a justice of the peace until an opportunity has been given him to be heard [313] in his defense, and for that purpose the justice may issue a warrant to bring the offender before him.

SEC. 23. Upon the conviction of any person for a contempt, the justice shall make up a record of the proceedings on such conviction, stating therein the particular circumstances of the offense, and the judgment rendered thereon.

SEC. 24. The warrant of commitment for any contempt shall set forth the particular circumstances of the offense, or it shall be void.

SEC. 25. Every justice of the peace who shall be guilty of bribery, perjury, or other infamous crime, or convicted of a wilful misdemeanor in office by indictment, shall be removed from office.

SEC. 26. The court before whom any justice may be tried and convicted for any of the offenses in the preceding section, shall enter up an order removing such justice from office, and from the time such order of removal shall be entered all the authority of such justice shall cease.

SEC. 27. Justices of the peace are empowered to grant subpoenas for witnesses in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions.

SEC. 28. 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.

SEC. 29. 1. Of all actions of debt, covenant and assumpsit, and all other actions founded on contract where the debt or balance due or damages claimed shall not exceed fifty dollars.

2. 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.

3. Actions of detinue and replevin, when the thing demanded or claimed does not exceed in value fifty dollars.

4. Actions commenced by attachment of property as hereinafter provided, as well as for any penalty given by any statute of this territory where the amount shall not exceed fifty dollars; and,

5. 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.

SEC. 30. No justice of the peace shall have cognizance,

1. Against any executor or administrator for any debt or demand due from the testator or intestate, nor

[314] 2. Of any action of slander, malicious prosecution or false imprisonment; nor

3. Of any action where the title to lands and tenements shall come in question.

SEC. 31. Every action cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the township, either,

1. Wherein the defendant resides, or

2. Wherein the plaintiff resides or the defendant may be found; but if the defendant in any action is a non-resident of the county, or has absconded from his usual place of abode, the action may be brought before some justice of any township or precinct where he may be found.

SEC. 32. Every action instituted by attachment may be brought before any justice of the county wherein the property of the defendant may be found.

SEC. 33. If there are several persons jointly liable to a suit, residing in different townships in the same county, the suit may be brought in either, against all such persons.

SEC. 34. 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 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 II.

SECTION 1. Every justice of the peace shall keep a docket in which he shall enter

1. The titles of all causes commenced before him.
2. The time when first process was issued against the defendant, and the particular nature thereof.
3. The time when the parties appeared before him, either without process or upon the return of process.
4. 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.
5. Every adjournment, stating at whose request and at what time.
- [315] 6. The time when the trial was had, stating whether the same was by jury or by the justice.
7. The verdict of the jury, and when rendered.
8. The judgment rendered by the justice, and the time of rendering the same.
9. 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.
10. The fact of an appeal having been made and allowed, and when made and allowed.

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.

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 or warrant against the person, or attachment against the property of the defendant.

SEC. 4. In all cases to be tried before a justice of the peace the plaintiff when he commences his suit shall set forth in writing, and file with the justice before the suit is placed upon the docket or process issued thereon, a plain statement of his demand or cause of action.

SEC. 5. 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 may in his discretion, 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. 6. 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. 7. All process issued by justices of the peace shall run "in [316] the name of the United States of America," to be dated on the day it is issued, and shall be signed by the justice granting the same.

SEC. 8. 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. 9. Every summons shall be served at least five days before the return day thereof, and shall be executed either

1. By reading the same to the defendant, or
2. By delivering a copy to the defendant, or
3. 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. 10. A justice of the peace shall issue a warrant in every case when he is satisfied from the affidavit of the person demanding the same, that the person against whom such process is desired is justly indebted to plaintiff in a sum exceeding five dollars, and that said person is about to leave this territory or move his property out of the same before judgment can be obtained, or otherwise abscond so that the process of the court after judgment cannot be executed.

SEC. 11. 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 of 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.

SEC. 12. 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.

SEC. 13. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of [317] 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 (or defendant, as the case may be,) I authorize _____ to execute and return this writ.

E. F., Justice of the peace.

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.

SEC. 14. 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 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.

SEC. 15. The justice before whom suit is brought, shall endorse upon the summons, or warrant, or writ of attachment the amount claimed by the plaintiff including interest and costs.

SEC. 16. 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.

SEC. 17. 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 offense, 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.

SEC. 18. The authority of constables to serve process issued by justices of the peace, shall be co-extensive with the county in which they are elected.

ARTICLE III.

SEC. 1. Any plaintiff in a suit, except persons under twenty-one years of age, may appear and conduct his suit either by agent or other person.

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 thereto in writing, to be named by such plaintiff, to act as his [318] next friend in such suit, who shall be responsible for the costs therein.

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.

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 defense 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.

SEC. 5. A party authorized to appear by agent, may appoint any person to act as such agent, and 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.

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.

SEC. 7. 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.

1. When the demand to be set off exceeds the jurisdiction of a justice court, or

2. 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.

SEC. 8. 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 his testator or intestate or upon an account, he must at the time of giving such [319] notice, file with the justice such instrument or a bill of the items of such account.

SEC. 9. 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 re-

quired of a plaintiff, upon instituting a suit in a justice's court on a lost or destroyed instrument of writing.

SEC. 10. If the amount of the set off duly established be equal to the plaintiffs debt, judgment shall be entered for the defendant, with the costs of suit, if it be less than the plaintiffs debt, the plaintiff shall have judgment for the residue only with costs, and if it be more than the plaintiffs 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.

SEC. 11. Whenever a set off is established in a suit 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. 12. If in a suit of trespass upon any lands or tenements, the defendant shall justify the trespass by 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. 13. 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.

SEC. 14. 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.

SEC. 15. A justice of the peace on the application of either party, with good cause shown, may adjourn a cause not exceeding sixty days [320] for any one adjournment, and may adjourn for a longer period with the consent of both parties.

SEC. 16. Whenever either party shall apply for an adjournment of a cause, on account of the absence of testimony, the motion shall be supported by the oath or affidavit of the party so applying, his agent or attorney, showing that due diligence has been used to obtain it, and also the name of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses, and that affiant knows of no other witness by whom the particular fact or facts can be proved, and that if an adjournment be allowed, he will be able to procure such testimony in time to be used upon the trial, and if the opposite party will admit the fact or facts so expected to be proved, the cause shall not be continued.

SEC. 17. 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.

SEC. 18. If any 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 plaintiffs 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.

SEC. 19. 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.

SEC. 20. 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 plaintiffs 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.

SEC. 21. If any such recognizance shall have been given upon any [321] 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.

SEC. 22. In a 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 IV.

Of Witnesses and Depositions.

SECTION 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.

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.

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 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 days attendance has been tendered or paid in advance, if previously demanded by such witness from the person serving such subpoena.

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.

[322] 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 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 justices court, and the constable shall pay the fine to the treasurer of the county.

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.

SEC. 7. Every person subpoenaed as aforesaid and neglecting to appear shall also be liable to the party in whose behalf he may have been subpoenaed for damages which such party may have sustained by his non-appearance.

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.

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.

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.

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 or county [323] 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,

1. Is dead or resides out of the county, or
2. Is unable to, or cannot safely attend before the justice on account of sickness, age, or other bodily infirmity, or
3. Has gone out of the county without the consent or collusion of the party offering the deposition.

ARTICLE V.

Of judgments on non-suits, and by default and of trials.

SECTION 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 following manner:

1. 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.

2. 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.

[324] 3. 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 non-suit 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.

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 meantime, 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.

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.

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.

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.

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.

[325] SEC. 9. The justice shall issue a summons directed to any constable of the county 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.

SEC. 10. The constable shall execute such jury summons fairly and impartially, and shall not summon any persons whom he has reason to believe are biased 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.

SEC. 11. 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.

SEC. 12. 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 —— defendant, shall be the truth, the whole truth, and nothing but the truth.

SEC. 13. 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 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, when the party introducing the instrument shall prove the signature by extrinsic evidence.

SEC. 14. 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.

SEC. 15. When the jurors have agreed on their verdict, they shall [326] deliver the same to the justice publicly, who shall enter it on his docket.

SEC. 16. 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. 17. 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.

ARTICLE VI.

Of judgments, and filing transcripts thereof, and the stay of execution.

SECTION 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.

SEC. 2. No confession shall be taken or judgment rendered thereon unless the following requisites be complied with:

1. The defendant must personally appear before the justice.

2. 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 set off is proposed, may be.

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 [327] granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed.

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 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.

SEC. 6. If, upon the appearance of the parties, on the return of process, in any case, either party 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.

SEC. 7. In cases where a plaintiff shall be non-suited 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.

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.

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:

1. If the judgment be for a sum of twenty-five dollars, or under, thirty days.

2. If the judgment be for more than twenty-five dollars, sixty days.

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 judg-[328]-ment, 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 — township (or precinct,) in — county, on the — day of — 18—, against —; now if such judgment shall be paid at the expiration of — days from the time it was rendered, this recognizance shall be void. 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.

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.

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.

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 judgments and decrees, and shall note therein the time of filing such transcript.

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 county, as a judgment of the district court of the same county; shall be equally under the control of the district court, and shall [329] 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.

SEC. 17. That in all cases where a transcript of a judgment of a justice of the peace in this territory shall be made out and certified by the justice authorized to certify the same, and delivered to any other justice for the purpose of enforcing the execution of such judgment, the justice to whom the transcript is delivered shall make an entry thereof in his docket, and issue a scire facias against the judgment debtor therein, to appear and show cause, if any exist, why execution should not issue against him for the amount of the judgment and costs, as stated in the transcript, and if the defendant cannot show that he has fully paid and satisfied such judgment, or show other good cause, execution shall be awarded and issued for the whole amount thereof, or such part as shall appear to remain unsatisfied with interest and costs as in other cases, but stay of execution if allowable, shall only be had from the date of the original judgment.

SEC. 18. That if any bail for stay of execution on any judgment shall remove from the county where he shall have entered as such bail to any other county in this territory, and a return of a constable be had on an execution against the principal of "no goods and chattels," or of not "goods and chattels sufficient to satisfy such execution," the judgment creditor may obtain from the proper justice a certified transcript of the judgment, recognizance, or entry of bail, for the stay and other proceedings in the case, upon which transcript

such creditor may proceed before a justice of the county, where the bail may reside, against such bail by scire facias as in the case of other transcript. That no transcript shall be valid unless accompanied by a certificate from the clerk of the district court of the county from which it was issued, certifying that the person issuing such transcript was an acting justice of the peace at the time of the issuing thereof.

SEC. 19. 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 [330] be good and legal evidence in any court in this territory, to prove the facts contained in such exemplifications and nothing more.

ARTICLE VII.

Of executions and proceedings thereon.

SECTION 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.

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.

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.

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.

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.

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 plain-[331]-tiff, 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 justices court.

SEC. 8. Justices of the peace are hereby authorized to issue execution against the plaintiff in any action for costs after one has been first issued and returned "no property found," against the defendant.

SEC. 9. Any person having obtained a judgment before a justice of the peace, upon filing an affidavit, setting forth that the deponent verily believes that the defendant has not in his possession within the knowledge of such affiant, any visible property or effects sufficient to satisfy said judgment and costs, and that the affiant believes that the defendant in the judgment has property, debts, rights, or credits, (as the case may be, stating the particulars of the case,) in the hands of (naming him) an execution upon any such judgment may issue, containing a garnishee clause, which shall be served upon any such garnishee requiring him to appear at the return of such execution, and answer interrogatories touching his indebtedness to the said defendant in execution, at or subsequent to the time of the service of such garnishee summons upon him.

SEC. 10. That if any such garnishee shall be found to be indebted to the defendant in any such execution, a judgment shall be rendered against such garnishee for the amount for which he admits himself indebted in his said answers, or so much thereof as will satisfy any such execution, with costs of suit and of the garnishee process; and any such judgment against the garnishee, shall bind all such property, effects, rights and credits in the hands of such garnishee, and the payment of the amount of the judgment and costs as aforesaid, shall operate as a conclusive bar to the rights of any such defendant in execution, to recover the amount paid under this process against any such garnishee.

SEC. 11. If a constable levy an execution or writ of attachment on any goods or chattels, and any person other than the defendant in execution or writ of attachment 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.

[332] SEC. 12. On filing said notice, said justice shall docket the cause for trial, making the claimant the plaintiff, and the execution plaintiff the defendant, and fix a day for trial within five days thereafter, of which the claimant, execution plaintiff, their agents or attorneys, (if in the county,) and the officer holding such execution or writ of attachment, shall have three days' notice, unless the same be waived and a speedier trial agreed to by said parties, and further proceedings on such execution or writ of attachment shall be thereupon suspended until such claim be abated, dismissed, or a final decision had thereon.

SEC. 13. Such justice shall hear and try such cause, unless either party should require a jury, in which case a jury shall be summoned as in other cases before a justice, and upon their verdict judgment shall be rendered as in other cases, so far as applicable.

SEC. 14. If the judgment be for the claimant, the goods and chattels claimed shall be delivered to him and the execution plaintiff shall pay the costs; if it be against the claimant the costs shall be paid by such claimant, and the judgment shall justify the officer in selling such goods and chattels.

SEC. 15. Nothing in this act contained shall be construed to prevent the claimant of property, levied on by execution or attachment, from resorting to any other legal remedy he may choose to pursue.

SEC. 16. 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 there-

for, 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.

SEC. 17. In the following cases the justice shall, upon the demand of the party injured, or his agent, issue a summons 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,

1. If the constable fail to make return of the execution according to the command thereof.

2. If he make a false return.

3. If he fail to have any money, by him collected on execution, [333] 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.

4. 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.

SEC. 18. Such summons shall require the constable, at the time therein mentioned, 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. 19. 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. 20. 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 VIII.

Of appeals and proceedings thereon in the district court.

SECTION 1. Any person aggrieved by any judgment or decision of 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 or the decision made.

SEC. 2. No appeal shall be allowed in any case unless the following requisites be complied with:—

[334] 1. The appeal must be made within twenty days after the decision is made, or the judgment is rendered.

2. 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.

SEC. 3. 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.
E. F.

Attest, G. H., justice.

SEC. 4. 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.

SEC. 5. 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. 6. The justice of the peace shall, after an appeal has been allowed, file with the clerk of the district court of the proper 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, filed [335] with the said justice, five days before the first day of the term of the said district court next after said appeal was allowed.

SEC. 7. 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.

SEC. 8. 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.

SEC. 9. 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.

SEC. 10. 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.

SEC. 11. 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.

SEC. 12. 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.

SEC. 13. 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 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.

SEC. 14. 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 such appeal shall be dismissed for want of such notice.

SEC. 15. 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.

SEC. 16. 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.

SEC. 17. 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.

SEC. 18. 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 IX.

Certiorari.

SECTION 1. If any person shall conceive himself injured by error in any process, proceedings, judgment, or order, given by any justice of the peace within this territory, it shall be lawful for such person, so aggrieved, to remove such judgment to the district court, for the same county, at any time within twenty days from the rendition of such judgment.

SEC. 2. The party applying for such *certiorari*, his agent or attorney, shall file in the office of the clerk of the district court, for the proper county, an affidavit stating that in his belief there is error in such judgment, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay, and further shall make and execute, to the opposite party, a bond, with one or more sufficient securities, to be approved by such clerk, in double the amount of the judgment and costs rendered before the justice, conditioned that he will prosecute the

writ of *certiorari* to final judgment, [337] and abide the order the court may make therein, and it shall be the duty of the said clerk, thereupon, to issue a writ of *certiorari*, commanding the justice, rendering such judgment, to make return as to all the facts contained in such affidavit.

SEC. 3. On the service of a writ of *certiorari* to reverse a judgment as aforesaid, it shall be the duty of the party serving the same, to deliver at the same time, to the justice, a copy of the affidavit on which the *certiorari* was procured, and the justice shall make a special return as to all the facts contained in such affidavit, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court within five days after the service of the writ.

SEC. 4. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or *mandamus*, as the case may require.

SEC. 5. The district court shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections or defects, in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and may issue execution as upon other judgments rendered before said court.

SEC. 6. If a judgment rendered before a justice be collected and afterwards be reversed by the court above, the court shall award restitution of the amount so collected, with interest from the time of collection.

ARTICLE X.

Regulating the action of replevin.

SECTION 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 writ of replevin, shall be brought.

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 [338] therein, that the same was wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within one year.

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 affidavit 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.

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.

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 affidavit to be delivered to the plaintiff, and by summoning the defendant according to the tenor of the writ.

SEC. 7. The defendant may plead that he is not guilty of the charge alleged 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.

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, 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.

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 property.

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.

SEC. 11. If the plaintiff violate the condition of this bond, the defendant may sue thereon in the name of the officer, for the use of said defendant.

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 [339] 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.

SECTION 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:

1. Where the debtor is not a resident of nor residing within the county.
2. 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.
3. Where the debtor is about to remove his property out of the county so as to hinder and delay his creditors.
4. 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.

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. Provided, that such creditor, or some one in his behalf, shall execute to the debtor and deliver to the justice a bond, with sufficient security, to be approved by such justice, in writing, upon the bond, in the penalty of one hundred dollars, con-

ditioned to pay to the debtor all damages and costs which he may sustain by reason of the issuing of such attachment, if the creditor fail to recover judgment thereon, and if such judgment be [340] recovered, that such creditor will pay the debtor all the moneys which shall be recovered by him from any property levied upon and sold under such attachment, over and above the amount of such judgment, and interests and costs thereon.

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.

SEC. 4. The manner of serving writs of attachment shall be as follows:

1. The writ shall be served upon the defendant as an ordinary summons.
2. Garnishees shall be summoned by the constable declaring to them that he does summons 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.
3. 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.
4. When the 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.

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.

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 [341] 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.

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 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.

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.

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 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 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 made in behalf of the defendant, and at any time before final judgment, in the following cases.

1. When the defendant shall appear and plead 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 [342] and credits attached, conditioned that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause.

2. When the defendant shall appear and 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 interest and costs of suit, conditioned that the defendant will pay to the plaintiff the amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, within thirty days after judgment shall be rendered.

SEC. 13. When any attachment shall be dissolved, 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. The justice shall take the answer of the garnishee to such interrogatories as may be propounded to him by the said justice, or under his direction in writing, and file the same as a paper in the cause.

SEC. 15. No person shall be garnisheed for debts due to another, if such indebtedness be for daily labor.

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, and 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.

SEC. 17. No final judgment shall be rendered against the garnishee until final judgment be had against the defendant.

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.

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.

SEC. 20. Any garnishee having property, money, or effects, of the defendant, may discharge himself by surrendering and paying the same, [343] 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.

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, moneys and credits of the defendant, in his hands, or due from him, and shall be considered as a garnishee summoned to answer.

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.

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.

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 [344] 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.

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 claim of the plaintiff, giving to the plaintiff ten days' notice of the time and place the petition will be presented.

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 disapproved and avoided, and the plaintiff shall pay the costs of the petition and of the original suit.

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:

1. Where there is a general judgment against the defendant, the execution shall be a common execution, which may be levied upon all the property of the defendant, (subject to execution) whether attached in the case or not.

2. Where there is a judgment against the property, money, or effects attached, the execution shall be an execution 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.

3. 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.

SEC. 30. When property is seized on attachment the justice may allow the officer, having charge thereof, such compensation for his trouble and expenses, in keeping and maintaining the same, as shall be reasonable and just.

[345] ARTICLE XII.

Forcible entry and detainer.

SECTION 1. No person shall enter upon or into any lands, tenements, or other possessions, and detain or hold the same but where entry is given by law, and then only in a peaceable manner.

SEC. 2. If any person shall enter upon or into any lands, tenements, or other possessions, and detain and hold the same with force or strong hand, or with weapons, or breaking open the doors and windows, or other part of a house, whether any person be in it or not, or by threatening to kill, maim, or beat the party in possession, or by such words or actions as to have a natural tendency to excite fear or apprehension of danger, or by putting out of doors or carrying 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, the party to yield possession, in such case every person so offending shall be deemed guilty of a forcible entry and detainer, within the meaning of this act.

SEC. 3. When any person shall wilfully and with force, hold over any lands, tenements or other possessions, after the determination of the time for which they were demised or let to him, or the person under whom he claims, or shall lawfully and peaceably obtain possession, but shall hold the same unlawfully and by force, and after demand made in writing for the delivery of possession thereof, by the person having the right to such possession, his agent or attorney, shall refuse or neglect to quit such possession, such person shall be deemed guilty of an unlawful detainer.

SEC. 4. The three preceding sections of this act shall extend to and comprehend terms for years, and all estates, whether freehold or less than freehold.

SEC. 5. The aforesaid forcible entries and detainers, and forcible and unlawful detainers, are hereby made cognizable before any justice of the peace of the respective counties in which the offenses may be committed.

SEC. 6. When a complaint to any justice of the peace shall be made in writing and signed by the party aggrieved, his agent or attorney, specifying the lands, tenements or other possessions, so forcibly entered and detained, or so unlawfully detained over, and by whom and when done, it shall be the duty of the justice of the peace, to issue his [346] summons under his hand, directed to the sheriff or any constable of the county, commanding him to summon the person against whom the complaint shall be made, to appear before such justice, at a day in such summons to be named.

SEC. 7. The summons shall be endorsed on or annexed to the complaint, and shall be in the form or to the effect following:

TERRITORY OF IOWA, }
County } ss.

To the sheriff or any constable of said county,

In the name of the United States of America, you are hereby commanded to summon —, of the county of —, to appear before the undersigned —, justice of the peace of the township or precinct within and for the county of — at — in said county, on the — day of —, at the hour of — of the clock, in the — noon of said day, then and there to answer and defend against the complaint of —, of forcible entry and detainer, (or of an unlawful detainer,) made by the said — upon the land of the said —, as by the complaint of the said —, hereto annexed will more fully appear; and have you then and there this summons, with your return thereon. Given under my hand this — day of — A. D., 18—

Justice of the Peace.

SEC. 8. Such summons shall be served at least five days before the return day thereof, by reading the complaint and summons to the defendant therein named, or by delivering him a copy thereof, or by leaving such copy at his usual place of abode, with some white member of his family above the age of fifteen years, and explaining to such person the contents thereof.

SEC. 9. The justice of the peace shall, at the same time, issue to the constable a venire, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the same time and place appointed for the trial of said complaint, to be a jury in the case.

SEC. 10. The venire for a jury shall be in the form or to the effect following:

TERRITORY OF IOWA, }
County } ss.

To the sheriff or any constable of said county—greeting:

Whereas complaint has been made to me, a justice of the peace for the township (or precinct) of — in said county, of a certain forcible entry and detainer, (or unlawful detainer,) made by —, in [347] and upon the lands of —, in the county aforesaid. These are therefore in the name of the United States of America, to command you that you cause to come before me at — in the county aforesaid, on the — day of —, at — o'clock of said day, six good and lawful men of your county, to serve as a jury to enquire into the forcible entry and detainer, (or unlawful detainer,) before described. Given under my hand, this — day of — A. D. 18—

Justice of the Peace.

SEC. 11. If a sufficient number of jurors do not attend, or attending, are set aside by challenging pre-emptorily, or for cause, the justice may order the sheriff or constable to complete the number.

SEC. 12. The sheriff or constable shall return to the justice the summons or venire, on or before the day assigned for the trial of the cause, and shall state on the summons how he had executed the same, and shall endorse on the venire, the list of jurors summoned by virtue of such venire.

SEC. 13. If the plaintiff does not appear by himself, his agent or attorney, on the day of trial, he shall be non-suited, and judgment entered against him for the costs.

SEC. 14. If the defendant fail to appear on the day of trial, by himself, or agent, or attorney, the justice may proceed *exparte*, or adjourn the cause at his discretion, except that he shall in no instance adjourn for a longer time

than ten days, nor to any other place than that named in the summons for the hearing of the case, except by the consent of the plaintiff and defendant.

SEC. 15. The justice of the peace shall have power to compel the attendance of witnesses as in other cases by attachment, and either party shall have process to bring in his witnesses.

SEC. 16. Juries when empaneled shall be sworn well and truly, to try the forcible entry and detainer, (or unlawful detainer,) as in the complaint of ——— alleged, and a true verdict give according to law and evidence.

SEC. 17. When the jury is sworn, the justice of the peace shall cause the complaint to be read to them, and then call on the plaintiff to support the same; but the plaintiff shall not be required to make further proof of the forcible entry and detainer, (or unlawful detainer,) than that he was lawfully possessed of the premises, and that the defendant unlawfully entered into and detains the same, (or lawfully entering, unlawfully detains.)

SEC. 18. If the jury on the trial find the defendant guilty, the jus-[348]-tice of the peace shall record the verdict, and give judgment thereon with costs, and also issue a writ of restitution directed to the sheriff or constable, to cause the plaintiff to be repossessed, to which shall be added a clause commanding the officer to levy the costs of the goods and chattels of the defendant.

SEC. 19. The verdict of the jury shall be in writing, and shall be in the form and to the effect following: "We the jury find the defendant guilty, (or if in favor of the defendant, then "not guilty,") of said forcible entry and detainer, (or unlawful detainer,) in manner and form as the plaintiff hath in his complaint alleged;" or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge as laid in the plaintiff's complaint. If so they shall state it specially in their verdict.

SEC. 20. When the jury find a verdict of not guilty generally for the defendant, the verdict shall be so recorded, and the justice of the peace shall enter judgment against the plaintiff for costs, and issue execution therefor against the goods and chattels of the plaintiff.

SEC. 21. It shall be the duty of the justice of the peace to enter on his minutes or docket the names of the jurors, their verdict and his judgment thereon, the admission of evidence objected to and the rejection of evidence offered, the reason of such admission or rejection, and all the proceedings before him had touching the complaint.

SEC. 22. In all cases under this act, the justice of the peace shall have power to grant a new trial if the same be applied for on the day the verdict is rendered, and good cause be shown on affidavit therefor, which shall be within ten days after granting the same, yet not more than one new trial shall be granted to either party.

SEC. 23. The estate or the merits of the title shall in no wise be inquired into on any complaint which shall be exhibited by virtue of this act.

SEC. 24. Three years peaceable and uninterrupted possession of the premises immediately preceding the filing of a complaint, under the provisions of this act, may be pleaded by any defendant in bar of the plaintiffs demand of possession.

SEC. 25. Every person who shall have a field or settlement on public lands, and who shall reside on or be in possession of the same, at the time of the forcible entry and subsequent detainer, or previous to the unlawful detainer, shall have the same remedy as is herein provided in such cases against any person who shall make such unlawful entry upon him. The recovery in such case shall extend to one-half [349] section of land, taking such field or settlement as a centre, but not to interfere with any other settlement or improvement previously made upon the public lands.

SEC. 26. When any forcible entry and detainer, or unlawful detainer shall be made upon, or of any land or other possession against the provisions of this act, the person having the lawful right of possession shall against the wrong doer be considered as entitled to such quantity, extent and limits of land as by the patent, grant, concession, deed, survey, donation, settlement or pre-emption right, such person or those under whom he claims can by the laws of the United States or of this territory, have and lawfully claim in and to such premises, and where no legal survey has been made, if such possession be detained, the field or improvement of the person entitled to the possession shall be in the middle of the tract as near as may be, making the survey as near in a square as practicable without interfering with any established survey or line, or any conditional lines agreed upon by the adjoining proprietors or possessors.

SEC. 27. Any person having authority from the United States, or lawfully claiming under them shall have power to enter upon such lands.

SEC. 28. Neither the judgment nor any thing in this act shall bar or prevent the party injured from bringing his action of trespass or ejection, or other action against the aggressor or party offending.

SEC. 29. The writ of restitution shall be in the form or to the effect following:

TERRITORY OF IOWA }
County. } ss.

To the sheriff or any constable of said county—*Greeting*:

Whereas ——— did make to the undersigned a justice of the peace in and for said county a complaint in writing against ——— of said county, that he had been guilty of a forcible entry and detainer (or an unlawful detainer) of a certain tract of land (or other possessions) of the said ———, and whereas a jury was empaneled and sworn to enquire of said complaint and did return their verdict that the said ——— was guilty thereof in manner and form as the said ——— has complained against him; (or if the verdict is guilty as to part only, then as follows: Here insert a description of that part of the premises of which the defendant is found guilty as in the verdict,) and whereas judgment was thereupon entered by said justice that the said ——— should have restitution of the premises. You are therefore command-[350]-ed, in the name of the United States of America, to cause the said ——— to be forthwith removed from the premises aforesaid, and that the said ——— have peaceable restitution of the same; and also that you levy of the goods and chattels of ——— found in your county, the sum of ——— being the amount of costs on the trial aforesaid, together with ——— dollars for this writ, and also your own fees, and make return of this writ with your proceedings thereon within ten days next after the date hereof. Witness ——— justice of the peace for the county of ——— this ——— day of ——— A. D. 18

SEC. 30. In all suits under this act either party shall have the right of appeal to the district court of the proper county, which appeal shall be prayed for on the day of trial. In cases of appeal under this act, the trial in the district court shall be denovo on the merits.

SEC. 31. Upon all trials of cases of forcible entry and detainer or unlawful detainer on appeal from the justice of the peace, the district court shall carry its judgment into effect as if such district court had had original jurisdiction of the case, and shall issue executions for costs, writs of restitution, and restitution when it shall be required.

SEC. 32. The justice of the peace, when any appeal is prayed for under this act as a condition, precedent to the granting the same, shall require such party to enter into bond with sufficient security, to be approved of by him, to the adverse party, conditioned that he will prosecute his appeal without delay, and

that he will pay all costs that shall be adjudged against him, and that he will in all things abide by and perform the judgment of the district court.

SEC. 33. All appeals shall be prayed for on the day of trial, and bond entered into within ten days after the trial had before the justice of the peace.

SEC. 34. No appeal shall be allowed unless the appellant shall make affidavit that the appeal is not for the purpose of vexation or delay, but that justice may be done.

SEC. 35. The justice shall, when any appeal is granted by him, make out and certify a full and complete copy of his docket and together with all the original papers in the case, cause them to be filed in the office of the clerk of the district court on or before the first day of the next term of the district court for the proper county.

SEC. 36. On any writ of restitution issued by a justice of the peace, if the officer shall return that he cannot find goods and chattels of the party against whom the writ issued, to pay the costs, the complainant may file in the office of the clerk of the district court, a duly certified [351] copy of the proceedings and judgment thereon, which shall be a lien on the lands of the defendant, as other judgments of courts of record, and such clerk shall issue execution thereon, directed and to be levied as executions in courts of record.

ARTICLE XIII.

Proceedings in case of breach of the peace.

SECTION 1. No assaults, battery, or affray shall be indictable, but all such offenses 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 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 offenses of shooting at, or stabbing, but all such offenses shall be punishable by indictment.

SEC. 3. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of any person competent to testify against the accused, that 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 knowledge that any of the offenses, mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as directed in that section, and if any such offense 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, 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 a justice of the peace, under the provisions of this act, it shall be the duty of the justice [352] to hear and determine, in a summary mode, the complaint alleged against the defendant.

SEC. 6. Upon good cause shown the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter 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 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.

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.

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 offense 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.

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.

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 offense.

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 if the justice is satisfied that the prosecution is malicious.

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.

[353] 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 privileged 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.

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.

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.

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.

SEC. 19. If the appeal be not taken and perfected within ten days after rendering judgment by the justice the judgment shall be 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.

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 im-[354]-posed the payment of the costs upon said prosecutor, and said judgment be affirmed, the judgment of the district court shall include the costs of both courts, and be against the prosecutor and his securities.

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.

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.

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 deduction for insolvencies, on which judgment execution shall be issued as other executions are, and the proceeds paid into the county treasury.

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.

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.

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 witnesses 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.

[355] ARTICLE XIV.

Proceedings to prevent the commission of offenses.

SECTION 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 offense against the person or property of another, such justice shall issue his warrant to bring such accused person forthwith before him.

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.

SEC. 3. If the justice becomes satisfied by such investigation that there is sufficient reason to apprehend the commission of the offense stated in the complaint, he shall require him to enter into a recognizance with sufficient surety, conditioned according to the form appended to this act.

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.

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.

SEC. 6. A transcript of the proceedings of any justice of the peace, as provided for in this and the succeeding article, 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.

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.

[356] ARTICLE XV.

Preliminary proceedings when offenses have been committed.

SECTION 1. That whenever by affidavit it shall be rendered probable to a justice of the peace, that an indictable offense has been committed within any county in this territory, he shall by his warrant cause said person to be arrested, and it shall be the duty of the officer arresting such person to take him before said justice of the peace who issued the warrant, or before the next nearest justice of the peace, if the justice of the peace who issued the warrant shall be absent, or from any other cause shall be unable to attend.

SEC. 2. If the arrest of the person charged with a criminal offense shall be made out of the county where it is charged to have been committed, it shall be the duty of the officer making the same to take the prisoner to some justice of the peace most convenient for the attendance of the witnesses in favor of the prosecution, and the justice of the peace if he shall commit the prisoner to jail shall direct the warrant of commitment to the jail of the county where the offense is charged to have been committed, if there be a jail in said county, and if there be none in said county, then in the next nearest county jail.

SEC. 3. It shall be the duty of the justice to take the recognizance of all the witnesses in behalf of the prosecution, and he may in all cases of felony, in his discretion, require the witnesses for the prosecution to give security for their appearance at the next term of the district court for the proper county.

SEC. 4. 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 thinks 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.

SEC. 5. If the property be found the officer shall bring the person having it in possession forthwith before the justice who issued the warrant.

SEC. 6. Upon satisfactory proof of ownership the justice shall direct any stolen property to be given up to the claimant thereof.

SEC. 7. That when an affidavit is filed with a justice of the peace, stating that the affiant suspects and believes that counterfeit money, [357] whether bank notes or coin, is concealed in any particular house or place, or about the person of any one, and stating also that such affiant believes that such person knows it to be counterfeit, the justice, if he thinks there is sufficient ground for such suspicion, shall issue his warrant to search for such property.

SEC. 8. That if such counterfeit money be found, then the same proceedings shall be had as are provided for in this article for the arrest, examination, and entering into recognizance of prisoners in other cases.

SEC. 9. 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.

SEC. 10. The magistrate may direct any portion of his 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 article.

SEC. 11. The magistrate may direct any of the witnesses to be removed from court during the examination of the prisoner, or of any other witness.

SEC. 12. 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 act.

SEC. 13. 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. 14. If the witness be an infant or a married woman, some other person shall enter into the recognizance for their appearance as aforesaid.

SEC. 15. If the offense be not bailable by a justice of the peace and there are probable grounds to suspect guilt, the prisoner shall at once be committed. But he may be afterwards bailed by a judge of the district court.

ARTICLE XVI.

Forms to be used in civil cases.

SECTION 1. The following, or other equivalent forms, shall be deemed sufficiently technical and correct in all cases to which they apply.

[358] *No. 1—A summons.*

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

In the name of the United States of America, you are hereby commanded to summon _____ to be and appear before me _____, a justice of the peace, of the township (or precinct as the case may be) of _____, in said county, at my office therein, on the _____ day of _____, 18—, at _____ o'clock A. M. or P. M. of said day, to answer unto _____; and of this summons make legal service and due return.

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

Justice of the Peace.

Form of endorsement upon summons:—The plaintiff demands the sum of \$_____. Costs \$_____.

No. 2—A writ of replevin.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

In the name of the United States of America, you are hereby commanded to cause to be delivered, without delay, to _____ plaintiff herein, (if he gives the security required by law,) the following goods and chattels, to wit, (here describe the articles of property, particularly, as in the affidavit) and summon _____ defendant to be and appear before me, a justice of the peace, of the township (or precinct, as the case may be) of _____, in said county, at my office therein, on the _____ day of _____ A. D. 18—, at _____ o'clock A. M. or P. M., of said day, to answer unto the said plaintiff, in a plea of replevin; and of this writ make due service and return.

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

Justice of the Peace.

No. 3—A warrant.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

In the name of the United States of America, you are hereby commanded to take _____ and him (her or them) forthwith bring before me, a justice of the peace of the township (or precinct) of _____, in [359] said county, at my office therein, to answer unto _____ plaintiff. And you are also commanded to give due notice thereof to the said plaintiff, and of this writ make due service and return.

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

Justice of the Peace.

No. 4—A subpoena.

TERRITORY OF IOWA, }
County. } ss.

To _____:

In the name of the United States of America, you are hereby required to appear before me, a justice of the peace of the township (or precinct) of _____,

in said county, at my office therein, on the _____ day of _____, 18—, at _____ o'clock A. M., or P. M., of said day, to testify in a suit, wherein _____ is plaintiff, and _____ is defendant; on the part of the (plaintiff or defendant, as the case may be.)

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

Justice of the Peace.

No. 5—A venire for a jury.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

In the name of the United States of America, you are hereby commanded to summon to appear before me, a justice of the peace of the township (or precinct) of _____, in said county, at my office therein; on the _____ day of _____, 18—, at _____ o'clock, A. M. (or P. M.) six good and lawful men, then and there to be sworn as a jury, to try an issue pending before me, between _____ plaintiff, and _____ defendant; and of this writ make due return.

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

Justice of the Peace.

No. 6—A writ of attachment.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

In the name of the United States of America, you are hereby commanded to attach so much of the goods, chattels, moneys, effects and [360] credits of C— D— (except such as the law exempts,) as shall be sufficient to satisfy the sum of _____, (the sum sworn to,) with interest and costs of suit, in whosoever possession the same may be found in your county, and so provide that the goods and chattels so attached, may be subject to further proceeding thereon as the law requires, and also to summon the said C— D— if to be found, to appear before me, a justice of the peace of the township or precinct of _____ in said county, at my office therein, on the _____ day of _____ 18—, at _____ o'clock, A. M. or P. M. of said day, to answer unto A— B— plaintiff, and also that you summon all such persons as garnishees, as may be directed by the said plaintiff, to appear before me at the time and place aforesaid, to answer such interrogatories as may be propounded to them. And of this writ make legal service and due return.

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

Justice of the Peace.

No. 7—Of oath of jury.

You and each of you do solemnly swear, that you will well and truly try the cause submitted to you by _____ plaintiff, and _____ defendant, and a true verdict give according to the evidence given you in court, so help you God.

No. 8—Oath of a witness.

You solemnly swear that the evidence you will give in the cause now pending between _____ plaintiff, and _____ defendant shall be the truth, the whole truth and nothing but the truth, so help you God.

JUSTICES OF THE PEACE

No. 9—Affirmation of a witness.

You do solemnly, truly and sincerely affirm, that the evidence you will give in the cause now in hearing, shall be the truth, the whole truth and nothing but the truth, and this you do under the pains and penalties of perjury.

No. 10—Oath of voire dire.

You do solemnly swear that you will make true answers to such questions as may be put to you, touching your interest in the suit now pending, between _____ plaintiff and _____ defendant, so help you God.

[361] *No. 11—Form of judgments.*

| | |
|------------------|------------|
| A. B. PLAINTIFF, | } In Debt. |
| vs. | |
| C. D. DEFENDANT. | |

(After noting the previous proceedings with the constables return and time of trial, say:

This day came the parties, (by themselves, their agents or attorneys, as the case may be,) and the cause and proceedings being fully heard and inspected, and all things touching the same. It is therefore considered that said plaintiff, (or defendant,) recover of said defendant, (or plaintiff,) the sum _____, debt with interest thereon, at the rate of _____ per centum per annum, from the _____ day of _____, 18____, till paid, with costs of suit taxed at _____.

No. 12.

Judgments in assumpsit, covenant, trespass or case, which all sound in damages, may be in the above form, substituting the word damages for the word debt. If the plaintiff is to be non-suited for not appearing, say "comes the defendant but the plaintiff being called comes not, nor is his suit further prosecuted." It is therefore considered that the plaintiff be non-suited, and that the defendant go hence without day, and recover of the plaintiff his costs by him about his defense herein expended.

No. 13.

If the defendant do not appear and the case proceeds, say "comes the plaintiff, but the defendant though called, comes not," and it appearing that he has been duly served with process, and the cause being fully heard and inspected. See as in form No. 11.

No. 14.

General judgment for defendant on trial, commence as in No. 11, and on coming to the judgment say, "It is considered that the plaintiff take nothing by his suit, and that the defendant go hence without day, and recover of the plaintiff his costs by him about his defense herein expended."

No. 15—Jury trial and judgment.

After stating the appearance of the parties as in No. 11, or of the [362] plaintiff, the non appearance of the defendant, and service of process as in form No. 13, say "and a jury being summoned at the request of the plaintiff or defendant, as the case may be, who being called likewise come to wit: (here insert their names,) good and lawful men, who being duly elected and sworn well and truly

to try the cause submitted to them, between the parties aforesaid, and a true verdict to give according to the evidence given them in court, return the following verdict, to wit: "We the jury, find for the — (as the verdict may be,) —. It is therefore considered that the (plaintiff or defendant as the case may be,) recover, etc., as in No. 11. Or if the case stand on default, and the jury are sworn to inquire of damages only, after the word sworn, say "well and truly to inquire of and assess the plaintiffs damages in said cause," etc., in which case their verdict will be, "we the jury assess the plaintiffs damages at ——. If the jury try the cause on an issue made between the parties, they are to find for the plaintiff or defendant, (as the case may be,) so much in debt or damages as the nature of the action or defense may require; or to find generally for the defendant.

No. 16—Judgment in replevin for plaintiff.

It is considered that for the tortuous taking and unlawful detention, (or the unlawful detention, as the case may be,) complained of by the plaintiff, the said plaintiff recover of the defendant the sum of ———, for his damages sustained by reason thereof, with costs of suit, taxed at ———. If the defendant succeed in his defense before the justice or jury, there will be a general verdict and judgment in his favor, "that the defendant go hence without day, and recover of the plaintiff his costs, &c., as in forms No. 12 and 14. If the defendant shall have pleaded a plea entitling him to a judgment for a return of the property replevied, to wit: a plea of property in himself or any person, other than the plaintiff, at the time of suing out the writ of replevin, and such plea be found true, the judgment will read, "it is therefore considered that the defendant have return of the goods and chattels replevied, (or such part of them as may be adjudged of him,) to wit: [here describe them,] agreeably to law, and that he recover of the plaintiff his costs," & c., as above.

[363] *No. 17—An execution.*

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

Whereas judgment against ——— for the sum of ——— dollars and ——— cents, and ——— dollars, and ——— cents costs, was recovered on the ——— day of ——— 18 —, before me a justice of the peace of the township (or precinct) of ——— in said county, at the suit of ———: These are therefore, in the name of the United States of America, to command you that of the goods and chattels of the said ———, (except such as the law exempts,) you cause to be made the said sum, interest and costs, and accruing costs by distress and sale thereof according to law; and of this writ make legal service and due return to me at my office, in said township (or precinct) within thirty days from this date.

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

Justice of the Peace.

No. 18— When security has been given for stay of execution on judgment against the principal and security.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

Whereas judgment against ———, for the sum of ———, and ——— costs, was recovered on the ——— day of ———, 18 —, before me a justice of the

peace of the township (or precinct) of _____ in said county at the suit of _____ . And whereas on the _____ day of _____, in the year aforesaid, _____ became security to pay the said judgments and costs in _____ days 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 the common form.)

No. 19—Form of an execution containing a garnishee clause.

(At the close of a common execution say,) and whereas A. B. has stated on affidavit, that he verily believes that the defendant in execution has not in his possession, sufficient property to satisfy such judgment and costs, and that C. D. is indebted to the said defendant in a sum above five dollars, (or has property in his possession of the said [364] defendant, describing it.) you are hereby further commanded to summon the said C. D. to be and appear before me, at my office in _____, on the _____ day of _____ 18—, (the return day of the execution,) at _____ o'clock of said day, to answer interrogatories touching his indebtedness to the said defendant in execution.

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

Justice of the Peace.

No. 20—Scire facias (on transcript.)

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

Whereas, on the _____ day of _____, A. B., obtained judgment before C. D., a justice of the peace of the township (or precinct) of _____ in the county of _____ and territory aforesaid, against E. F. for the sum of _____ debt [or damages] with interest thereon from the _____ day of _____ till paid, and costs of suit taxed at _____, costs recovered since _____, whole costs _____, making in all the sum of _____, as by transcript thereof duly certified appears. And whereas said judgment is still in full force, unreversed and unsatisfied and execution thereof yet remains to be made as is on the part of the said A. B. alleged.

You are therefore, in the name of the United States of America, commanded to summon the said E. F. to appear before me a justice of the peace of the township (or precinct) of _____ in said county, at my office therein at _____ o'clock on the _____ day of _____ to show cause why execution shall not issue against him for the debt, interest and costs aforesaid, and of this writ make due service and return.

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

Justice of the Peace.

Forms in breaches of the peace.

No. 1—Warrant.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

Whereas complaint has been made before me a justice of the peace of the township (or precinct) of _____ in said county, on the oath of [365] A. B. that on the _____ day of _____, at the county aforesaid E. F. late of said county, did (here

describe the offense as in the affidavit.) You are therefore, in the name of the United States of America, commanded to take E. F., and him forthwith bring before me or some other justice of the peace, to answer to said complaint and be further dealt with according to law.

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

Justice of the Peace.

No. 2—Venire for a jury.

TERRITORY OF IOWA, }
County. } ss.

To any constable in said county—greeting:

Whereas _____ has been arrested and brought before me a justice of the peace of the township (or precinct) of _____ in said county, on a charge of having committed an assault and battery on the body of _____ (if the offense charged be anything else describe it.) You are therefore hereby commanded, in the name of the United States of America, to summon six good and lawful men of your county to appear before me forthwith at my office in said township, (or precinct.) as jurors, to inquire of the truth of the said charge, and give their verdict thereon. And of this writ make legal service and due return.

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

Justice of the Peace.

No. 3—Constable's return.

I have, as commanded, summoned six good and lawful men as jurors whose names are on the pannel hereto annexed.

May 1, 184—

I. S. Constable.

No. 4—Oath of the jurors.

You and each of you do solemnly swear that you will well and truly inquire into the charge now alleged against _____, and a true verdict give according to law and the evidence. So help you God.

No. 5—Verdict of the jury.

We the jury find the defendant guilty, and assess his fine at _____ dollars.

[366] *No. 6—Judgment.*

After stating the proceedings in the case, the finding of guilty by the jury or justice, say "it is therefore considered that the said United States of America recover of said _____ the sum of _____ fine for the offense aforesaid, with interest thereon till paid, as well as the costs of the prosecution against him, taxed at _____, and that said _____ stand committed until said fine and costs be paid, or he be otherwise duly discharged.

*In proceedings to prevent the commission of offenses.**No. 1—Affidavit.*

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 offense 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 sufficient grounds to apprehend that he will carry those threats in execution.

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

E. F. Justice of the Peace.

A. B.

No. 2—Warrant.

TERRITORY OF IOWA, }
 County. } ss.

To the sheriff or any constable of said county:—

It having been made satisfactorily to appear to me, a justice of the peace, of the township (or precinct) of _____ in said county, by the affidavit of A. B. [and C. D. (if other affidavits were taken)] that M. N. has threatened to (here describe the offense 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 of America, to command you, that you arrest the said M. N., if he be found in your county, and bring him forthwith [367] before me at my office in _____, or before some justice of the peace of the county aforesaid, to answer the charges against him.

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

E. T., Justice of the Peace.

No. 3—Recognizance.

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.

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 meantime 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.

No. 4—Mittimus or commitment.

TERRITORY OF IOWA, }
 County. } ss.

To the keeper of the jail of said county:—

It having been sufficiently proved to me, a justice of the peace of the township (or precinct) of _____ in said county, 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 behavior in the sum of _____ dollars, which he has failed to do. These are, therefore, in the name of the United States of America, 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.

[368] *No. 5—Subpoena.*

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, a justice of the peace of the township (or precinct) of _____ in said county, 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 offense.) Hereof fail not, and have you then there this writ.

E. F., Justice of the Peace.

In proceedings where offenses have been committed.

No. 6.

The affidavit in this case should be the same as in No. 1, except that it should charge the offense to have been committed by the person accused, within the county aforesaid, as deponent verily believes.

No. 7—Warrant.

TERRITORY OF IOWA, }
 County. } ss.

To the sheriff or any constable of said county:

It having been shown to me a justice of the peace of the township (or precinct) of _____ in said county, by the affidavit of A. B., etc., that M. N. is guilty of murder, as deponent verily believes, by killing G. H. in the county aforesaid. These are therefore, etc., (as in No. 2).

No. 8.

(Commencement the same as in No. 3. 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 to depart without the leave of the same, then this recognizance to be void, otherwise of force.

M. N. [L. s.]

J. S. [L. s.]

[369] 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.)

No. 9—Search Warrant.

TERRITORY OF IOWA, }
County. } ss.

To the sheriff or any constable in said county—greeting:

Whereas A. B. has stated on affidavit that the following goods and chattels to-wit (here describe them) have within _____ days last past (or were on the _____ day of _____) by some person or persons unknown, been feloniously stolen, taken, and carried away out of the hands and possession (or from the premises) of C. D. of the county aforesaid, and also that the said A. B. verily believes that said goods, or part thereof, are concealed (in or about the house or premises of E. F., describing the place to be searched) in said county.

These are, therefore, in the name of the United States of America, to command you that, with the necessary and proper assistance, you enter into said _____ (here describe the house, premises, or other place to be searched) and there diligently search for said goods and chattels, and if the same, or any part thereof, be found on such search, bring the same, as also the said E. F., forthwith before me, a justice of the peace, of the township (or precinct) of _____ in said county, or some other justice, to be disposed of and dealt with according to law; and of this writ make due service and return.

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

Justice of the Peace.

No. 10—Mittimus.

TERRITORY OF IOWA, }
County. } ss.

To the keeper of the jail of said county:—

It having been sufficiently proved to me, a justice of the peace of the township (or precinct) of _____ in said county, 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. [370] was directed to find security, for his good behavior, in the sum of _____ dollars, which he has failed so to do.") These are, therefore [the same as in No. 4.]

SEC. 2. That an act entitled an act to provide for the appointing of justices of the peace, to prescribe their powers and duties, and to regulate their proceedings, approved January 21st, 1839; and an act entitled an act to prescribe the mode of proving, in courts of this territory, judgments rendered by justices of the peace in the several states, approved January 15th, 1839; and an act entitled an act to prevent forcible entry and detainer, approved January 25th, 1839; and so much of an act entitled an act to amend the act providing for the appointment of the justices of the peace, etc., approved January 21st, 1839—ap-

proved January 14th, 1840, as relates to the election and proceedings of justices of the peace; and so much of any and all other acts as contravene the provisions of this act, be and the same are hereby repealed.

Approved February 9, A. D. 1843.

CHAPTER 87.

LANDLORD AND TENANTS.

AN ACT relative to landlords and tenants.

SECTION.

1. Rent on demise paid to executor.
2. Lessee for life dying, rents may still be recovered.
3. Rents in right of deceased wife may be recovered.
4. Recovery of rent on lease for life.
5. Executors &c, to have remedy.
6. Tenant summoned, to give notice to person under whom he holds.
7. Tenant holding over to pay double rent.
8. How recovered.
9. Under tenant holding over to pay double rent.
10. No relief in equity against such recovery.

SECTION.

11. Attornment void, unless, etc.
12. Satisfaction for use and occupation recovered.
13. Parol demise evidence in such suit.
14. Landlord to have lien on crop.
15. And in towns on furniture.
16. When tenant half year in arrear, landlord may bring action of right.
17. How served.
18. To be instead of demand.
19. Judgment.
20. When proceedings to cease.
21. After six months no relief.
22. Mortgage when not effected.

[371] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. That the executors or administrators of any tenant for life, who shall have demised any lands or tenements so held, and shall die on or before the day when any rent on such demise shall become payable, may recover,

1. If such tenant for life die on the day, the whole rent;
2. If he die before the day, such proportion of the rent as shall have accrued before his death.

SEC. 2. Every person entitled to any rents dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action for the recovery of all arrears of such rent that are due and unpaid at the death of such other person, as he might have had if such other person was in full life.

SEC. 3. Every person having in right of his wife any freehold estate in any rents, may, if such rent is due and unpaid at the time of the wife's death, have the same remedy by action for the recovery of such arrears as he might have had if the wife was in full life.

SEC. 4. Any person having any rent due upon any lease for life, may have the same remedy by action for the recovery thereof, as if such lease were for years.

SEC. 5. The executors or administrators of any person to whom any rent shall have been due and unpaid at the time of the death of such person, may

have the same remedy by action against the tenant, his executors or administrators, for the recovery thereof that their testator or intestate might have had.

SEC. 6. Every tenant on whom a summons in any action of right to recover the tenements held by him shall be served, shall forthwith give notice thereof to the person or the agent of the person of whom such tenant holds, under the penalty of forfeiting to such person the value of two years' rent of the premises occupied by him.

SEC. 7. If any tenant shall give notice in writing, of his intention to quit the premises held by him at a time specified in such notice, and shall not deliver up the possession thereof at such time, such tenant, his executors or administrators shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent reserved during all the time such tenant shall so continue in possession.

SEC. 8. Such double rent shall be recovered in the same manner that the single rent is recoverable.

SEC. 9. If any tenant for life or years, or if any other person who may have come into the possession of any lands or tenements, under, [372] or by collusion with such tenant, shall wilfully hold over the same, after the termination of such term, and after demand made, and notice in writing given requiring the possession thereof, by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession, double the yearly value of the lands or tenements so detained, for all the time he shall keep the person entitled out of possession.

SEC. 10. There shall be no relief in equity against any recovery had at law, under the preceding section.

SEC. 11. The attornment of a tenant to a stranger shall be void, and shall not in any wise affect the possession of his landlord, unless it is made

1. With the consent of the landlord; or
2. Pursuant to, or in consequence of a judgment at law, or a decree in equity; or
3. To a mortgagee after the mortgage has been forfeited.

SEC. 12. A landlord may recover in an action on the case, a reasonable satisfaction, for the use and occupation of any lands or tenements held by any person under an agreement not made by deed.

SEC. 13. If a parol demise, or other agreement not by deed, by which a certain rent is reserved, appears in evidence on the trial of such action, the plaintiff shall not, on that account, be debarred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

SEC. 14. Every landlord shall have a lien upon the crop grown upon the demised premises in any year, for the rent that shall accrue for such year, and such lien shall continue for eight months after such rent shall become payable, and until the decision of any suit for such rent brought within that time.

SEC. 15. In every surveyed or incorporated town, the landlord shall have a lien on such household furniture of the tenant as is not exempt from execution, for any rent that may be due from such tenant, for the rent of a house or house and lot, and shall continue for three months after such rent shall fall due, and until the decision of any suit that may be brought within that time for such rent.

SEC. 16. Whenever a half year's rent or more is in arrear from a tenant, the landlord, if he has a subsisting right by law, to re-enter for the non-payment of such rent, may bring an action of right to recover the possession of the demised premises.

SEC. 17. If the summons, in such action, cannot be served in the [373] ordinary mode provided by law, it may be served by affixing a copy of the declaration

and summons on a conspicuous part of the demised premises, where it may be conveniently read.

SEC. 18. The service of the summons in such action of right, shall be deemed and stand instead of a demand of the rent in arrear, and of a re-entry on the demised premises.

SEC. 19. If, upon the trial of such action, it is proved, or upon judgment by default it appears to the court by affidavit, that the plaintiff had a right to commence such action according to the provisions of this act, he shall have judgment to recover the possession of the demised premises and costs.

SEC. 20. If the defendant, before judgment is given in such action, either tenders to the landlord or brings into the court where the suit is pending all the rent then in arrear, and all costs, all further proceedings in the action shall cease.

SEC. 21. If the rent and costs remain unpaid for six months after execution upon such judgment in an action of right is executed, and no bill for relief in equity is filed within that time, the lessee and his assigns, and all other persons deriving title under the lease from such lessee, shall be barred from all relief in law or equity, (except for error in the record or proceedings) and the landlord shall, from thenceforth, hold the demised premises discharged from the lease.

SEC. 22. A mortgagee of such lease, not in possession of such demised premises, who within six months after execution of any such judgment in an action of right is executed, shall pay all rent in arrear, and all costs, and the charges incurred by the landlord, and shall perform all the agreements which ought to be performed by the first lessee, shall not be affected by the recovery in such action of right.

Approved December 30, A. D. 1839.

CHAPTER 88.

GROCERY LICENSE.

AN ACT regulating grocery license.

SECTION.

1. County commissioners to grant license, bond, penalty, etc.
2. License to include one place only.
3. What is deemed a grocery.

[374] SECTION.

4. Person for selling liquor in less quantities than one gallon.
5. Duties of officers. Proviso.
6. Repealing clause.
7. When act to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any person wishing to obtain a license to keep a grocery, shall apply to the board of county commissioners of the proper county, who shall issue their warrant directing the person so applying, to pay into the county treasury, a sum not exceeding one hundred nor less than twenty-five dollars, as the case may be, in the discretion of the board, and obtain the treasurer's receipt for the same, and upon the presentation of such receipt, the board shall grant to such applicant a license to keep a grocery in said county for the term of one year, by the said applicant executing a bond to the said board in the penalty of one hundred dollars, with one or more sufficient securities, conditioned

GROCERY LICENSE

that he will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in or about his house; and upon a violation of the requisition herein contained, the person so offending shall pay a fine of not less than ten nor more than fifty dollars, for the use of the county in which the offense was committed, to be recovered by law, as debts are recovered.

SEC. 2. License granted to keep a grocery, shall not authorize the person obtaining such license to vend or sell spirituous or vinous liquors in more than one place or house at the same time.

SEC. 3. A grocery shall be deemed to include any house or place where spirituous or vinous liquors are retailed by less quantities than one gallon.

SEC. 4. If any person shall sell or retail any spirituous or vinous liquors in less quantity or quantities than one gallon, without first having obtained a license agreeably to this act, he shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars nor less than fifty dollars, for the use of the county where the offense shall have been committed, to be recovered by motion, in any court of record having cognizance thereof.

SEC. 5. And it is hereby made the duty of all county officers, knowing of any violation of the foregoing regulations of this act, to make complaint thereof to the grand jury, at the next session of the district court after such violation, and of the clerk of the board of county commissioners or county treasurer to sue on the bond for any violation of its conditions; provided however, that no provisions of this act shall be [375] so construed as to interfere [with] or in any way abridge the powers and privileges granted to the cities and incorporated towns within this territory.

SEC. 6. All laws now in force, coming within the purview of this act, are hereby repealed: provided, that nothing contained in this act shall affect any licenses heretofore granted under the laws of this territory.

SEC. 7. This act to take effect and be in force from and after the first day of June next.

Approved January 4, A. D. 1840.

CHAPTER 89.

LIBRARIAN.

AN ACT to provide for the appointment of a Librarian, and for other purposes.

SECTION.

1. Appointment.
2. Bond and oath.
3. To have care of library.
4. To provide a room.
5. No person to remove books except.
6. Revised statutes, how taken.
7. Persons not to keep books more than ten days.
8. Receipt to be given for books taken.
9. Penalty for injury, &c.

SECTION.

10. Strangers may be invited to library by privileged persons.
11. Assistant librarian.
12. Library to be kept open, when.
13. Librarian to report.
14. Expenses how paid.
15. Compensation of librarian.
16. Other rules may be made.
17. Suits.
18. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That a librarian shall be annually appointed on the nomination of the governor, by and with the advice and consent of the council.

SEC. 2. That said librarian shall give bond to the secretary of the territory, in the sum of five thousand dollars, for the faithful performance of his duties; and he shall take an oath impartially and faithfully to discharge the duties of librarian, which, together with a certificate thereof, shall be endorsed on said bond.

SEC. 3. He shall have the custody, charge, safe keeping, manage-[376]-ment and direction of all books, papers, maps, charts, engravings, paintings, and all other things of what nature soever; properly belonging to the library, and shall take especial care that none of them be lost or injured.

SEC. 4. He shall provide, at the seat of government, and convenient as possible to the house occupied by the legislative assembly, a proper room for the safe keeping of the territorial library, and all things belonging or appertaining thereto, which shall be entrusted to his care.

SEC. 5. No person shall be permitted to remove a book from the library, except the members of the legislative assembly, governor and secretary of the territory, judges of the supreme court, United States attorney, marshal of the territory, delegate to congress from the territory, clerk and attorneys of the supreme court during its session, and officers of the legislature during its session.

SEC. 6. No person shall take more than one volume of revised statutes from the library at any one time, nor retain the same for a longer period than two days.

SEC. 7. No person shall be allowed to keep any work belonging to the library in his possession for a longer period than ten days, under a penalty of twenty-five cents for each day he holds it over that time.

SEC. 8. No person shall be permitted to remove a book from the library without giving a receipt therefor to the librarian.

SEC. 9. If any person injure or fail to return any book, map or chart, or other work, for more than three months, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs, to be recovered in the name of the territory for the use of the library, in any court having jurisdiction thereof.

SEC. 10. The persons privileged to remove books, etc., from the library may introduce citizens or strangers, into the library, who shall have the privilege, during all seasonable hours, to read of the books therein not required for the use of such privileged persons.

SEC. 11. The librarian shall have authority to appoint an assistant librarian, who may perform the duties assigned to the librarian, and for whose acts the librarian shall be personally responsible.

SEC. 12. The library shall be kept open during the session of the legislature and supreme courts, from the hours of nine to twelve, m., and from two to nine p. m. At all other times, on every Wednesday and Saturday afternoons, for four hours each. The hours to be select-[377]-ed and notice thereof posted on the outside of the door of the library room by the librarian.

SEC. 13. The librarian shall, at the commencement of every session of the legislative assembly, report a list of books or other property missing, if any, of the library, and an account of fines imposed and paid, and such other information in relation to the library as he may deem expedient.

SEC. 14. He shall, previous to the close of every session, report to the legislative assembly, a true account of all expenses incurred during the session, and since the adjournment of the next preceding session; for rent of room, fuel, candles, stationery, and other necessary incidental expenses, which shall be paid out of any moneys appropriated by congress to defray the expenses of the legislative assembly.

SEC. 15. The librarian shall annually receive for his services, the sum of two hundred and ten dollars, payable quarterly, by the secretary of the territory, out of the fund appropriated by congress for the expenses of the legislative assembly.

SEC. 16. Such other rules, not inconsistent with this act, as may be necessary for the safe keeping and good management of the library, may be adopted by the governor and librarian, and kept, together with a catalogue of the books in the library for the inspection of those concerned.

SEC. 17. The librarian shall carry this act into execution, and sue for all penalties, and for all injuries done to the library under this act, in the name of the territory, for the use of the library.

SEC. 18. This act to be in force from and after its passage.

Approved January 4, A. D. 1840.

CHAPTER 90.

LAWS.

AN ACT relative to the time of taking effect of the laws of the present session.

SECTION.

1. Time, 4th of July.

SECTION.

2. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all laws of a general nature enacted at [378] the present session of the legislative assembly, shall take effect and be in force from and after the

fourth day of July, in the year of our Lord, eighteen hundred and forty-three, and not before, unless otherwise specially provided.

SEC. 2. This act to take effect and be [in] force, from and after its passage.

Approved February 13, A. D. 1843.

CHAPTER 91.

LAWs.

AN ACT defining the number of copies of the laws of the present session to be published and the mode of their distribution.

SECTION.

1. Number to be printed, and manner of doing it.
2. Distribution to counties.
3. Clerks of board of commissioners to deliver to certain persons in office.
4. To be returned upon resignation, removal &c., &c., for use of successor.

SECTION.

5. Copy to certain territorial officers.
6. Copy to each state and territory in the union.
7. Residue, disposition of.
8. Publication of local laws.
9. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That two thousand five hundred copies of the laws of a general nature, enacted at the present session of the legislative assembly, together with all laws of a general nature, ordered to be reprinted by this legislative assembly, shall be published in one volume, to be bound after the manner of the volume of laws enacted at the first session of the legislative assembly in 1838 and '9.

SEC. 2. The said laws shall be distributed as follows, to-wit: to the counties of Des Moines, Van Buren, Lee, Dubuque, Henry and Jefferson, each one hundred and fifty copies; to the counties of Washington, Louisa, Johnson, Scott, Muscatine, Jackson and Linn, each one hundred copies; to the county of Cedar, eighty copies; to the counties of Clinton, Jones and Clayton, each seventy-five copies; to the county of Delaware, thirty copies; and to the counties of Buchanan [379] and Fayette, each fifteen copies; to be deposited with the clerks of the boards of county commissioners of the counties to which they are attached for judicial purposes.

SEC. 3. It is hereby made the duty of the clerks of the boards of commissioners of the several counties, in the preceding section mentioned, to deliver upon application, to each of the following officers of his county, one copy of said laws, to-wit: each member of the council and house of representatives of the present legislative assembly, judge of probate, recorder, county commissioner, sheriff, coroner, county treasurer, county surveyor, clerk of the district court, clerk of the board of commissioners, three copies for the use of the district court, grand jury and bar, each justice of the peace, assessor, constable, collector, one copy for the use of the clerk and trustees of each township organized by law, supervisor of roads, and the surplus copies (if any) shall be carefully kept by said clerk in his office, to be distributed as may be hereafter directed by law; and upon the delivery of the laws as aforesaid it shall be the duty of said clerk to take a receipt for the same, which he shall file in his office, and in no case shall any person be entitled to more than one copy although he may hold several offices.

SEC. 4. 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 board of commissioners, for the use of his successor in office, the laws received by him in pursuance of this act; and in case of the death of any such officer, the said laws shall be returned as aforesaid by his legal representatives. If any such officer or his legal representatives, shall refuse or neglect for the space of three months after the happening of any such vacancy as aforesaid, to return the said laws 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 from any such person in default as aforesaid, for the use of said county, the sum of five dollars for each copy so detained, with costs of suit: provided, that no person, 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 as aforesaid.

SEC. 5. There shall also be distributed to each of the following named persons one copy of said laws, to-wit: the governor of the territory, each judge of the supreme court, the clerk of the supreme court, the attorney of the United States for the district of Iowa, each district prosecutor, the territorial agent, auditor, and treasurer, and each justice of the peace appointed and commissioned by the governor.

[380] SEC. 6. That the secretary of the territory shall transmit one copy of said laws to each state and territory of the United States.

SEC. 7. The residue of the said number of copies of the laws, shall be deposited in the territorial library, subject to be disposed of as may hereafter be directed by law.

SEC. 8. That there shall be published in pamphlet form, one thousand copies of the laws of a private and local nature, passed at the present session of the legislative assembly, which shall be distributed to the several counties in the ratio mentioned in the second section of this act, reserving to be deposited in the territorial library, one hundred copies of said laws.

SEC. 9. That all acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

Approved February 16, A. D. 1843.

CHAPTER 92.

MECHANICS LIENS.

AN ACT relative to mechanics liens, and other purposes.

SECTION.

1. Lien on building, lot, &c., for materials and labor.
2. Action to be commenced, how and when.
3. Special execution to be issued.
4. Proceedings under this act before justice of the peace.
5. Summons issued against debtor.
6. Service of summons.

SECTION.

7. Defendant not appearing, judgment to be given according to justice and equity.
8. Benefit of this act extended to workers in mineral land.
9. This act not to affect rights of parties prior to its passage.
10. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That in all cases hereafter when any contract shall be made between the owner of any tract of land, or town lot, or the lessee of any tract of land or town lot, with the owner's knowledge or consent, on the one part, and any person on the other part, for the erecting or repairing any house, or other building, mill or machinery, 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 agreement, the person who shall, in pursuance of such contract, have furnished labor or materials for such purpose, shall respectively have a lien, to secure the payment of the same, upon such house or other building, mill or machinery, and on the tract of land or lot, on which the same shall have been erected, in proportion to the labor done or materials furnished; and the owner or lessee of said ground shall not be able to convey the same free from the said lien created by this act, nor shall the same be sold by legal process so as to avoid said lien, unless upon judgment rendered before such building, mill, or repairs, were commenced.

SEC. 2. When any person shall wish to avail himself of the benefit of such lien, he shall commence his action in any court having jurisdiction of the same, within one year from the time payment should have been made by virtue of any such contract by which such lien shall have been claimed, or within six months after the decision of any suit that such person may bring within that time, for the debt that may be due for work done or materials furnished in erecting such building, mill or machinery, or appurtenances thereto, 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, which shall stand in the place of a declaration; and the plaintiff shall also file a precept in which he shall state the name of his action and the usual order for the clerk to issue a summons. The courts trying such causes shall be governed by the same rules of evidence that are now observed in suits at law, and give judgment according to the justice and equity of the case.

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 judgments and costs are to be collected; and no other property of 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.

[382] SEC. 4. Any person wishing to avail himself 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 done or materials furnished, and upon trial of such 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, together with a description of property subject thereto, and said judgment and description of property so subject thereto, 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, from the judgment of justices of the peace in other cases.

SEC. 5. *And it is further enacted*, that upon filing the bill or petition, or account provided for in this act, the clerk of the district court of the proper county, or justice of the peace, shall issue a summons against the debtor in the usual form, with an endorsement signed by said clerk, justice, or plaintiff, or his attorney, stating the nature of the action.

SEC. 6. That said writ shall be served in like manner as a summons in an ordinary suit, upon the person therein named, if to be found in the county, if not to be found in the county, then the same notice shall be given as is required by law in cases of writs of attachment when the summons has been returned, "defendant not found."

SEC. 7. That upon return of service and failure of defendant to appear, the court or justice of the peace shall render judgment according to the justice and equity of the case; but if the defendant shall appear he may plead and make defense as in personal actions for the recovery of debts.

SEC. 8. And is it 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, [383] to pay him for any just demand which he may have in consequence of labor he may have performed on the same.

SEC. 9. This act shall be so construed as not to affect the rights of parties prior to its passage.

SEC. 10. That "an act relative to mechanics' liens and for other purposes," approved, December seventeenth, in the year eighteen hundred and thirty-eight, and "an act to amend an act relative to mechanics' liens and for other purposes," approved, January sixteenth, in the year eighteen hundred and forty, be and the same are hereby repealed.

Approved February 13, A. D. 1843.

CHAPTER 93.

LIMITATION OF SUITS.

AN ACT for the limitations of suits on penal statutes and criminal prosecutions.

SECTION.

SECTION.

1. Actions by informers. By territory. 2. Criminal prosecutions.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all actions, suits, bills or informations which shall hereafter be had, sued, or commenced for any forfeiture on any penal statute made or to be made, the benefit whereof is, or shall be by the said statute in whole or in part to the person who shall inform and prosecute in his behalf, shall be had, brought, sued or commenced by any person who may lawfully pursue the same as aforesaid, within one year from the commission of the offenses, and not afterwards, and in default of such pursuit, then the same shall be had, brought, or prosecuted by the territory at any time within two years from the commission of all such offenses, and not afterwards, and any indictment, complaint, or information of any offense against such statute aforesaid, shall hereafter be made and prosecuted within two years limited as aforesaid, and not afterwards.

SEC. 2. That all prosecutions for offenses except treason, murder, arson, burglary, kidnapping, horse stealing, and forgery, shall be instituted within two years next after the offense charged may have been committed, and not after: provided, that if the person charged, or [384] against whom such prosecution may be instituted, shall not have been an inhabitant or usually a resident of this territory, within and during the said term of two years, said prosecution may be instituted any time within two years next after such person may have become an inhabitant or usually resident of this territory: and further provided, that all prosecutions that shall be hereafter commenced for offenses, except treason, murder, arson, burglary, kidnapping, horse stealing, and forgery, committed before the organization of this territory, to-wit: before the fourth day of July, in the year eighteen hundred and thirty-eight, shall fail and be utterly null and void.

Approved January 7, A. D. 1840.

CHAPTER 94.

LIMITATION OF SUITS.

AN ACT for the limitation of actions, and for avoiding vexatious law suits.

SECTION.

1. Limitation of actions, detinue trespass, trover, etc., etc.
2. Of assault and battery.
3. Slanderous words and malicious prosecutions.
4. Debt or covenants for rent, etc.
5. Judgment revived.
6. Right of entry when barred.

SECTION.

7. Certain actions to be brought within twenty years.
8. Absence not to be accounted in certain cases.
9. Effect of reversal of judgment on writ of error.
10. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

SEC. 2. That all actions of trespass, for assault and battery, wounding and imprisonment, or any of them, shall be commenced within two [385] years next after the cause of such action shall have accrued, and not after.

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.

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, and every action of assumpsit 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.

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.

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.

SEC. 7. That every real, possessory, ancestral or mixed action, or writ of right, or action of ejectment 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 the foregoing cases in this section mentioned, 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, feme covert, or beyond the limits of this territory, such person or persons may make such entry, or institute such action, at any time [386] within twenty years after the removal of such disability, and not afterwards. And that in all cases, in the former sections of this act mentioned, when the person or persons, who shall have the cause of action, is, are, or shall be, at the time of such cause of action, under the age of twenty-one years, insane, or feme covert, such person or persons may institute such action at any time within the period limited in said former sections, after the said disabilities shall cease, and not afterwards.

SEC. 8. That if any person or persons against whom there is, or shall be, any cause of action, as 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 part of the time limited by this act.

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 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 nonsuited, 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.

SEC. 10. That an act for the limitation of actions, and for avoiding vexatious law suits, approved January 25, 1839, be and the same is hereby repealed.

Approved February 15, A. D. 1843.

[387] CHAPTER 95.

PURCHASE OF LANDS.

AN ACT to make certificates of purchase of lands, from any register or receiver of any land office in this territory, evidence of title in the purchaser.

SECTION.

1 Nature of action, in which receipt to have same effect as patent.

SECTION.

2. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That in any action of trespass, quare clausum fregit, action of right, or other actions at law, or in equity, in which the title to, or possession, or right of possession, of lands or tenements, may come in question, now or hereafter pending in any court of this territory, or before any justice of the peace,

the usual duplicate receipt of the receiver, or the certificate of the register, of the proper land office, shall be sufficient prima facie evidence of title, or of right of possession, (as the case may require,) in the person mentioned in such certificate or receipt, as the purchaser of such lands or tenements, or in the assignee of such receipt or certificate, as the case may be, to support such action; and such certificate shall have the same effect in establishing a possession in law as is given to a deed of conveyance or a patent.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved February 10, A. D. 1842.

CHAPTER 96.

MILITIA.

AN ACT to organize, discipline, and govern the militia of this territory.

SECTION.

1. Militia arranged.
2. Separate battalions.
3. Officers.
4. Appointed by governor and council.
- [388] 5. Officers appointed without consent of council.
6. Who shall be enrolled.
7. Commander in chief may alter divisions, brigades, bounds of regiments, &c.
8. Artillery, light infantry and dragoon companies.
9. When militia to rendezvous by companies.
10. Officers of company and staff to rendezvous, regimental and battalion musters, etc.
11. Officers and privates to appear with arms.
12. Books of tactics to be provided.
13. Militia to be reviewed.
14. Duty of brigade inspectors and their compensation.

SECTION.

15. Who to have custody of arms and accoutrements.
16. When commanding officers of companies to make returns.
17. When commandants of regiments to make returns.
18. Returns to be made to adjutant general; he to make returns to commander in chief, his compensation.
19. Fines to be imposed for certain acts.
20. Court martial for trial of absent officers.
21. Court martial for trial of absent privates, etc.
22. Fines, how collected and applied.
23. Compensation of musicians.
24. Colors and musical instruments to be furnished.
25. Militia to be called out in cases of invasion or danger thereof.
26. Persons exempt from military duty.
27. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, Keokuk, Johnson, Linn, Cedar, Scott, and Muscatine, shall form the second division. And the counties of Clinton, Jones, Jackson, Dubuque, 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.

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, [389] 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.

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, 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.

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.

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 appoint and commission, one adjutant general, one commissary general, and one quartermaster general, each with the rank of brigadier general, and to each brigade a brigade inspector, with the rank of major. The commandant of each regiment, and separate battalion, shall appoint, during his pleasure, one adjutant, one quartermaster, and one paymaster, 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.

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.

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, [390] in like manner, the brigadier general may, with the approbation 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 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 accoutred, 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 regiment, 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 of being, unless the brigadier general shall otherwise order and direct. The riflemen shall be clothed, armed, and equipped as the brigadier general may direct.

SEC. 9. That the militia, for the purpose of improving 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 advertisements, in the most public places in his district, ten days before the day of meeting. Captains or commanding 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 of August, in every year, the colonel or commanding 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 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 [391] 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 preceding sections, the militia shall not be kept under arms longer than three hours at any one time.

SEC. 11. That it shall be the duty of every non-commissioned officer and private, who owns a rifle, musket, or firelock, to appear with it in good order at every parade.

SEC. 12. That in order to insure 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.

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.

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 rifle men. The brigade inspectors shall, one month previous to the meeting of the legislative assembly, make full and complete returns to the adjutant gen-[392]-eral, 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 traveling and contingent expenses, which shall be paid out of any money in the territorial treasury not otherwise appropriated.

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.

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 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.

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 [393] bounds of each company district composing the regimental or separate battalion district, which they command.

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.

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 ninth and tenth 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.

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 offense 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 be charged with some offense, 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.

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 offense 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.

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 commissioners' 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, when-ever, 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 defense 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.

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.

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, A. D. 1839.

CHAPTER 97.

MILITIA.

AN ACT to organize, discipline and govern the militia of this territory.

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TITLE I.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all able bodied free white male inhabitants, between the ages of eighteen, and forty-five years, resident in this territory, and not exempted from serving in the militia by the laws of the United States, or of this territory, are subject to military duty within this territory.

SEC. 2. In addition to the persons exempted by the laws of the United States, the following persons shall be exempt from military duty.

- 1. The secretary of the territory.
- 2. The members of the legislature, and its officers, during the session thereof, and fourteen days before and after each meeting.
- 3. Ministers and preachers of the gospel, teachers in all colleges.
- 4. Officers hereafter to be commissioned, who shall serve as such in the militia of this territory, or in that of one of the United States, for the space of five years; but no such officer who may have served in the militia of this territory, shall be so exempt unless by his resignation, after such term of service duly accepted, or in some other law-[400]-ful manner he shall have been honorably discharged from his commission.
- 5. Every non-commissioned officer, musician and private, of every uniform company raised, or hereafter to be raised, who has uniformed himself, or shall hereafter uniform and equip himself, and whose term of service in such company shall have amounted, or shall amount to ten years from the time of his enrollment therein, shall be exempt from military duty, except in cases of insurrection or invasion.
- 6. If any member of such company, who shall have been regularly uniformed and equipped, shall, upon his removal out of the district of such company, or upon the disbandment thereof, enlist into another uniform company, and uniform and equip himself therefor, and serve in the same, whenever the whole time of his service in such companies, computed together, shall amount to ten years, he shall be exempt from military duty, in like manner, as if he had served for the whole period in the company in which he was first enrolled.

7. Every person actually employed by the year or season on board any vessel, or in the merchant service or coasting trade in this territory, all firemen attached to supply engines, and all other firemen belonging to any company in any city or village in this territory, not exceeding twenty-four (24) in number, attached to a fire engine, unless, in cases otherwise specially provided, shall be exempt from military duty, and also all ferrymen actually employed on post roads, not exceeding two in number, to each ferry, except in cases of war, insurrection or invasion.

TITLE II.

Of the appointment of militia officers and the tenor of their offices.

SECTION 1. The officers of the militia shall be appointed in the manner prescribed in the seventh section of the "act of congress, establishing the territorial government of Iowa," and shall hold their commissions without limitation of time, subject however to be revoked and determined by the governor of the territory for the time being at his pleasure.

SEC. 2. The commander-in-chief shall appoint his own staff.

SEC. 3. Major-generals, brigadier-generals, and commanding offi-[401]-cers of regiments, or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments or separate battalions.

SEC. 4. No commissioned officer can be removed, except by the governor, or by the decision of a court-martial pursuant to law.

SEC. 5. Sergeant-majors, quarter-master sergeants, sergeant-standard-bearers, drum-majors, fife-majors, and trumpet-majors, shall be appointed by the commanding officer of the regiment or separate battalion to which they shall belong, by warrant under the hand of such commanding officer, and shall hold their office during his pleasure.

SEC. 6. Whenever the office of any commissioned officer in the militia, except those of the staff, shall become vacant, the commander-in-chief shall have power to fill the same, which appointment shall continue until the last day of the next succeeding session of the legislative assembly.

SEC. 7. Every officer, duly commissioned, shall within twenty days after his commission shall be tendered to him, or within twenty days after he shall be personally notified that the same is held in readiness for him, by any superior officer, take and subscribe an oath to support the constitution of the United States of America, and well and faithfully discharge the duties of his said office; and in case of neglect or refusal to take such oath within the time mentioned, he shall be deemed to have resigned said office, and a new appointment shall be forthwith made to fill his place. The neglect or refusal of an officer appointed to take such oath, shall be no excuse for neglect of duty until another shall be duly commissioned in his place.

SEC. 8. Every commissioned officer shall take and subscribe such oath before a judge of some court of record in this territory, clerks of courts, notaries public, justice of the peace, or some general or field officer, who having previously taken it himself, is hereby authorized to administer the same.

SEC. 9. A certificate of the oath, shall be endorsed by the officer administering the same, on the commission, and no fee shall be received for administering any such oath or endorsing such certificate.

SEC. 10. All non-commissioned officers of companies shall be appointed by the commandants of their respective companies, but shall not be removed except by the approbation of the commandant of the regiment, or separate battalion to which the said company may belong.

SEC. 11. The commanding officers of brigades may accept the resignations of all commissioned officers in their respective brigades; but no resignation of any captain or subaltern shall be accepted until the same [402] shall have been approved of by the commanding officer of the regiment to which the officer so resigning may belong. No officer shall be permitted to resign his commission who shall be under arrest or shall be returned to a court martial for any deficiency or delinquency, and no commanding officer of a brigade, regiment or separate battalion, shall approve or accept any resignation, unless the officer tendering the resignation shall furnish satisfactory evidence that he has delivered all moneys in his hands, as such officer, and all books and other property of the territory, in his possession, to his next superior or inferior officer, or to the officer authorized by law to receive the same.

SEC. 12. The commanding officer of a brigade, on accepting any resignation, shall forthwith communicate the same to the commander-in-chief; also to the commandant of the regiment to which the officer resigning may belong; and if any such officer be a subaltern, he shall also communicate the same to the commandant of his company.

SEC. 13. The commander-in-chief may accept the resignation of any officer whose resignation the commanding officer of a brigade is not authorized to accept, and he may also accept the resignation of any officer whose resignation the commanding officer of his brigade shall have refused to accept, and cause such vacancies to be filled without delay.

SEC. 14. Every officer who shall remove out of the bounds of his command, or who shall be absent from his command twelve months, without leave of the commanding officer of his brigade, or regiment, shall be considered as having vacated his office.

SEC. 15. The commissioned officer who shall receive a commission for any subordinate officer, shall, within thirty days thereafter, give notice thereof in writing, by mail or otherwise, to the person entitled to it.

TITLE III.

Of the enrollment of persons subject to military duty.

SECTION 1. The commanding officer of each company of infantry shall, from time to time, enroll all persons within the limits of his company, who may be subject to military duty, and shall without delay notify such persons of their enrollment.

SEC. 2. Every notice or warning, to a person so enrolled, to attend a company, battalion, or regimental muster or training, pursuant [403] to the provisions of this act, shall be deemed a legal notice of his enrollment.

SEC. 3. Every person duly enrolled, shall be provided, within six months from and after he shall be duly notified of his enrollment, with arms, accoutrements, and ammunition, agreeably to the directions of the laws of the United States.

SEC. 4. The age and ability to bear arms, of every person so enrolled, shall be determined by the commandant of such company, subject to an appeal to the commanding officer of the regiment; but the decision of neither of these officers shall prevent a court-martial from determining whether such person was duly enrolled.

SEC. 5. Persons claiming to be exempted from enrollment, by reason of inability to bear arms, may produce the certificate of a surgeon or surgeon's mate, as evidence of such inability; but it shall not be lawful for the surgeon giving the same to take any fee or reward therefor.

SEC. 6. All tavern keepers, keepers of boarding houses, persons having boarders in their families, and house-keepers, upon their being thereto requested by the commanding officer of the company, within the district of which they reside, shall give to such commanding officer a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty may be enrolled according to law.

SEC. 7. If any person of whom such account is so demanded, shall refuse to give an account, he shall forfeit and pay ten dollars for every individual name that may be refused, omitted, concealed, or falsely stated, to be recovered by the commanding officer of the regiment for the use of his regiment.

SEC. 8. Every commandant of a company may enroll, as musicians, in his company, at least two and not more than five persons, residing in his district, who are desirous to be so enrolled.

SEC. 9. The persons so enrolled shall perform the duty of musician in such company, instead of serving as privates therein, and shall respectively be entitled to the same privileges and exemptions as non-commissioned officers and privates in uniform companies, and shall be subject to the same fines and penalties for the non-performance of their duty, as non-commissioned officers are liable to for absence from parade.

SEC. 10. No such musician, after being enrolled, shall enlist into another company, without the written consent of the commanding officer of the company to which he belongs.

[404] *Of the organization, uniform, and discipline of the militia.*

SECTION 1. The organization of the militia in divisions, brigades, regiments, battalions, and companies shall be conformed to the provisions of the laws of the United States.

SEC. 2. Subject to such laws the commander-in-chief may arrange, alter, divide, annex and consolidate the divisions, brigades, regiments, battalions and companies, in such manner as, in his opinion, the proper organization of the same shall require.

SEC. 3. The commanding officer of each brigade, with the approbation of the commanding officer of his division, may divide, annex, or alter the bounds of the several regiments, or separate battalions, under his command; and in all cases of alteration in the bounds of any regiment, that part containing the major part of the companies of any one regiment shall retain its name, number and rank. The commanding officer of each regiment or separate battalion, with the approbation of the commanding officer of his brigade, may divide, annex, or alter the bounds of the several companies under his command.

SEC. 4. All such alterations shall be forthwith reported to the commander-in-chief, and remain in force until he shall otherwise direct.

SEC. 5. Every officer rendered supernumerary by any consolidation or alteration of regiments, separate battalions or companies, shall be deemed to have resigned his commission, unless he shall have given written notice of his intention to retain his rank in the line, to the commanding officer of the brigade to which he belonged, within thirty days after such consolidation or alteration shall be published in general orders.

SEC. 6. Supernumerary officers shall equip themselves, and those under rank of colonel shall attend the parades and drill trainings of the officers and non-commissioned officers.

SEC. 7. Whenever thirty persons, subject to military duty, associate together for the purpose of forming a company of mounted riflemen, infantry or artillery, by and with the consent of the commanding officer of their regiments,

shall apply to the commander-in-chief to be organized as such, the commander-in-chief may so organize them, and such persons as a majority of the applicants shall have designated in their application shall be commissioned as the officers of such company. All artillery companies organized under the provisions of said act shall [405] be liable to do military duty in the same manner as volunteer riflemen until they shall be provided with a suitable piece of artillery.

SEC. 8. Every commanding officer of a regiment, before he shall consent to any such application, shall require satisfactory evidence that the persons making the same intend in good faith to serve when organized, and that they are of sufficient ability to equip themselves according to law.

SEC. 9. Every company of artillery, riflemen, light infantry, or mounted riflemen, which shall not at any annual inspection and review have at least thirty privates mounted, or armed and equipped as the law directs, shall be immediately reported by the inspector, or officer acting as such, to the commandant of the brigade to whom such company belongs.

SEC. 10. If thirty privates shall not so appear at such inspection and review, the inspector shall require proof that there are privates belonging to such company properly mounted, or armed and equipped, sufficient to complete the whole number of thirty; such proof may be made by the certificate on honor of a commissioned officer or by the oath of a non-commissioned officer or private.

SEC. 11. The commandant of a brigade to whom a company shall be reported as deficient in number shall thereupon disband the same in orders, unless he shall have reason to believe that such company will have thirty privates present and absent, mounted, or armed and equipped as aforesaid at the next succeeding inspection and review.

SEC. 12. In case such company at the next inspection and review shall have absent and present the number above required, mounted, or armed and equipped, it shall not be disbanded, but if otherwise, the commandant of the brigade shall without delay disband the same.

SEC. 13. All the companies of mounted riflemen and dragoons in each of the judicial districts of the territory, shall be formed into separate battalions, and the members of all such companies after they shall have uniformed and equipped, shall be exempt from poll tax to work on the highways in their respective towns.

SEC. 14. All battalions of mounted riflemen, or dragoons, not formed into separate regiments, shall for all the purposes of this act be considered as a part of the regiments or separate battalions of infantry in the bounds of which they are situated.

SEC. 15. All regiments and separate battalions of riflemen or artillery, not formed into brigades, shall for the purpose of this act be considered as a part of the brigade of infantry in the hands of which the [406] commanders of such regiment or separate battalion shall respectively reside.

SEC. 16. No non-commissioned officer, musician, or private, belonging to any company of mounted riflemen, artillery, or light infantry, shall leave the company to which he belongs to serve as a fireman in any fire company now raised or hereafter to be raised in any city or county, nor shall he leave such company and enlist in any other, without the written consent of the commandant of the company to which he belongs, unless he shall have removed out of the district of such company.

SEC. 17. The commandant of every uniform company shall make a return without delay, of all person enlisted therein to the commandant of the infantry companies within whose district the persons enlisted respectively reside, and in such return shall specify the date of each enlistment, and the commandant

of infantry companies shall strike from their rolls the name of every person thus certified to have been enlisted in any regularly organized uniform company.

SEC. 18. All persons enlisted into any uniform company, shall within three months from their enlistment, furnish themselves with a uniform and other equipage, according to law; for non-compliance they shall be returned to the proper court-martial and fined as hereinafter provided.

SEC. 19. The commandant of any uniform company, whenever he shall discharge an able bodied man, shall give notice thereof in writing to the commandant of the infantry company, within whose district the individual discharged shall reside.

SEC. 20. The uniform of the infantry, or such portion thereof as the commander-in-chief may deem advisable, shall in his discretion be directed to conform with that which is now or may hereafter be established by the army regulations of the United States, and of all other corps for which provision is not made by the laws of the United States, as the commander-in-chief shall from time to time direct.

SEC. 21. The militia of the territory shall as near as may be conform their system of discipline and exercise to that of the army of the United States, as is now, or shall hereafter be prescribed by the congress of the United States.

SEC. 22. The commander-in-chief shall from time to time direct such books as to him shall appear expedient as a guide for the corps of artillery and mounted riflemen, and shall furnish the same to the field [407] officers and commandants of companies of such corps at the expense of the territory.

SEC. 23. All mounted riflemen and dragoons as well as all other independent or volunteer corps, shall be subject to be called into the service of the United States or of this territory, by companies, battalions, regiments or brigades, by order of the commander-in-chief, or other proper officer.

ARTICLE SECOND.

Of the organization of the staff department.

SEC. 24. The commander-in-chief shall be entitled to four aids with the rank of colonel, and a military secretary with the rank of major.

SEC. 25. Each major-general shall be entitled to two aids with the rank of major, and each brigadier-general to one aid with the rank of captain.

SEC. 26. The adjutant-general shall have the rank of brigadier-general, and in his department there shall be to each division, a division inspector, with the rank of colonel; to each brigade, a brigade inspector, to serve also as a brigade major, with the rank of major, and to each regiment and separate battalion an adjutant with the rank of lieutenant.

SEC. 27. In the judge advocate's department there shall be a judge advocate with the rank of brigadier general; to each division, a division judge advocate with the rank of colonel; and to each brigade a brigade judge advocate with the rank of major.

SEC. 28. In the quarter-master general's department there shall be a quarter-master general with the rank of brigadier general; to each division a division quarter-master with the rank of colonel; to each brigade a brigade quarter-master with the rank of captain; and to each regiment and separate battalion, a quarter-master with the rank of lieutenant.

SEC. 29. In the pay-master general's department there shall be a pay-master general with the rank of colonel; to each division a division pay-master with the rank of major; to each brigade a brigade pay-master with the rank of captain;

and to each regiment and separate battalion, a pay-master with the rank of lieutenant.

SEC. 30. The commissary-general shall have the rank of brigadier general, and in his department there shall be so many military store-keepers, for the safe keeping and preserving of the arsenals, magazines, [408] fortifications and military stores belonging to this territory as he may find it necessary to appoint, not exceeding one to each arsenal.

SEC. 31. In the hospital department there shall be a surgeon-general with the rank of brigadier general; to each division a hospital surgeon with the rank of colonel; to each brigade a hospital surgeon with the rank of major; to each regiment a surgeon with the rank of captain; and to each regiment or separate battalion a surgeon's mate with the rank of lieutenant; but such rank shall not entitle officers to promotion in the line, nor regulate their pay or rations in the service.

SEC. 32. There shall be to each regiment and separate battalion two sergeant-standard bearers, one sergeant-major, one quarter-master sergeant, one drum-major, one fife-major, and to each regiment and separate battalion of mounted riflemen, one trumpet-major.

SEC. 33. The chief of each staff department shall, under the direction of the commander-in-chief, have command over all subordinate officers in his department, and shall from time to time issue orders and instructions for their government and practice.

SEC. 34. Each chief of such department shall prepare and transmit, at the expense of the territory, all blank forms of returns, precepts, warrants and proceedings necessary in his department.

TITLE V.

Of the several parades and rendezvous of the militia.

The militia shall rendezvous as follows:

SEC. 1. By regiments, or separate battalions, once in each year, between the tenth day of September and fifteenth day of October, at such time and place in their respective districts as the commanding officer of the brigade shall direct, for the purpose of inspection, review and martial exercise.

SEC. 2. At such other times and places, either by regiments, battalions or companies, as the case may require, as shall be directed in any order of proper authority, calling into service of the United States, or of this territory, the whole or any portion of the militia.

SEC. 3. It shall be the duty of all uniform companies to meet within [their] respective districts, in addition to the general rendezvous, not less than three nor more than eight days in each year, at such time and place as their respective commandants may direct, and as much of-[409]-tender as a majority of all the members of their company may direct, for the purpose of drill and martial exercise.

SEC. 4. The commandant of each brigade shall give notice to the commandant of the division of the times and places of the annual inspection and review of the several regiments and separate battalions in his brigade.

SEC. 5. Each commandant of division shall attend the review and inspection of the several regiments and separate battalions of at least one of the brigades in his division in each year; and he shall require the officers of the division staff, armed and equipped as the law directs, to accompany him; he shall also attend such reviews and inspections in each brigade of his division in succession.

SEC. 6. The commandant of each brigade shall attend, with the officers of the brigade staff, armed and equipped as the law directs, the annual inspection and review of the several regiments and separate battalions in his brigade.

SEC. 7. The commissioned and non-commissioned officers and musician of each regiment and separate battalions, shall rendezvous within their respective districts not less than three nor more than six days successively, between the first day of June and the first day of September in each year, for the purpose of disciplining and improving in martial exercise. The day and place of rendezvous shall be prescribed by the commanding officers of the regiment or separate battalion.

SEC. 8. Such commandant shall report all absentees and deficiencies to the president of the proper court-martial.

SEC. 9. For the purpose of warning the non-commissioned officers, musicians and privates, to any parade or place of rendezvous, required by law, the commandant of each company shall issue his warrant, under his hand, to his non-commissioned officers, or to such of them as he may deem proper, requiring them respectively to warn all persons subject to military duty within a certain district to be designated in such warrant, or all persons named in the warrant, as such commandant may elect, to appear at such parade or place of rendezvous, armed and equipped as the law directs.

SEC. 10. Each non-commissioned officer to whom such warrant shall be directed, shall warn every person heretofore enlisted, whom he shall be therein required to warn, by reading the warrant or stating the substance thereof in the hearing of such person; or in case of his absence by leaving a notice thereof at his usual place of abode, with some person of suitable age and discretion, or affix the same on the outer [410] door of the house in case no persons can be found therein; such notice shall be signed by the non-commissioned officer making the service, and so left or affixed shall have the like effect as if the person to whom the same shall be directed had been personally warned.

SEC. 11. Such non-commissioned officer shall deliver the warrant to his commandant, with a return, in which he shall state the names of all persons by him warned, and the manner of warning them respectively, and shall make oath to the truth of such return, which oath shall be administered by the commandant, and certified by him on the warrant or return.

SEC. 12. Such commandant shall deliver the warrant and return together with his own return of all the delinquents and delinquencies, to the president of the proper court-martial.

SEC. 13. The return of such non-commissioned officer, so sworn to and certified, shall be as good evidence on the trial of any person returned as a delinquent, of the facts therein stated, as if such officer had testified to the same before the court-martial on such trial.

SEC. 14. Every commandant of a company shall make the like return upon honor, and with like effect, of every delinquency and neglect of duty of his non-commissioned officers, either in not attending on parade, or not executing or returning a warrant to them directed, or not obeying the orders of their commanding officer.

SEC. 15. Any commissioned officer of a company, may, without a warrant, warn any or all the persons subject to military duty, within the district of the company, to appear at any parade or place of rendezvous; such warning may be given by him, either personally, or by affixing a notice in the same manner as if given by a non-commissioned officer, and his certificate upon honor shall be received by any court-martial as legal evidence of such warning.

SEC. 16. All tavern keepers, keepers of boarding houses, persons having boarders in their families, and house-keepers upon their being thereto requested by the commandant of the company within the district of which they reside, or by the non-commissioned officer of any such company having a warrant from such commanding officer to warn persons to attend any parade, shall give to such commanding officer or non-commissioned officer, a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty may be warned to rendezvous according to law.

SEC. 17. If any person of whom such account is so demanded, shall [411] refuse to give such account and names, or shall wilfully give a false account, he shall forfeit and pay ten dollars, to be recovered by the commandant of the regiment for the use of the regiment.

SEC. 18. For the purpose of preserving order on the day of parade, the militia shall be considered to be under arms from the rising of the sun to its setting, on the same day, and shall be exempted from arrest on civil process during the time.

SEC. 19. Every commandant of a company, in addition to putting under guard as he is hereby authorized to do, and the exercise of the usual military power with which he is hereby vested, shall return to the president of the proper court-martial, the names of all persons in the company who shall have discharged any fire arms on such day of parade, without the order or permission of a commissioned officer, or officer acting under such; and also the name of every non-commissioned officer, musician or private, who shall on such day refuse or neglect to obey the order of his superior officer or to perform such military duty or exercise as may be required, or depart from his colors, post or guard, or leave the ranks, without permission from his superior officer.

SEC. 20. The commanding officers of a division, brigade, regiment, or separate battalion, present at any parade, may put under guard any by-stander or spectator, who shall abuse, molest, or strike any one when on parade or under arms.

SEC. 21. The commanding officer of a regiment or separate battalion, shall on the day on which any parade or rendezvous is to be held, and previous thereto, cause the bounds of the parade ground to be designated in such manner as not to obstruct the passage of travellers on any public highway.

SEC. 22. If any person, during parade, shall encroach on the parade ground previously designated, or shall then and there sell, or offer to sell or give away, any spirituous liquors, without permission of the commanding officer, or shall have in his possession any gambling table or other gambling device, such persons may be put and kept under guard by such commander until the setting of the sun on the same day; and such liquor, gaming table, or other gambling device, may be abated or destroyed as a nuisance, by order of the commandant.

SEC. 23. No parade or rendezvous of the militia shall be ordered on any day during which a general or special election shall be held, nor within five days previous to such election, except in cases of invasion, or insurrection, or of imminent danger thereof; and if any officer shall [412] order any such parade or rendezvous, he shall forfeit and pay to the people of this territory the sum of five hundred dollars.

SEC. 24. Every commandant of a company shall, within twenty days after any parade, furnish the president of the proper court-martial with a return of all persons belonging to his company, who shall have been at such parade delinquent in the performance of duty, or deficient in the equipment or uniform required by law, or who by any means shall have incurred any fine or penalties under this act.

SEC. 25. The commandant of every regiment or separate battalion, within fifty days after the regimental or battalion parade or rendezvous of commissioned and non-commissioned officers and musicians, shall furnish the president of the proper court-martial with a return of all delinquents under the rank of a major in the staff or line.

SEC. 26. In case of any invasion, or of imminent danger thereof, within the limits of any division, brigade, regiment or separate battalion, it shall be the duty of the commandant of such division, brigade, regiment or separate battalion, to order out for the defense of the territory, the militia of any part thereof under his command.

SEC. 27. It shall also be his duty to give immediate notice of such invasion, and of the circumstances attending the same, to his immediate commanding officer, by whom such information shall be transmitted with the utmost expedition to the commander-in-chief.

SEC. 28. The commandant of every regiment or separate battalion within the limits of which an insurrection may happen, shall immediately assemble his regiment or battalion under arms, and with the utmost expedition shall transmit information to the commandant of his brigade, and to the commander-in-chief.

SEC. 29. Every person who, while in the actual service of this territory, shall be wounded or disabled, in opposing or suppressing any invasion or insurrection, shall be taken care of and provided for at the expense of the territory.

SEC. 30. Whenever the president of the United States, or the commander-in-chief, shall order a draft for [of] the militia for public service, such draft shall be made in each company in which it is required, by lot to be determined at a company parade ordered for that purpose.

SEC. 31. Each non-commissioned officer, musician, or private, present at such parade, shall draw to make up the quota required, and each person drawn shall fill such grade in the militia drafted as he was entitled to when drawn in his own company.

[413] SEC. 32. One of the commissioned officers shall draw for every person subject to the draft who shall refuse to draw, or be absent from the parade, and such draft shall have the like effect as if the person so refusing or absent had drawn himself.

SEC. 33. Any person so drafted may offer a substitute at or after the time of rendezvous of the drafted militia, and such substitute, if he be an able bodied man of the age of twenty-one years, and shall consent in writing to subject himself to all the duties, fines, forfeitures and punishments, to which his principal would have been subject had he personally served, shall be accepted by the commandant of the company of drafted militia to which his principal may belong.

SEC. 34. The commander-in-chief shall prescribe such rules, orders and regulations, relative to the distribution of arms, ammunition and military stores, to the militia when called into actual service as he may deem proper.

SEC. 35. The commandants of companies are hereby authorized to put under guard, or to commit to prison for the day, and to return to the proper court-martial, any non-commissioned officer, musician or private, who shall appear on parade wearing any false face, personal disguise, or other unusual ludicrous article of dress, or any arms, weapons, or other implements or things not required by law, and which are calculated to interrupt the peaceable and orderly discharge of duty.

SEC. 36. Any commissioned officer of division, brigade, regiment, separate battalion or company, present at any parade, is hereby authorized to put under

guard, or to commit to prison for the day, any person or persons, who shall upon or near any parade ground, field, public highway, or any other place occupied by the militia under arms, by means of ludicrous disguise, dress, arms and instruments, or by any other means disturb the peaceable and orderly proceedings of those under arms; and the jailor shall receive and confine such persons in the debtors department of the jail, pursuant to the order of commitment which shall be issued and delivered to him in virtue of this or the preceding section.

SEC. 37. It shall be the duty of each commandant of a regiment or separate battalion, within twenty days after the annual inspection, to furnish the commandant of his brigade a local description of separate regiment or separate battalion, together with a roster of the commissioned officers of such regiment.

SEC. 38. It shall be the duty of each brigade inspector, within thirty days after the annual review, in each year to transmit to the ad-[414]-jutant-general a statement of the review, and inspection of the several regiments and separate battalions in his brigade accompanied by the division and brigade staff armed and equipped as the law directs.

SEC. 39. In case any general officer, or any member of his staff, shall neglect to attend such inspection and review, it shall be the duty of the adjutant-general to require such officer to render an excuse, in writing, to the commander-in-chief, for his delinquency. If the commander-in-chief shall deem such excuse insufficient, he shall order a court-martial to try the delinquency.

TITLE VI.

Of courts of inquiry and courts-martial.

ARTICLE FIRST.

SECTION 1. Courts of inquiry may be instituted by the commander-in-chief, or the commanding officer of division or brigade, in relation to those officers for whose trial they are authorized to appoint courts-martial, for the purpose of investigating the conduct of any officer, either by his own solicitation or on a complaint, or charge of improper conduct, degrading to the character of an officer, or for the purpose of settling rank.

SEC. 2. Such courts shall consist of not less than three nor more than five commissioned officers; and the president shall, without delay, report a statement of facts to the officer instituting such court, who may, in his discretion thereupon, appoint a court-martial for the trial of the officer whose conduct shall have been inquired into.

SEC. 3. Every court-martial, for the trial of a major-general, shall be ordered by the commander-in-chief, and shall consist of thirteen officers, any nine of whom shall constitute a quorum.

SEC. 4. Every court-martial for the trial of a brigadier-general shall be ordered by the commander-in-chief, and shall consist of nine officers, any seven of whom shall constitute a quorum.

SEC. 5. All other courts-martial, for the trial of other commissioned officers, shall consist of seven officers, any five of whom shall constitute a quorum, and shall be ordered, if for the trial of officers above the rank of captain, by the commanding officer of division, and for all other officers, by the commanding officer of brigade.

SEC. 6. No officer arrested shall be brought to trial, unless a copy [415] of the charges and specifications, certified by the officer ordering the arrest, shall be delivered to him, or left at his usual place of abode, within three days after his arrest; nor unless the officer ordering the court-martial shall have ordered the same within thirty days after receiving notice of the arrest, and a copy of

the charges and specifications; nor until ten days after a copy of a list of the names of the officers detailed to form the court, shall have been delivered to the officer arrested, or left at his usual place of abode.

SEC. 7. The officer ordering the court may at any time supply any vacancy that, from any cause, may happen therein.

SEC. 8. If the officer accused shall have any cause of challenge to the president of such court, he shall, within a reasonable time after receiving a copy of the charges, and a list of the members, deliver his cause of challenge, in writing, to the officer ordering such court, who shall thereupon determine as to the validity of such challenge; and if, in his opinion, the causes are sufficient, he shall appoint another president of such court.

SEC. 9. After the court shall be assembled, and after all challenges, if any, are made, shall have been determined, the judge-advocate, whether commissioned or special, shall administer to each member the following oath: "You, _____, do swear that you will faithfully discharge the duties of a member of a court-martial now assembled, according to the best of your ability."

SEC. 10. Every judge-advocate, whether commissioned or special, and every member of a court-martial, shall keep secret the sentence of the court until the same shall be approved, or disapproved, according to law, and shall keep secret the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice.

SEC. 11. The sentence of any such court-martial shall be according to the nature and degree of the offense, and according to military usage, but shall not extend further than cashiering the officer convicted, and disqualifying him from holding any office in the militia of this territory, and imposing a fine not exceeding one hundred dollars.

SEC. 12. The proceedings and sentence of every such court-martial, shall, without delay, be delivered to the officer ordering the court, who shall approve or disapprove thereof within fifteen days thereafter, and shall give notice of his approval or disapproval to the president of such court-martial, and to the arresting officer, and he may at his discretion, publish the sentence, as approved or disapproved in orders.

[416] SEC. 13. He shall also transmit such proceedings and sentence, and his approval or disapproval thereof, to the adjutant-general, to be kept in his office

SEC. 14. The right of appeal to the commander-in-chief, as it now exists by military usage, is reserved, but no appeal shall be received unless made within twenty days after the decision appealed from is made known to the person appealing.

ARTICLE SECOND.

Of regimental and battalion courts-martial.

SEC. 15. The commandant of each regiment and separate battalion, shall, on or before the first Monday of June, in every year, appoint a regimental or battalion court-martial, to consist of three commissioned officers, one of whom shall be a field officer or captain, and shall be appointed president thereof.

SEC. 16. The officer appointing the court shall fix the day on which it shall convene; and when convened, the court may adjourn from time to time, as shall become necessary for the transaction of business, but the whole session of the court, from the day on which it shall convene, shall not exceed one week.

SEC. 17. In case any vacancy shall happen in the court, or a new court shall be required, the officer ordering the court, or his successor in command, may fill such vacancy or order a new court.

SEC. 18. The president and each member of such court, before he shall enter on his duties as such, shall take the following oath:

“I ——— do swear, that I will well and truly try and determine, according to evidence, all matters between the people of the United States, and any person or persons which shall come before a regimental (or battalion) court martial of which I have been appointed president (or a member.)”

SEC. 19. Such oath shall be taken by the president, on or before the day on which the court shall convene, before a justice of the county in which he may reside, or a field officer of his regiment or battalion; and it shall be the duty of such justice, or field officer, to administer the oath without fee or reward. The president shall administer the oath to each of the members.

SEC. 20. The president of the court shall direct a non-commissioned officer, or other fit person or persons, to be by him designated, to summon all delinquents and parties accused, to appear before the court at a time and place to be by him appointed.

[417] SEC. 21. Such non-commissioned officer, or other person or persons so designated shall make the like return, and with the like effect as commissioned and non-commissioned officers are authorized and required to make in cases of warning to a company, or regimental parade, and shall be subject to the like penalties for neglect of duty.

SEC. 22. The court, when organized, shall have the trial of all delinquents and deficiencies in the regiments or battalions for which it shall have been called, and shall have power to impose and direct to be levied all the fines to which commissioned officers of companies, and non-commissioned officers, musicians or privates are declared to be subject in first article of the 6th title of this act.

SEC. 23. No fine, imposed by a regimental or battalion court-martial on a commissioned officer, shall prevent such officer from being tried and cashiered for neglect of duty by a court martial, ordered by the commandant of his brigade.

SEC. 24. Every such court-martial may mitigate or wholly remit any penalty or fine, directed to be imposed for any deficiency, in arms or equipments, of any delinquent in any company of infantry, whom the court shall adjudge to be so poor as not to be able to furnish himself with such arms or equipments.

SEC. 25. From the sentence of any such court imposing a fine for any delinquency, an appeal, if made within twenty days, shall be allowed to the officer instituting the court, or to his successor in command, who may remit or mitigate such penalty or fine. In case the delinquent was not personally summoned to appear before such court, and did not appear, he shall have ten days, after personal notice of the sentence, in which to appeal from the decision of the officer instituting such court, or of his successor in command. An appeal, if made within ten days after personal notice of such decision, shall be allowed to the commanding officer of the brigade, who may remit or mitigate such penalty or fine.

ARTICLE THIRD.

General provisions applicable to all courts-martial and courts of inquiry.

SEC. 26. The president of every court-martial, and of every court of inquiry, both before and after he shall have been sworn, and also the judge advocate, if required, shall issue subpoenas for all witnesses, whose attendance at such privates are declared to be subject in first article of the 6th title of this act. court may, in his opinion, be necessary, in [418] behalf of the people of the United States, and also an application for all witnesses in behalf of any officer charged or accused, or persons returned as delinquent, and may direct the commandant

of any company to cause such subpoena to be served on any witness residing within his district.

SEC. 27. The president of such court-martial, or court of inquiry, shall have power to administer the usual oath to witnesses, and shall have the same power to compel attending witnesses to be sworn and testify, and to preserve order, as courts of common law jurisdiction; and all sheriffs, jailors and constables are hereby required to execute any precept issued by such president for that purpose.

SEC. 28. Every witness not appearing in obedience to such subpoena, when duly served, and not having a sufficient or reasonable excuse, shall forfeit to the people of this territory a sum not less than five or more than fifty dollars; and the president of such court shall from time to time report to the district attorney such offense, the name of all such delinquent witnesses, together with the names and places of residence of the persons serving such subpoena, the better to enable him to prosecute for such forfeiture.

SEC. 29. Any person or persons who shall be guilty of disorderly, contemptuous, or insolent behaviour in, or use any insulting or contemptuous, or indecorous language, or expression to, or before any court-martial, or court of inquiry, or any member of either of such courts in open court, may be committed to the jail of the county in which such court shall sit, by warrant under the hand and seal of the president of such court.

SEC. 30. Such warrant shall be directed to the sheriff, or any or either of the constables, or marshals of any such county, or any officer attending the court, and shall command the officer to whom it is directed to take the body of such person and to commit him to the jail of the county thereof, to remain without bail or mainprise in close confinement for a time to be limited, not exceeding three days, and until the officer's fees for committing, and the jailor's fees be paid.

SEC. 31. Such sheriff shall receive the body of any person who shall be brought to him by virtue of such warrant, and keep him until the expiration of the time mentioned in the warrant, and until the officer's and jailor's fees shall be paid, or until the offender shall be discharged by due course of law.

SEC. 32. In the absence of the president of any court-martial, or court of inquiry, the senior officer present may preside, with all the [419] powers of the president, and all the members of such courts shall, when on duty, be in full uniform.

SEC. 33. The president of any court-martial, or court of inquiry, may appoint by warrant under his hand and seal, one or more marshals.

SEC. 34. The marshal or marshals so appointed, may not only perform the usual duties of such marshals, but may also execute all process lawfully issued by such president, and perform all acts and duties in this act imposed on and authorized to be performed by any sheriff, marshal or constable.

SEC. 35. Whenever the sentence of any court-martial shall be appealed from, the officer hearing the appeal shall require the president of the court-martial to furnish him forthwith with a statement of the case, and of the evidence touching the same, which statement and evidence shall in case of an appeal to the commanding officer of the brigade, be forthwith, on notice of such appeal, transmitted to him.

SEC. 36. Such statement being furnished, the officer hearing the appeal may hear such further evidence by affidavit or otherwise, as the nature of the case may require; and for that purpose he shall have the power to administer the usual oaths to witnesses produced before him, except in cases where trials may have been had upon charges preferred.

SEC. 37. The two last sections shall extend to appeals made from the order of an officer approving the sentence of a court-martial.

TITLE VII.

Of penalties, fines, fees, and expenditures.

ARTICLE FIRST.

SECTION 1. Every commissioned officer, for disobedience of orders, neglect of duty, unofficer-like conduct, or disrespect to a superior officer, or for neglecting to furnish himself with a uniform and equipments, within twelve months after receiving his commission, shall be arrested and brought to trial before a court-martial, who may, on conviction, sentence him to be cashiered, incapacitated from holding any military commission, and fined to an amount not exceeding one hundred dollars, or may sentence him to any part of such penalties, or to be reprimanded in their discretion.

[420] SEC. 2. Every commissioned officer refusing to pay over moneys in his hands as is directed in the second article of this title, shall be liable to be tried and cashiered, or otherwise punished therefor, by a court martial.

SEC. 3. Every commissioned officer of a company, and every non-commissioned officer, musician and private, shall, on due conviction, be subject, for the following offenses, to the fines thereto annexed:

1. Every non-commissioned officer, musician, and private, for non-appearance, when duly warned or summoned, at a company parade, a fine of one dollar; at a regimental or battalion parade, or rendezvous of officers, not less than two nor more than four dollars; and at a place of rendezvous, when called into actual service, a sum not exceeding fifty dollars.

2. Every commissioned officer under the rank of colonel, for non-attendance at any parade, and every such officer, non-commissioned officer, musician, or private, for neglecting, or refusing, to obey the orders of his superior officers, on any day of parade, or to perform such military duty or exercise as may be required, or departing from his colors, post or guard, or leaving his place or rank without permission, a fine not more than fifteen nor less than five dollars.

3. For neglecting or refusing to obey any order, or warrant, to him lawfully given or directed, or to make a proper return thereof, if such return be necessary, or making a false return, or neglecting or refusing when required to summon a delinquent before a court-martial, or duly to return such summons, a fine not more than twenty-five nor less than five dollars.

4. Every commissioned officer, for neglecting or refusing to act as such, when duly appointed, shall be sentenced to pay a fine not exceeding fifty dollars, and not less than five dollars. Every non-commissioned officer, for neglecting or refusing to act as such, when duly appointed, shall be sentenced to pay a fine not exceeding twenty dollars nor less than five dollars; and every non-commissioned officer, for neglect of duty, or unofficer-like conduct, in addition to other penalties, may be reduced to the ranks by the commandant of the company with the approbation of the commandant of the regiment or battalion.

5. Every non-commissioned officer, musician or private, who shall unlawfully discharge any fire arms on the days of company or regimental muster, shall be sentenced to pay a fine of one dollar.

6. Every non-commissioned officer and private, appearing without being armed and equipped as the law directs, at any parade or ren-[421]-dezvous, shall be sentenced to pay the following fines, namely: For want of sufficient sword and belt, if belonging to the artillery, and for want of a sufficient musket with a steel rod, or rifle, if belonging to a company of infantry, one dollar; for want of a sufficient bayonet and belt, twenty-five cents; for want of a pouch with a box therein sufficient to contain twenty-four cartridges, suited to the bore of his musket, twenty-five cents; for want of two spare flints and knapsack, twenty-

four cartridges, shot pouch, powder horn, twenty balls, and a quarter of a pound of powder, twenty-five cents each; but the whole number of spare flints, of cartridges, and of balls, shall be considered each only one deficiency.

7. The penalty imposed for want of bayonet, belt and cartridge-box, shall not apply to any non-commissioned officer or private of a rifle company, or to any private of any other company, having a powder horn and pouch.

8. Each non-commissioned officer and private in the mounted rifle corps, shall be sentenced to pay as fine, for want of sufficient horse, two dollars; for want of sufficient rifle and sling, one dollar; for want of sufficient pistol and belt, one dollar; for want of a sufficient saddle, bridle, breast-plate, valise, or cartridge box, twenty-five cents each.

9. The court martial, by which any delinquent is tried, may excuse such delinquent if it shall be made satisfactorily to appear to the court that he has a reasonable excuse for such delinquency.

10. Any commissioned officer who shall retain a commission received by him for any subaltern, for more than thirty days, without giving notice by mail or otherwise, to the person entitled to it, shall be liable to pay a fine not exceeding twenty-five dollars, to be imposed, in case of a commissioned officer of a company, by a regimental or battalion court martial on the complaint of any officer interested, and in case of a general or field officer, by a general court martial, which shall be ordered on the like complaint. In addition to the penalties imposed by any of the provisions of this act, every commissioned and non-commissioned officer, musician, and private, of a company, who shall appear on 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 intercept the orderly and peaceable discharge of duty by those under arms, shall be liable to a fine of not more than twenty-five nor less than five dollars, to be imposed by the proper court martial.

SEC. 4. No action shall be maintained against any member of a [422] court martial, or officer, or agent acting under its authority, on account of the imposition of a fine, or the execution of a sentence on a person not liable to military duty, if such person shall have been returned as a delinquent, and duly summoned, and shall have neglected to show his exemption before such court.

ARTICLE SECOND.

Of the collection and application of penalties, fines and commutation money.

SECTION 1. All fines that shall be imposed by any regimental or battalion court martial shall be reported by the president of the court to the officer ordering it, or to his successor in command, within twenty days after such fines shall have been imposed; and the officer ordering the court, or his successor in command, shall immediately after the time shall have elapsed in which appeals are allowed from his decision to the commandant of the brigade, give written notice to the president of the court of the penalties and fines which shall have been by him remitted or mitigated, and of the appeals which shall have been made from his decision to the commandant of the brigade.

SEC. 2. For the purpose of collecting fines the president of the court shall, within ten days after the receipt of the written notice aforesaid, make a list of all persons of whom fines are to be collected, designating the company to which they respectively belong, the sums imposed as fines on each person, and the person who shall have appealed to the commandant of the brigade; and shall draw his warrant under his hand and seal directed to any constable of any city or county, as the case may be, thereby commanding him to levy such fine or fines, together with his costs, of the goods and chattels of such delinquents; and

if any such delinquent shall be under age, and live with his father or mother, master or mistress, then to levy such fine or fines, and the costs of the goods and chattels of such father or mother, master or mistress, as the case may be; and in case the goods and chattels of any delinquent over the age of twenty-one years cannot be found wherewith to satisfy the same, then to take the body of such delinquent and convey him to the jail of the city or county wherein he shall reside.

SEC. 3. It shall be the duty of the jailor to whom such delinquent shall be delivered, to keep him closely confined without bail or mainprise, for four days, for any fine not exceeding two dollars, and one additional day for every dollar above that sum, unless the fine, together with the costs and jailor's fees shall be sooner paid.

[423] SEC. 4. Every such constable to whom such list and warrant shall be directed and delivered, may execute the same by levying and collecting the fines or by taking the body of the delinquent, in any city, town or county in this territory and shall make return thereof within forty days from the receipt of such warrant to the president who issued the same; the execution of said warrant shall be suspended as to those persons who shall have appealed to the commandant of the brigade until the further order of such commandant.

SEC. 5. If the constable shall not be able to collect the fines or take the bodies within the forty days aforesaid, then the president issuing the warrant may at any time thereafter, within two years from the time of imposing the fines, issue a new warrant from time to time, as may be necessary.

SEC. 6. Any warrant for the collection of fines, issued by virtue of this act, shall and may be renewed in the same manner that executions issued from justices' courts may by law be renewed.

SEC. 7. The moneys arising from fines imposed by any regimental or battalion court martial, shall be paid by the officers collecting the same to the president of the court. The sureties which shall hereafter be given by any constable elect, shall be deemed liable to pay to the president of the court all such sums of money as the said constable may become liable to pay on account of any warrant which shall be delivered to him for collection.

SEC. 8. Such president, after deducting and paying the costs and fees properly chargeable on the fines so recovered by him, shall pay the surplus of such fines to the officer by whom the court shall have been ordered.

SEC. 9. Every such president shall from time to time, as often as he shall be required, furnish to the officer ordering the court or to his successor in command, a correct statement of all moneys received by him on account of fines, and of all fines imposed; and it shall be the duty of the officer instituting every such court, or his successor in command, to make such request within thirty days after any such court shall be held.

SEC. 10. Whoever shall wilfully neglect or refuse to comply with such request for the space of ten days, shall be liable to be tried and cashiered therefor.

SEC. 11. It shall be the duty of the respective presidents of courts martial to prosecute in their own names any marshal or constable who [424] shall incur any penalty for neglect in the execution or return of any warrant, or in paying over moneys collected by him.

SEC. 12. The moneys arising from such penalties when collected, shall be paid over and applied as other moneys payable to the commandants of regiments and separate battalions are directed to be paid over and applied in this article.

SEC. 13. All penalties and fines imposed by courts martial upon commissioned officers, shall be collected by the attorney general, or by the district at-

torneys of the counties in which the persons fined may reside, and be paid by the officer collecting the same into the treasury.

SEC. 14. All moneys received by each commandant of a regiment or separate battalion, shall be expended under the direction of the field officers and commandants of companies in such regiment or battalion, and shall be applied in the first place to the purchase and repair of colors, and instruments of music, and the residue in disciplining and improving such regiment or battalion in such manner as a majority of the field officers and commandants of companies shall direct.

SEC. 15. It shall be the duty of each commandant of a regiment or separate battalion to keep an accurate account of all moneys by him received and expended for the use of the regiment or battalion, and to exhibit such account on request to any commissioned officer of his regiment or battalion; and to deliver it over to his successor in office.

SEC. 16. Each commandant of brigade shall examine and adjust the accounts of the commandants of regiments and separate battalions in his brigade, on or before the first day of May in each year.

SEC. 17. If the commandants of any regiment or separate battalion, shall neglect or refuse to pay moneys belonging to the regiment or battalion, as the field officers and commandants of companies shall have directed, the commandant of brigade shall sue in his own name for such moneys and apply the same when recovered to the use of the regiment or battalion.

SEC. 18. It shall be the duty of the several officers to whom moneys are in this article directed to be paid, in case of the refusal or neglect of the person directed to account for and pay over such moneys, to sue for the same in their own names, but to the uses before specified, in an action for money had and received.

SEC. 19. Every officer so suing may retain out of the money he shall collect, all necessary and reasonable expenses he may incur in such suits.

[425] SEC. 20. It shall be no objection to any person called as a witness, or to serve as a juror in any action authorized in this article, that he is a member of the regiment or battalion that may be affected by such action.

ARTICLE THIRD.

Of the compensation and fees of the members of courts martial, and other officers.

SEC. 21. There shall be allowed and paid out of the treasury:

1. To each division and brigade judge advocate, and to each president and member of any court of inquiry, or court martial for the trial of officers, two dollars for each day actually employed on duty; and the like compensation to any marshal or marshals appointed by any such court, for every day employed in the execution of the duties required of him:

2. To each brigade inspector, for inspecting a regiment or separate battalion, eight dollars; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, eight dollars; for making out and transmitting to the adjutant general an inspection return of his brigade, eight dollars:

3. To each military storekeeper, such sum, not exceeding twenty dollars, as the commander-in-chief shall think proper to allow.

SEC. 22. No payment shall be made to any brigade inspector until he shall have furnished evidence to the auditor of his having made out and transmitted the inspection return of his brigade to the adjutant general, and a copy thereof to his division inspector; nor shall any payment be made to a division

inspector until he shall have furnished like evidence of his having made out and transmitted his division return to the adjutant general, and the commandant of his division.

SEC. 23. There shall be allowed and paid out of the fines imposed by each regimental or battalion court martial, and received by the president thereof:

1. To the president, one dollar and fifty cents for each day he may be actually employed in holding the court or engaged in the business thereof.

2. To each member of the court one dollar and fifty cents for each day he may sit as such member, or may be engaged in traveling to and from the court, allowing twenty miles for a day's travel:

3. To the non-commissioned officer or other person who shall [426] have summoned delinquents to appear before the court, one dollar and fifty cents for each day he may have been so necessarily employed, and the same sum for each day of his attendance on the court.

SEC. 24. No other sums or expenses whatever shall be charged on the fines received by the president of any such court, but the president, members and officers shall defray the expenses out of the fees allowed to them respectively.

SEC. 25. Each constable to whom a warrant for the collection of fines may be directed, shall be entitled to the same fees, and be subject to the same penalties for any neglect, as are allowed and provided for on executions issued out of justices' courts.

SEC. 26. For all other service and commitments under this act, the sheriff, jailor and constables executing the same, shall be entitled to the like fees as for similar services in other cases.

SEC. 27. The accounts of all persons who, under this article, are entitled to be paid out of the treasury, shall be audited by the auditor: and of all persons who are to be paid out of the fines imposed by a regimental or battalion court martial, by the officer ordering the court.

SEC. 28. The auditor, on the application of the governor, may draw his warrant on the treasurer for such sum of money as may be requisite in the execution of the provisions of this act, and may require the chief of each staff department to account quarterly for all moneys received by him for purposes connected with his department.

TITLE VIII.

Of the duties of certain staff officers, of and various matters connected with their respective departments.

ARTICLE FIRST.

Of the adjutant general.

SECTION 1. The adjutant general shall keep a roster of all the officers of the militia of this territory, containing the corps to which they belong, the division, brigade, and regiment of such corps, and the places of their residence, as accurately as can be ascertained, which roster shall be revised and corrected every year.

SEC. 2. He shall also enter in a book to be kept for that purpose, [427] a local description of the several regiments, brigades, and divisions of infantry, artillery and riflemen.

SEC. 3. It shall be the duty of the commandants of divisions and brigades to furnish the adjutant general with a roster of their officers, containing the facts requisite to enable him to comply with the provisions of this article, and also a description of the regiments and brigades.

SEC. 4. The books required by the adjutant general to comply with this article, shall be furnished him at the expense of this territory, and shall go to his successor in office.

SEC. 5. It shall be the duty of the brigade inspectors to transmit a copy of the inspection return annually to the adjutant general, and duplicate of the same to the division inspector, within thirty days after the inspection shall be made.

SEC. 6. The adjutant general shall procure, at the expense of the territory, a seal with some proper device thereon, which shall be the seal of his office, and shall from time to time be delivered to his successor in office; and all copies of records or papers in his office duly certified and authenticated under the seal, shall be evidence in all cases in like manner as if the originals were procured.

SEC. 7. The adjutant general shall receive for his services, one hundred and fifty dollars per annum.

ARTICLE SECOND.

Of the commissary general.

SEC. 8. The commissary general shall keep in good repair the arsenals and magazines of the territory, and attend to the due preservation and safe keeping, cleaning and repairing of the ordnance, arms, accoutrements, ammunition, munitions of war, and implements of every description, the property of this territory; and he shall at all times have the control and disposition of the same for that purpose.

SEC. 9. He shall dispose, to the best advantage, of all damaged powder, and of all arms, ammunition, accoutrements, tools, implements, and warlike stores, of every description whatsoever, that shall be deemed unsuitable for the use of the territory.

SEC. 10. He shall, from time to time, render a just and true account of all sales made by him, with all convenient speed, to the governor, and shall pay the proceeds of such sales into the treasury.

SEC. 11. Whenever the commanding officer of a brigade shall cer-[428]-tify that a stand of colors, or any drums, fifes or bugles, are necessary for any battalion in his brigade, the commissary general, with the approbation of the commander-in-chief, shall furnish such battalion with a stand of colors, and a sufficiency of drums, fifes and bugles, at the expense of the territory; but no such drums, fifes or bugles shall be furnished to any brigade at an expense greater than the sum that shall have been theretofore actually paid into the treasury for fines in such brigade.

SEC. 12. The commissary general shall issue the general allowance of powder and balls to artillery companies for practice, and the several commandants of artillery companies shall annually report to the commissary general, the situation and state of the pieces of ordnance, arms, implements, and accoutrements, the property of the territory entrusted to their charge, respectively.

SEC. 13. The commissary general shall report annually to the commander-in-chief, whose duty it shall be to transmit the same to the legislature, a true and particular statement, showing the actual situation and disposition of all the ordnance, arms, ammunition, and other munitions of war, property and things, which in anywise appertain to, or respect the department confided to his keeping.

SEC. 14. He shall keep a just and true account of all the expenses necessarily incurred in and about his department; and once, at least, in every six months, deliver the same to the auditor, who shall thereupon examine and audit the same,

and shall draw his warrant on the treasurer for such sum as he shall audit and certify to be due.

SEC. 15. The organization of the militia into divisions, brigades, regiments and companies, under the act to organize, discipline, and govern the militia, approved January 4, 1838, shall remain unchanged, except by order of the commander-in-chief, or in accordance with the provisions of this act.

SEC. 16. This act shall take effect from and after its passage, and all laws contravening the same are hereby repealed.

Approved July 31, A. D. 1840.

[429] CHAPTER 98.

MILITIA.

AN ACT to amend the militia law.

SECTION.

1. Officers serving 4 years to be exempt from duty in peace.
2. Non-commissioned officers and musicians serving 7 years, exempt in time of peace.

SECTION.

3. Uniform members exempt conditionally.
4. Officers to hold offices during pleasure of commander-in-chief.
5. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all military officers, who are now or may hereafter be commissioned, and who shall serve as such in the militia of this territory, or in that of one of the United States, for the space of four years, shall be exempt from military duty in time of peace: provided, however, that no such officer who may have served in the militia of this territory, shall be so exempt, unless by his resignation after such term of service duly accepted, or in some other lawful manner, honorably discharged from his commission.

SEC. 2. Every non-commissioned officer, musician, and private of every uniform company, raised or hereafter to be raised, who has uniformed himself or shall hereafter uniform and equip himself, and whose term of service in such company may have amounted or shall amount to seven years, from the time of his enrollment therein, shall be exempt from military duty, except in cases of war, insurrection, or invasion.

SEC. 3. If any member of such company, who shall have been regularly uniformed and equipped, shall upon his removal out of the district of such company, or upon the disbandment thereof, enlist into another uniform company and uniform and equip himself therefor, and serve in the same, whenever the whole term of his services in such companies computed together shall amount to seven years, he shall be exempt from military duty, in like manner, as if he had served the whole period in the company in which he was first enrolled.

SEC. 4. *And be it further enacted*, that all officers hereafter elected or appointed, who shall willingly consent to such election or appointment, may hold such office during the pleasure of the commander-in-[430]-chief, unless removed by a legal court martial, but no such officer shall under the provisions of this act, be entitled to resign his office until he has served at least two years from and after his election or appointment, and no resignation shall be accepted for a

shorter term of service, without good cause shown to the satisfaction of the officer to whom such resignation shall be presented.

SEC. 5. All acts or parts of acts, which may conflict with this act is hereby repealed.

Approved February 17, A. D. 1842.

CHAPTER 99.

MINORS, ORPHANS AND GUARDIANS.

AN ACT concerning minors, orphans and guardians.

SECTION.

1. Orphan minors may choose guardians.
2. Neglecting to do so, probate court to appoint.
3. In what case the father may be appointed.
4. Insanity or incapacity of the father provided for.
5. Guardians to prosecute for their wards.
6. Bond to be executed by guardian, and its condition.

SECTION.

7. Guardians to render accounts to probate court, and give additional security if required.
8. Probate court may remove guardians.
9. Powers of guardians.
10. Education of ward.
11. District court may order sale of real estate.
12. Account of money to be returned to probate court.
13. Appeals allowed to district court.
14. Compensation to guardians.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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 [431] 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.

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 a 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.

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 [432] 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.

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.

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.

SEC. 10. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the [433] ward: and, for that purpose, may pay out such portions of the ward's money as the court of pro-

bate 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.

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.

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.

SEC. 14. Guardians, on final settlement, shall be allowed such fees and compensation for their services, as shall seem reasonable and just [434] to the judge of probate, not exceeding what are, or shall be, allowed by law to administrators.

Approved January 25, A. D. 1839.

CHAPTER 100.

MARRIAGES.

AN ACT regulating marriages.

SECTION.

1. Who may be joined.
2. And by whom.
3. Minister to be licensed.
4. License to be produced to clerk, and to be recorded.
5. Record to be evidence.
6. Parties to obtain license.
7. Evidence of legality, consent of parties, fee, &c, &c.
8. Certificate of marriage to be recorded.

SECTION.

9. Penalty for failure to transmit or record.
10. Record to be presumptive evidence of marriage.
11. Penalty for solemnizing marriage contrary to this act.
12. Forfeitures how recovered.
13. What marriages void.
14. Repealing clause, &c.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That male persons of the age of eighteen years, female persons of the age of fourteen years, not nearer of kin than first cousins, and not having a husband or wife living, may be joined in marriage: provided always, that male persons under twenty-one years, female persons under the age of eighteen years, shall first obtain the consent of their fathers respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians.

SEC. 2. That it shall be lawful for any ordained minister of the gospel of a religious society or congregation within this territory, who has or may hereafter obtain a license for that purpose, as hereinafter provided, or for any justice of the peace in his county, or for the several religious societies agreeably to the rules and regulations of their respective churches, to join together all persons as husband and wife not prohibited by this act.

SEC. 3. That any minister of the gospel, upon producing to the clerk of the district court of any county in this territory in which he [435] officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive from said clerk a license authorizing him to solemnize marriages within this territory, so long as he shall continue a regular minister in such society or congregation.

SEC. 4. That it shall be the duty of every minister who is now or shall hereafter be licensed to solemnize marriages as aforesaid, to produce to the clerk of the district court, in every county in which he shall solemnize any marriages, his license so obtained, and the said clerk shall thereupon enter the name of such minister upon record, as a minister of the gospel, duly authorized to solemnize marriages within this territory, and shall note the county from which said license issued, for which services no charge shall be made by such clerk.

SEC. 5. That when the name of any such minister is so entered upon the record by the clerk aforesaid, such record, or the certificate thereof by the said clerk, under the seal of his office, shall be good evidence that the said minister was duly authorized to solemnize marriages.

SEC. 6. That previous to persons being joined in marriage, a license for the purpose, shall be obtained from the clerk of the district court, in the county

where such female resides, agreeably to the provisions of this act: provided, that the society called Friends or Quakers, may solemnize marriages in their public meetings without the production of such license.

SEC. 7. That the clerk of the district court as aforesaid, may inquire of the party applying for marriage license as aforesaid, upon oath or affirmation relative to the legality of such contemplated marriage, and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and if any of the persons intending to marry shall be under age, the consent of the parents or guardian shall be personally given before the clerk, or certified under the hand of such parent or guardians, attested by two witnesses, one of which shall appear before the clerk and make oath or affirmation that he saw the parent or guardian whose name is annexed to such certificate subscribe, or heard him or her acknowledge the same, and the clerk is hereby authorized to issue and sign such license, and affix thereto his seal of office. The clerk shall be entitled to receive, as his fee for administering the oaths or affirmation aforesaid, and granting license, recording the certificate of marriage, and filing all the necessary papers, the sum of one dollar and twenty-five cents; and if [436] any clerk shall, in any other manner, issue or sign any marriage license, he shall forfeit and pay a sum not exceeding five hundred dollars, to and for the use of the party aggrieved.

SEC. 8. That a certificate of every marriage hereafter solemnized, under the hand of the justice, minister, or the clerk or keeper of the records of the societies mentioned in this act, specifying,

1. The christian names and surnames, ages, and places of residence of the parties married;

2. The time and place of such marriage shall be transmitted to the clerk of the district court of the county where such marriage was solemnized, within three months thereafter, and be recorded by such clerk in a book to be kept by him for that purpose.

SEC. 9. Every justice, minister, or clerk, or keeper of records, in section eight mentioned, failing to transmit such certificate to the clerk of the district court of the county, in due time, shall forfeit and pay fifty dollars, to and for the use of the county; and if such clerk shall neglect to record the same, he shall forfeit and pay fifty dollars, to and for the use of the county.

SEC. 10. That the record of a marriage made and kept as before prescribed by the clerk of the district court, or a copy thereof duly certified, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

SEC. 11. That if any justice or minister by this act authorized to join persons in marriage, shall solemnize the same contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding five hundred dollars, to and for the use of the county where such offense was committed; and if any person not legally authorized shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county where such offense was committed.

SEC. 12. That any fine or forfeiture arising under the provisions of this act to the county, in consequence of any breach of this act, shall be recovered by action of debt, or by indictment, with costs of suit, in any court of record having cognizance of the same.

SEC. 13. All marriages of white persons with negroes or mulattoes are declared to be illegal and void.

SEC. 14. That all laws now in force in this territory, not embraced in the statutes of Iowa, on the subject of marriage, be and the [437] same are hereby re-

pealed. This act to take effect, and be in force from and after the first day of March next.

Approved January 6, A. D. 1840.

CHAPTER 101.

MARRIAGES.

AN ACT supplementary to an act regulating marriages, approved January 6, 1840.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all marriages which may have been solemnized by any regularly ordained or licensed minister of the gospel in this territory, previous to the taking effect of this act, shall be in all respects as valid in law, as though the same had been solemnized by a minister licensed as required by the third section of the act to which this is a supplement.

SEC. 2. This act to take effect from and after its passage.

Approved February 17, A. D. 1842.

CHAPTER 102.

MILLS AND MILLERS.

AN ACT regulating mills and millers, and for other purposes.

SECTION.

1. How owners of land on one side of a stream, wishing to build a mill to obtain the other side.
2. Writ of ad quod damnum, to whom directed, how served, &c.
3. Charge to jury when met, the power, duty, etc., etc.
4. Notice to owners to appear in court and show cause against leave.
5. Proceedings when land on both sides is owned by the same person wishing to build mill.
6. Leave given upon inquest of court, with certain restrictions and regulations.
7. Acquisition and character of title limitation, etc.

SECTION.

8. Operation of this act as to damages.
9. Forfeiture upon non-compliance.
- 10-11-12. Penalty for obstructing, injuring, or destroying race, dams, etc., of such mills.
13. What constitutes a public mill.
14. Regulations of steam, water, and horse mills, rates of toll, etc., etc., proviso.
15. Duty of millers, attention, toll dishes, measures, etc.
16. Accountable for safe keeping of grain, sacks, bags, casks, etc.
17. Forfeiture for failure to grind, taking unlawful toll, etc., etc.
18. Repealing clause, and when act to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when any person, owning lands on one side of a stream or water course, the bed of which wholly, or in part, belonging to himself or her-

self, 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 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 writ 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.

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 [439] each owner will sustain thereby, and whether the dwelling house, outhouse, 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.

SEC. 4. When the inquest aforesaid shall be taken, the party obtaining the same shall notify the owner or owners of such lands mentioned in such inquisition, whose lands are to be affected by the same, to appear at the district court at 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.

SEC. 5. Any person wishing to build such mill, and to 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 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.

SEC. 6. If on such inquest, or other evidence, it shall appear to the court that the dwelling house of any proprietor, or any outhouse, 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.

SEC. 7. If the party applying obtain leave to build the said dam, he shall, on paying the proprietors of the lands located, 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.

[440] 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.

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.

SEC. 10. That whenever any saw mill, grist mill or machinery of any kind, is erected and put into operation, the same being propelled either in whole or in part, by water power, it shall not be lawful for any person or persons, so to obstruct or divert the course of said water or water power, so as to turn it away from said mill or other machinery.

SEC. 11. That whenever any mill dam, mill race, canal, trench or any gate, flume or other appurtenance or improvement, is made or erected, for the purpose of conveying water to any mill, or other machinery, it shall not be lawful for any person or persons to break down, injure, remove, destroy or otherwise impair such dam, canal, trench or race, gate, flume, or other appurtenance or improvement, so as in any way to effect, diminish or impair the power necessary to propel said mill or other machinery.

SEC. 12. That any person or persons who shall wilfully violate the provisions of this act, upon conviction thereof, in any court of competent jurisdiction in this territory, shall be liable to pay to the party aggrieved, treble the amount of damages actually sustained by the party owning such mill or other machinery, or be imprisoned at the discretion of the court.

SEC. 13. 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. 14. 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; 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, [441] one-eighth part. For any ox or 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.

SEC. 15. 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.

SEC. 16. 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 any grain, bags, or casks, which happen by unavoidable accidents.

SEC. 17. 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, unless by consent of the party entitled to his first turn, as the same may have been brought, any miller so offending, shall forfeit and pay the sum of five dollars, as before directed.

SEC. 18. This act to take effect and be in force from and after its passage, and that all acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

Approved February 3, A. D. 1843.

[442] CHAPTER 103.

MORTGAGES.

AN ACT concerning mortgages.

SECTION.

1. Mortgages, before whom, and where acknowledged and recorded.
2. To be a lien from time of record.
3. Duty of recorder relative to time of filing mortgages.
4. Petition for foreclosure.
5. Where petition may be filed.
6. Summons to defendants to appear and answer petition; service, and return of same.
7. Proceedings when not found.
8. When names not known.
9. Who may be made defendants.
10. Defendant not appearing, judgment rendered by default.
11. When cases to be tried.

SECTION.

12. Order of sale, when any part of mortgage money is found to be unpaid.
13. Writs of fieri facias to sheriff commanding him to sell.
14. How returned.
15. Where directed.
16. When mortgaged property does not satisfy amount due, execution to issue.
17. Satisfaction of amount due to be acknowledged, and where.
18. Forfeiture for failure to do so within sixty days.
19. To operate as a release.
20. Certificate of redemption before sale to have same effect as satisfaction entered.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all mortgages, whether for real or personal estate, shall be acknowledged before some person authorized by law to take the acknowledgement of deeds, and shall be recorded, if for lands, in the county or coun-

ties in which the lands lie, and if for personal property, in the county in which the mortgagor resides.

SEC. 2. Every mortgage, whether for real or personal property, shall be a lien on the mortgaged property from the time the same is filed in the recorder's office for record; which filing shall be notice to all persons of the existence of such mortgage.

SEC. 3. It shall be the duty of the recorder to endorse on every mortgage filed in his office for record, and note in the record the precise time such mortgage was filed for record.

SEC. 4. All mortgagees of real estate and mortgagees of personal estate may file a petition in the office of the clerk of the district court [443] against the mortgagor, and the actual occupiers of such real estate, if any, setting forth the substance of the mortgage deed, and praying that judgment may be rendered for the debt, and that the equity of redemption may be foreclosed, and that the mortgaged property may be sold to satisfy the amount due.

SEC. 5. If any part of the property be real estate the petition may be filed in any county where any part of the mortgaged premises are situated; but if it be exclusively for personal property it may be filed and proceedings commenced as in personal actions.

SEC. 6. The clerk of the district court shall issue a summons commanding the defendant to appear and answer such petition at the return day thereof, and if there be two or more defendants, and they reside in different counties, a separate summons shall be directed to each county including all the defendants therein, and the service and return of such summons shall be made as in actions at law.

SEC. 7. If a return be made of such summons that any defendant cannot be found, an alias summons may be issued to the same or any other county, or publication may be made and proceedings therein had as in similar cases in courts of chancery.

SEC. 8. Defendants whose names are unknown may be sued, and orders of publication may be made as in suits of chancery.

SEC. 9. Any person claiming an interest in the mortgaged property may be made defendant to any such proceedings, on motion, and may plead any lawful plea in avoidance or bar of the deed or debt, and an issue shall be made and tried as in actions of law.

SEC. 10. If any person summoned or notified as aforesaid, thirty days previous to the return of such summons, do not appear and answer such petition at the time required, judgment shall be rendered by default, and proceedings had thereon as in actions at law.

SEC. 11. All cases under the provisions of this act shall be tried at the term of the court to which the summons is made returnable, if such summons shall have been served thirty days previous to the return day thereof, unless for good cause shown.

SEC. 12. If upon trial it be found that any part of the mortgage money is unpaid, and that the petitioner is entitled to recover the same, the court shall render judgment for the debt, interest and costs, and shall make an order that the mortgaged property be sold, describing the same as in the mortgage, or so much thereof as is sufficient to satisfy the amount found due, with interest thereon until paid.

SEC. 13. Upon such order a special writ of fieri facias shall be is-[444]sued, directed to the sheriff, referring to the order of sale, and commanding the sheriff that of the real and personal estate, in such order specified, he cause to be levied the debt, damages and costs, together with interest thereon from the

date of the judgment, which shall be specially stated in the writ, and that he have the money at the return day of such writ.

SEC. 14. Such writs shall be returnable as other executions, and the advertisement, sale, and conveyance of real and personal estate, under the same, shall be made as under other executions.

SEC. 15. If such mortgage be for real estate, such writ of fieri facias shall be directed to the county in which the same is situate, and if it be for personal property it may be directed to any county.

SEC. 16. If the whole of the mortgaged property does not sell for a sum sufficient to satisfy the amount due, an execution may be issued against the defendant as on ordinary judgments.

SEC. 17. If any mortgagee, his executor, administrator, or assignee, shall receive full satisfaction for the amount due on any mortgage, he shall, at the request of the person making satisfaction, acknowledge satisfaction thereof on the margin of the record in which such mortgage is recorded.

SEC. 18. If any person, thus receiving satisfaction, do not within sixty days after being requested, acknowledge satisfaction as aforesaid, he shall forfeit to the party aggrieved any sum not exceeding the amount of the mortgage money, to be recovered by an action of debt in any court of competent jurisdiction.

SEC. 19. Such acknowledgement of satisfaction, made as aforesaid, shall have the effect to release the mortgage and bar all actions brought thereon, and revert in the mortgagor or his legal representatives all title to the mortgaged property.

SEC. 20. If such mortgaged property be redeemed by payment to the officer before the sale, such officer shall make a certificate thereof and acknowledge the same before some officer authorized to take the acknowledgment of deeds for lands, and such certificate shall be recorded in the office in which the mortgage is recorded, and shall have the same effect as satisfaction entered on the margin of the record.

Approved February 14, A. D. 1843.

[445] CHAPTER 104.

NE EXEAT AND INJUNCTIONS.

AN ACT regulating the issuing of writs of ne exeat and injunctions.

SECTION.

1. Writs of ne exeat, in what cases granted.
2. Remedies of obligors against each other, when one or more are about to remove, securities, etc.
3. Application for writ, how made, endorsement when granted, bond and security, conditions, suit for damages, etc., etc.
4. Return of writ, in vacation and.
5. Writ to contain summons, defendant to give bond, security, condition, etc., etc.
6. Security may surrender the principal and be discharged.
7. Return of writ, proceedings in court,

SECTION.

- may be stayed, quashed, or set aside.
8. Writs of ne exeat and injunction, by whom and when granted.
9. Return of writs.
10. When suit to be had upon an injunction to stay.
11. Limitation of injunction. Bond necessary to procure injunction dissolved, complainant liable for costs, interests, etc.
12. Attachment for contempt against person for breach of injunction.
13. Motion to dissolve injunction, continuance how procured, testimony, depositions, etc.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 show that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.

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 a writ of ne exeat to [446] 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.

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 cause 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 such damages and costs as he shall wrongfully sustain by vaca-

tion 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.

[447] 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.

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.

SEC. 9. When an injunction shall be granted by the supreme court, or a judge thereof, it shall be returnable into the district court of the proper county.

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.

SEC. 11. No injunction shall be granted to stay any judgment at law, for a greater sum than the complainant shall show 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 (445) of legal interests 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.

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, A. D. 1839.

[449] CHAPTER 105.

NOTARIES PUBLIC.

AN ACT to provide for the appointment of notaries public, and to prescribe their duties.

SECTION.

1. Appointment.
2. Bond.
3. Notice of protest to maker, etc., of bills of exchange to be given.
4. To keep record.
5. To serve notice personally.
6. Seal of office and powers.

SECTION.

7. Disposition of papers in case of death.
8. Penalty for neglect.
9. Same.
10. District clerk to receive records.
11. And make copies.
12. Penalty for destroying records.
13. Recovery of forfeitures.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the governor of this territory, by and with the advice and consent of the council, may appoint and commission one or more notaries public in each organized county, who shall hold their office three years, unless sooner removed.

SEC. 2. Each notary public, so soon as he receives his commission, shall repair to the office of the clerk of the district court of his proper county, and give bond to the governor in the sum of five hundred dollars, with sufficient security, to be approved of by such clerk, conditioned for the due and faithful performance of his duty as notary public, which bond shall be filed in the office of the clerk, and, if forfeited, be sued for in the name of the territory, and for its use.

SEC. 3. It shall be the duty of each notary public, whenever any bill of exchange, promissory note, or other written instrument shall be by him protested for non-acceptance or non-payment, to give notice thereof in writing to the maker and endorsers of any bill of exchange and to the maker, and each security or endorser of any promissory note or written instrument, immediately after such protest shall have been made.

SEC. 4. It shall be the duty of each notary public to keep a correct record of all such notices, and the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument [450] protested, which record shall, at all times, be competent evidence to prove such notice in any trial before any court in this territory; and to all the attestations, protestations, and other instruments of publication of the said notaries public, due faith shall be given.

SEC. 5. It shall be the duty of the notary public, personally, to serve the notice upon the person protested against, provided said person reside within two miles of the office of such notary public; but if said person reside more than two miles from such office, then the said notice may be forwarded by the first mail or other safe conveyance.

SEC. 6. Each notary public shall procure a seal, which shall be called the "notarial seal," and he shall have full power and authority to administer oaths, and take acknowledgments or proofs of deeds, mortgages, powers of attorney, and other instruments of writing, with or without the release and assignment of dower.

SEC. 7. On the death, resignation, or removal from office, of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the district court for the same county in which said notary public resided.

SEC. 8. If any notary public, on his resignation or removal from office, shall, for the space of three months, neglect to deposit his records and official papers in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars.

SEC. 9. If the executor or administrator of any deceased notary public, shall, for the space of three months, after his acceptance of such appointment, neglect to deposit in the clerk's office, the records and official papers of such deceased notary, which shall come into his hands, he shall forfeit a sum not exceeding five hundred dollars.

SEC. 10. The several clerks of the district court shall receive, and safely keep, all the records and official papers of any notary public which are, in this act, directed to be deposited in the office of said clerks.

SEC. 11. Said clerks shall make and certify copies of any records and official papers of any notary public deposited with them, for which copies they shall be paid the same fees that such notary public would have been entitled; and all copies certified by the said clerk shall have the same effect in law as if they had been certified by such notary public.

SEC. 12. If any person shall knowingly destroy, deface, or conceal, any records or official papers of any notary public, he shall forfeit a [451] sum not exceeding one thousand dollars, and moreover be liable in damages to any party injured.

SEC. 13. When any forfeiture is incurred by this act, it may be recovered by action of debt in the name of the territory and for its use.

Approved December 24, A. D. 1839.

CHAPTER 106.

PROMISSORY NOTES, &c.

AN ACT relative to promissory notes, bonds, due bills, and other instruments of writing.

SECTION.

1. Bonds, notes, etc., to be taken according to their purport.
Assignment thereof and its effects.
Suits for the recovery of money, or property promised, and the right of action.
2. Assignor liable when due diligence has been used by assignee, proviso.
3. Defense of maker in suit upon endorsed note or bill.
4. Notice of payment to endorsee and its effect on trial.
5. Want of consideration or failure of, a good defense.
6. Fraud or circumvention pleaded in bar.

SECTION.

7. When personal property to be paid, time, place, and manner of tender.
8. Effects of legal tender as to personal property, proviso, relative to certain kinds.
9. Corporations, partnerships, etc., style of suits, judgment and execution, individual liability herein.
10. Signature to notes, must be denied under oath, proviso as to judgment.
11. Signature to notes by agent, how governed.
12. Repealing clause.
13. Act when to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, due bill, or other instrument of writing is made, and any such note, bond, due bill or other instruments of [452] writing, made payable to any persons, 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 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 allege payment to the payer, made after notice of such assignment, as a defense against such assignee.

SEC. 2. Every assignor, or his heirs, executors, or administrators on every such note, bond, bill, or other instrument of 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 of writing became 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.

SEC. 3. If any such note, bond, bill, or other instrument of 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 defense 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.

SEC. 4. If any such note, bond, bill, or other instrument in writing [453] shall be endorsed before the day the money or property therein mentioned became due and payable, and the endorser 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.

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 other 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 in 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.

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 such instruments, whether such action be brought by the party committing such fraud or circumvention, or by any assignee of such instruments.

SEC. 7. In all cases where any of the before mentioned instruments of writing are for the payments 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 such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument [454] 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 pur-

suance of this section shall be equally as valid and legal in case any such instrument of writing shall have been assigned in pursuance of the first section of this act, as if no such assignment had been made.

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 the duty of 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, prescribing, or sustaining such property until payment be made for such trouble and expense.

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 partner-[455]-ship 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 partnerships.

SEC. 10. The signature to all bills, promissory notes, bonds, or other instruments of writing, or to any assignments thereon 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 a judgment against him at that term, must prove the execution and assignment of the note, bond, or other instrument.

SEC. 11. The signature to all promissory notes, bonds, bills, or other instruments of writing, (the same having been executed by an agent, in the name of his principal,) on which suit is or may be commenced in any of the courts of this territory, shall be considered as *prima facie* evidence of their execution, and shall be governed in all respects as other promissory notes, bonds, bills, or other instruments of writing, according to the provisions of the tenth section of this bill.

SEC. 12. That an act, entitled an act, relative to promissory notes, bonds, due bills, and other instruments of writing, approved January 4, 1839, be and the same is hereby repealed.

SEC. 13. This act to take effect, and be in force, from and after its passage.
Approved February 8, A. D. 1843.

PUBLIC LANDS

CHAPTER 107.

OATHS AND AFFIDAVITS.

AN ACT concerning oaths and affidavits.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the following officers are hereby authorized and empowered to administer oaths and affidavits, in all cases wherein such oath or affidavit may be required by law, viz: Justices [456] of the peace, clerks of the district court, the clerk of the supreme court, notaries public, and judges of probate.

SEC. 2. This act to take effect and be in force from and after its passage.
Approved February 10, A. D. 1842.

CHAPTER 108.

PUBLIC LANDS.

AN ACT to provide for the collection of demands growing out of contracts for sales of improvements on public lands.

SECTION.

1. What contracts hereafter made shall be deemed valid.

SECTION.

2. Conveyances to be binding and effectual.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, A. D. 1839.

[457] CHAPTER 109.

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.

SECTION.

1. Boundary and extent of claim.
2. Abandonment.

SECTION.

3. Particular case in which action may be sustained.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter in actions of trespass, *quare clausum fregit*, trespass, 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 boundaries 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: provided, that such "claim" shall not exceed in number of acres the amount limited to any one person, according 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 provided, 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 sub-division, 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 boundaries 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" (except mineral lots) unless he has actually made an improvement, as required by the custom of the neighborhood in which such claim or claims may be situated.

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 [458] such an abandonment as to preclude said owner from sustaining either of the aforesaid actions.

SEC. 3. Nothing in this act contained shall be construed 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 unenclosed, may exceed in the whole three hundred and twenty acres.

Approved January 25, A. D. 1839.

CHAPTER 110.

PARTITION.

AN ACT to provide for the partition of real property.

| SECTION. | SECTION. |
|--|---|
| 1. When suit may be commenced for partition. | 34. May be set aside. |
| 2. Petition and affidavit. | 35. Confirmation. |
| 3. Who must be parties to suit. | 36. When judgment conclusive. |
| 4. Infant owners. | 37. Other cases. |
| 5. Court may appoint guardian. | 38. Court may order sale of property. |
| 6. Summons served. | 39. Security. |
| 7. Notice to unknown defendants. | 40. General incumbrance. |
| 8. What it shall contain. | 41. Holders to be parties. |
| 9. Publication of notice. | 42. Notice of sale. |
| 10. Defendant's answer. | 43. Report to be filed. |
| 11. What it may deny. | 44. Conveyances. |
| 12. Issue formed. | 45. If sales disapproved. |
| 13. Tried by juries. | 46. Conveyance to be recorded. |
| 14. Amendment and effects. | 47. Share of party under legal disability. |
| 15. When new parties introduced. | 48. Proof of incumbrance. |
| 16. Issues of fact. | [459] 49. Calculation of estate for life. |
| 17. What each of parties to exhibit. | 50. Investment of proceeds if consent be not given. |
| 18. When statement to be taken as true. | 51. Not to delay distribution. |
| 19. Judgment. | 52. Holder of incumbrance. |
| 20. Parties not appearing. | 53. Contingent interest. |
| 21. Incumbrance. | 54. Share of absent owner. |
| 22. Commissioners. | 55. Expenses. |
| 23. Vacancy. | 56. Equity powers. |
| 24. Affidavit by commissioners. | 57. Security to refund. |
| 25. Acts of majority valid. | 58. Security to be by bond. |
| 26. To report if partition would be prejudicial. | 59. How investments to be made. |
| 27. Partition according to value. | 60. Discharge of security, etc. |
| 28. Report. | 61. Clerk to receive and apply moneys. |
| 29. Allotment of shares. | 62. In what cases petition to pay costs. |
| 30. Partition of part of property. | 63. Writ of error may be brought. |
| 31. Allowance to commissioners. | 64. What errors may be assigned thereon. |
| 32. Costs. | 65. Judgment by court above. |
| 33. Report to be acknowledged. | |

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any one or more joint tenants or tenant 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.

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 partition shall be verified by affidavit, and filed in the office of the clerk of the court.

SEC. 3. All persons having interests 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.

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.

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.

SEC. 6. After filing the petition aforesaid, a summons shall issue which shall be served and returned, as in other cases.

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 [460] such defendants not known or not found as aforesaid, to be signed by him, and furnished to the petitioners, or their attorney, on demand.

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 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 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 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 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 by separate juries, or any portion thereof by the same jury, at the discretion of the court.

SEC. 14. After an amendment affecting the interests 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 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.

[461] SEC. 16. All issues of fact shall be tried by a jury 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.

SEC. 18. If the statements in the petition are not contradicted by some of the defendants, or by the aforesaid proofs themselves, such statements shall be taken as confessed and true.

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.

SEC. 20. The shares and interests of all those parties who shall not have appeared as aforesaid, shall, as between such parties, remain undivided.

SEC. 21. Any incumbrance on the undivided share of any party shall, after petition, be confined to the particular share of such party.

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.

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.

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.

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.

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.

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.

[462] 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.

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.

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.

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.

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.

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.

SEC. 35. Upon the report of commissioners being confirmed, judgment shall thereon be rendered that such partition be firm and effectual forever.

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 hereinbefore prescribed, the judgment aforesaid shall be binding and conclusive upon all persons whatsoever.

SEC. 37. In other cases it shall only bind those who shall have been duly served with the summons as aforesaid.

SEC. 38. If the said commissioners shall report that the whole or [463] 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 entered, directing the commissioners to sell the premises so situated at public auction, to the highest bidder, and also fixing the terms of sale.

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.

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.

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.

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.

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.

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.

SEC. 45. If such sales be disproved, the moneys paid, and the securities given, shall be returned to the respective purchasers.

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.

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 [464] 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.

SEC. 57. The court may, in its discretion, require all or any of the [465] 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.

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.

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.

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.

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.

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.

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.

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 adjudication, 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, A. D. 1839.

[466] CHAPTER 111.

PRACTICE.

AN ACT to amend an act relative to practice in the district courts of this territory.

SECTION.

1. Duty of clerks of district courts in certain cases.

SECTION.

2. Act when to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter, when any action is pending, in any of the district courts of this territory, it shall be legal for the clerk of said court, and it is hereby made his duty, on the application of any party to any such suit, to issue subpoenas for witnesses into any adjoining county in this territory, which shall be issued and returned as in other cases; and all subsequent process shall issue accordingly, as in other cases.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved January 15, A. D. 1841.

CHAPTER 112.

PRACTICE.

AN ACT regulating practice in the district courts in the territory of Iowa.

SECTION.

1. Authority, test, date and return of writs.
2. Service and return of writs, proviso.
3. Continuance granted for certain reasons.
4. Proceedings on trial when one or more defendants are absent, judgment, etc.
5. Sheriff punished as for contempt for neglecting or refusing to return summons.
6. Effects of failure to file declaration at certain time before first term, and also second term of court.
7. Clerk to keep docket, apportion and classify causes, etc.
- [467] 8. Duty of clerk as to witnesses.
9. When court may decide law and facts.
10. Parties required to produce books, etc., particulars to be filed in defendant's plea.
11. Time of pleading, judgment by default, continuance, admission of facts, etc.
12. Multiplicity of pleas, general issue and special matter, verification of pleas, etc., proviso.
13. Damages how assessed, when judgment by default.
14. When judgments by default set aside.
15. Affidavits made in court to be filed.
16. Actions on penal bonds, breaches of covenants, penalty to stand as security, damages, &c., &c., proviso relative to notice to defendant, or attorney.
17. Set off, plea, and notice, judgment for defendant.
18. Peremptory challenges, documentary evidence, non-suit, &c.
19. Bills of exception part of record, refusal of judge to allow remedied by supreme court.
20. Verdict how rendered, exceptions, motion for new trial, arrest of judgment, grounds for motion, stay of proceedings, limitation, etc., etc.
21. General verdict how sustained.
22. Judgment by confession, release of errors, record in such cases, etc.
23. Judgment arrested for error, order of court.

SECTION.

24. Fee book of clerk, what it shall set forth, a public record, bill of costs to accompany execution, how collected, etc.
25. Bill of costs to correspond with fee book, otherwise void, names of witness, and attendance to be stated in same.
26. Docket book, character and correction of fee book.
27. Judgment docket, order thereof, duty of clerk, detailed satisfaction of judgment, penalty for neglect, how recovered, etc.
28. Remedy against sheriff for refusal to return execution, party may apply for relief, duty of courts to grant order, its requirements, etc., proviso.
29. Return of executions to be entered, penalty for failure.
30. Writs of summons, how served.
31. How served against corporations.
32. How against county commissioners.
33. Costs for plaintiff in actions of tort where damages are less than fifty dollars.
34. Division in opinion in court on hearing an appeal.
35. Charge of district court confined to law.
36. Scrawl equal to seal.
37. Incompetent witnesses.
38. Non-joinder in appeal or writ of error not to affect proceedings thereon.
39. Minors may sue by next friend.
40. Proceedings where defendants reside in different counties.
41. Interpreters.
42. Declaration not necessary to be filed in scire facias to revive judgment.
43. Filing bond or note, etc., petition and form.
44. Assignment of bond or note.
45. Petition equal to a declaration.
46. Defects after verdict, how cured, election of remedies.
47. Repealing clause.
See note.

SECTION.

48. Execution with attachment served on garnishee.
49. Judgment against garnishee.

SECTION.

50. Writs of scire facias not necessary to revive judgment until the lapse of five years.

[468] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. 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 writ.

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.

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.

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, 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 [469] 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.

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.

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 cost 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.

SEC. 7. The clerks of the district courts of 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 name of the plaintiff's attorney, and he shall furnish the judge and the bar at each term with a copy of the same, in which all indictments and causes to which the United States may be a party shall be first set down; all cases in law, in order, according to the date of their commencement, and lastly, the suits in chancery; and the clerks 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.

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; [470] 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.

SEC. 9. In all cases pending in any district court of this territory, if both parties shall agree, both matters of law and fact may be tried by the court.

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 contains 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.

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 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 also that affiant knows of no other witness by whom the particular fact or facts could be proved, 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.

SEC. 12. The defendant may, in his defense, plead specially 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 defense 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 specially pleaded and issue taken thereon; but no person shall be permitted to deny, on trial, the [471] execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be set up by way of defense or set off, unless the person so denying the same shall file his, or her affidavit denying the execution of such instrument; provided, if the party making such denial be prosecuting or defending said suit 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 where judgment shall go by default, the plaintiff may have his damages assessed by a 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 the motion is made at the term said judgment was rendered.

SEC. 15. All affidavits made in court during the progress of any cause, and relating thereto, shall be filed and preserved by the clerk.

SEC. 16. In all actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration as many breaches as he may think fit, and the jury, whether on trial of 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 security for such other breaches as may afterwards happen, and the plaintiff may, at any time afterwards, sue out a writ of inquiry to assess damages for the 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 judgment, 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, his agent, or attorney shall have at least ten days notice, in writing, of the time of executing the same.

[472] SEC. 17. The defendant or defendants, in any action brought upon any contract or agreement, either 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, and the same, or such part thereof, as the defendant shall prove on trial shall be set off and allowed against the plaintiffs demand, and a verdict shall be given for the balance due, and if it shall appear that the plaintiff be indebted to the defendant, the jury shall find a verdict for the 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 defense, and executions shall be issued on such judgment as in other cases.

SEC. 18. In all civil actions each party shall be entitled to a challenge of three jurors without showing cause for such challenge; and when the jury retire to consider of their verdict 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.

SEC. 19. If, during the progress of any trial in any civil cause, either party shall allege an exception to the opinion 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 of the district court shall refuse to allow or sign such bill of exceptions tendered, and the same 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.

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 [473] 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 verdict or judgment shall be given.

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.

SEC. 22. Any person for a debt, *bona fide* due, may confess judgment by himself, or attorney duly 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 complete record, unless especially requested by one of the parties, who shall pay the costs of the complete record.

SEC. 23. Where judgment shall be arrested for any defect in the record or proceedings, after the first process, the plaintiff shall not be compelled to commence his action anew, but the court shall order new pleadings to commence with the error that caused the arrest.

SEC. 24. The clerks of the several district courts shall keep a fee book in which shall be clearly and distinctly set down, in items, under the proper title, the costs of each suit, including the sheriff's and witnesses' as well as the 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 suit shall be determined and final judgment entered, 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 the execution, and the costs of the party failing in the suit shall be collected in the manner prescribed by law.

SEC. 25. If any clerk shall issue a fee bill or a bill of costs with the execution, without first entering the same in his fee book, or if any such bill of costs, or fee bill, shall be so issued which shall not be, in substance, a copy of the recorded bill, the same shall be void, and any person having paid such bill of costs or fee bill, may recover from the clerk the amount thereof, with costs of suit, in any court having cognizance thereof. And in every bill of costs to be made or re-

corded as aforesaid, the names of the witnesses shall be stated with the number of days each attended at every term.

[474] SEC. 26. 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.

SEC. 27. 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 book, in alphabetical order, the name of the person against whom the judgment or decree was rendered, 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 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.

SEC. 28. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution to him delivered, 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 coroner five days' notice in writing of his, her or their intention to 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 [475] 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 allowed.

SEC. 29. The clerk shall enter in a book to be kept by him for that 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-seventh section of this act.

SEC. 30. That all writs of summons issuing from any court of record in this territory, shall be served by reading to the defendant if found, and if not found, by leaving a copy thereof attested by the officer serving the same at his dwelling house or usual place of abode, with some person of the family of fifteen years of age or upwards, and stating the contents to said person.

SEC. 31. That in all suits against any corporation, the summons shall be served by leaving an attested copy thereof, with the clerk, cashier, secretary,

agent or any other officer having charge of their business, and if there be no such officer found within the county, the summons may be served on any member of the corporation.

SEC. 32. That in all suits against the board of commissioners of any county, or against the inhabitants of any county in this territory, the summons shall be served by leaving an attested copy thereof, with one of the commissioners, or with the clerk of the board of county commissioners.

SEC. 33. That in all actions of tort, brought originally in any of the district courts of this territory, if the plaintiff recover less than fifty dollars, such plaintiff shall recover no more costs than damages.

SEC. 34. Whenever the supreme court shall be equally divided in opinion, on hearing an appeal or writ of error, the cause shall stand continued until all the judges are on the bench.

SEC. 35. The district court in charging the jury, shall only instruct them as to the law of the case.

SEC. 36. 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, that the seal be referred to in the body of the instrument.

SEC. 37. A negro, mulatto or Indian, shall not be a witness in any court, or in any case against a white person.

[476] SEC. 38. 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 said persons if necessary, but no costs shall be taxed against any person who shall 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. 39. 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 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.

SEC. 40. 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 resides, 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.

SEC. 41. Interpreters may be sworn truly to interpret, when necessary.

SEC. 42. No declaration shall hereafter be considered necessary to be filed in any *scire facias* to revive a judgment.

SEC. 43. 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 the same with the clerk of the district court having jurisdiction thereof, together with the petition purporting as follows:

DISTRICT COURT, — COUNTY, }
 Iowa Territory, } ss.

A. B., plaintiff, states that he holds a bond, or note, (as the case may be) on the defendant, C. D., in substance as follows, (here insert a copy of the bond or note) yet the same debt remains unpaid, where-[477]-fore he prays judgment for his debt and damages, for the detention of the same, together with his costs.

SEC. 44. 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 has become the proprietor thereof, of which the defendant has had due notice.

SEC. 45. 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.

SEC. 46. 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.

SEC. 47. That an act entitled an act regulating practice in the district courts of the territory of Iowa, approved January 25th, 1839; and an act amendatory of an act regulating practice, etc., approved January 17th, 1840; and an act supplemental to an act regulating practice in the district courts, approved December 31st, 1840; and an act to amend an act relative to practice in the district courts, approved January 9th, 1841; and an act providing for the service of writs, by copy, in certain cases, be and the same are hereby repealed.

Approved February 10, A. D. 1843.

NOTE—The three following sections are added as additional sections to this act, in accordance with the provisions of the sixth section of an act to amend the several acts therein named, approved, 16th February, 1843.—See Chapter 20.

SEC. 48. That any person having obtained a judgment before any court of record within this territory, against any defendant, the plaintiff, upon filing an affidavit setting forth that the deponent verily believes that the defendant has not in his possession, within the knowledge of any such affiant, any visible property or effects sufficient to satisfy said judgment and costs, and that the said affiant believes that the defendant in the judgment has property, rights, or credits, (as the case may be, stating the particulars of the case,) in the hands of A. B. (naming him,) an execution upon such judgment may issue, containing an attachment clause, which shall be served upon any such garnishee, requiring him to appear at the return of such execution and answer to [478] interrogatories touching his indebtedness to the said defendant in execution, at or subsequent to the time of the service of such attachment.

SEC. 49. That if any such garnishee shall be found to be indebted to the defendant in any such execution, a judgment shall be rendered against any such garnishee for the amount for which he admits himself to be indebted in his said answers, or so much thereof as will satisfy any such execution, with costs of suit, and of the attachment; and any such judgment against the garnishee shall bind all such property, effects, rights, and credits in the hands of such garnishee, and the payment of the amount of the judgment by such garnishee, shall operate as a conclusive bar to the right of any such defendant

in execution to recover the amount paid under this process against any such garnishee.

SEC. 50. That no writ of *scire facias* shall be necessary to revive any judgment heretofore or hereafter had in any of the district courts of this territory, until after the lapse of five years from the rendition of the same, and execution may, at any time, be issued upon the same until said lapse of five years, unless said judgment be sooner satisfied.

Approved February 10, A. D. 1843.

CHAPTER 113.

PARTNERSHIPS.

AN ACT relative to limited partnerships.

| SECTION. | SECTION. |
|---|--|
| 1. By whom and for what purpose formed. | 12. Effect of alteration of names, business, or capital. |
| 2. General and special partners and their respective liabilities. | 13. Names to be used in business transactions. |
| 3. General partners to transact business. | 14. Style of suits. |
| 4. Certificate of partnership, what to contain. | 15. Special partnerships, extent of liabilities, and their privileges. |
| 5. Before whom and when acknowledged. | [479] 16. Reduction of capital prohibited. |
| 6. Where and by whom recorded when in different counties. | 17. Special partners, extent of their liabilities, and their special privileges. |
| 7. Affidavit as to moneys paid. | 18. Partners to account to each other. |
| 8. Partnership when formed, and effect of false statement. | 19. Fraud and consequent damages. |
| 9. Terms of partnership to be published, and effect of neglect. | 20. Transfer in contemplation of insolvency, etc., void. |
| 10. Affidavit of publication and its effect. | 21. Preference of creditors prohibited. |
| 11. Proceedings to renew or continuance. | 22. Liabilities of special, by violation of the above sections. |
| | 23. Creditors to be first satisfied. |
| | 24. Notice of dissolution to be recorded, and published. |

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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 to the capital.

SEC. 3. The general partners only, shall be authorized to transact business and sign for the partnership, and to bind the same.

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.

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.

SEC. 6. The certificate, so acknowledged and certified, shall be re-[480]-corded 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.

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.

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.

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.

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.

[481] 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 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.

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.

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.

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.

SEC. 16. If it shall appear, that by the payment of interest, or profits, to any special partner, the original 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.

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.

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.

SEC. 19. Every partner who shall be guilty of any fraud, in the [482] affairs of the partnership, shall be liable, civilly, to the party injured, to the extent of his damage.

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.

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.

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.

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.

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.

Approved January 25, A. D. 1839.

[483] CHAPTER 114.

PENITENTIARY.

AN ACT to provide for the erection of a penitentiary, and establishing and regulating prison discipline for the same.

SECTION.

1. Capacity and cost of building.
2. Directors, number, power and oath, how elected, etc.
3. Building where located, land donated, title recorded.
4. Superintendent appointed, his powers and duties.
5. Appropriation by congress for penitentiary, duty of directors, etc.
6. Compensation of directors.

SECTION.

7. Warden and assistants appointed, bond, securities, etc., etc.
8. Compensation of same.
9. Duty of warden.
10. Inspection of prison, warden account, etc., etc.
11. By-laws and regulations of directors.
12. Employment of ministers of the gospel and their compensation.
13. Appropriations past and future.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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 re-

quired 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 [484] two years, and the third for the term of one year, and after the 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.

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: provided, 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.

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 the Connecticut state prison at Wethersfield; he shall also, and under the like direction, and subject to the same control, [485] 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.

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, [486] or state, to be approved 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.

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.

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.

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 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.

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.

SEC. 12. That the directors may, at their discretion, employ any [487] 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.

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.

Approved January 25, A. D. 1839.

CHAPTER 115.

PENITENTIARY.

AN ACT to amend an act entitled "An act to provide for the erection of a penitentiary," &c.

SECTION.

1. Governor to appoint warden.
2. Power and duties of warden.
3. Compensation, etc.
4. Pay of director.
5. Pay of superintendent.
6. Governor to draw appropriations.
Proviso.

SECTION.

7. Superintendent authorized to issue certificates, etc.
8. Payment of same.
9. Of rewards for recovery of convicts.
10. Appropriation to Wells & Wilson.
11. Repealing clause.
12. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall be appointed by the governor, by and with the advice and consent of the council, a warden for the penitentiary, who shall hold his office for the term of one year, and until his successor be appointed, whose duties shall be the same as those required of the warden in the act to which this is amendatory.

SEC. 2. That the warden is hereby authorized and empowered to hire out the convicts confined in the penitentiary, and that the amount of the labor so performed, which shall be paid over to the superinten-[488]-dent, and the money arising therefrom, be reported by said warden to the director and by him to the legislative assembly. But said convicts shall not be hired out of the town in which the penitentiary is located, nor shall they be hired out separately.

SEC. 3. That the warden shall receive an annual compensation of five hundred dollars; and each assistant shall receive not exceeding twenty dollars per month, to be fixed by the director.

SEC. 4. That the director shall receive two hundred and fifty dollars annually, payable as provided for in "an act to amend an act to provide for the erection of a penitentiary," approved, January 17th, 1840.

SEC. 5. That the superintendent shall be paid only for the time he shall be necessarily employed in the performance of his duties, as prescribed by the act to which this is amendatory, at the rate of one thousand dollars per annum. The accounts of the superintendent shall be examined and allowed by the director, and paid out of any money appropriated by congress for the erection and completion of the penitentiary.

SEC. 6. That the governor is hereby authorized to draw any appropriation which may be made by congress for the completion of said building, 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, that the governor shall not pay over to said superintendent more than ten thousand dollars at any one time.

SEC. 7. That the superintendent is hereby authorized to issue certificates, payable out of any moneys hereafter appropriated by congress to the amount of one thousand five hundred dollars, to be used in payment for the transportation of stone from the quarry in Illinois to the penitentiary, and the completion of the doors for the cells.

SEC. 8. That the superintendent is hereby authorized to pay, out of any appropriation to be made for the purpose aforesaid, the several sums due on the certificate issued by the superintendent for work done and materials furnished for said building; and also the several sums due, or which may hereafter become due, for expenses for guarding, clothing and boarding the convicts; and provided that no such appropriation be made, then and in that case the superintendent is hereby required to certify the amount of the several sums so due to the auditor of the territory, who is hereby authorized to draw his warrant on the treasurer of the territory for the payment of the same.

[489] SEC. 9. That the director is hereby authorized, on the escape of any convicts from said prison, to offer such reward not exceeding one hundred dollars for the apprehension and delivery of such fugitive, as to him may seem proper; and the superintendent is hereby authorized to pay out of any appropriation to be made for the purposes aforesaid, all rewards now due and owing, or which may hereafter become due, to any individuals for the apprehension of convicts, and provided no such appropriation be made, then and in that case he shall certify the amount so due, to the auditor of the territory, who is hereby authorized to draw his warrant on the treasurer of the territory for the payment of the same.

SEC. 10. That the superintendent is hereby authorized to pay to Wells and Wilson, of Fort Madison, the sum of seven thousand one hundred dollars, with six per cent interest until paid, for work done on the penitentiary, out of the first appropriation to be made by congress for the completion of said building; and provided no such appropriation be made, then he is hereby required to certify the sum so due to the auditor of the territory, who is hereby authorized to draw his warrant on the treasurer of the territory for said amount.

SEC. 11. That all acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

SEC. 12. This act to take effect from and after its passage.

Approved January 15, A. D. 1841.

CHAPTER 116.

PENITENTIARY.

AN ACT to amend the several acts providing for the erection of the penitentiary, &c.

SECTION.

1. Account of warden to be audited by auditor of the territory.
2. Late director and superintendent to report from date of their last, to

SECTION.

- the time of the abolishment of their offices.
3. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the account of the warden of the pen-[490]-itentiary shall be annually examined and audited by the auditor of the territory.

SEC. 2. That the late director and superintendent of the penitentiary, shall report, to the said auditor, of their doings and expenditures, since the date of their last annual reports, up to the time of the taking effect of the act abolishing their said offices; and it is hereby made the duty of the said director and superintendent to deliver over to the said warden, all the books, papers and vouchers belonging to their respective offices.

SEC. 3. This act to take effect and be in force from and after its passage.

Approved February 16, A. D. 1843.

CHAPTER 117.

PETITION.

AN ACT to repeal an act to regulate the mode of petitioning the legislature, in certain cases.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That an act entitled an act, to regulate the mode of petitioning the legislature, in certain cases, approved January 25, 1839, be and the same is hereby repealed.

Approved February 17, A. D. 1842.

CHAPTER 118.

POOR.

AN ACT for the relief of the poor.

SECTION.

1. Legal residence and settlement defined.
2. Blacks and mulattoes excluded.
3. Not to exclude voters under provisions of first section.
4. Warrant to constables to warn poor persons to depart.
5. Provision for poor legally settled in [491] a township.
6. Duty of overseer to afford relief, and how.
7. Order of trustees to directors to receive paupers.

SECTION.

8. Temporary relief by overseer.
9. Removal of paupers, by whom, and expense how borne.
10. May be removed to state or county in which they have legal settlement.
11. Overseers to keep account of expenses, enter names of the poor, etc.
12. Trustees of poor to issue demands accruing under this act.
13. Provision for grants and devises to the poor.
14. Former act repealed.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any person or persons, other than those hereinafter provided for, residing one year in any township in this territory, without being warned by the overseers of the poor for said township, to depart the same or three years after being once so warned, without being again warned as aforesaid, shall be considered as having gained a legal residence in such township; every indentured servant or apprentice legally brought into this territory, shall obtain a legal settlement in the township where such servant or apprentice first served his master or mistress three years; and every married woman during coverture, and after her husband's death, shall be considered legally settled in the place where he was last legally settled; but if he shall have, or shall have had, no known legal settlement, then she shall be considered as settled in the place where she was last legally settled before marriage.

SEC. 2. That nothing in this act shall be so construed, as to enable any black or mulatto person, to gain a legal settlement in this territory.

SEC. 3. That the provisions of this first section of this act, shall not be so construed as to exclude any person from voting at elections, who would otherwise by the laws of this territory be entitled to vote.

SEC. 4. That the overseers of the poor, upon receiving information that any person has come within the limits of their township to reside, who will be likely to become a township charge, shall issue their warrant or order to any constable of the township, commanding him forthwith to warn such poor person to depart the township, by reading such warrant or order of the overseers of the poor, in his or her presence, and hearing, or by leaving an attested copy thereof, at his or her last place of residence; and it shall be the duty of such constable receiving such warrant or order, to make immediate service thereof in manner above [492] directed, and to certify on the back of such warrant, that he read the same in the presence or hearing of the person therein named to depart the township, or left an attested copy thereof at his or her last place of residence, as the case may be; which warrant the said constable shall immediately lodge with the clerk of said township, who shall record the same, and the certificate of the constable endorsed thereon within three days thereafter, in the book containing the records of the township.

SEC. 5. That upon complaint being made, or information given to the trustees of the township in any county having a county poor house, that any inhabitant of such township having a legal settlement therein, is in a suffering condition and requires public assistance or support, said trustees shall inquire into the condition and necessities of such person, and if satisfied that such person ought to be relieved at public expense, they shall make out an order to the directors of the poor house, to receive and provide for such person, and shall accompany said order with the statement required by the act, to authorize the establishment of poor houses.

SEC. 6. That when the overseers of the poor of any township in any county, having no poor house, shall be satisfied that any person having legal residence in such township, is in a suffering condition, and ought to be relieved at the expense of such township, they may afford such relief at the expense of their township, as in their opinion the necessities of such person may require; and when more than temporary relief is required, the overseers shall set up a notification in three public places in their township, specifying some time and place at which they will attend for the purpose of receiving proposals for the maintenance of such pauper, which notification shall be posted up, at least seven days before the day named therein, for receiving such proposals; and said overseers may contract with such person as they shall think suitable, to take charge of and maintain such pauper, and who will do the same on the most reasonable terms; but they shall not contract for the support of such pauper for a longer period than one year, at any one time.

SEC. 7. That if the trustees of any township, in any county having a poor house, shall issue an order to the directors of such poor house, requiring them to receive and provide for any pauper, and such pauper be rejected by said directors, under the provisions of the ninth section of the act to authorize the establishment of poor houses, the overseers of the poor of such township, shall receive and provide for such pauper, according to the provisions of the preceding section of this act.

[493] SEC. 8. That the overseers of the poor of each township, shall also afford temporary relief or support to any person within their township, and not having a legal settlement in the same, when such relief or support is needed.

SEC. 9. That if any person shall become chargeable in any township, in which he, she, or they have not gained a legal settlement, it shall be the duty of the overseers of the poor of such township, to cause such person or persons, so soon as their health will permit, to be removed to the township where he, she, or they were last legally settled, if such person or persons have any legal settlement in this territory; and the overseers of the poor of such township, shall receive such pauper or paupers thus removed, and provide for his, her or their maintenance, in the manner pointed out by law; and the township in which such pauper or paupers have gained a legal settlement, and to which he, she, or they are transported, shall pay said overseers of the township, which have thus supported and removed said pauper or paupers, all reasonable charges for such support and removal; and upon refusal, may be compelled by an action of debt, brought against the trustees of said township, before the district court of the county in which either or both of the townships may be situated; and the trustees of each and every township in this territory, are hereby empowered to sustain said action against the trustees of any other township in this territory, for thus supporting and removing their own paupers.

SEC. 10. That in case any person or persons, becoming chargeable to any township as aforesaid, shall have no legal settlement within this territory, the overseers of the poor in such township, if directed by the trustees, may remove such person or persons to the state or county where he, she, or they have a

legal settlement, unless such person or persons shall give sufficient security, to indemnify the said township.

SEC. 11. That the said overseers shall keep fair and accurate accounts of all expenses incurred, for the support of the poor, within their respective townships, and make entries in a book of the names of the poor, and the time when each of them became chargeable, together with an account of their own services rendered; and on the first Monday of March, annually, the said overseers shall meet the trustees of their respective townships, and exhibit said books and accounts, which the said trustees are hereby authorized to audit and allow, together with such compensation to the said overseers, for their services, as shall, in the opinion of said trustees, be just and reasonable.

SEC. 12. That it shall be the duty of the trustees, in each and ev-[494]-ery township, to issue orders to the township treasurer, for any and all such demands as may accrue under the provisions of this act: and the said trustees may issue such orders on the treasury, in favor of the overseers of the poor, at any time during the year, when it shall be necessary to carry into effect any of the provisions of this act.

SEC. 13. That all gifts, grants, devises, and bequests, hereafter to be made, of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, to the poor of any township, by deed, gift, or by the last will and testament of any person or persons, or otherwise, shall be good and valid in law; and shall convey such houses, lands, tenements, rents, goods, and chattels, to the trustees of such township, and their successors in office, for the use of their poor respectively, under such regulations as shall, from time to time, be made by law.

SEC. 14. That the act for the relief of the poor, approved January 16, 1840, be and the same is hereby repealed: provided, that in counties where townships are not, or may not be organized, the said act shall be in as full force as if this act had not passed.

Approved February 16, A. D. 1842.

CHAPTER 119.

POOR HOUSES.

AN ACT to authorize the establishment of poor houses.

SECTION.

1. County commissioners to erect poor houses, purchase land for same, levy tax for that purpose.
2. Board of directors to be appointed, oath, term of service, etc.
3. Made a body corporate, name and style, powers, etc.
4. Superintendent appointed, his duties, powers, etc.
5. Examination of poor houses.
6. Report of directors to be made annually.
7. Children may be bound to apprenticeship.

SECTION.

8. Order on county commissioners for expenses of poor houses.
9. Order for admission of paupers, causes of non-admission, etc.
10. Non-residents must be removed, and authority of directors to do so.
11. Paupers restored to health to be discharged.
12. Provision for non-resident paupers that cannot be removed.
13. County commissioners to levy tax for support of poor.
14. Compensation of directors.

[495] *Be it enacted by the Council and House of Representatives of the Territory of Iowa:*

SECTION 1. That the county commissioners of each and every county within this territory, shall be, and they are hereby authorized, to erect and establish poor houses within their respective counties, whenever in their opinion such a measure will be proper and advantageous, and for that purpose it shall be lawful for said commissioners to purchase such lot or tract of land as they may deem necessary for the accommodation of the institution: provided, that if the commissioners of any county shall think proper to purchase land, and erect a poor house under the provisions of this act, the expense of such purchase and erection shall be defrayed by a tax levied on the general assessment roll for that express purpose, and collected and paid over in the same manner that other taxes are.

SEC. 2. That whenever the commissioners of any county shall have completed a poor house for the reception of the poor, they shall immediately meet and appoint three judicious persons, residents of the county, who shall form a board of directors, to take charge of and manage the affairs of such poor house agreeably to the provisions of this act; and the directors so appointed, shall, previous to their entering on the duties of their appointment, take an oath or affirmation, faithfully to discharge the duties of their office, and shall continue in office one year, and until their successors are appointed and qualified; and said board of directors shall appoint a clerk of their own body, whose duty shall be defined by the board; and if a vacancy shall happen in the board of directors, the county commissioners shall appoint some suitable person or persons to fill such vacancy, and who shall hold his or their office until the next annual meeting.

SEC. 3. That the board of directors, or a majority of them, shall form a quorum to transact business, and shall be a body corporate and politic, with perpetual succession, and shall be known by the name of the board of directors, of the poor house of ——— county, (naming the county,) and by that name they may sue and be sued, defend and be defended, in any court within this territory; they may make all such contracts and purchases as may be necessary for the institution, and may prescribe such rules and regulations as they may

think proper for the management and good government of the same; and for introducing the practice of sobriety, morality, and industry, among its inhabitants, they shall meet quarter yearly at such place as they may agree upon, and the president may call a special meeting of the board as often as the interests of the institution require it.

[496] SEC. 4. That the board of directors shall appoint a superintendent, who shall reside in some apartment in the poor house, or other building contiguous thereto, and shall receive such compensation for his services, perform such duties and give such security for their faithful performance, as the board shall judge proper; he shall be governed in all respects by the rules and regulations of the board, and may be removed by them at pleasure; he may require all persons received into the poor houses, to perform such reasonable and moderate labor, as may be suited to their ages and bodily strength, the proceeds of which shall be appropriated to the use of the institution, in such manner as the board of directors may point out; the superintendent shall receive into the poor house, any person who shall produce to him such an order or voucher as is hereinafter provided, and shall enter in a book to be provided by him, and kept for that purpose, the name and age, as near as may be, of every person so received into the poor house, together with the day on which such person was received.

SEC. 5. That the board of directors shall cause the poor house to be visited, at least once in every month, by a member of their body; which member shall carefully examine the condition of the paupers, the manner in which they are fed, clothed, or otherwise provided for and treated; shall ascertain what labor they are required to perform; and shall inspect the books and accounts of the superintendent, and make report thereof at the next meeting of the board.

SEC. 6. That the board of directors shall annually report to the commissioners of the county, the state of the institution, with a full and correct account of all their proceedings, contracts, and disbursements, and the expenses of establishing and supporting the institution, shall be paid on the order of the county commissioners out of any money in the county treasury, not otherwise appropriated.

SEC. 7. That the directors aforesaid, shall have power to bind out to apprenticeship, all such poor children as may belong to such poor house, males until the age of twenty-one, and females until the age of eighteen years, unless any such females shall be married previous to that age, on such terms and conditions, as are prescribed by an act concerning apprentices and servants.

SEC. 8. That in every county within which a poor house may be established it shall be the duty of the directors of such poor house, to give an order on the county commissioners for the payment of such reasonable and necessary expense, as may have been incurred by any township or individual, in removing any pauper to the poor house, or [497] that may have been incurred, immediately preceding such removal, by reason of delay, caused by the sickness of such pauper, and the county commissioners shall draw their order on the county treasurer for such amount: provided, that said directors shall not give such order unless they shall previously determine that such pauper is legally a county charge.

SEC. 9. That no person shall be admitted to such poor house, as a pauper, unless upon the order of the trustees of the proper township, or of the county commissioners, directed to the board of directors of the poor house of the proper county, which order shall be accompanied by a statement of the facts, signed by said trustees or county commissioners, setting forth the name, age, birthplace, length of residence, previous habits, and present conditions of the person, claiming to be a pauper; together with the time or times at which

such person or persons, if not a native of the county or township, has been warned to depart therefrom, and if neglected to be warned or removed, the reason or cause of such neglect; and if, on a full examination of the facts or circumstances, touching the right of such pauper to admission into the poor house, which may come to the knowledge of the directors, they shall be of opinion, from the failure or neglect of duty on the part of the overseers of the poor, or from want of proper legal residence, or from any other cause, such person is not legally chargeable to the county as a pauper, he or she shall not be admitted to the poor house, and the superintendent shall not admit any person into the poor house as a pauper, unless upon the order of a member of the board of directors.

SEC. 10. That in case any person shall become an inmate of any poor house, supported as a pauper, whose proper place of residence is in another county, state, or territory, it shall be lawful for the board of directors of such poor house, to cause such pauper to be removed to his or her proper place of residence, in the same manner as overseers of the poor are authorized and required to remove persons not legally chargeable, by the provisions of the act entitled "an act for the relief of the poor," and all the power and authority vested in the overseers of the poor, by and in virtue of said act, necessary to carry into effect the provisions of this section, are hereby conferred upon the directors of poor houses, for the purposes herein mentioned.

SEC. 11. That when any person has been, or shall hereafter be received into any poor house, as a pauper, on account of any infirmity or disease, the directors of such poor house may, when, in their opinion, such person is so far restored to health and bodily strength, as to be [498] able to support himself or herself, direct the superintendent of such poor house, to discharge such person therefrom.

SEC. 12. That if any paupers shall be in a situation, that will not admit of their removal to the poor house, or to their proper residence, the directors of the poor house shall have power to provide for the maintenance and support of such paupers, out of the county treasury, in the same manner as if such paupers were in the poor house, until their condition will admit of their removal to the poor house, or to their proper residence.

SEC. 13. That the county commissioners be, and they are hereby authorized and empowered, in case the ordinary revenue of the county shall prove insufficient for the support of the poor, to levy and collect a poor tax, not exceeding one mill on the dollar, of the valuation of the property taxable for county and territorial purposes, to be entered on the grand list, and collected as other taxes.

SEC. 14. That the county commissioners may allow the directors, for their services, such sum as they may deem reasonable, not exceeding one dollar and fifty cents per day, for every day necessarily employed in the duties of their appointment, to be paid out of the county treasury, on the order of said commissioners.

Approved February 17, A. D. 1842.

CHAPTER 120.

PUBLIC PRINTING.

AN ACT establishing the prices of public printing.

SECTION.

1. Form and manner of printing the laws and time of their completion, printing bills, etc.
2. Examination by the secretary and receipt, damages for non performance.
3. Printing ordered by either house to

SECTION.

- be for use of both unless otherwise provided.
4. Prices for printing, etc.
 5. Printer to give bonds.
 6. Indexing and distribution of the journals, and compensation.
 7. Act when to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the public printing of this territory [499] shall hereafter be executed in the following manner: The laws shall be printed on good long primer type, on paper of the usual quality, and on an extra page proportioned to the size of a medium sheet; and each page shall contain fifteen hundred ems. The number of each page shall be made of figures of the size of long primer, and shall have a single line of long primer quadrates placed between the number and the body of the page, and the dividing space between each law shall be three long primer lines, the middle one of which to contain a small dash; the caption of each act, and an abstract of each section, shall be printed in brevier type and placed as a preface to each act, after the manner of the revised statutes of Arkansas of eighteen hundred and thirty-seven, and the enacting clauses and clause of each section, in long primer italics. The journals of both houses shall be printed with good long primer type, on the same quality of paper and sized sheet as above provided, and each page shall contain fifteen hundred ems. The head lines and intermediate spaces between each day's proceedings shall be as prescribed for the printing of the laws. The laws and journals of each session shall be printed and delivered to the secretary of the territory, well folded, pressed, stitched and bound, within ninety days after the adjournment of such session. All the extra printing of each session shall be done with as much dispatch as possible, never occupying in the printing of one bill or other article, except when of extraordinary length, a longer period than one day. The bills shall be printed on foolscap paper, in the form of four pages to a sheet, the lines numbered beginning with the figure one (1) at the commencement of each section, in long primer type, with a space between each line not exceeding the size of long primer, and no long primer unnecessary blanks shall be measured.

SEC. 2. That it shall be the duty of the secretary of the territory, on the delivery of the laws and journals as aforesaid, to examine whether they have been properly executed according to the provisions of this act, and should they not be thus executed, he may still receive them and give his receipt for the same, stating therein the number of pages, and the amount to which the printer is entitled under the provisions of this act, noting the deficiency, if any, in said receipt; and he is hereby authorized to pay over the amount judged by him to be due said printer, retaining such sum as he may deem sufficient to cover any damages sustained by the non-performance of the service of the printer, accord-

ing to law, and report the same in his annual report to the next legislative assembly.

[500] SEC. 3. That whenever either house of the legislative assembly shall order anything printed, it shall be for the use of both houses, unless otherwise specially ordered, and be distributed in proportion to the number of members belonging to each house: provided, that when ordered by the council, it shall have printed on it the designating mark "C. F." and when by the house of representatives that of "H. R."

SEC. 4. That the printer shall receive for his services the following prices: One dollar per thousand ems, for composition, and double price for rule and figure work. One dollar per token of an eight page form for press-work, and eighty-seven cents per token for paper. For folding, stitching, pressing, and binding the journals of both houses, fifteen cents per copy. For binding the laws, such price as may hereafter be allowed by law: provided, that nothing in this act shall be so construed as to prevent the legislature of this territory from receiving proposals and having the printing done per contract with said printers.

SEC. 5. Good and sufficient bonds shall be given by any one who may hereafter be employed to print the laws or journals of the legislature, to be approved by the governor, conditioned that the work shall be done in good and workman-like manner, according to law.

SEC. 6. It shall be the duty of the secretary of the council, and the chief clerk of the house of representatives to make a full and copious index to the journals of their respective houses, and superintend the printing of the same, and distribute them, when bound, to the clerks of the several boards of county commissioners, in ratable proportion, according to the representation of the several counties, for which service they shall each receive the sum of three hundred dollars.

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

Approved February 2, A. D. 1843.

[501] CHAPTER 121.

PRAIRIES.

AN ACT to prevent damage by the firing of prairies.

SECTION.

1. Fire districts laid off and fire wardens appointed by county commissioners, their powers and duties.
2. Fine for firing prairie without license and persons doing so liable for damages sustained.
3. Fire wardens to call aid in putting out fire, penalty for refusal to aid.
4. Fines, by whom prosecuted, how recovered, how applied, bonds, security, etc.

SECTION.

5. Fines recovered for use of the county.
6. Compensation of fire wardens and by whom paid.
7. Warden to take oath, penalty for refusal to serve.
8. This act not to prevent persons from firing within his own inclosures without license.
9. Act in force after first day of March.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That it shall and may be lawful for each of the boards of county commissioners in the several counties of the territory, whenever in their judg-

ment the public good may require it, to lay off their counties into as many fire districts as they shall think proper, and have a description of said districts filed in the office of the clerk of said county commissioners, and shall appoint one fire warden for each district that shall be so laid off, who shall be a resident of the same, and shall fill vacancies from time to time in said districts as they shall happen. It shall also be the duty of the board to cause a notice to be given to each fire-warden of his appointment, and the description of the district over which each one is respectively to exercise the duties of said appointment, each of which fire-wardens shall hold their office till others are appointed and qualified. And every person, before setting fire to any prairie or other ground, or to any grass, trees, or plants, growing or standing thereon, shall apply to one of said fire-wardens for a license therefor; and if it shall appear proper and expedient to such fire-warden, he may allow such person so applying to set fire to such prairie or other ground, grass, trees or plants, upon such restrictions and conditions as may by such fire-warden be deemed necessary and prudent for the security and preservation of the crops and other property in the neighborhood, and may grant a license therefor, which [502] shall express and set forth such restrictions and conditions, and describe where fire is to be set; and it shall be the duty of such fire-warden, by himself or some other person, to superintend all such burnings as shall be authorized by license as aforesaid, and to prevent the spreading of the fire beyond the necessary and safe bounds. And until fire-wardens shall be elected in pursuance of this act, it shall and may be lawful for the supervisors of roads, in their respective path-master districts, to exercise the powers and duties herein conferred upon and to be exercised by fire-wardens, and every such fire-warden, or supervisor, shall have power to appoint one or more deputies to assist in the discharge of their respective duties.

SEC. 2. If any hunter or other person, without license first obtained as above, shall wilfully or carelessly set fire to any prairie or other ground, or any grass, trees, or plants, growing or standing thereon, or to any crops of grain or hay stacked or piled thereon, or to any other combustible thing, whereby such prairie or other ground, grass, trees, or plants or crops of grain or hay, shall be burned, or if any person, having obtained a license agreeably to the provisions of the first section of this act, shall wilfully or negligently allow his fire to spread, contrary to the terms of his license, every such person shall, on conviction thereof, be fined not less than five dollars, nor more than one hundred dollars; and if any damage shall happen by reason of the violation of this section, the offender shall be liable therefor, to be recovered by the party injured, before any court having competent jurisdiction.

SEC. 3. When a fire shall spread upon the prairies, or in the timber land, or be kindled and burn in such place as to do, or threaten to do, damage to the property of any person, or to the timber growing or standing on any land belonging to the public, or to individuals, it shall be the duty of the fire-wardens in the district where the fire is burning, and also in any district adjacent thereunto, either in the same or an adjoining county, if there is reason to believe the fire will extend beyond the first district, to require the assistance of all able bodied male citizens in putting out the fire; and if any person, when so required by a fire-warden, shall refuse or neglect to render assistance, without good cause shown to the court for such refusal or neglect, he shall be fined not exceeding five dollars, and not less than one dollar.

SEC. 4. The penalties imposed by this act may be recovered by complaint, or by action of debt, in the name of the board of county commissioners of the county in which the offense shall be committed; and it is hereby made the duty of the fire-wardens to prosecute all of-[503]-fenses committed in their respective districts, and any person, knowing of any breach of this law, may sue in the name of the board of county commissioners of the county in which such offense has

been committed; and whenever a fine shall be imposed on any person for a violation of any provision of this act, the offender shall stand committed to the county jail, or if there be no jail in the county, to the jail in any adjoining county, till such fine is paid, together with the costs of prosecution, unless the board of county commissioners shall sooner discharge said offender from jail. And the said commissioners are hereby authorized to settle and take bonds, with security, for all fines imposed by this act, after such offender shall have been committed, which said bond shall be delivered to the county treasurer and filed in his office, and if not paid according to the conditions, shall be by him prosecuted, and the amount of such fine, when collected, shall be applied in conformity to the provisions of this act: provided, that said board of commissioners may, at their discretion, release any person who may have been committed as aforesaid, if such person shall have been confined for the term of thirty days, and shall be unable to give the security required for the payment of said fine and costs, in cases where the conviction was had before a justice of the peace; and where the conviction was had before the district court, then the judge of said district court may grant such release, on application of the county commissioners.

SEC. 5. All fines recovered for breaches of this act, shall be for the use of the county in which the offense is committed, and shall be paid into the county treasury.

SEC. 6. The fire-wardens shall be paid by the county treasurers, in their counties respectively, such compensation as shall be deemed reasonable by the board of county commissioners, who are hereby required to audit the accounts which may, from time to time, be presented by such fire-wardens for services performed under this act.

SEC. 7. Any person, who being duly elected a fire-warden shall refuse to serve in said office, shall forfeit and pay the sum of five dollars; and every such fire-warden shall, before he enters upon the duties of his office, take an oath, before some justice of the peace of the proper county, well and truly to perform all the services by this act prescribed.

SEC. 8. Nothing in this act contained shall be so construed as to prevent any person from setting fire within his enclosures, and without any license for that purpose; but such person shall, at the same time, be subject to all the fines and penalties imposed by this act, if he [504] shall suffer the fire to extend beyond any such enclosure in any direction.

SEC. 9. This act to take effect and be in force from and after the first day of March next.

Approved February 16, A. D. 1843.

CHAPTER 122.

QUO WARRANTO.

AN ACT relating to information in the nature of quo warranto, and regulating the mode of proceeding thereon.

SECTION.

1. When, against whom, by whom, and at whose instance an information in the nature of a quo warranto may be filed.
2. Summons, service return, etc.
3. What right determined by judgment.
4. Oath of office, bond and demand for books, papers, etc.
5. Refusal a contempt, fine and punishment therefor.
6. Suit for damages, limitation one year.
7. Plurality of claimants.
8. Quo warranto against corporations; by whom filed, at whose instance, and in what cases.
9. Application in what county, notice thereof, and hearing.
10. Upon leave granted, information filed, summons or rule and plea.
11. Summons on whom served, return and appearance.
12. Copy of information pleadings and issue.
13. When writ cannot be served, notice

SECTION.

- required, affidavit and judgment by default.
14. Order of court and proviso.
15. Effects of judgment, and relators costs.
16. Judgment against corporations and dissolutions thereof.
17. Execution for costs.
18. Appointment of trustees, their bond securities, duties and powers.
19. Trustees to demand books, papers, etc., may sue for debts, and in whose name.
20. Refusal to deliver books, etc., a contempt, how punished.
21. Misconduct, forfeiture and damages.
22. Who may perform the duties required of district attorneys under this act.
23. Trusts and their performance.
24. Fines where paid and for what use.
25. Limitation of suits. Proviso.
26. Appeals when and to whom allowed, writs of error how they shall operate.
27. This act in force May 1, 1839.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when any person or persons shall usurp, [505] 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.

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.

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.

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 [506] 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 section, whenever he shall have good reason to believe that the same can be established by proof.

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.

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 [507] writ of summons shall be forth-

with 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.

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.

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.

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.

SEC. 15. Whenever any defendant or defendants, against whom an [508] 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.

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.

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.

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 payments of debts, and other necessary expenses.

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, [509] 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.

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.

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.

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.

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 persons injured.

[510] 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.

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, 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.

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.

SEC. 27. This act to take effect, and be in force, from and after the first day of May next.

Approved December 20, A. D. 1838.

[511] CHAPTER 123.

ROADS.

AN ACT to provide for laying out and opening territorial roads.

SECTION.

1. Territorial roads to be laid out within one year.
2. Special provisions as to the mode.
3. Certified return of survey and plat.
4. Where to be recorded.

SECTION.

5. Expense paid by counties.
6. Established width of roads.
7. No part of expense to be paid by territory.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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 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.

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.

SEC. 4. Said return and plat shall be signed by a majority of the [512] 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.

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.

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.

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, A. D. 1838.

CHAPTER 124.

ROADS AND HIGHWAYS.

AN ACT defining the duties of supervisors of roads and highways.

SECTION.

1. Persons liable to labor.
2. Penalty of delinquents.
3. Persons having performed labor to get a certificate from supervisor.
- [513] 4. Time to appear on road and tools furnished.
5. Persons exempt.
6. In case of sickness.
7. Road districts formed.
8. Fines, how collected and paid.
9. To open and repair roads.
10. Damages in making or laying out road.

SECTION.

11. Guide posts to be set up.
12. Supervisors to make repairs, power to call out laborers.
13. Certificates assignable.
14. Trustees to settle accounts.
15. Forfeiture of supervisor for giving false certificate.
16. Compensation of supervisor.
17. County commissioners to appoint supervisors, and penalty for injuring or removing guide posts.
18. Width of bridges. 17th section to be given in charge to grand juries.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all male persons between twenty-one and fifty years of age, who have resided one month in this territory, and who are not a county or township charge, or otherwise exempt by law, shall be liable yearly, and every year, to do and perform three days work on the public roads, under the direction of the supervisor within whose district they may respectively reside.

SEC. 2. That it shall be the duty of every supervisor to order out every such person, resident as aforesaid, between the first days of April and October annually, to do and perform the work aforesaid, on the public roads within his district; and if any such resident being personally warned by the supervisor, or by leaving a written notice at his place of abode, or by some person under the direction of the supervisor, by whom such warning can be proven, shall refuse or neglect, having had at least three days notice, to attend, by himself or substitute, to the acceptance of the supervisor, on the day and at the time and place directed by the supervisor, or, having attended, shall refuse to obey the directions of the supervisor, or shall spend the time in idleness and inattention to the duties assigned him, every such delinquent shall forfeit and pay for each day he shall so refuse or neglect to attend, or for any of the offenses above specified, the sum of one dollar and fifty cents, to be recovered by action of debt before any justice of the peace having jurisdiction thereof, at the suit of the supervisor within whose district such delinquent may reside; and the money so collected shall be paid over to the township treasurer and accounted for by the supervisor, at the annual settlement with the trustees of his township: provided, that in counties where townships are not organized, such forfeiture, so collected, shall be paid into the county treasury, and appropriated as provided for in this act.

[514] SEC. 3. That in case any person shall remove from one district to another who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in other respects has paid the whole or any part of the amount aforesaid in lieu of said labor, and shall produce a certificate of the same from the supervisors of the proper district, such certificate shall be a complete discharge for the amount therein specified.

SEC. 4. That every person called upon to perform any labor upon public roads and highways, under any of the provisions of this act, shall appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and the supervisor may, if necessary for the improvement of the roads, order any person owning the same to furnish a team of horses or oxen, and wagon, cart, scraper, or plough, to be employed or used on the roads under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper, or plough, in discharge of any labor due from said person.

SEC. 5. That all persons who may be deemed, by the supervisor, unable to perform, or cause to be performed, the three days work required by this act, shall be exempted from the requisitions of the same.

SEC. 6. That whenever it shall happen, in consequence of sickness, absence from home, or any other cause, that the three days work aforesaid shall not be performed within the time specified in this act, the supervisor shall be authorized to require the performance of such work at any other time.

SEC. 7. That the county commissioners or the trustees of townships, when the same shall be organized, shall, as often as they may deem it necessary, but not oftener than once a year, divide their respective counties or townships, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county or township records; and in case any public road shall be established as a part of the line, or boundary of any township, where townships are organized, the trustees of the adjoining townships shall meet at some convenient place, as soon after such division as convenient, and apportion such road or roads between the two townships, as justice and equity may require, for the purpose of opening and improving the same, and the supervisors and inhabitants of each township shall be bound to work on said road or roads accordingly.

SEC. 8. That the several supervisors within their respective dis-[515]-tricts, shall collect, by suit or otherwise, all fines, forfeitures, and penalties, arising and accruing under the provisions of this act, unless the collection thereof is herein provided for, and pay the same into the township treasury, if the townships are organized on or before the first Monday in March, otherwise in the county treasury on or before the first Monday in April annually, taking the treasurer's receipt for the same, which receipt shall be the proper voucher for the supervisor to settle with the trustees or county commissioners for the amount thereof, and all fines and forfeitures sued for and recovered under the provisions of this act by any other person than a supervisor shall be paid over within twenty days by the justice of the peace or constable collecting the same to the township treasurer, if townships are organized, if not, to the county treasurer, taking a receipt therefor, and the trustees of townships, or county commissioners shall cause all moneys so paid into the township or county treasury to be immediately appropriated to repairing the public roads in such road district wherein such fine or forfeiture accrued, and if any person shall be sued for doing or performing any act or thing required or authorized by this act, such person may plead the general issue, and give this act and the special matter in evidence, and no suit or action shall be brought or maintained unless it shall have been commenced within six months after the cause of such action shall have arisen: provided, that nothing in this section shall be so construed as to prevent the trustees of townships or county commissioners from collecting or recovering any moneys in the hands of the township or county treasurers, or supervisors of roads and highways.

SEC. 9. That it shall be the duty of each and every supervisor to open or cause to be opened all public roads and highways which have been or may here-

after be laid out and established through any part of the district assigned to such supervisor, and keep the same in repair, for which purpose the supervisors are hereby authorized to enter upon any unimproved lands near or adjoining the public roads, to cut and carry away any timber, to dig or cause to be dug and carried away any gravel, sand, or stone, or gather any loose stone which may be necessary to improve or repair the roads, and to enter on any lands adjoining or lying near the roads, to make such drains or ditches through the same as they deem necessary for the benefit of the roads, doing as little injury as may be to said lands, and the drains or ditches so made shall not be stopped or obstructed by the owner or occupier of such lands or any other person or persons, under the penalty of forfeiting a [516] sum not exceeding twenty dollars for each offense, to be recovered and appropriated as provided in the preceding section of this act.

SEC. 10. That if any person or persons shall feel aggrieved by any supervisor's cutting or carrying away any timber or stone as aforesaid, they may make complaint thereof to the county commissioners of the proper county, at a regular meeting within six months after the cause of such complaint shall exist, and the commissioners shall appoint three disinterested landholders of the county whose duty it shall be after taking an oath or affirmation to discharge their duty faithfully and impartially, to proceed and examine the matter complained of by the complainant, and assess and determine the damages, if any, and they shall report the same in writing to the commissioners at their next meeting thereafter, and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable, they shall cause the same to be paid to the complainant out of the county treasury, but if upon view the said landholders should be of opinion that there is no grievance or just cause of complaint, the person so complaining shall pay the costs of such view.

SEC. 11. That each supervisor within his district shall erect and keep up, at the expense of the county, at the forks of every territorial or county road, a post and guide board or figure board, containing an inscription in legible letters, directing the way and distance to the next town or towns, or public place or places, situated on each road respectively; said post to be at least six inches in diameter, and not less than twelve feet high, and well set in the ground.

SEC. 12. That any time during the year when any public road shall be obstructed by the fall of timber or any other cause, or any bridge shall be impaired so that the passage of teams or travelers on said road or bridge shall be dangerous, and the supervisor in the district in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed or bridge repaired forthwith, for which purpose he shall immediately order out such number of the inhabitants of his district as he may deem necessary to remove said obstructions or repair said bridge, and the persons so ordered out shall, after having had one day's notice to attend as aforesaid, be subject to the same restrictions and liable to the same penalties as if ordered out under the provisions of the second and fourth sections of this act.

SEC. 13. That in all cases when any person shall, under the direction of his supervisor, perform more labor on the public roads than [517] may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate shall be assignable and received for the amount specified in such certificate in discharge of any labor within the same road district, which may be due from the holder of such certificate in any succeeding year under the provisions of this act: provided, that the preceding section shall not authorize any supervisor to require any person to perform more than two days' work in any one year, over and above the amount of labor due from such person agreeably to the provisions of the first section of this act.

SEC. 14. That where townships are organized the trustees shall meet at the place of holding township elections, on the first Monday of March annually, at which time and place the several supervisors of the township shall attend, and each produce his lists and accounts, together with the township treasurer's receipt for all fines, penalties, and forfeitures by him collected, and the trustees are hereby authorized and required to adjust and settle all accounts so produced to them, and allow such amount for delinquencies as they shall deem just and reasonable; and, if upon a fair and accurate settlement there shall appear to be a balance due to any supervisor for his services under this act, the trustees shall give him an order on the township treasurer for the amount due: provided, that the supervisor shall, in all cases, be held accountable for the full amount of labor due in his district, unless for good cause shown, the trustees shall deem it just to remit the same: and provided further, that in counties where townships are not organized the county commissioners shall annually on the first Monday in April, settle the accounts of the supervisors within their respective counties agreeably to the provisions of this act; and the supervisors of such counties shall attend upon said commissioners on said day.

SEC. 15. That each and every supervisor who shall neglect or refuse to perform the several duties enjoined on him by this act, or who shall, under any pretense whatever, give or sign any receipt or certificate purporting to be a receipt or certificate for labor performed or money paid, unless the labor shall have been performed or money paid prior to the giving or signing such receipt or certificate; every supervisor so offending, shall forfeit for every such offense, not less than five dollars nor more than twenty-five dollars, to be recovered by indictment in the district court, or by action of debt before any justice of the peace having jurisdiction of the same; and it is hereby made the duty of the trustees of the township in counties where the same are organ-[518]-ized, and county commissioners where townships are not organized, to prosecute all offenses against the provisions of this act: provided, that if any supervisor shall conceive himself aggrieved by the judgment of the justice of the peace, he may appeal to the district court as in other cases.

SEC. 16. That each supervisor shall receive for his services for each day employed under the provisions of this act over and above three days, the sum of one dollar, to be paid out of the township treasury on the order of the trustees where townships are organized, but in counties where townships are not organized the supervisor shall be paid out of the county treasury on the order of the county commissioners.

SEC. 17. That the several boards of county commissioners in counties where townships are not organized, shall, annually at their April session, appoint a suitable number of supervisors for such road districts as are not provided for by law, and they may fill vacancies at any time when they may occur, and shall cause the supervisors, by them appointed, to be notified thereof in writing. That any person who shall destroy, or in anywise deface or obliterate any guide board or mile post set up according to the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined the sum of not less than ten nor more than fifty dollars, and be imprisoned not less than one month nor more than three months, at the discretion of the court.

SEC. 18. That bridges on territorial and county roads shall not be less than sixteen feet wide. It shall be the duty of the judges of the district court to give the foregoing section of this act in charge to the grand juries at each term of their respective courts.

Approved January 17, A. D. 1840.

[519] CHAPTER 125.

ROADS AND HIGHWAYS.

AN ACT for opening and regulating roads and highways.

SECTION.

1. Roads to be opened and kept in repair according to this act.
2. Applications for laying out or altering roads to be made to county commissioners.
3. Notice of application to be given by advertisement.
4. Duty of viewers.
5. Review allowed on application of 12 householders.
6. Damages to land holders, how assessed, and how paid.
7. Vacation of useless road, upon application of householders and sustained by viewers.
8. Boundaries of a road uncertain, to be reviewed and relocated.

SECTION.

9. Alteration of road, manner of applying, view, report, etc.
10. Penalty for refusal or neglect of viewers.
11. Compensation.
12. Location of road along the county line, report of viewers, etc.
13. Report sustained by commissioners, road to be opened.
14. Manner of opening road.
15. Applicants for opening, altering, of relocating roads, to give bond for expenses.
16. Record of plat in two counties when required.
17. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all county and territorial roads which have been or may hereafter be laid out and established agreeably to law, in this territory, shall be opened and kept in repair in the manner hereinafter provided; and all county roads shall hereafter be laid out and established agreeably to the provisions of this act, and all county roads shall be sixty feet wide, unless the commissioners of the county, upon petition, should determine on a less number of feet in point of width, on any road so petitioned for.

SEC. 2. That all applications for laying out or altering any county road, or for the alteration of any territorial road, shall be by petition to the board of commissioners of the proper county, signed by at least twelve householders of the county, living in the vicinity where said road is to be laid out or altered, and said petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

[520] SEC. 3. That previous to any petition being presented for a county road, or for the alteration of a county or territorial road, notice thereof shall be given by advertisement set up at the place of holding county commissioners courts, and three public places in each township through which any part of such road is designed to be laid out or altered, at least thirty days previous to the meeting of the board of county commissioners, at which the petition shall be presented, and on the petition being presented and the commissioners satisfied that such notice has been given as aforesaid, they shall appoint three disinterested householders of the county as viewers of said road, and a skillful surveyor to survey the same, and shall issue an order directing said viewers and surveyor to proceed, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey, lay out, or alter said road.

SEC. 4. That it shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving at least six days' previous notice by one of the petitioners, to meet at the time and place specified in the order of the commis-

sioners aforesaid, or within five days thereafter, and after taking an oath or affirmation, faithfully and impartially to discharge the duties of their appointments respectively, shall take to their assistance, two suitable persons as chain carriers and one marker, and proceed to view, survey, and lay out or alter said road as prayed for in the petition or as near the same as in their opinion, a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience, and expense which will result to individuals as well as to the public, if such road shall be established and opened or altered, and the surveyor shall survey such road under the direction of the viewers and cause the same to be conspicuously marked throughout, noting the courses and distances, and at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road or survey to be marked on a tree or monument erected for that purpose, he shall also make out and deliver to one of the viewers, without delay, a correct certified return of the survey of said road, and a plat of the same; and the viewers shall make and sign a report in writing, stating their opinion in favor or against the establishing or alteration of such road, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, shall be delivered to the county commissioners' clerk, by one of the viewers, on or before the first day of the session of the county commissioners' court then next ensuing, and it shall be the duty of the [521] commissioners on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no legal application shall be made to them for a review of said road or alteration, or petition for damages, between the first day of their session, at which the report and survey are made, and the second day of their next stated session, they shall cause said report, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their orders directing said road to be opened. But if the report of the viewers be against such proposed road or alteration, then no further proceedings shall be had thereon, and the obligor or obligors in the bond receiving the payment of costs and expenses, shall be liable for the full amount of such costs and expenses: provided, that in all cases when any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor, or by one of the viewers or reviewers who have previously been sworn or affirmed themselves.

SEC. 5. That after the viewers of any county or territorial road shall have made return in favor of the same agreeably to the preceding section, and before said return shall be recorded, and the record established, it shall be lawful for any land holder of the county, to apply to the commissioners for a review of said road, by petition, signed by at least twelve householders residing in that part of the county through which said road is proposed to be established; and the commissioners shall on such petition being presented, and they satisfied it is just and reasonable, appoint five disinterested qualified voters of the county, to view said road, and issue their order to said viewers, directing them to meet at a time specified in such order, or within five days thereafter, and said viewers shall meet after having received six days' previous notice by one of the petitioners, and after taking the oath or affirmation required by the preceding section, shall proceed to examine the route surveyed for said road by the former commissioners, stating their opinion in favor or against the establishment of said road, and their reasons for the same; and if the report of the viewers be in favor of said road, the same shall be established, recorded, and opened, agreeably to the provisions of this act; and the person or persons bound for the same, shall pay into the county treasury the amount of the costs of such review, but if the report be against the establishment of such road no further proceedings shall be had thereon before the commissioners, and the [522] persons executing the first bond

shall pay into the county treasury, the amount of costs and expenses of the first view and survey, and review of said road.

SEC. 6. That if any person or persons through whose land any territorial or county road may be laid out, shall feel injured thereby, such person or persons may make complaint thereof to the board of county commissioners, at any time between the session of the commissioners at which the report of said road is made, and the second day of their next stated session; and the commissioners shall appoint three disinterested householders of the county, whose duty it shall be, after having been duly sworn or affirmed to discharge their duty faithfully and impartially, to proceed and view said road the whole distance the same may have been established through the premises of the complainant, and assess and determine how much less valuable the land or premises of the complainant has been or will be rendered by the opening of said road, and they shall report the same in writing to the commissioners at their next meeting thereafter, and if the commissioners shall be satisfied that the amount so assessed and determined be just and equitable, and that said road will, in their opinion, be of sufficient importance to the public to cause the damages to be paid by the county, they shall order the same to be paid to the petitioner from the county treasury, but if in their opinion the said road is not of sufficient importance to the public, to cause the same to be paid by the county, they may refuse to establish the same a public highway, unless the damages and expenses are paid by the petitioners.

SEC. 7. That when any county road shall be considered useless, any twelve householders residing in that part of the county where such road is established, may make application by petition to the board of commissioners of the county to vacate the same, setting forth in said petition the reasons why said road ought to be vacated, which petition shall be presented and publicly read at a regular session of the board of commissioners, and no other proceedings shall be had thereon, until the next stated session of said board of commissioners, when it shall be again read as aforesaid, and if no objection be made, the commissioners may on the last day of that session declare said road vacated, or any part thereof, which they may deem unnecessary to keep open for public convenience, but if objection be made in writing, signed at least by twelve householders residing in the neighborhood of the road proposed to be vacated, the commissioners shall appoint three disinterested persons to view said road, who shall take the same oath or affirmation [523] as is required by the fourth section of this act, and proceed to view the road aforesaid and make a report of their opinion thereon and their reasons for the same, to the board of commissioners, and if said viewers shall report in favor of vacating said road or any part thereof, the commissioners may if they shall deem it just and reasonable, declare said road vacated agreeably to the report of the viewers, but in case said viewers shall report against vacating said road, then and in that case no further proceeding shall be had thereon: provided, that previous to any petition being presented under the provisions of this section, the same notice shall be given as is required by the third section of this act.

SEC. 8. That when the place of beginning or true course of territorial or county roads shall be uncertain, by reason of the removal of any monuments or marked tree, by which said road was designated or from any other cause the board of commissioners of the proper county, may appoint three disinterested persons, citizens of the county, to review and straighten said road if they shall deem it necessary, and the reviewers shall cause said road to be correctly marked throughout, as in case of new roads, and a correct survey to be made of the same, and shall make return of said survey and plat of said road, to the board of commissioners, who shall cause the same to be recorded as in other

cases, and from thenceforth said road, surveyed as aforesaid, shall be considered a public highway.

SEC. 9. That if any person or persons, through whose land any territorial or county road is or may be established, shall be desirous of turning said road through any other part of his or her land, such person or persons may, by petition, agreeably to the second and third sections of this act, apply to the commissioners of the county, while in session, to permit him or them to turn any road through any other part, or off, of his, her or their land on as good ground, without increasing the distance to the injury of the public; and on the receipt of such petition, the board of commissioners shall appoint a surveyor, and three disinterested householders of the county, as viewers, who, or any two of them, shall proceed to view the ground over which the said road is proposed to be turned, and ascertain the distance which said road will be increased by such proposed alteration, and make out a report in writing stating the several distances so found, together with their opinion as to the utility or inutility of making said alteration, and if said reviewers shall report to the board of commissioners that the prayer of the petitioner or petitioners is reasonable, and that the alteration will [524] not place the road on worse ground, or increase the distance to the injury of the public, they shall, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and, in all respects, made equal to the old road for the convenience of travelers, the commissioners aforesaid may declare said new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced by the new, and the person or persons desiring the alteration aforesaid, shall pay all the costs of the view, survey, and return of said alteration.

SEC. 10. That if any person, who shall be appointed by the board of commissioners as a viewer, reviewer, or surveyor of any road, shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding three dollars, to be recovered by action of debt by any person suing for the same, before any justice of the peace having jurisdiction of the same, and shall be paid over, without delay, to the county treasurer, by the justice of the peace or constable collecting the same, taking his receipt therefor, and the board of commissioners shall cause all fines which shall be paid into the county treasury, under the provisions of this act, to be expended on roads and bridges within their county.

SEC. 11. That the persons required to render services under this act, shall receive compensation for each day they shall be necessarily employed, as follows, to-wit: viewers and reviewers, one dollar and fifty cents each; chain carriers and markers, one dollar and twenty-five cents each; and surveyors, two dollars and fifty cents each, to be charged as costs and expenses and paid out of the county treasury, on the order of the board of commissioners of the proper county.

SEC. 12. That when it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the board of commissioners of their respective counties, for a view of such road in the manner pointed out in the preceding section of this act, and it shall be the duty of such board of commissioners, for each of the counties interested, to appoint two discreet citizens as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor; and the viewers and surveyor, appointed as aforesaid, shall make their report in writing, for or against such road, to the board of commissioners of the counties concerned, and the said commissioners, [525] upon receiving such report, shall, in all respects, be governed by the provisions of this act.

SEC. 13. That if, on receiving such report, the commissioners of all the counties interested, shall be of opinion that such road, if opened, would be of public utility, they shall order the same to be opened in the manner pointed out by this act.

SEC. 14. That when any road is located under the provisions of the twelfth and thirteenth sections of this act it shall be the duty of the board of commissioners of the county, or trustees of townships adjoining such road, to select one from their number whose duty it shall be to meet at some convenient place near the line of the same, the time and place to be appointed by the commissioners or trustees of the oldest county or township interested, previous to the time appointed by law for apportioning labor to their respective road districts, and shall assign a sufficient number of persons, if practicable, to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the supervisors in the county or township to which they belong, and the supervisors and persons so assigned shall be governed by the provisions of the act entitled, an act defining the duties of supervisors of roads and highways.

SEC. 15. That on application, made under the provisions of this act, the board of commissioners of the proper counties shall, before granting any order thereon, require of the person or persons making such application, a bond, with one or more sufficient securities, made payable to the county treasurer, and approved by the board of commissioners of the county, for the use of the county.

SEC. 16. That no change shall be made in the direction of a territorial road, where it crosses the line between two counties, unless by mutual agreement in the report of the viewers appointed by the board of commissioners of the counties interested, in which last case the plat and survey of the variation from the original road shall be recorded in both counties.

SEC. 17. That an act entitled an act for opening and regulating roads and highways, approved January 17th, 1840; and an act entitled an act to amend an act for opening and regulating roads and highways, approved February 2nd, 1842, be and the same are hereby repealed.

Approved February 1, A. D. 1843.

[526] CHAPTER 126.

RIGHT.

AN ACT to allow and regulate the action of right.

SECTION.

1. Action proper remedy for recovery of interest in lands, etc.
2. What required for recovery.
3. Action when brought, and how.
4. Against whom.
5. Tenant to give notice of action against himself, to landlord.
6. Substitution of landlord.
7. The writ now served.
8. Non-residents and their agents.
9. Service of summons abroad.
10. Return and proof of service.
11. Notice by advertisement given, where and how long.
12. Contents and requirements of such notice.
13. Declaration what to set forth.
14. Undivided shares.
15. Several tracts.
16. Declaration may be amended.
17. Defendants, joint or separate.
18. Plea to the merits.
19. Demurrer or plea.
20. Evidence.
21. Damages assessed by jury.
22. Judgments by default, and damages assessed.
23. Restoration of right, damages and costs.
24. Verdict and judgment in certain cases.
25. Default, action on the case, new trial, etc.
26. Proceedings on new trial.
27. Restitution of damages.
28. New trial when allowed, and to whom.
29. Proceedings, on trial, when some of defendants occupy different parcels of the property.
30. Discontinuance, in what cases.

SECTION.

31. Verdict and judgment relative to defendants.
32. Relative to plaintiff.
33. Specifications in verdict.
34. General verdict and judgment.
35. Judgments in this action.
36. New trial granted.
37. Limitation to heirs, etc.
38. Insane persons, etc.
39. Married women, privileges of.
40. Limitation to persons out of the United States.
41. Writ of possession.
42. Judgment against tenant, conclusive against landlord.
43. Want of notice, etc., etc.
44. Suit not to affect persons not a party.
45. Plaintiff to recover on the strength of his own title.
46. 20 years quiet possession a bar to this action.
47. Limitation to persons insane.
48. Widows dower, action commenced for.
49. Suit by joint tenants and tenants in common.
50. Arrest of judgment, etc.
51. Warrant of attorney.
52. Waste and damages.
53. Permanent improvements to be valued [527] in certain cases.
54. Joining of issue.
55. County lines.
56. Assignment of dower established by this action.

FORMS.

- Summons.
- Advertisement.
- Declaration.
- Plea to the merits.
- Writ of possession.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter the proper remedy for recovering any interest in lands, tenements, or hereditaments, shall be by an action of right.

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.

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 all the proceedings therein shall be assimilated, as nearly as practicable, to those in personal actions, except as herein otherwise provided.

SEC. 4. The action may be brought against any person acting as owner, landlord or tenant of the property claimed.

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.

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.

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.

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.

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.

[528] 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.

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.

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, [529] 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 empaneled, 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 *feri facias*, shall be ordered accordingly.

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 thereof without delay.

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 the costs to abide the event of the suit.

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.

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.

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.

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.

[530] 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.

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.

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.

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.

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.

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.

SEC. 37. Such application, if made by the defendant himself, must be within three years after the said judgment by default. If he die, within the three years, his heirs may have at least two years after his death, within which to make such application. If any such heirs are minors, they shall have at least one year after they respectively become of age, within which to make application as aforesaid.

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.

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.

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 [531] any time within two years after his return, provided the same be within seven years from the date of the judgment against him as aforesaid.

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.

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.

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.

SEC. 44. No determination of an action of right shall prejudice the interests of any person not a party to the suit, except in case of a landlord as aforesaid.

SEC. 45. The plaintiff, in this action, can only recover upon the strength and validity of his own title.

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.

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.

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.

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.

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.

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.

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.

[532] 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.

SEC. 54. After issue shall have been joined on the merits, no exceptions shall be taken to the declaration, in any manner whatever.

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.

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:

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.
2. They shall make a written report of their proceedings in the premises to the next term of said court.
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.
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.

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.

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 [533] 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 and there this writ, witness, etc.

ADVERTISEMENT.—[SEE SECTIONS 11 AND 12.]

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 (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.

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.

G. M. Attorney for plaintiff.

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. Attorney for defendant.

[534] 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 *feri facias*, as in ordinary judgments.]

Approved December 29, A. D. 1838.

CHAPTER 127.

REPLEVIN.

AN ACT regulating the action of replevin.

SECTION.

1. Action, when, by whom and for what purpose instituted.
2. Not to issue without affidavit of plaintiff.
3. Property exempt from levy may be replevied.
4. Clerk and plaintiff liable for issuing writ without affidavit.
5. Defects in affidavit how remedied.
6. The writ, to whom directed, and its requirements.
7. Power of officer as to buildings and enclosures.
8. Bond and securities by plaintiff before delivery of goods to him.
9. Amount of bond, how determined, returned with writ, etc.
10. Remedies and liabilities of the officers, etc., etc.
11. Bond to be executed within 24 hours or property returned.

SECTION.

12. Insufficient security taken, officer liable [535] able.
13. Right of property tried when claimed by a third person.
14. Claimant made defendant, unless.
15. When property not delivered, action to proceed.
16. Government of action.
17. Right of property tried by jury.
18. Jury finding for defendant, damages, costs, etc., assessed for him.
19. Judgment on finding by jury relative to right of property or right of possession.
20. When the jury find for the plaintiff, costs, damages, etc.
21. Additional judgment where property has not been replevied; value how ascertained, etc.
22. Judgment against all defendants.
23. When suit on bond may be commenced.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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 exempted therefrom by law, upon affidavit filed as aforesaid, that such property was so exempt, a writ of replevin may issue as above provided.

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.

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.

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, [536] 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.

SEC. 7. The officer executing such writ may break open any house, or other building, or enclosure, 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.

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.

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.

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.

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.

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.

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.

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.

[537] 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.

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 actions, except as otherwise provided by law, or by the rules of court.

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.

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.

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.

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.

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.

SEC. 23. No suit shall be instituted on the bond given by the plain-[538]-tiff, 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.

Approved January 23, A. D. 1839.

CHAPTER 128.

RELIGIOUS SOCIETIES.

AN ACT relative to incorporated religious societies.

SECTION.

1. Religious societies empowered to hold certain property.
2. May elect officers and make rules.

SECTION.

3. Mesne process how served.
4. Power to repeal. Proviso.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any religious society hereafter incorporated by any act of the legislature, shall have perpetual succession by such name as may be designated, and by such name shall be legally capable of contracting and of prosecuting and defending suits in any court; and shall have capacity to receive, acquire, hold, enjoy, and dispose of a house for public worship, with the land necessary therefor, not exceeding in quantity one acre; a burying ground for such society; a parsonage, not exceeding in value the sum of five thousand

dollars; and any other property not exceeding the annual value of one thousand dollars, which shall be applied to the support of public worship, and such institutions of learning and charity as may be connected with such society, and to no other purpose.

SEC. 2. That such society, when incorporated, may elect such officers, and make such rules, as may be necessary and expedient for its own government, and the management of its own affairs.

SEC. 3. That *mesne* process shall be served on the corporation, by leaving an attested copy thereof with any one of its officers at least ten days before the return day thereof.

SEC. 4. The legislature may, at any time, repeal or alter an act in-[539]-corporating any such society: provided, that such repeal or alteration shall not affect the title to any real or personal estate, acquired or conveyed under its provisions.

Approved December 22, A. D. 1840.

CHAPTER 129.

RELIGIOUS SOCIETIES.

AN ACT supplemental to "an act relative to incorporated religious societies."

SECTION.

1. Religious societies make out an abstract statement of their organization.

SECTION.

2. Statement to be placed on record.
3. Fee of the recorder.
4. Act in force from passage.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter, any religious society desirous of exercising the privileges, and enjoying the benefits of the act to which this is a supplement, may make out an abstract statement of their organization, containing the name and location of such society, the name and style of the officers in such organization, have the same signed by all the officers of such society, at the time of making out such statement, and procure the said statement to be recorded upon the records in the recorder's office of the proper county.

SEC. 2. That when such statement is placed upon record, as aforesaid, said society shall be entitled to all the privileges, and subject to all the restrictions of the act to which this is a supplement, in like manner as said society could be if incorporated by act of this legislative assembly.

SEC. 3. The fee of the recorder for recording said statement, shall be one dollar.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved February 14, A. D. 1842.

[540] CHAPTER 130.

REPEAL.

AN ACT to repeal the acts therein mentioned.

SECTION.

1. Acts of Michigan and Wisconsin repealed.
2. Repeal not to revive any previous act. Proviso.
3. Act respecting seals repealed.
4. Repeals, not to affect acts done under repealed statutes, before repeal.

SECTION.

5. Offenses committed, etc., before repeal not affected.
6. Prosecutions not affected by repeal.
7. Repeal not to extend to laws of private nature.
8. Acts of G. Britian not in force in this territory.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That all acts of the territory of Michigan and the territory of Wisconsin, which were in force in the territory of Iowa on the fourth day of July, in the year one thousand eight hundred and thirty-eight, are hereby repealed.

SEC. 2. The repeal of any act by any law of this territory shall never be construed to revive any act previously in force, unless such repealing act shall contain an express provision that any such repealed act shall be thereby revived and put in force.

SEC. 3. That "an act respecting seals," approved January 24, 1839, is hereby repealed.

SEC. 4. The repeal of any statutory provision by this act shall not affect any act done, or right accrued or established, or any proceeding, suit or prosecution, had, or commenced, previous to the time when such repeal shall take effect, but every such right, act, and proceeding, shall remain as valid and effectual as if the provision so repealed had remained in full force.

SEC. 5. No offense committed, and no penalty or forfeiture incurred previous to the time when any statutory provisions shall be repealed, shall be effected by such repeal, except that when any punishment, forfeiture or penalty, shall have been mitigated by the laws to be in force after such repeal, such provision shall apply to and control any judgment to be pronounced after the repeal for any offense committed before that time.

[541] SEC. 6. No prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed as if any such provision had not been repealed, except that such proceedings shall be conducted according to the provisions of the law in force at and after the time of such repeal.

SEC. 7. The repeal of the laws of Wisconsin, as contemplated in the first section of this act, shall not extend to any law private in its nature, nor to any act conferring rights, privileges, or immunities upon any individual, or association of individuals, or conferring corporate powers upon any county, town, society, or individuals.

SEC. 8. None of the statutes of Great Britain shall be considered as law of this territory.

[Adopted by two-thirds of both branches of the legislature, and became a law July 30, 1840.]

CHAPTER 131.

RECORDERS.

AN ACT relating to the office of recorder of deeds.

SECTION.

1. Recorders office in each organized county.
2. Recorder to be elected biennially, to give bond, conditions, etc., etc.
3. Penalty for officiating before security be given.
4. To keep entry book, manner of recording, index, receipt, etc., proviso.

SECTION.

5. May appoint deputies, for whose acts he shall be responsible.
6. County commissioners may fill vacancies in office of recorder.
7. Vacancies to be filled by election, after notice.
8. Time of service for persons filling vacancy.
9. Fees of recorder.
10. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 du-[542]-ly 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 clerk of the board of commissioners; and every person so elected, shall, within ten days after receiving his certificate of election, take and subscribe an oath (or affirmation) faithfully to discharge the duties of his office; and shall, also, within the time aforesaid, give bond to the board of commissioners of the proper county, with two or more good securities, to be approved by the clerk of the board of commissioners, in the penal sum of five hundred dollars, 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 undamaged, to his successor in office, and any person aggrieved by a breach of the condition thereof, may sustain an action thereon in any court of competent jurisdiction; which oath and bond shall be filed in the office of the clerk of the board of commissioners.

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 taken the oath and given the bond as above prescribed, upon pain of forfeiting the sum of one hundred and fifty dollars; one-half to the use of the county, and 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 the neglect of such recorder to take the oath and give the bond as above mentioned.

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 al-[543]-so make and keep a complete alphabetical index to each record book, showing the page on which each instrument is recorded, with the names of the parties thereto; he shall, upon being requested, 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, and it is hereby made the duty of each recorder of deeds to file, immediately, all deeds and papers which may be presented to him for record, and to note on the back of the same, the hour and day when the same were presented for record.

SEC. 5. Said recorder of deeds is hereby authorized to appoint one or more deputies, for whose acts, however, said recorder shall be held responsible, and each deputy is required before entering upon the duties of his appointment, to take an oath (or affirmation) faithfully to discharge the duties of deputy recorder of deeds, which oath shall be filed in the office of the clerk of the board of commissioners.

SEC. 6. In all cases when the office of recorder of deeds shall become vacant by death, resignation, removal or otherwise, it is hereby made the duty of the board of commissioners of the county in which such vacancy shall happen, to appoint some suitable person to fill the same, who shall, previously to entering upon the duties of his office, take an oath and enter into bond, as provided in the second section of this act.

SEC. 7. It is hereby made the duty of the clerk of the board of commissioners of the county, in which any vacancy in the office of recorder of deeds may occur, to give notice that such vacancy will be filled by an election, which notice shall be given, and the election conducted in conformity to the law regulating general and special elections: provided, that in all cases where the recorder of any county shall absent himself from the county in which he is recorder, for the term of six months, said office shall be deemed vacant.

SEC. 8. That the person chosen to fill such vacancy, shall serve the balance of the time for which his predecessor was elected, and until his successor is elected and qualified: provided, that no special election shall be ordered as aforesaid unless the vacancy shall occur six months previous to any general election.

SEC. 9. Each recorder of deeds shall be entitled to the following fees, to-wit: for recording all deeds, mortgages and other instruments of writing, for every one hundred words thereof, twelve cents; for copies of the same, when requested, for every one hundred words, [544] twelve cents; for every official certificate when requested, twenty-five cents.

SEC. 10. The act entitled an act relating to the office of recorder of deeds, etc., approved January 19, 1839, be and the same is hereby repealed.

Approved January 23, A. D. 1843.

CHAPTER 132.

REVENUE.

AN ACT to provide for assessing and collecting county and territorial revenue.

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32. List of property assessed by collector and amount of taxes collected thereon to be verified.
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- whom paid, and the adjustment of his accounts.
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 39. Collectors fees.
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 42. Forfeitures and penalties for violations or neglect of duty.
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57. Officers prohibited from purchasing territorial warrants to pay into treasury on account of taxes collected.
58. Repealing clause.
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Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That, for the purpose of raising a revenue for county and territorial purposes, it shall be the duty of the board of county commissioners of each county of this territory, each year, to levy a tax, not to exceed five mills on the dollar, on the property of all bodies corporate or politic; all capital employed in merchandising; all capital employed by exchange brokers; all capital employed by money lenders; all distilleries; and all stock in steam boats; on all lands, town lots, and out lots, not exempt from taxation by any law of the United States now in force; and on all personal property, with the exception of one hundred dollars worth of household furniture to each house holder; and excepting libraries, agricultural implements, tools of mechanics, the property of all literary institutions, together with public buildings, and all other property belonging to the territory; on each ferry kept by authority of law, not less than two, nor more than fifty dollars per annum; on each license for hawking wooden, brass, or any other kind of clocks, not less than one hundred nor more than three hundred dollars; on each license to keep a grocery, not less than twenty-five nor more than one hundred dollars; and no tavern or inn-keeper shall be permitted to retail spirituous liquors, without a grocery license.

SEC. 2. That the county commissioners shall annually, at their regular session in July, or so soon thereafter as the assessment roll is filed, levy a percentage on all real and personal property, as aforesaid, sufficient, when added to the amount that will probably be received by the county from other sources of revenue, to defray the current expenses of such county, and to liquidate its debts for the year. Such percentage shall not, in any case, exceed five mills on the dollar as aforesaid, and the said commissioners may annually levy

a poll tax, not to exceed fifty cents, to be paid in money or county orders, on all male citizens over the age of twenty-one, and under the age of fifty years.

SEC. 3. That at the time and place of holding township elections, for [547] township officers, there shall be elected one assessor for each and every organized township, who shall be a qualified voter, whose term of office shall be one year, and until his successor is elected and qualified. Such assessor, so elected, shall, within ten days after receiving a certificate of his election, enter into bond, with sufficient security, to be approved by the board of township trustees, in the penalty of one hundred dollars, made payable to the county commissioners of the proper county, conditioned for the faithful performance of his duty as assessor, and also take an oath or affirmation, to be administered by the clerk of said township, faithfully to discharge the duties required of him by law.

SEC. 4. That if any county in this territory be not organized into townships, then, in that case, there shall be one assessor elected in each election precinct, who shall perform all the duties described in the third section of this act, to whom the clerk of the board of county commissioners shall administer the necessary oath, and his bond shall be approved by the said commissioners, and filed with their clerk.

SEC. 5. If any assessor, so elected under the provisions of this act, shall refuse to accept such office, or fail to comply with the two foregoing sections, the clerk of the board of township trustees shall, upon such failure, issue a notice thereof to the board of trustees of said township, which shall be served by any constable of said township, upon said trustees; and it shall be the duty of said trustees, 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 sections; and should any assessor die or become unable, from bodily infirmity or any other cause, to complete the assessment of his township or precinct, as the case may be, 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 thereof 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 found, and then he shall go on to finish the assessment, according to the provisions of this act; and if the roll of his predecessor cannot be found, the clerk of the board of county commissioners of said county shall make a new one.

SEC. 6. That whenever any assessor, elected or appointed as aforesaid, shall deem it necessary, he may appoint a deputy assessor, to be approved of by the board of trustees of such township in which it may happen, and take an oath, or affirmation, as is prescribed in the third [548] and fourth sections of this act, for whose acts the assessor shall be responsible.

SEC. 7. That immediately after the election and qualification of each assessor, he shall commence assessing all the taxable property subject to taxation within his township, or precinct, as the case may be, and shall deliver to the board of county commissioners, on or before the first Monday in July thereafter, a full and complete assessment roll, which roll shall set forth a precise description of the land, as owned by each person therein named, which specification shall correspond with the plan or map of the original survey, and the number of acres specifically noted in a column by itself; and further, said lands and all town lots shall be valued at their true value, in cash, with all the improvements thereon, by the present assessors now elected in each county in this territory, with two other persons of good qualifications, to be appointed by the board of county commissioners of the proper county at their April term next, one in each county commissioners district, other than that in which the assessor lives, so that each part of the county may have an equal valuation of their land or lots,

who shall take into consideration the general improvements of the country in which the same may be situated, the quality of soil, its convenience to navigation, public roads, mill privileges, and all other local advantages. Such appraisers so appointed, before entering upon their duties as such, shall take and subscribe an oath for the faithful performance of their duty; and when said appraisers are so appointed and qualified as aforesaid, it shall be their duty to attend with said assessor, on the second Monday in June next, at the county seat of said county, then and there to make said valuation as nearly equal as may be, which valuation, when examined and corrected by the board of county commissioners, shall be recorded in the clerk's office of said board, and remain as a fixed value for five years, unless sooner allowed by law: provided, however, that it shall not prevent any person or persons who may feel aggrieved by the valuation put on his, her, or their land or lots, from having the matter determined before the county commissioners any time within three months after the acceptance of said roll, and upon proof thereof, if said commissioners should think the valuation too high, they may alter the same accordingly. Said appraisers shall have, as a compensation for their services, the sum of two dollars per day, for every day necessarily employed, which shall be paid out of the county treasury as other moneys are paid: provided, that when any person or persons shall [549] sell or convey any part of a certain tract of land, or town lots, with improvements thereon, by deed, or otherwise, and thereby making said tract unequal in value by said division, it is hereby made the duty of said purchaser to have his name inserted in the assessment roll by the clerk of the board of commissioners, and the land so purchased shall be transferred from said grantor to said purchaser, and if the parties cannot agree on the value of said land so transferred, it shall be the duty of said clerk to decide the matter of difference, and fix the value thereof on each tract, so as to retain the same valuation on the whole tract as if it had never been divided; for which service the said clerk shall receive twelve and a half cents for each transfer.

SEC. 8. That the assessor shall also give a full description of all town lots in his township, or precinct, as is laid down in said town plat, the number of lot, or part thereof, and valuation of the same, in the manner prescribed in the foregoing section; and all lands, or town lots, not given in by the owners it shall be the duty of the assessor to return the same as non-resident land, by such description as specified in the section preceding.

SEC. 9. That all personal property shall be taxed according to its true value, in cash, to be determined by the assessor; and it shall be the duty of each assessor to value all improvements, on claimed lands unsold, as personal property, and charge the same to said claimants; and that all grain, in stacks or cribs, of corn or pork, put up for family use, and all other necessaries of like nature, shall be exempt from taxation: provided, that all keel and flat boats, and all wharf boats, shall be taxed according to their real value, in cash.

SEC. 10. That any assessor may, at his discretion, swear any person to give a true account of his or her property, according to the best of his or her knowledge and belief; and should any person or persons when so required, refuse to testify as aforesaid, such assessor shall ascertain the taxable property of such person or persons, from the best information to be derived from other sources, and the person or persons so refusing to testify shall pay to such assessor the sum of five dollars for extra trouble, which sum may be recovered as other debts, by motion, before any court having competent jurisdiction.

SEC. 11. That the clerk of the board of county commissioners, of each county in this territory, shall prepare blank forms for each assessor sufficient for his assessment, ruled in complete order, which roll shall be ready to deliver to each assessor on or before the fifth day of April in each year, for which the county shall pay, for paper and ruling, fifty cents per quire. Said form shall be as follows, viz:

[550] SEE PLAT, SECTION 18.

| Name of Persons | Description | No. of Sec. | Town | R'nge | No. of Acres | Value | Total | Pol | Per'l Prop. | Names of Towns | Block | Lot | Value | Total |
|-----------------|-------------|-------------|------|-------|--------------|-------|---------|-----|-------------|----------------|-------|-----|--------|---------|
| Chas. Mason | E ½ N E ½ | 1 | 71 | 4 | 80 | 8.00 | — | 1 | 300.00 | Burlington | — | 40 | 500.00 | — |
| Same | W ½ N E ½ | 4 | 71 | 4 | 80 | 5.00 | — | — | — | Augusta | 14 | 10 | 50.00 | — |
| Same | SW ¼ NE ¼ | 9 | 71 | 4 | 40 | 3.00 | — | — | — | Pleasant Grove | — | 25 | 75.00 | — |
| Same | NE ¼ NE ¼ | 30 | 71 | 4 | 30 | 2.00 | — | — | — | Dodgeville | 18 | 60 | 50.00 | — |
| Same | SW ¼ SW ¼ | 20 | 71 | 4 | 25 | 1.25 | 1251.25 | — | — | Yellow Springs | — | 30 | 20.00 | 2246.75 |

REVENUE

[551] SEC. 12. That whenever any assessor shall discover during his assessment that there were any tracts of land, town lots, or any goods and chattels of any kind subject to taxation, that were omitted by his predecessor the preceding year, he shall enter the same upon his roll, and the name of the person to whom it belongs, if known, and the said property shall be taxed and collected as though it had been assessed the preceding year and paid into the county treasury.

SEC. 13. That for future convenience it is hereby made the duty of the clerk of the board of county commissioners to furnish each assessor with a plat of his township, or precinct, as the case may be, and said plat shall contain the amount of all lands in his district, which plat shall set forth all the vacant lands in it marked thus, (vacant) and said clerk shall deliver the same to each assessor at the same time he received his assessment roll, and it shall be the duty of said assessor, when assessing the taxable lands as specified in the seventh section of this act, to write the name of the person or persons on each tract of land specifically set forth throughout, until all is assessed in his district, and the remainder return as non-resident lands. The following is a form of said plat, and the manner in which it should be kept:

[552] SEE FORM—SECTION 11.

| | | | | | |
|----------------------|----------------------|---------------------|--------------|----|---------------------|
| 6 | 5 | C. M. 80 a. 4 | 3 | 2 | C. M. 80 a. 1 |
| 7 | 8 | C. M. 40 a. 9 | 10 | 11 | 12 |
| 18 | 17 | 16 | Vacant 15 | 14 | 13 |
| 19 | C. M. 28 a. 20 | 21 | 22 | 23 | 24 |
| C. M. 30 a. 30 | 29 | 28 | 27 | 26 | 25 |
| 31 Vacant | 32 | 33 | 34 | 35 | 36 |

SEC. 14. That the assessors shall be allowed, as a compensation for their services, the sum of two dollars per day, to be paid out of the county treasury of the proper county as other moneys are paid; and if afterwards it should appear that any of the assessors have failed to make a complete and full assessment of his township or precinct, the commissioners may deduct from his per diem such amount as they may deem reasonable for such failure, and if such assessor have received his pay for such assessment, he and his securities shall be liable, on their bond, for the amount of such deduction.

SEC. 15. That it shall be the duty of the clerk of the board of county commissioners, in the first place, to calculate and carry out the territorial tax on the total amount as returned by the assessors, which rate shall be the half of a mill on the dollar, and it shall be the duty of said commissioners, at their regular session in July as before mentioned, to fix the per centage for county revenue, which, together with the territorial revenue, shall not exceed five mills on the dollar as aforesaid, and such percentage as they may fix upon shall be recorded, which [553] shall govern said clerk in making out the calculation for county revenue for county purposes.

SEC. 16. That immediately after the return, acceptance, and filing of the assessment rolls, the clerk shall calculate and carry out the amount of taxes opposite to the specified property, lots, or lands, or any other property charged with taxes, and shall, within twenty days after filing of the same, make out and deliver a certified statement of the amount, as exhibited by said assessment rolls, to the treasurer of said county.

SEC. 17. That there shall be elected hereafter annually, at the general election, one collector in each county in this territory, who shall be a qualified elector and shall, within sixteen days after receiving a certificate of his election, take an oath, to be administered by the clerk of the board of county commissioners, that he will well and truly perform the duties of his office as collector, and shall enter into bond, to be filed with said clerk with sufficient security, to be approved by the board of county commissioners, in the penalty of double the amount of taxes assessed in his county, conditioned for the faithful performance of the duties of his office as prescribed by law, and such collector may appoint one or more deputies, who shall be sworn and have the same power to collect taxes as the collector himself; such collector shall be responsible for the acts of his deputies, and should any deputy fail to pay over any money collected by him for county or territorial purposes, such principal collector is hereby authorized to proceed against him in the same summary manner as is provided for proceeding against collectors in like cases.

SEC. 18. That it shall be the duty of the clerk of the board of county commissioners, within twenty days after filing the assessment rolls, to make out two copies of the same, with the names of the owners of the property therein assessed, arranged in alphabetical order, under the seal of said board, and in the name of the territory, directed to the collector of said county, commanding him to collect the taxes charged in said duplicate by demanding payment of the persons therein charged, at the most usual place of residence, or in any other place where they may be found, on or before the first Monday in April next ensuing; and on receiving full payment of the amount due from any person, he shall give a receipt in full for the amount paid, in words at full length, and for what year, and further shall specify the number of lands or lots so charged, and after once demanding payment as aforesaid, he may, at his discretion, advertise and appoint times when he will meet each person in their respective townships, or precincts, to [554] receive taxes, and at all other times, except public days, he or his deputy may be found at the county seat.

SEC. 19. That as fast as the collector shall collect moneys due said county, he shall pay over to the county treasury monthly, 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.

SEC. 20. That any collector, in cases of gross assessment of taxes upon any tract or lot of land, upon application of any claimant or owner of any part thereof, either divided or undivided, to pay such part as he may be entitled to pay, such collector shall receive the same, provided the owner will specify by a

map or memorandum of the survey, and the balance of such taxes and interest shall be a lien on the remainder of said land.

SEC. 21. That if the taxes are not paid to the collector on or before the first Monday in January, he may proceed to collect the same by distress and sale of the goods and chattels of the person or persons so charged, by giving ten days notice of such sale, the time and place, and what property to be sold; such notices shall be set up in four of the most public places in the county.

SEC. 22. That if no goods and 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 in the most public places in the county, one of which shall be on the court house door, and it shall particularly set forth each tract of land or town lot, intended to be sold, at least four weeks previous to the day of sale, which shall take place annually on the third Monday in February, notifying all whom it may concern, that he will, on the third Monday in February, next ensuing the date of such notice, commence selling, at the court house door, all and singular the lands and town lots in said county, in which the taxes due for the year, or years, are not paid by said day, and that such sale will continue from day to day, between the hours of nine o'clock in the forenoon, and four in the afternoon of each day, until all are offered for sale.

SEC. 23. That the collector shall file with the clerk, the verification of the printer, that the advertisement above described, has been published for the length of time required by law in said newspaper.

[555] SEC. 24. That after he has filed evidence of the publication, of the notice required in the preceding section, the collector shall proceed, in pursuance thereof, on said third Monday in February, 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 cost of advertising and selling the same, or so much thereof as will sell for the amount due and chargeable thereon, to the highest bidder for ready cash; such collector shall state at the time of such sale, in what manner the land shall be divided, if at all, and continue from day to day, between said hours, to expose the said lands and lots to sale, until all shall be duly offered.

SEC. 25. That when any lot or tract of land, or part thereof, shall be sold for the non-payment of taxes and cost, the collector shall give the purchaser a certificate in writing, describing the same with certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lot, or land, or part thereof, which certificate may be assignable 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 the purchaser, his heirs or assigns, or to the clerk of the board of county commissioners of the county in which such lot or tract of land be situate for the use of the purchaser, his heirs or assigns, the sum mentioned in said certificate, with interest thereon, at the rate of fifty per cent. per annum, and the said clerk shall note the same in a book to be kept by him for that purpose, and redeem said lands from said purchasers, for which said clerk shall receive as a compensation for such redemption the sum of twenty-five cents, for each eighty acres, and the same for each town lot, which sum said claimant shall pay said clerk before redemption. The said collector or his successor in office, at the time such deed is demanded, shall, at the expiration of said two years, execute to said purchaser, his heirs or assigns, in the name of the territory of Iowa, a conveyance of the lot or tract of land, so sold as afore-

said, and described in said certificate, which conveyance shall vest in the person to whom it is given, an absolute estate in fee simple, and such conveyance, acknowledged and recorded, shall be good and valid in law. No sale of lands for taxes, nor deed made in pursuance thereof, shall be of any validity, if the tax for which the same is sold shall have been paid prior to such sale, and the collector's receipt shall be evidence of that fact: provided, always, that when the lands of minors, insane persons, or persons in confinement, and *femes sole*, be sold, the same shall be redeemable within one year after such disability shall have been removed.

SEC. 26. That all lands and town lots which shall not be sold, as above provided, and the taxes charged thereon still remain unpaid, such taxes and charges shall bear interest from the date of the aforesaid sale, at the rate of six 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 from it all lands which they know to be forfeited or relinquished to the United States, all lands or lots which have been double assessed, or which the taxes have been paid on, and correct all manner of errors that may exist, and see that the clerk makes due return of such corrected list of former years, which they shall annex to the new duplicate next after its correction, and if any remain unpaid, the same shall be collected by said collector of the current year, as hereinbefore directed.

SEC. 27. That taxes are hereby made a lien on the lands or town lots on which they may be due, in whose hands such lands or town lots may come, and when any goods and chattels are sold to satisfy the payment of any tax, the collector shall apply it to that purpose, and should there be an overplus, he shall refund the same to the owner.

SEC. 28. That if any 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 refuse payment, the collector shall have a right again to advertise and sell the same on the first Monday in May next thereafter, and such advertising and sale shall 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 if made on the third Monday in February; and when such collector shall have settled with the treasurer, 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 day last mentioned, which account shall be made out and sworn to, as is provided for in this act, for his delinquent return.

SEC. 29. That the collector in his return to the precept mentioned, shall state fully and distinctly the payment made by way of credit to the property charged on the transcript of the assessment rolls as aforesaid, the payments enforced by distress and sale of goods and chattels, and in like manner the sale of lots and tracts of land, or part thereof, and the [557] person to whom, and the sum 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 cause of failure to enforce payment as commanded in the precept, and such other 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 individuals shall be injured or sustain any 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 or individuals, upon suit to be brought against such collector and his securities, upon their bond, for his or their use, shall recover treble damages and full cost and charges.

SEC. 30. That it shall be the duty of the clerk of the board of commissioners of the several counties to make out four copies of the list 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 for twelve months, and shall cause the other three to be posted up in the most public places in the county, within ten days after receiving said return: provided however, it shall be lawful for any collector to proceed, by distress and sale of goods and chattels, to collect any taxes returned delinquent within twenty days after making such return.

SEC. 31. That 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.

SEC. 32. That each and every collector is required to assess a county and territorial 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, and verify by affidavit, a list of the property by him 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 [558] taxes collected thereon by said collector, in the same manner and at the same time that he publishes the delinquent list.

SEC. 33. That 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 illegally assessed; and in all cases where too much personal property has been through mistake charged by the assessor, the collector may remit the excess of tax, and report the same with the illegal assessment, the name of the person and property illegally assessed, and the same shall be verified by affidavit and filed with the clerk before it shall have any effect.

SEC. 34. That 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 another to fill such vacancy, who shall take the oath of office before said clerk, with like penalty and condition as prescribed hereafter, 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, 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, and 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.

SEC. 35. That any person injured by the neglect of any deceased or infirm collector to enter credits for taxes paid on the transcript aforesaid, shall have redress by action on such collector's bond for the damages thereby sustained, and if any person charged with taxes on the duplicate of the deceased or infirm collector, and shall have no evidence of payment of said taxes, he shall produce the collector's receipt of such prior collector, and his successors shall not be charged therewith, but shall take up such receipt and give his own in lieu thereof, and return the same with said receipt, and the amount shall be recov-

erable as before provided: provided, however, that the two foregoing sections be so construed as not to prevent any collector who may be disabled by bodily infirmity from appointing deputies under the provisions of this act.

SEC. 36. That every collector shall receive from any person or per-[559]-sons, orders regularly drawn upon the treasurer of his county, in payment due said county.

SEC. 37. That the collectors of each county in this territory are required, and it is hereby made their duty, to pay to the county treasurer of their counties, the whole amount of taxes charged against them in said duplicate, on or before the first Monday in April, in each year, and if there be any deficiency in the amount thereof, they shall account for the same by producing to the board of commissioners a certified statement, to be made by the clerk, attested by his signature and official seal, of the amount of the delinquencies in the payment of taxes, specifying the name of the persons and property, or tax, for which he is delinquent, as appears from such collector's return to the precept.

SEC. 38. That it is made the further 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 receipts 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.

SEC. 39. That each collector shall be entitled to the following fees for his services: five per centum on all taxes by him collected, except by distress, then two per centum in addition, and on real estate sold, twenty-five cents for each certificate.

SEC. 40. That if any collector shall fail to make settlement of the taxes assessed in his county, at the time required by this act, it shall be the duty of the board of commissioners forthwith, to charge in the account against such collector, five per centum damage on the amount of the balance due from such collector, on account of such taxes, for such delinquency; and unless the said debt and damages, and the interest thereon, be paid to the treasurer of the county, the county commissioners shall cause suit to be commenced against such collector and securities, on their bond, for the debt and damages due as aforesaid, and the said amount shall bear interest from the day at which payment was to be made, at the rate of twenty 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 county commissioners as truly transcribed from the account current against such collector on the book 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 and his securities be permitted to set off, or allege in payment of such demand, any [560] payment or claim of credit, unless the same has been first 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.

SEC. 41. That 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 and territorial revenue, as contained in said duplicate, together with damages and costs: provided, the commissioners may extend the time to a day certain, to be affixed, that said collector shall make return without fail, conforming in all respects with the provisions of this act. That it shall be the duty of the district attorney to aid the commissioners in the

prosecution of this act when requested, and to give advice and counsel concerning the revenue.

SEC. 42. That 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 offense, 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 limitation 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.

SEC. 43. That 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 and 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 their several rights may be presented in the same suit on such bond, and one judgment entered thereon, which 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 awarded on such judgment for the debt and damages supposed to be due, owing or belonging to the party complaining, as often as such right may accrue.

[561] SEC. 44. That any officer withholding the payment of any moneys, belonging to the county or territory, 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 their clerk, as above provided in cases 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 defense to the demand.

SEC. 45. That no pedlar 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 pedlar intends to offer said goods for sale, such sum as the board of commissioners shall assess, not less than ten, nor more than fifty dollars per annum, or at the same rate for a shorter period; and if any person or persons shall peddle any goods, wares, or merchandise, within any county in this territory, without first having obtained such license, any such person or persons 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 county commissioners of the proper county, for the use of said county, before any justice of the peace, or any court of record having jurisdiction thereof.

SEC. 46. That 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 the board to grant a written permission to such applicant or applicants to vend, sell, and retail goods, wares, and merchandise, as provided in this act, until the next meeting of the 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 next meeting, shall, upon an examination, 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 such permits or licenses, when granted, the clerk shall receive one dollar to be paid by such applicant.

[562] SEC. 47. That 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 proceed forthwith to assess the tax to be paid in such cases, 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, or a less time, commencing with the date of the permission, and if a greater sum be assessed than that affixed 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 having his, her, or their permit revoked, but if a less sum be assessed, it shall be the duty of the board of county commissioners to order a warrant to be drawn on the treasurer, in favor of such person, for the overplus, payable out of any money in the county treasury not otherwise appropriated.

SEC. 48. That if any person shall peddle, or hawk, or in any other manner dispose of clocks, without being duly authorized by a license or a permit, such person, for every such offense, 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 county commissioners, sheriffs, coroners, justices of the peace, and clerks of the several courts in this territory; and it shall be lawful for any other person, in case of their neglect, to cause all such offenders to be brought to justice.

SEC. 49. That no person or persons applying for a license or permit, shall be entitled to the same until he, she, or they shall file with the clerk of the board of county commissioners, a receipt from the county treasurer for the amount ordered to be paid by such applicant or applicants, agreeable to the provisions of this act, and such receipt shall be charged in the account against said treasurer on the books of said commissioners.

SEC. 50. That an act providing for assessing and collecting county revenue, approved January 24, 1839; and an act to amend the same, approved January 14, 1840; and an act providing for the same, approved January 15, 1841; and all other acts contravening this act, be and the same are hereby repealed.

SEC. 51. *And be it further enacted,* That it shall be the duty of the county commissioners of each and every organized county in this territory, when they levy the county tax, to levy, in addition thereto, a [563] tax of one quarter mill per cent. on all taxable property within this territory, for territorial purposes, which shall be collected in the same manner, and at the same time that the county tax is collected, and by the same collector.

SEC. 52. That when said tax is collected, it is hereby made the duty of the collectors of said tax to pay the same into the county treasury of his county, there to remain subject to the order of the territorial treasurer; and it is hereby made the duty of the said collectors to take duplicate receipts for the same, one of which they shall transmit by mail, or other safe conveyance, to the territorial treasurer, and the other they shall keep as a voucher for their own safety.

SEC. 53. That it shall be the duty of the auditor of public accounts, so soon as he shall have received a copy of the assessment roll from the clerk of the board of county commissioners of any county in this territory, to open an account with the collector of such county, in which he shall charge such col-

lector with the amount of territorial tax which shall appear, from the said copy of the assessment roll, to have been assessed in such county.

SEC. 54. That nothing in this act shall be so construed as to relinquish to any of the counties in this territory, any portion of the tax heretofore assessed in said counties, for territorial purposes, by any law or laws heretofore in force on that subject. And if any collector, county treasurer, or other officer in this territory, who shall have heretofore received any part of the territorial revenue, and shall have neglected or failed to account for, or pay over the same, according to the laws heretofore passed, it shall be the duty of the auditor and prosecuting attorney of the proper district to proceed against such officer, and his securities, in like manner as provided in section fifty-five for proceeding against delinquent collectors and their securities.

SEC. 55. That whenever the clerk of the board of county commissioners of any county in this territory shall neglect or refuse to transmit to the auditor of public accounts a copy of the assessment roll, as directed in section eighteen, it shall be the duty of the auditor (before the next term of the district court to be held in and for such county) to give notice to the prosecuting attorney of the judicial district in which such county may be situated, of such neglect or refusal, and it shall be the duty of such prosecuting attorney to apply to the said district court, on the first day of the next term thereof, for a writ of mandamus, under the seal of said court, directing such clerk forthwith to transmit such copy to the auditor as aforesaid, or show cause, by the [564] fourth day of the same term of such court, why he has failed to do so according [to] the provisions of this act; and if it shall appear that such failure has been occasioned by carelessness or wilful negligence, the costs of such proceedings shall be taxed against such collector, together with a fee of five dollars for the prosecuting attorney.

SEC. 56. If the collector of any county in this territory shall neglect or refuse to account for, and pay over to the territorial treasurer, on or before the first day of June, in each and every year, any or all of the taxes with which he shall stand charged by the auditor, it shall be the duty of the auditor forthwith to give notice thereof to the prosecuting attorney of the district in which such county may be situated, and it shall be the duty of such prosecuting attorney to commence suit immediately against such collector, and his sureties, upon his official bond, and the certificate of the territorial treasurer, countersigned by the auditor, shall be sufficient evidence to put such collector, and his securities, upon the proof of such settlement and payment. And whenever judgment shall be rendered against such collector and his securities, by virtue of the provisions of this section, the damages assessed shall be for the amount found to be due and unaccounted for by such collector, together with twenty per cent interest thereon, from the time such payment should have been made until such judgment shall be satisfied. And the said prosecuting attorney shall be entitled to ten per cent on the amount of such damages and interest, to be paid out of the proceeds thereof, as a compensation for his services: provided, that in all cases when persons, against whom territorial taxes have been assessed, shall have become insolvent, or shall have removed out of the county before the said taxes could, by due diligence, have been collected from them, it shall be the duty of the collector to make out a list of such delinquents, together with the amount of territorial tax assessed to each, which shall be verified by the affidavit of such collector, and filed with the auditor, whose duty it shall be to credit such collector by the amount of such delinquent list.

SEC. 57. That no collector, county treasurer, or other officer, authorized to collect or receive any part of the territorial revenue by virtue of this act, or any act heretofore passed for the collection and receiving of the territorial revenue, shall hereafter be allowed to purchase any warrant issued by the auditor,

or any draft heretofore issued by the territorial treasurer upon any county treasurer in this territory, with a view of paying the same into the territorial treasury in lieu of money collected or received on account of the territory. And it is [565] hereby made the duty of the territorial treasurer to refuse to receive from any officer, authorized to collect or receive any part of the territorial revenue, any warrant, draft, or other evidence of debt against the territory, hereafter purchased by such officer and offered by him in payment to the territorial treasurer in lieu of money collected or received on account of the territory.

SEC. 58. That an act to provide for a territorial revenue, approved January 25, 1839, also an act to levy a territorial tax, approved, January 15, 1841, be and the same are hereby repealed.

SEC. 59. That this act shall take effect from and after its passage, except so much thereof as relates to the election of assessors in each township or precinct, which shall take effect from and after the first day of April, in the year of our Lord one thousand eight hundred and forty-four.

Approved February 13, A. D. 1843.

CHAPTER 133.

SECURITIES.

AN ACT concerning debtors and their securities.

SECTION.

1. Security when apprehensive that principal will become insolvent, may require creditor to put his bond in suit.
2. To whom provisions of this act extend, and to whom it shall not.
3. Security to have judgment for the sum paid, with interests and costs.

SECTION.

4. Proceedings when principal obligor becomes insolvent.
5. Sureties suffering judgment by default.
6. Special bail of judgment debtor.
7. Notice to be given to person upon whom judgment is to operate.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, [566] or obligation, so that it will become impossible, or difficult, for such security, after paying, satisfying, or discharging such debts due or demand, to 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.

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.

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 each and of their respective shares and proportions of the amount or value of such judgment with damages and costs.

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 representatives aforesaid, [567] good collateral security, to be approved by the court before whom such suit is depending.

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.

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, A. D. 1838.

CHAPTER 134.

SECURITIES.

AN ACT for the relief of securities of persons charged with criminal offenses.

SECTION 1—When securities may surrender their principal.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That in all cases of surety for the appearance of persons charged with criminal offenses 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, A. D. 1839.

[568] CHAPTER 135.

SECURITIES.

AN ACT for the relief of securities of public officers in certain cases.

SECTION.

1. Securities of sheriffs or other county officers, when apprehensive, may be discharged by court, upon petition to that effect.
2. Securities of executors and administrators may, by petition to judge of probate court, be discharged, according to first section.

SECTION.

3. New bond being given, old securities discharged from further liability on their bond.
4. Officer failing or refusing to give new bond, his office to be considered vacated.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That in case the securities, or either of them of any sheriff, coroner, treasurer, or any other county officer, or constable, shall conceive himself, or themselves in danger of suffering by being such security, and shall petition the district court for relief in the premises, the said court shall have full power to order that the said officers shall give bond, and other good and sufficient security, for the faithful discharge of the duties of his office, on its being made known to the court that twenty days' previous notice was given of such intended petition, which bond shall be in a penalty not less than the first, and conditioned according to law.

SEC. 2. That if the securities, or any of them, of any executor or administrator, or any other person having charge of the settlement of the estate of any deceased person, or of any guardian having charge of the estate of minor heirs, in this territory, shall conceive himself or themselves in danger of suffering by being such security, and shall file a petition with the judge of probate of the proper county for relief in the premises, the said judge of probate shall have the same power as is conferred by the first section of this bill upon the district courts, and shall be governed in all respects, according to the provisions of said section relative to the officers therein named.

SEC. 3. That on the giving a new bond and other security as aforesaid, the former security or securities shall be discharged from further [569] liability on their bond, as to the performance of all official duties after the giving of such new bond.

SEC. 4. That if any such officer shall fail or refuse to comply with such order, to give other bond and security as aforesaid, the office shall become vacated, and thereafter filled as by law is now directed.

Approved February 15, A. D. 1843.

CHAPTER 136.

STEAM BOATS.

AN ACT to prevent disasters on steam boats, navigating the waters within the jurisdiction of the territory of Iowa.

SECTION.

1. Duty of masters as regards officers, crew, boilers, etc., etc.
2. Regulation relative to passing of boats in ascending and descending.
3. Management of boats meeting in night time, or in narrow channel.
4. Duty of passengers in the observance of rules.
5. Responsibilities of masters and owners.
6. Officers guilty of manslaughter if loss of life ensue from negligence.
7. Racing prohibited, and accountability thus incurred.
8. Loss of life occasioned by racing, and penalty incurred.

SECTION.

9. Duty of masters in landing passengers.
10. Penalties for violation of preceding section.
11. Gunpowder as freight, how and where to be stowed, penalty for failure or neglect to comply herewith.
12. Duty of passengers as to gunpowder.
13. This act to be printed and put up in boats, and penalty for neglect.
14. Where suit may be brought under this act.
15. When to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 seaworthy.

[570] 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.

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.

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.

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.

SEC. 6. If any loss of life shall ensue, from any neglect, or refusal on the 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.

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.

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 any sum not exceeding five thousand dollars, nor less than five hundred dollars, or imprisoned for any time not exceeding ten years.

SEC. 9. That, in landing passengers from steamboats, the master shall cause the vessel to be brought to shore whenever practicable and [571] 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.

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.

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.

SEC. 12. It shall not be lawful for any person or persons to put, or keep, any gunpowder 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.

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 [572] which the suit shall be brought, and the other to the use of the person, who may sue for the same.

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.

SEC. 15. This act to take effect from and after its passage.

Approved January 4, A. D. 1839.

CHAPTER 137.

CONSTRUCTION OF STATUTES.

AN ACT concerning the construction of statutes.

SECTION.

1. Laws to be promulgated by printing.
2. Acts of incorporation to be considered public.
3. Statutes to take effect at the same time throughout the territory.
4. Time of taking effect of statutes when the time is not specified.
5. Rules for the construction of statutes:
 - 1st. Manner of construing words and statutes.
 - 2nd. Number, words and things.
 - 3rd. Joint authority.
 - 4th. Meaning of grantor and grantee.
 - 5th. Highway.

SECTION.

- 6th. Inhabitant.
- 7th. Insane person, who included by the term.
- 8th. Issue, who it includes.
- 9th. Lands, what is included.
- 10th. Month and year.
- 11th. Oath and affirmation.
- 12th. Person.
- 13th. Seal.
- 14th. State.
- 15th. Town.
- 16th. Will.
- 17th. Written. Proviso with regard to written signatures.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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.

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.

SEC. 3. Every statute shall take effect at the same time throughout the territory.

[573] 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.

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—

1. 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.

2. 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 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.

3. 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.

4. 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.

5. 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."

6. The word "inhabitant" may be construed to mean a resident in any city or town.

7. The words "insane person" shall be construed to include every idiot, non-compus, lunatic and distracted person.

8. The word "issue," as applied to the descent of estates shall be construed to include all the lawful lineal descendants of the ancestor.

9. The words "land," or "lands," and the words "real es-[574]-tate," shall be construed to include lands, tenements and hereditaments and all rights thereto, and interest therein.

10. The word "month" shall be construed to mean a calendar month, unless otherwise expressed, and the word "year" alone shall be equivalent to the expression "year of our Lord."

11. 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."

12. The word "person" may extend and be applied to bodies politic and corporate as well as to individuals.

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

14. 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.

15. 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.

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

17. The words "written" and "in writing" may be construed to include printing, engraving, lithography and any other mode of representing words and letters: provided, however, that in all cases where the written signature of any person is required by law it shall be the proper handwriting of such person, or, in case he is unable to write, his proper mark.

Approved January 19, A. D. 1839.

[575] CHAPTER 138.

AUTHENTICATION OF STATUTES.

AN ACT relative to the authentication of statutes without the approval of the governor, and for other purposes.

SECTION.

1. Authentication of bill returned without signature, and form.
2. Authentication of bills not returned, and form.

SECTION.

3. Printed laws of other states evidence.
4. Copies of printed statutes evidence.
5. Fees of secretary for copies.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when a bill that has passed both houses of the legislative assembly, shall be returned by the governor without his signature, and with his objections therto, and upon a reconsideration shall pass both houses by a majority of two-thirds, it shall be authenticated as having become a law by a certificate endorsed thereon or attached thereto, in the following form: "this bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses by a majority of two-thirds, it has become a law this —— day of ——," which, being signed by the president of the council and speaker of the house of representatives, shall be deemed a sufficient authentication thereof, and the bill shall again be presented to the governor, to be by him deposited with the laws in the office of the secretary of the territory.

SEC. 2. That every bill which has passed both houses of the legislative assembly, and shall not be returned by the governor within three days, having thereby become a law, shall be authenticated by the governor, causing the fact to be certified thereon by the secretary of the territory, in the following form: "this bill having remained with the governor three days, (Sundays excepted) and the legislative assembly being in session, it has become a law this —— day of ——, J. C., secretary of Iowa territory."

SEC. 3. The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of such state or territory, shall be evidence of the legislative acts of such state or territory.

[576] SEC. 4. That copies of any act, law or resolution, contained in the printed statute books of the United States, or any state or territory thereof, purporting to be printed by authority, and which are now or may hereafter be deposited in the office of the secretary of this territory, or the territorial library, certified under the hand of said secretary, (or in his absence, by the governor,) and the seal of the territory shall be admitted as evidence in any court of law or equity.

SEC. 5. That the secretary shall be entitled to demand, and receive, for copies so furnished, and attaching the seal thereto, twenty-five cents, for every folio of one hundred words, which, if required, must be paid in advance.

Approved January 16 A. D. 1840.

CHAPTER 139.

SHERIFFS.

AN ACT for the appointment and duties of sheriffs.

SECTION.

1. Tenure and oath of office.
2. Bond given, conditions, sum.
3. Same to be filed, recorded, etc.
4. When office of sheriff shall be deemed vacant.
5. Duty of sheriff as regards the execution and return of process.
6. To give certificate of writ in certain cases.
7. Proceedings against sheriff for neglect or refusal to pay over money. Proviso.
8. Proceedings by board of commissioners against sheriff for a failure or refusal to settle and pay over to them.
9. Annual settlement in April.
10. Duty of sheriff in preserving the peace, and their powers herein.
11. Sheriffs to attend courts and to have charge of court house and jail.
12. Penalty for taking unlawful fees, and how recovered.

SECTION.

13. Sheriffs not to purchase at their own sales.
14. Sheriffs may appoint deputies, in what manner, provision in case of death, resignation or removal of sheriff and deputy.
15. Expiration of sheriffs office; his powers and duties, transfer of prisoners, papers, &c.
16. Executions, fee bills, tax lists, etc., when to be retained.
17. Duty of sheriffs and jailors with regard to prisoners, etc.
18. Male and female prisoners to be kept in separate rooms, penalty for violation of this provision.
19. What shall be deemed an escape.
- [577] 20. Penalties on conviction of bribery, for escapes.
21. Duty of sheriffs as to jails, and providing for security of prisoners.
See sections 4, 5, 6, following for amendments to first and second sections of this act.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, as 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 cer-

tified 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 described, 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 approve, in all such cases the office shall be deemed vacant.

[578] 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.

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.

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 enquiry 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 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 [579] 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.

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.

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.

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.

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 offense, to the party 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.

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 [580] process, and all such purchases made by any sheriff, or by any other person in his behalf, shall be absolutely null and void.

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 meantime, 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 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 reappointed 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, [581] 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 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.

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.

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 offense, forfeit the sum of two [582] hundred and ninety dollars, and liable to all the pains and penalties of perjury, and be forever after incapable of executing the said office.

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.

Approved January 21, A. D. 1839.

Note—The following are the 4th, 5th and 6th sections of "an act providing for the election of sheriffs, recorders, &c.," approved, January 16th, 1840, which are amendatory of this act.

SEC. 4. That in each organized county there shall be elected one sheriff, at the general election in the year eighteen hundred and forty, who shall hold his office two years, and until his successor is elected and qualified.

SEC. 5. That a certificate of election shall be issued to the person elected sheriff, in like manner as to other county officers, and the oaths required to be taken by him shall be endorsed on the back of said certificate.

SEC. 6. That so much of the first section of "an act for the appointment and duties of sheriffs," approved January twenty-one, eighteen hundred and thirty-nine, as requires them to be appointed and commissioned by the governor, is hereby repealed; and every sheriff shall, within thirty days after receiving his certificate of election, enter into bonds, etc., as required in section second of said act; and in section fourteen of said act, the words "appointed and commissioned," shall read "elected and qualified," after the next general election; and in section fifteen of said act, the words "commissioned" and "appointed," shall read "elected."

[583] CHAPTER 140.

COMMON SCHOOLS.

AN ACT to establish a system of common schools.

SECTION.

1. Notice of the formation of district to be given.
2. All voters to be notified.
3. Forfeiture for neglect to serve notice.
4. Officers chosen.
5. Voters.
6. Failure to organize.
7. When districts dissolved.
8. Special meetings.
9. Annual meetings.
10. Each district a body corporate.
12. Suits against district.
13. Powers of district voters.
 - 1st. To adjourn.
 - 2nd. To designate site for school.
 - 3rd. To purchase same.
 - 4th. To impose tax for expenses.
 - 5th. To impose tax for the purchase of library.
 - 6th. To select place for library, and librarian also.

SECTION.

- 7th. To fix the time for keeping school, and price of tuition.
14. Duration of offices.
15. Penalty against officer refusing to serve.
16. Duties of moderator.
17. Duties of assessor.
 - 1st. To amend transcript of assessment roll for his district.
 - 2nd. To post up list of persons taxed and amount of tax.
 - 3rd. To call meeting of the board in cases of complaint.
 - 4th. To collect taxes.
 - 5th. To appear for his district in any suits against same.
18. Power and duty of director.
 - 1st. To record proceedings of district.
 - 2nd. To employ teachers.
 - 3rd. To apprise board of the insufficiency of tax.

SECTION.

- 4th. To take the census of his district.
- 5th. To furnish teachers with copy of the same.
- 6th. To provide necessaries for school house.
- 7th. To lay the same before board.
- 8th. To give notice of district meeting.
- 9th. To report yearly to board of inspectors.
- 19. Duty of board of district.
 - 1st. To levy and assess tax.
 - 2nd. To equalize assessment rolls.
 - 3rd. To purchase or lease a site for school house.
 - 4th. To assign and apply moneys collected.
 - 5th. To require bond of assessor.
 - 6th. To make annual report.
- 20. Board to fill vacancies.
- 21. District entitled to proceeds of fines.
- 22. Compensation of board.
- 23. School inspectors.
- 24. Their duty.
 - 1st. To hold meetings.
 - 2nd. To divide townships into districts.
 - [584] 3rd. To receive school moneys.
 - 4th. To describe and number districts.
 - 5th. To apportion school money.
- 25. Chairman to give bond.
- 26. To make report.
- 27. Penalty for failure.

SECTION.

- 28. District in two townships.
- 29. To examine teachers.
- 30. May annul certificates.
- 31. To visit schools.
- 32-33. To fill vacancies.
- 34. Compensation.
- 35. Forfeiture for failure or refusal to act.
- 36. Clerk and his duty.
 - 1st. To attend all meetings, etc.
 - 2nd. To receipt and keep report.
 - 3rd. To receive and answer communications.
 - 4th. To transmit reports.
- 37. Duties of clerk of district court.
- 38. To make report annually.
- 39. Penalty for failure.
- 40. Moneys when paid.
- 41. Treasurer of county to apply for and receive.
- 42. To give notice to school board.
- 43. Disposition of moneys unexpended by directors.
- 44. Clerk of county to transmit certified copies of the amount of money to be disbursed in each township.
- 45. Money to be raised in townships.
- 46. To be paid to chairman of board of inspectors.
- 47. Moneys how paid when townships fail to organize.
- 48. Penalty against officers for failure to deliver books, moneys, papers, etc., to successors in office.
- 49. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. [That] whenever any school district shall be formed in any township by the board of school inspectors, it shall be the duty of said board to deliver a notice in writing describing the boundaries of said district, and the time and place of the first meeting, to a taxable inhabitant of such district.

SEC. 2. It shall be the duty of such inhabitant to notify every qualified voter of such district, either personally or by leaving a written notice at his place of residence, of the time and place of said meeting, at least six days before said meeting.

SEC. 3. Whenever such inhabitant shall neglect or refuse to serve notice as required, he shall forfeit to the district, for the use of its library, the sum of ten dollars, to be recovered in an action of debt by the assessor, when said district shall be organized, before any court of competent jurisdiction.

SEC. 4. The qualified voters, when assembled, pursuant to such previous notice, and also at each annual meeting, shall choose a moderator, director and assessor.

SEC. 5. Every white male inhabitant of the age of twenty-one [585] years, residing in such district, liable to pay a school district tax, shall be entitled to vote at any district meeting.

SEC. 6. In case the inhabitants of a district fail to organize the same or if any district, after formation, shall be dissolved, such notice shall be renewed in the manner prescribed in the first two sections of this act.

SEC. 7. Whenever from whatever cause any district shall become destitute of the three officers provided for in this act, for the period of six months, or whenever any district shall neglect or refuse to hold two successive annual meetings, it shall be taken and held to be dissolved.

SEC. 8. Special meetings may be called by the district board, or by any one of them, on the written request of three legal voters of the district, by giving the required previous notice; but in all such cases the object of the meeting shall be clearly stated in said notice.

SEC. 9. All notices for district meetings, except such as are provided for in the first two sections of this act, whether annual or special, shall set forth the day and hour and place of meeting, and be given at least six days previous to such meeting, by being posted up in the most public place in the district.

SEC. 10. The annual meeting of each school district shall be on the first Monday of October.

SEC. 11. Each school district organized under this act, shall be a body corporate by the name and style of "school district number _____ of the township of _____, in the county of _____, and territory of Iowa," and in that name of suing and being sued, and of holding such real and personal estate as is authorized to be purchased by the provisions of this act, and of selling the same.

SEC. 12. Whenever any suit shall be brought against any school district, the process shall be by summons, a copy of which shall be left with the assessor of said district at least ten days previous to the return day thereof.

SEC. 13. Whenever lawfully assembled, the qualified voters in each district shall have power.

1. To adjourn from time to time as may be necessary.

2. To designate a site for a school house, and to change the same by a vote of two-thirds, at any regular meeting: provided, that when no site can be established by said inhabitants, the inspectors of the township or townships shall determine where the site shall be, and said determination shall be final.

[586] 3. To purchase or lease an appropriate site, and to build, hire or purchase a school house, and to impose such tax as shall be sufficient for the payment thereof: provided, that the amount of such tax shall not exceed in any one year the sum of five hundred dollars.

4. To impose from time to time such tax as may be required to keep the school house in repair, and provide for the necessary appendages: provided, that all expenses for fuel shall be a tax upon the inhabitants sending pupils to school in proportion to the number of pupils, and the time they shall attend school: and provided also, that when any district in which a school house shall have been built, shall, within two years thereafter, be divided, and there shall be a tax for a school house raised in the districts to which any portion of such aforesaid district shall have been attached, the remaining portion of such district in which the school house shall have been built, shall refund to the newly formed district that portion of the tax contributed by such portion of the district so set off.

5. To impose a tax sufficient for the purchase of a suitable library case, also a sum not exceeding ten dollars annually, for the purchase of books to be selected by a vote of the district by the district board, when so directed.

6. To designate the place where the library shall be kept, and the person by whom it shall be kept; and the superintendent of public instruction shall establish the necessary rules for the regulation of the library.

7. To determine at each annual meeting, the length of time, which shall not be less than three months, the school shall be kept, and to fix the amount of money, in addition to its apportionment, which may be raised for the support of its school teachers the ensuing year, the sum so voted not to exceed in any one year ninety dollars: provided, that in case no sum for the support of schools shall be voted at the annual meeting of any district, the director may call a special meeting for the purpose of voting such tax; at which meeting the district may, by a vote of two-thirds, vote any sum not exceeding that authorized to be raised at the annual meeting.

8. To order and direct the sale of any site that may belong to the district, whenever the school house shall have been removed, or the sale of such other property and buildings as may belong to the district.

SEC. 14. The moderator, director, and assessor shall hold their respective offices until the annual meeting next following their appoint-[587]-ment and until others are chosen: provided, they shall not hold their offices beyond the time of a second annual meeting without re-election.

SEC. 15. Every person elected to any one of the above offices who, without sufficient cause, shall neglect or refuse to serve shall forfeit to the district for the use of the library the sum of ten dollars, to be recovered in an action of debt by the assessors before any court of competent jurisdiction.

SEC. 16. The moderator shall have power, and it shall be his duty to preside at all meetings of the district, to sign all warrants for the collection of taxes and all orders for payment of moneys to be disbursed by the district, and countersign all warrants of the director upon the township board of inspectors, for the moneys apportioned to the district by said board of school inspectors.

SEC. 17. The assessor shall have power, and it shall be his duty,

1. To obtain within thirty days of his election, a transcript of so much of the last assessment roll of the township or townships as relates to his district, and shall add to such transcript all the property of persons who may have become residents since the last assessment roll was made, and all the property purchased by non-residents since the making of said roll; said property to be rated according to the rule of valuation adopted in making out the township assessment roll: provided, that no property shall be twice assessed, and the said transcript together with such additions as shall be made as aforesaid, shall be the assessment roll of said district; and all taxes to be raised in such district shall be levied upon the taxable property thereof in proportion to such valuation.

2. To post up whenever any tax shall have been assessed upon the property of his district, in the most frequented and central place, a list of persons taxed, with the amount set opposite their respective names, so far as their names shall be known, and also a description of the property of persons whose names shall be known, and also a description of property of persons whose names are not known, at least thirty days previous to the same being offered for collection.

3. To call a meeting of the district board in case any person shall complain to him, during the above named period, of being taxed beyond his due proportion, who shall examine into the ground of said complaint, and reverse, alter, or confirm said assessment as, in their judgment, justice shall require; and at the end of the time specified, he shall certify the same upon the tax list, and present it to the moderator for his warrant.

[588] 4. It shall be the duty of the assessor to collect all taxes assessed upon the taxable property of his district, and pay them over on the warrant of the moderator, and in case any person shall neglect or refuse to pay such tax when called upon, it shall be the duty of the assessor to collect the same by distress and sale of the goods and chattels of such person whenever found in said district, having first published such sale for at least ten days by posting up notice thereof in the most public place in the district; and in the collection of taxes upon lands and tenements said assessor shall make returns to the county collector; and it shall be the duty of the county collector to sell the lands and tenements for the collection of said school tax, in the same manner as is required for the collection of township and county taxes.

5. It shall also be the duty of the assessor to appear for and in behalf of his district, in all suits brought by or against said district, except the case provided for in the nineteenth section of this act.

SEC. 18. The director shall have power and it shall be his duty,

1. To record all the proceedings of the district in a book to be kept for that purpose, and preserve copies of all reports made to the board of school inspectors.

2. To employ by and with the advice and consent of the moderator and assessor, or either of them, qualified teachers, and pay them by draft upon the township board of inspectors, said draft not to exceed the amount due said district on account of the apportionment of the board of school inspectors.

3. Whenever the apportionment shall not be sufficient to pay for the services of any such teachers, it shall be the duty of the director to call a meeting of the district board for the purpose of levying the balance upon the taxable property of the district, the amount so levied not to exceed the sum voted by the district at its annual meeting; and in case said sum so voted, together with the apportionment, shall be found insufficient the deficit shall be assessed upon the parents or guardians of the children in proportion to the length of time they shall severally have attended school during the term or terms when such deficiency shall have arisen.

4. Within ten days of the time of the annual meeting, the director shall take the census of his district by registering the names of all belonging to it between the ages of five and twenty-one years inclusive.

5. A copy of this list he shall give to each and every teacher employed within the district, and require every such teacher carefully [589] to note the time of attendance of each and every scholar, and to make a return of the same to the director.

6. It shall be the duty of the director to provide the necessary appendages for the school house, and keep the same in good condition and repair during the time of school, and an accurate account of all the expenses incurred.

7. He shall present said account to the district board to be assessed and collected in the manner hereinbefore prescribed.

8. It shall be his duty to give the prescribed notice of the annual district meeting, and all such special meetings as shall be called for in accordance with the provisions of this act.

9. At the end of the year the school director shall report to the township board of inspectors at the office of the township clerk:

1. The whole number of persons between the ages of five and twenty-one.
2. The number attending school under five and over twenty-one.
3. Whole number that have attended school during the year.
4. Length of time a school has been kept by a qualified teacher.
5. Amount of money received from the board of school inspectors.

6. Amount received for library.
7. Amount of money raised in the district.
8. Purposes for which it was raised, and,
9. Books used in said school.

SEC. 19. The moderator, director, and assessor, shall constitute the district board, and they shall have power and it shall be their duty,

1. To levy and assess upon the taxable property all moneys voted by the district, and the deficit, if any, agreeably to the third provision of the eighteenth section of this act, and the sums requisite for the necessary appendages and fuel for the school house during the continuance of any school.

2. To equalize the assessment roll of fractional school districts formed from different counties, whenever, in their judgment, the assessment rolls of the townships out of which said district was formed shall be unequal.

3. To purchase or lease a site as designated by the district for the school house in the corporate name thereof, to build, hire or purchase such school house out of the funds collected for that purpose, and [590] to make sale of any site or property of the district as directed by the inhabitants thereof, at an annual or special meeting.

4. To divide the public moneys received by the district for the year in not more than two parts, and to assign and apply one of such portions to each term a school may be kept, in payment of the teachers for services for the same: provided, that no money shall be paid to any teacher who has not received a certificate as provided in the twenty-ninth section of this act.

5. To require of the assessor a bond to be given to the district in double the amount of taxes to be collected in the district, with two sufficient sureties, to be approved by the moderator and director, conditioned for the faithful appropriation of all moneys that come into his hands by virtue of his office; said bond to be lodged in the hands of the moderator; and in case of a non-fulfillment of the condition thereof, the moderator and director, or either of them, may cause a suit for the penalty of said bond to be commenced in the name of the district, before any court of competent jurisdiction.

6. To present at each annual meeting of the district, a report setting forth an accurate account of all moneys received by them, or any of them, during the preceding year, and of the disbursement of the same, which report shall contain the items of such receipts and disbursements, and such report shall be recorded by the director in a distinct book to be provided and kept for that purpose.

SEC. 20. The district board shall have power to fill, by appointment, any vacancy that shall occur from whatever cause, and it shall be the duty of the board to supply such vacancy within ten days after the time of its occurrence.

SEC. 21. Each and every district that shall comply with the fifth provision of the thirteenth section of this act, shall be entitled to its proportion of the clear proceeds of all fines collected within the several counties for any breach of the penal laws, and also its proportion of the equivalent for exemption from military duty, which fines and equivalent shall be paid over by the several officers collecting the same to the treasurers of their respective counties, to be by them apportioned amongst the several townships in the county according to the number of persons between the ages of five and twenty-one years inclusive.

SEC. 22. Each member of the district board shall receive such compensation for his services as shall be voted in district meetings.

SEC. 23. There shall be chosen at each annual township meeting, [591] three school inspectors in the same manner as other township officers are chosen, who shall hold their office until others are chosen.

SEC. 24. Said inspectors shall have power and it shall be their duty,

1. To meet within ten days of their election, at the office of the township clerk, who shall be ex-officio clerk of the board, and organize by choosing one of their number chairman, who shall preside at their meetings.

2. To divide the township into such a number of districts, and to regulate and alter the boundaries of said school districts, as from time to time be necessary.

3. To apply for and receive from the county treasurer, all moneys appropriated for the primary schools, and district libraries, in their townships, and from the collector of the township, all moneys raised therein for the same purpose, as soon as the same may be due.

4. To describe and number the school districts of their township.

5. To apportion the school and library money received by them, on or before the first day of March in each year, among the several school districts in their township, in proportion to the number of persons in each, between the ages of five and twenty-one years, as the same shall be shown by the last annual report of the director of each district: provided, no school money shall be apportioned to any district from which a report shall not have been received, nor to any district in which a school shall not have been kept at least three months during the year, immediately preceding, by a qualified teacher, except the first distribution: and, provided, that no library moneys shall be apportioned to any district that shall not have complied with the fifth provision of the thirteenth section of this act.

SEC. 25. The chairman of the board of inspectors shall be the treasurer of said board, and it shall be the duty of the inspectors to require of said chairman a bond to be given to the township in double the amount to be received by him, in two sufficient securities, to be approved by the township clerk, conditioned for the faithful appropriation of all moneys that may come into his hands by virtue of his office, said bond to be lodged with the township clerk, who is hereby authorized, in case of the non-fulfilment of the condition of said bond, to sue for the penalty thereof, before any court of competent jurisdiction.

SEC. 26. On or before the twentieth day of October of each year, they shall make out and transmit to the clerk of the district court a report, setting forth the whole number of districts in their township, [592] together with the several particulars set forth in the reports of the school directors.

SEC. 27. If any board of school inspectors shall neglect or refuse to make such report, by the time set forth in the preceding section, they shall forfeit to the use of the schools of their township the sum of fifty dollars, and the full amount of the money lost by their failure, with interest on the same, to be recovered in an action of debt by the township collector, before any court having competent jurisdiction of the same.

SEC. 28. Whenever it may be necessary or convenient to form a district from two or more adjoining townships, the inspectors, or majority of them, from each of such adjoining townships, may form a district, regulate and alter the same; and the director of such district, so formed, shall make returns to each township from which said district is formed, specifying in said returns that, only, which belongs to said township.

SEC. 29. It shall be the duty of the inspectors to examine annually all persons offering themselves as candidates for teaching primary schools, in their townships, in regard to moral character, learning and ability to teach school, and if satisfied that such candidates possess the requisite qualifications, they shall deliver to the person so examined, a certificate signed by them, in such form as shall be prescribed by the superintendent of public instruction, which certificate shall be in force one year from the date thereof.

SEC. 30. Whenever the inspectors shall deem it necessary, they may re-examine any teacher of any primary school in their township, and if found wanting the requisite qualifications, they may annul any certificate given to such teacher by giving to such person ten days written notice to that effect, and filing the same in the office of the clerk of their township.

SEC. 31. It shall be the duty of the inspectors to visit all such schools in their township, at least twice in each year, as shall be organized according to law, to inquire into the condition, examine the scholars, and give such advice to both teachers and scholars as they shall deem proper.

SEC. 32. In case of the death, or removal, or disability to act of any one of the inspectors, the board shall fill such vacancy by appointment.

SEC. 33. Whenever any district board shall fail to supply any vacancy within the time limited in section twenty, the board of inspectors shall fill the same by appointment.

[593] SEC. 34. The inspectors shall be entitled to receive, for their services, the sum of one dollar per day, to be audited and paid as the accounts of other township officers are audited and paid.

SEC. 35. Any person elected or appointed school inspector, who shall neglect or refuse, without sufficient cause, to serve as such, shall forfeit, to the use of the school fund of his township, the sum of twenty-five dollars, to be recovered as prescribed in the twenty-fifth section of this act.

SEC. 36. The township clerk shall be ex-officio clerk of the board of school inspectors, and shall have power, and it shall be his duty,

1. To attend all meetings of the inspectors, and to prepare, under their directions, all their reports, estimates and apportionments of schools moneys, and record the same and all their proceedings in a book to be kept for that purpose.

2. To receive and keep all reports made to the inspectors from the directors of the several school districts, and all the books and papers belonging to the inspectors, and file the same in his office.

3. To receive all such communications as may be directed to him by the superintendent of public instruction, and dispose of the same in the manner directed therein.

4. To transmit to the clerk of the district court all such reports as may be made for such clerk by the inspectors, within the time limited in this act, and generally to do and execute all such things as belong to his office, and may be required of him by the inspectors.

SEC. 37. It shall be the duty of each and every clerk of the district court, to receive all such communications as may be directed to him by the superintendent of public instruction, and dispose of the same in the manner therein directed.

SEC. 38. It shall be the duty of each clerk of the district court, on or before the twentieth of November of every year, to make and transmit to the superintendent of public instruction, a report in writing, containing the whole number of townships in his county, distinguishing townships from which the required reports have been made to him by the inspectors of schools, and containing a certified copy of all their reports; and the board of supervisors or commissioners of each county are hereby authorized to allow to the clerk of the district courts such compensation as they may deem proper, for the services he may perform under and by virtue of the provisions of this act.

SEC. 39. Any clerk who shall neglect or refuse to make such report by the time so limited, shall, for each offense, forfeit the sum of [594] one hundred dollars, to the use of the schools of said county, to be recovered in an action of debt,

to be commenced forthwith, by and in the name of the superintendent of public instruction. And the money so recovered shall, when received by the superintendent, be paid into the treasury of the county, to the credit and for the use of the district or districts which may suffer from such neglect of the clerk; and the sum may be drawn out by the proper authority of said district or districts.

SEC. 40. The moneys to be hereafter distributed annually, for the support of primary schools, shall be payable on the first Monday of January in each year, on the warrant of the auditor of public accounts, to the treasurers of the several counties.

SEC. 41. The treasurers of the counties shall apply for and receive such moneys as are apportioned to their respective counties when the same shall become due.

SEC. 42. The treasurer of each county, when he shall receive such moneys shall give notice, in writing, to the chairman or clerk of the board of school inspectors of each township in his county, of the amount of school and library moneys apportioned to such township, and shall hold the same subject to the order of the inspectors.

SEC. 43. In case any moneys, apportioned to any township, shall not be applied for by such inspectors, the moneys so remaining shall be added to the moneys next received by the treasurer for distribution from the superintendent of public instruction, and in the same proportion distributed.

SEC. 44. Whenever the clerk of any county shall receive, from the superintendent, notice of the amount of money to be disbursed in the several townships in his county, he shall file the same in his office, and within one week transmit a certified copy thereof to the clerk of the board of commissioners, which copy said clerk shall lay before the commissioners at their next regular meeting.

SEC. 45. It shall be the duty of the commissioners, at such meeting, to add to the sums of money to be raised in each of the townships of the county, a sum equal to that which shall have been apportioned to such township from the school fund, to be levied and collected in the same manner as other moneys are directed to be raised in the townships.

SEC. 46. The commissioners shall cause and require the collector of each township, by their warrant, to pay such moneys, when collected, to the chairman of the board of school inspectors in such township, for the use of schools therein.

SEC. 47. Should any township neglect, or refuse, to elect, a board [595] of school inspectors, the collector shall pay the money, so collected, to the county treasurer, to be apportioned among the several townships as provided in the fortieth section of this act.

SEC. 48. Each and every officer created by the provisions of this act, who shall receive, by virtue of his office, any books, papers, or moneys, and shall refuse to deliver the same to his successor in office, or shall wilfully mutilate or destroy the same, or any part thereof, shall be deemed guilty of a misdemeanor and liable to a fine of not less than fifty dollars, nor more than five hundred, at the discretion of the court.

SEC. 49. All acts and parts of acts coming within the purview of this act, are hereby repealed.

Approved, January 16, A. D. 1840.

CHAPTER 141.

SCHOOL LANDS.

AN ACT to punish for trespass on school and other lands.

SECTION.

1. Trustees of school lands.
2. Trespassers, penalty.
3. On refusal or neglect to pay, to be imprisoned.
4. Trespass on other lands, and penalty.

SECTION.

5. Occupants to have fire wood.
6. Penalty for trespass on public grounds.
7. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the several boards of county commissioners are hereby made the trustees of the school lands in their respective counties, and they shall execute the duties of trustees of the school lands, so far as relates to the sixteenth section according to law, and the best of their understanding.

SEC. 2. That if any person shall hereafter trespass upon the school lands or sixteenth section or other lands selected in lieu thereof, by cutting down, destroying, or hauling from off the same any timber, stone-coal, or minerals of any description, every person so offending shall forfeit and pay double the value of such timber, stone, or stone-coal, or minerals of any description, to be recovered in the name of the trustees before any justice of the peace or before any court having [596] competent jurisdiction thereof, or by indictment by the grand jury of the district court of the county, and to be appropriated to the use of the townships for school purposes.

SEC. 3. Hereafter when any person shall be found guilty of trespassing on the sixteenth section or other school lands in this territory, and neglects or refuses to pay damages and costs, it shall be the duty of the court before whom such judgment was rendered, to imprison the defendant not less than ten days nor more than two months.

SEC. 4. That hereafter if any person knowingly enter on the lands belonging to another person, fall, box, bore or carry away any timber, stone, or stone-coal, or minerals of any description, the person so offending shall forfeit and pay double the value of such timber, stone, stone-coal, or minerals, to be recovered, together with costs of suit by the person injured, before any justice of the peace, or any court having jurisdiction thereof.

SEC. 5. That persons heretofore and now living and who have made improvements on the sixteenth section or school lands, shall be entitled to the use of such timber as is necessary to keep up fences, repair buildings, fire-wood, etc.: provided however, they shall not be allowed by the trustees to make use of timber in any other way than for repairing their improvements on the sixteenth section. A departure from the above provision by any occupant on the sixteenth section, shall subject him or her to the same penalties as other trespassers on the sixteenth section or school lands.

SEC. 6. That if any person or persons shall, without proper authority, cut down, injure or destroy any living ornamental tree or trees, either planted or preserved, standing or growing, on any commons or public ground, or any street, alley, sidewalk, avenue, or promenade, every such person or persons so offending, shall, on conviction thereof, be fined in any sum not exceeding two

hundred dollars, and shall moreover be liable to the action of the party injured in double damages.

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

Approved, January 17, A. D. 1840.

[597] CHAPTER 142.

SUPERINTENDENT OF PUBLIC BUILDINGS.

AN ACT providing for the appointment of a superintendent of public buildings at Iowa City, and the appointment of a territorial agent, and for other purposes.

SECTION.

1. Former act repealed.
2. Governor to appoint superintendent.
3. Duty of superintendent.
4. Pay roll to be kept.
5. Discretion vested in superintendent.
6. Payments how, and when to be made.
7. Superintendent to give bond.
8. Agent to be appointed.
9. Agents and others to revalue unsold lots.
10. Sale of lots.
11. Bond to be given to purchasers.
12. Agent to keep moneys, notes, etc.,

SECTION.

- and pay 75 per cent upon estimates.
13. Agent to give bond in sum of \$40,000 and take oath.
14. Oath to be taken by others.
15. Superintendent and agent to make annual report.
16. Duty of acting commissioner relative to notes, maps, etc.
17. Further duties of agent.
18. Vacancies in either office.
19. Salaries of superintendent and agent.
20. Repealing clause.
21. Act when to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That so much of an act entitled "An act to locate the seat of government of the territory of Iowa and for other purposes," and so much of any and all other acts as relates to the creation and appointment of three commissioners to locate and establish the permanent seat of government of this territory, and to the appointment of one of the three to be acting commissioner to superintend the erection of the capitol, be and the same are hereby repealed: provided, that nothing in this act shall be so construed as to render invalid any acts which have been done by the commissioners aforesaid, in pursuance of law.

SEC. 2. That in lieu of the commissioners above named, there shall be appointed by the governor, by and with the advice and consent of the council, some competent person as superintendent of public buildings at Iowa City, whose duty it shall be to superintend the erection of [598] the capitol, and who shall hold his office for the term of one year, and until his successor be appointed.

SEC. 3. That said superintendent shall proceed with the erection of the capitol, by making contracts for all such parts of the work as can be put under contract, consistently with the interests of the territory, and a vigorous prosecution of the work: provided, that all contracts shall be in writing.

SEC. 4. And of all work that is not done by contract, the superintendent shall keep, or cause to be kept, a pay roll, which shall show the time, rate, and amount, of all services rendered; and said superintendent shall keep a clear

and specific account of all materials purchased by him for the capitol, and of all his proceedings in relation to his office.

SEC. 5. That in all contracts for materials, or for work on the capitol, there shall be reserved to the superintendent the discretionary power of annulling them, if not fulfilled to his satisfaction and acceptance.

SEC. 6. That payments shall be made on all contracts every thirty days, upon estimates made by the superintendent or some competent person under his direction: provided, that twenty-five per cent, of the amount of the estimates, according to contract prices, shall be withheld until the contract shall be completed, when the whole amount shall be paid: and provided further, that payments on pay rolls, to the full amount, certified to by the superintendent, shall be made every thirty days.

SEC. 7. That the said superintendent, before he enters upon his office, shall take and subscribe an oath before some person authorized to administer oaths, faithfully to discharge the duties of his office, which oath, certified by the person administering the same, shall be filed in the office of the secretary of the territory; and shall also give bond to the territory, with securities to be approved by the governor, in the sum of ten thousand dollars, conditioned for the faithful discharge of the duties pertaining to his office; which bond shall also be filed in the office of the secretary of the territory.

SEC. 8. And be it further enacted, that there shall be appointed as aforesaid a territorial agent, who shall reside and keep his office at Iowa City, who shall hold his office for the term of one year, and until his successor be appointed, and whose duties shall be as hereinafter enumerated.

SEC. 9. The said territorial agent shall, in conjunction with two [599] other persons, now residents of Iowa City, to be appointed by the governor, make, between the first and fifteenth days of April, eighteen hundred and forty-one, a re-valuation of all unsold lots of Iowa City, at an average minimum price of two hundred dollars; and shall make out two certified lists of the same, one to be recorded and kept in the office of said agent, and the other to be filed in the office of the secretary of the territory.

SEC. 10. That as soon after the said re-valuation as his excellency the governor shall deem it expedient, he shall order, by proclamation, the sale of as many of such unsold lots as he may think proper, upon the following terms, viz: one-third paid down in cash, and the balance in two semi-annual installments: provided, that no lot shall be sold for a less sum than the minimum price fixed thereon by such re-valuation.

SEC. 11. That it shall be the duty of said agent to execute a bond to each of the purchasers, conditioned that upon the payment to the territory of the installments as they become due, the holder or obligee shall be entitled to a deed of conveyance in fee simple to the lot or lots therein named, as soon as a title is obtained from the government of the United States; and upon failure to pay any installment within thirty days after it becomes due, the lot or lots shall revert to the territory, and all sums of money paid thereon shall be forfeited.

SEC. 12. That said agent shall receive and keep on file all notes given for lots; shall receive, collect, and safely keep, all moneys due the territory, or hereafter becoming due; and shall pay out seventy-five per cent upon estimates certified by the superintendent for work done, or materials furnished under contract for the capitol, and the balance when the contract or contracts are completed to the satisfaction of the superintendent; and shall pay the full amount of incidental expenses on certified bills of the superintendent, and also the full amount of all pay-rolls, certified by the superintendent, paying to each man the amount called for by the pay-roll, and taking his receipt therefor, which receipt shall be his signature opposite the amount on the right hand

margin; which pay-roll, thus receipted, shall be a competent voucher for the agent in his settlement with the territory.

SEC. 13. That the said territorial agent, before he enters upon his office, shall give bond to the territory, with good securities, to be approved by the governor, in the sum of forty thousand dollars, conditioned for the faithful discharge and performance of the duties of his office, which shall be filed in the office of the secretary of the territo-[600]-ry; and shall also take and subscribe an oath, that he will faithfully, and to the best of his judgment and ability, discharge the duties of his office, which shall be filed as aforesaid.

SEC. 14. That the persons required to be appointed by the governor in the ninth section of this act, to act in conjunction with the said territorial agent, in making a re-valuation of the unsold lots in Iowa City, shall be sworn to discharge their duties to the best of their judgment, and shall receive three dollars per day for their services while actually employed.

SEC. 15. That the superintendent of public buildings at Iowa City, shall make a report annually to the legislative assembly, and oftener, when required; and the territorial agent shall report to the governor once in three months, and annually to the legislative assembly.

SEC. 16. That it shall be the duty of the acting commissioner forthwith to deliver up to the territorial agent all notes, books, records, maps and papers, of every kind and description, pertaining to his office, and to the board of commissioners appointed to locate and establish the permanent seat of government of this territory; and all property of every kind and description in his or their possession, or under his or their control, which belongs to the territory; and to deliver up to the superintendent all plans and drawings of every description pertaining to the capitol; and the acting commissioner is also required to make out a clear and accurate statement of all contracts made by him which have not been completed, and deliver the same to the superintendent of public buildings; and to furnish him with all necessary information in relation to the capitol, and to the situation of the materials on hand, and all other information which may be required.

SEC. 17. That the duties required to be performed by the acting commissioner in the third section of an act entitled, "An act to provide for the execution of title deeds to lots in Iowa City, and for other purposes," shall hereafter be performed by the territorial agent, and the purchase money of all lots or out lots in Iowa City, and all sums becoming due upon any promissory notes or obligations for the purchase of any of said lots, shall be paid to the said territorial agent, or his successor in office.

SEC. 18. Should a vacancy happen in either of the aforesaid offices of superintendent of public buildings at Iowa City, or territorial agent, during the recess of the legislative assembly, such vacancy shall be filled by the governor.

SEC. 19. That the said superintendent shall receive, as compensa-[601]-tion for his services, an annual salary of one thousand dollars, and the said territorial agent the sum of seven hundred dollars per annum.

SEC. 20. That all acts and parts of acts contravening the provisions of this act, be and the same are hereby repealed.

SEC. 21. This act to take effect and be in force from and after its passage.

Approved, January 14, A. D. 1841.

CHAPTER 143.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

AN ACT to repeal an act to create the office of superintendent of public instruction.

SECTION.

1. Office abolished.
2. To whom school inspectors to report

SECTION.

to, clerk of board of county commissioners.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That an act to create the office of superintendent of public instruction, approved January 13, 1841, be and the same is hereby repealed.

SEC. 2. That it shall be the duty of the school inspectors of the different districts in the several counties in this territory, to report the true condition of all the schools in their respective districts to the clerk of the boards of county commissioners in the several counties in this territory, on or before the first day of November, annually, and it is hereby made the duty of the several clerks aforesaid, to arrange the said several reports in order, and transmit the same to the legislative assembly of the territory, annually, on or before the second Monday after its annual organization.

Approved, February 17, A. D. 1842.

[602] CHAPTER 144.

SUPERVISORS.

AN ACT amending an act defining the duties of supervisors of roads and highways.

SECTION—Supervisor competent to prove warning.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That upon the trial of any action against any person or persons liable to work on the public roads, for the recovery of any penalty, fine or forfeiture, for a refusal or neglect to work on a public road, or for any other delinquency, the supervisor of the road, shall be a competent witness to prove the warning or notice given such person, and any other fact or facts necessary to establish such delinquency; any thing in any former act to the contrary notwithstanding.

Approved, February 2, A. D. 1842.

CHAPTER 145.

STALLIONS AND JACKS.

AN ACT regulating the keeping of stallions and jacks and to improve the breed of horses.

SECTION.

1. Stallions and jacks not to be kept within the limits of cities or towns, unless.
2. Stud horses running at large may be gelded, if done by a competent person.
3. Persons negligently suffering stud

SECTION.

- horses to run at large, liable for expenses of taking up.
4. Persons gelding horse to take reasonable care of him, and to receive reasonable compensation for the same.
5. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That it shall not be lawful for any person to keep or let to mares any stallion or jack, within the limits of any town [603] or village in this territory, or within two hundred yards thereof, unless such person shall provide an inclosure, so arranged as to obstruct the view from all the inhabitants in the town and vicinity as aforesaid, any person so offending shall on conviction thereof, be fined not less than one nor more than five dollars for every such offense, which fine shall be collected, on complaint to any justice of the county where the offense may have been committed.

SEC. 2. 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 in the habit of gelding, and the owner shall pay the price of so gelding.

SEC. 3. That 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 said 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 offense double the sum, and for a third offense, said horse may be taken up and gelded, as is provided in the preceding section of this act.

SEC. 4. That 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 of this act, 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.

SEC. 5. That an act for the improvement of the breed of horses, approved January 17, 1839, and an act regulating the keeping of stallions and jacks, approved February 17, 1842, be and the same are hereby repealed.

Approved, January 28, A. D. 1843.

[604] CHAPTER 146.

COUNTY SURVEYORS.

AN ACT defining the duties of county surveyors.

SECTION.

1. Surveyor elected and commissioned, to give bond, &c., &c.
2. To take oath and by whom administered.
3. May appoint deputies.
4. To make surveys as soon after application as possible.
5. Chainmen to be sworn.
6. County commissioners to procure field notes of their counties and file the same.
7. Special directions relative to surveys, field notes, record, etc.
8. Official record to be given up to successor, penalty for refusing to do so.

SECTION.

9. Record not to be conclusive, may be reviewed.
10. Compensation of surveyors.
11. Surveyors to provide themselves with compass of Rittenhouse construction.
12. Manner of sub-dividing a section.
13. Surveys made by other person than county surveyor, unless by mutual consent of parties, not good evidence in suit.
14. Calculation of irregular pieces of land.
15. This act not to be construed to affect surveyors elected under other law.
16. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall be elected in each county in this territory, at the next general election, one county surveyor; and it shall be the duty of the clerk of the board of county commissioners to make out and deliver to such person so elected, a certificate of his election, who shall continue in office two years from the time of his election, and shall, within fifteen days after receiving his certificate of election, as aforesaid, enter into bond, with good and sufficient security, in a sum not less than five hundred dollars, to the territory of Iowa, conditioned for the faithful performance of the duties of his office, according to law, to be approved by the board of county commissioners, or the clerk thereof in vacation, subject to the confirmation or rejection of the commissioners in term time.

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, [606] without favor or affection, which oath may be administered by any person duly authorized to administer oaths in the county, and shall be endorsed on his certificate of election.

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-[605]-or himself, and the surveyor shall be responsible for the official acts of his deputy.

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.

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.

SEC. 6. That it shall be the duty of the board of commissioners of each and every organized county in this territory, to procure, for the use and benefit of their county surveyors, the field notes of all the surveyed lands within the same, which field notes, when so procured, shall be filed in the office of the clerk of said board, and there carefully preserved for the use and benefit of the county surveyor, and the citizens of each county respectively: provided, that in all cases where the county surveyor of any county, who is now or may have been in office, and who has procured in part, or in whole, the field notes of his county, shall have the privilege of presenting the same to the board of commissioners of his county, which board is hereby authorized to take the same, if they are not injured or defaced, and draw an order on the treasurer of their county for the amount so allowed, which order shall be paid in cash; but in no case shall the commissioners allow the surveyors more for the said field notes than they could be had for at the surveyor general's or some one of the land offices within this territory.

SEC. 7. 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 the county surveyor shall be made according to the original survey. 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: provided, 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 [606] 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 be the duty of the county commissioners to furnish the county surveyor 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 *prima facie* evidence in any court of record in this territory.

SEC. 8. 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 as aforesaid, refusing the same when demanded, shall forfeit and pay one dollar for every day he may detain it after demanded, to be recovered by any person who may sue for the same before any justice of the peace of the proper county, to the use of common schools.

SEC. 9. 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.

SEC. 10. 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 is now allowed by law.

SEC. 11. That it shall be the duty of all the county surveyors of this territory, to furnish themselves with a good compass of Rittenhouse construction, the needle of which shall be not less than five and one-fourth inches in length, and the nonius of which shall bear not less than ten degrees variation, also a two pole chain of fifty links.

SEC. 12. Whenever a surveyor is required to make a sub-division of a section as established by the United States survey, he shall proceed as follows, (except when the section is fractional,) commencing at the quarter section corner, on either the east or west side of the section, and shall run east and west across said section, as the case may [607] be, and establish a common center therefor on a direct line between said corners, and equally distant from either. Any less sub-divisions than a quarter section shall be made by proceeding in the same manner, except in fractional sections.

SEC. 13. That no survey made hereafter by any person except the county surveyor or his deputy, shall be considered as legal evidence in any court of law or equity within this territory, except such surveys as are made by mutual consent of parties: provided always, that where it shall appear that the county surveyor of the county wherein the lands lie, may be a party, or in any manner interested, it shall be lawful for the district court, on application of either party, to appoint some suitable person in said county, whose duty it shall be to proceed to divide the same, for which service the person so appointed, shall be entitled to the same fees as county surveyors are entitled to for similar services.

SEC. 14. That all irregular pieces of land shall be calculated by latitude and departure.

SEC. 15. Nothing in this act shall be so construed as to interfere with any election of any surveyor who may have been elected under any other law.

SEC. 16. An act defining the duties of county surveyors, approved December 25, 1838, also December 21, 1840, shall be and the same are hereby repealed.

Approved, February 9, A. D. 1843.

CHAPTER 147.

TOWN PLATS.

AN ACT to provide for the recording of town plats.

SECTION.

1. Towns laid out or additions made thereto, by the county surveyor, and character of plat of same.
2. Regulations relative to number and size of in and out lots.
3. Corners to be marked, how and under whose direction, to be designated on plats, &c.
4. Town plats to be certified, acknowledged and recorded.

SECTION.

5. Donations or grants made on plats or maps of towns to be binding.
6. Towns in unorganized counties where recorded.
7. Forfeiture for violating this act.
8. Additional forfeiture for the premature [608] sale of lots.
9. Compensation of county surveyors.
10. Suits for forfeitures, &c., how brought and receipts from treasurer with whom filed.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That when any county commissioners, or other person or persons, wish to lay out a town in this territory, or an addition, or sub-division 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 sub-division 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, acknowledge 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 intent 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.

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.

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.

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.

SEC. 9. The county surveyor, who shall survey, lay out, and plat, any town, or addition, shall receive such compensation as is prescribed by an act defining the duties and compensation of county surveyors.

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 [610] 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, A. D. 1839.

CHAPTER 148.

TERRITORIAL TREASURER.

AN ACT to provide for the appointment of a territorial treasurer, and defining his duties.

SECTION.

1. Treasurer, by whom appointed and for how long, to give bond, take oath, etc.
2. To receive all territorial moneys and keep account of the same.

SECTION.

3. To pay money according to law only, and to make annual report of his receipts and disbursements.
4. Compensation.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 duties appertaining to the office of treasurer of the territory of Iowa: I will not, on any occasion, or pretense, 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."

SEC. 2. The treasurer shall receive all moneys, belonging to the territory, that may be raised by taxation, or otherwise, and shall pro-[611]-cure suitable books, in which he shall enter an account of his 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.

SEC. 4. The treasurer shall receive for his services such sum as may hereafter be allowed him by law.

Approved, January 24, A. D. 1839.

CHAPTER 149.

COUNTY TREASURERS.

AN ACT to provide for the election of county treasurers and to define their duties.

SECTION.

1. Treasurers elected, oath and bond, term of office, etc.
- 2-3. Duty of treasurer.
4. County orders to be received.
5. Compensation of treasurer.
6. County commissioners to fill vacancies.

SECTION.

7. License of public shows.
8. Tavern licenses.
9. Who to prosecute for violations of this act.
10. Before whom prosecuted.
11. Treasurers to prosecute on bonds.
12. May appoint deputy.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That there shall be elected at the general election annually, in each county in this territory, a treasurer, who shall immediately, on the receipt of a certificate notifying him of his election, take an oath faithfully to perform his trust, and give bond, with security to the satisfaction of the board of county commissioners, payable to said board in their corporate name, conditioned for the faithful discharge of the duties of his office, that he will account for all moneys that may come into his hands as treasurer, that he will deliver unto his successor in office, all books, papers, documents and other things which he may hold by virtue of his office, and that he will pay him the balance of all moneys due the county. And said treasurer shall hold [612] his office for the term of one year, and until his successor shall be elected and qualified.

SEC. 2. It shall be the duty of the treasurer to receive all moneys due and accruing to the county, to pay and disburse the same on orders drawn by the board of county commissioners of the proper county, attested by the clerk, and not otherwise. The said treasurer shall keep a true and just account of all moneys received and disbursed, and hold and keep the same at all times ready for the inspection of the board, and shall, at every regular term of said board, furnish them with a statement thereof, balanced to the first day of said term, showing all the moneys received and disbursed by him since his last settlement, and the balance remaining in his hands, together with the arrearages of taxes in the hands of the collectors. He shall, moreover, once in every year, settle his accounts with the said board, and produce his vouchers, which being allowed, shall be cancelled by them, by writing the word "cancelled" on the face of such order, which shall be retained and filed by the clerk of said board.

SEC. 3. It shall moreover be the duty of said treasurer, as soon as he shall have received from the clerk of said board a statement of the amount of taxes put into the hands of the sheriff or collector of his county or any of his predecessors, and which shall not have been accounted for, forthwith to proceed to collect, in the name of the county commissioners, from said delinquent, his sureties, heirs, executors or administrators, the sum or sums in arrear and due from him or them to the county, and in like manner when such treasurer shall

be furnished by the clerk with a statement of jury fees, fines and forfeitures received by any officer, he shall forthwith proceed to collect the same, and place the same when collected, to the credit of the county.

SEC. 4. County orders, when properly attested, shall be entitled to preference as to payment according to the order of time in which they may be presented, and upon the receipt of money into the treasury, it shall be the duty of the treasurer to appropriate and set apart the same for the discharge of such county orders so presented: provided, however, that the county treasurer is hereby required to receive of any collector all county orders which such collector may have received in payment of county tax, without regard to the priority of number of any such order or orders: and provided, that when two or more orders are presented at the same time, preference shall be given to the order of the oldest date.

SEC. 5. That the county treasurer shall have for his services one [613] and a half per centum for all moneys received, and one and a half per centum for all moneys paid out for the county, excepting moneys arising from the sale of town lots at the county seats, in which case he shall receive no more than two per cent for both receiving and paying out the same.

SEC. 6. In case the treasurer chosen shall decline accepting the office, or after accepting, shall die, or resign, or remove out of the county within the year, or shall from any cause become incapable of discharging the duties of his office, the board of county commissioners shall appoint a suitable person, being a resident of the same county, to fill such vacancy; and the person appointed, being sworn to the faithful discharge of the trust and giving bond as before directed, shall be treasurer of said county for the remainder of the year, and until another shall be chosen and qualified in his stead.

SEC. 7. That hereafter it shall be the duty of any person or persons who may intend to exhibit to public view or show any animal or animals, wax work or other figures, rope or wire dancers, feats of circus riding, or slight of hand for gain, to apply to the treasurer of the county where such exhibition is to be made, and pay the said treasurer not less than ten nor more than fifty dollars, at the discretion of the said treasurer, who shall receipt for the same, which receipt shall be forthwith filed with the clerk of the board of commissioners of the proper county, who is hereby required to make out his permit under the seal of the said county, for which said clerk shall be entitled to receive, as a fee, one dollar, to be paid by such applicant, and the said permit shall be a sufficient authority for such applicant to show or exhibit such animals, wax work, or other things during his stay in said county, provided that such stay shall not exceed one month, and further provided, that nothing in this act contained shall prevent any board of trustees of any incorporated town from taxing such exhibition agreeably to their corporate laws and ordinances passed in pursuance thereof.

SEC. 8. All county taxes arising from tavern licenses or otherwise, shall be paid into the county treasury.

SEC. 9. All sheriffs, coroners, constables, clerks, county treasurers, collectors, assessors, justices of the peace, and county commissioners, shall be required and it is hereby made their duty to cause to be prosecuted any person or persons who shall violate any of the provisions of this act.

SEC. 10. Any person who shall violate the provisions of the sev-[614]-enth section of this act, shall be prosecuted before any justice of the peace, and fined in any sum not less than twenty-five nor more than fifty dollars.

SEC. 11. The treasurers of the several counties may, in their own names and official capacity, prosecute to final judgment and execution any suits upon bonds, notes, and other securities given to their predecessors in office, and any

suits commenced by their predecessors in office, and pending at their removal therefrom; and they may also prosecute for any injuries done to the lands, buildings, or other property of their counties.

SEC. 12. The treasurer in each county may appoint a deputy, for whose acts he shall be responsible, and who shall take an oath for the faithful performance of the duties of his office.

Approved, December 24, A. D. 1839.

CHAPTER 150.

TRESPASSING ANIMALS, ETC.

AN ACT defining a lawful fence, and providing against trespassing animals.

SECTION.

1. Lawful fence defined, and proceedings when animals have broken into fields so enclosed.
2. Proceedings against owner of trespassing animals.
3. Judgment and execution against the same.

SECTION.

4. Compensation to fence viewers and penalty for refusal to perform duties.
5. Justice of the peace may appoint viewers.
6. When act to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That if any horse, mare, mule, or ass, or any cattle, hogs, sheep, or goats, shall break into any ground being enclosed with a strong worm fence, sufficiently staked and ridged, or locked at each joint, five feet in height, or with strong post and rails, or post and pailings five feet high, or with a hedge two feet high upon a ditch three feet deep and three feet wide, or, instead of such hedge, a rail fence three feet high, or with a sod fence three feet high, with a ditch on each side three feet wide and three feet deep, or a stone fence four [615] feet high or with a fence five feet six inches high, composed of strong timber, put up in any other proper manner, not herein particularly expressed, and the owner or occupier of such enclosure shall consider him or herself aggrieved thereby, the person so injured may apply to the fence viewers of the township, who shall forthwith repair to the place where such injury was done, and then diligently examine such fence.

SEC. 2. That if, in the opinion of the fence viewers, the fence over or through which the trespassing animal entered, is of such height and strength as is defined in the first section of this act, and in all other respects such a fence as good husbandmen generally keep, they shall proceed from view and enquiry to assess the damages sustained by such applicant, from such trespassing animal or animals; which assessment, including the sum due the fence viewers for their services by this act allowed, the said fence viewers, or a majority of them, shall under their hands and seals, certify and deliver to the person sustaining the damages; and if the owner or possessor of such trespassing animal or animals aforesaid, refuses to pay the said damages on demand, the person injured may deliver said certificate to any justice of the peace within the township, who shall issue process thereon as in other cases of damages; and, after trial had, shall enter up judgment and issue execution thereon agreeably to law.

SEC. 3. That if it shall appear to such justice, that damage has been done the plaintiff, he shall give judgment for the amount thereof, with costs of suit; and shall issue execution thereon, in the same manner and under like regulations as is by law directed, in other cases tried before a justice of the peace; but if it shall appear that the plaintiff has not sustained any damage, the justice shall give judgment against him, and award execution thereon for the costs of suit: provided, nevertheless, that either party shall have the privilege of an appeal to the district court, as in other causes tried before a justice of the peace.

SEC. 4. That the sum of fifty cents per day shall be allowed to each of the fence viewers, for their services rendered under this act; and if any fence viewer, directed to view and report the situation of any fence as aforesaid, shall fail or refuse to do the same, not having reasonable excuse for such failure or refusal, such person shall be subject to a fine not exceeding two dollars, at the discretion of the justice of the peace, for the use of the township, or county, where the townships are not organized.

SEC. 5. If there be no fence viewers elected or qualified, the person injured may apply to any justice of the peace within his county, [616] who shall appoint two householders, being citizens of the county, to examine said fence, and do all the duties required by the fence viewers.

SEC. 6. This act to take effect and be in force from and after the first day of May next.

Approved, January 21, A. D. 1842.

CHAPTER 151.

ROAD TAX.

AN ACT to provide for levying a tax on real and personal property, for road purposes.

SECTION.

1. Power of commissioners to levy tax for road purposes.
2. Duty of supervisor to furnish a list of taxable citizens.
3. Tax collector to proceed against delinquents for tax.

SECTION.

4. Application of money received for taxes.
5. Power of superintendent to order persons out to work.
6. Requirements of supervisors.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That hereafter the board of commissioners in each county in this territory, may, at the same time they make a levy of taxes for county purposes, also fix a per centum on real and personal property, for road purposes, which per centum shall not be less than five cents, nor more than twenty-five cents on the hundred dollars valuation, on all property made taxable by the revenue laws of this territory; said tax to be paid to the supervisors or worked out on the roads.

SEC. 2. That it shall be the duty of each supervisor to furnish the board of commissioners of his county, on or before the first Monday in July annually, a complete list of the individuals liable to pay county tax in his road district, particularly specifying those who are the owners of real estate in his district, whereupon said board shall furnish, or have furnished, said supervisors with a list of the road tax assessed on each person in his district, whose

duty it shall be to collect, or have the same worked out on the roads, allowing one dollar for each day's work.

SEC. 3. That for the purpose of giving non-residents an opportuni-[617]-ty to work out their road tax, the supervisors shall be furnished with a list of the amount of road tax charged on each non-resident tract of land in each supervisor's district; and in case said road tax is not paid or worked out by either residents or non-residents, on or before the first day of November in each year, then the supervisor shall make out a list of delinquents, attach his certificate thereto, and deliver the same to the proper tax collector, who is hereby authorized to proceed to collect said tax according to law, by sale of property, etc., as other taxes are collected, and when collected, to pay over the same to the proper supervisors: provided, however, that county orders shall not be received for said road tax.

SEC. 4. That it shall be the duty of each supervisor to apply all moneys, received by him for road tax, to the making or repairing of bridges or improvement of roads within his district; and said supervisors shall pay over to their successors, all moneys that may be in their hands when their successors are sworn into office.

SEC. 5. That it shall be the duty of supervisors to order out every person in their road districts, subject to labor on roads and highways, to work two days on the roads within the time provided by law, instead of three days as now provided by said law; and in all other duties said supervisors shall be governed by the road laws now in force in this territory.

SEC. 6. That the said supervisors shall only be required to perform two days' services free of charge, instead of three days as now required by law.

Approved, February 16, A. D. 1842.

CHAPTER 152.

TOWNSHIPS.

AN ACT for the organization of townships.

| SECTION. | SECTION. |
|--|--|
| 1. Board of commissioners to divide counties into townships. | 10. Compensation of treasurer. |
| 2. Townships, when organized, made bodies politic and corporate. | 11. Duty of township trustees. |
| 3. Time and manner of choosing judges of election. | 12. Supervisors of roads to furnish tools for repair of the same. |
| 4. First meeting of electors. | 13. Tax levied, its amount, assessment and collection. |
| 5. Election of township clerk and other [618] officers. | 14. Trustees to issue warrants to constable, to notify electors of elections. |
| 6. Clerk of township to keep record of all transactions at township meetings. | 15. Forfeiture of persons refusing to serve. |
| 7. To record private roads, cartways, brands of cattle, etc., and compensation for the same. | 16. Trustees to fill vacancies and appoint township officers in certain cases. |
| 8. Forfeiture for one person using marks of others, and how recovered. | 17. Duty of officer to deliver over books, etc., to successors. |
| 9. Township treasurers to give bond, suit on the same. | 18. County commissioners may alter boundaries. |

SECTION.

19. Applications for organization of townships, how and to whom.
20. Application for laying out private roads by petition.
21. Notice to be given, review, remonstrance, and establishment of said road.
22. Damages for injury of premises.

SECTION.

23. Constables to take oath, file bonds, etc., etc.
24. Trustees to be judges of elections held in townships.
25. Certain acts repealed.
26. No compensation to judges and clerks.
27. When act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the board of county commissioners in each county, not yet divided into townships, shall, as soon as they are of opinion that a majority of the people of the county desire it, proceed to divide the county into townships, in the following manner: they shall divide the county into townships of such shape and size as the convenience and interests of the citizens may require, confer upon each township the name preferred by the inhabitants of the same, and appoint the place where the first meeting of the electors shall be holden. The clerk of the said board shall record the name of each township, the time when it was set off, and a particular description of its boundaries.

SEC. 2. That the several townships which have been, or may hereafter be, organized, be and they are hereby formed into bodies, politic and corporate, capable of suing and being sued, pleading and being impleaded, in any court of law or equity in this territory.

SEC. 3. That the electors of each township shall, on the first Monday in April, annually, after the organization of the same, assemble at some place within the township, at the hour of 10 a. m., and when eight or more electors shall have assembled, they shall elect from their number a chairman, whose duty it shall be to preside over the meeting, [619] and to direct any constable present to remove or arrest any disorderly person or persons, and, if necessary, to confine them until the close of the meeting, and it is hereby made the duty of such constable to obey such orders; said electors shall then proceed to elect, by ballot, three persons, having the qualifications of electors, as judges of the election, who shall appoint the necessary clerk, and take an oath, or affirmation, faithfully to discharge the duties of their office.

SEC. 4. That the first meeting of the electors of any township, shall be held at the place appointed by the board of county commissioners, but all future meetings shall be held at such place as the trustees of the township may direct.

SEC. 5. That after the election of the chairman, and judges of the election, in the manner aforesaid, the electors shall proceed to the election of one township clerk, three trustees, two overseers of the poor, three fence viewers, a sufficient number of supervisors of highways, two constables, and one township treasurer, which several officers shall continue in office until their successors shall be chosen and qualified, and shall, on their respective appointments, take an oath or affirmation faithfully to discharge the duties of their respective offices.

SEC. 6. That it shall be the duty of the township clerk, to keep fair and accurate records of all public transactions at the township meetings, to make out within two days after the election of township officers a list of all of those of whom oaths are required by law, stating the offices to which they have been respectively chosen, and deliver the same to a constable of the township, requiring such constable forthwith to summons such officers to appear before a justice of the peace, or before such clerk within ten days, to take such oaths or affirmations as may by law be required, which oaths or affirmations the said

clerk is authorized to administer, and of which he shall make a record, and in case any township officer shall take the oath of office before any justice of the peace, such justice shall file a certificate thereof with the clerk of the township, who shall record the same.

SEC. 7. That it shall be the further duty of the township clerk, to record in a book to be provided by him for that purpose, all private roads, or cart-ways established by the trustees, together with the ear marks and brands of all cattle, sheep, and hogs, and such other marks as any person may wish to have recorded in said township, but he shall not record the same mark to two different persons, and the said clerk shall be entitled to receive of the person employing him as aforesaid for recording such marks or brands, the sum of twenty-five cents, and [620] shall deliver a certified copy of such record to the owner if required, and for recording private roads or cart-ways, he shall be entitled to receive ten cents for every sheet of one hundred words: provided, that in counties not divided into organized townships, the duties required of the township clerk in this section, shall be performed by the clerk of the board of county commissioners.

SEC. 8. If any person shall knowingly mark any of his horses, cattle, sheep, or hogs, with the same mark or brand previously recorded, and still used by any individual resident in the same organized township (or within five miles of such person in counties not divided into organized townships) the person so offending shall forfeit and pay for every such offense five dollars, to be recovered by action of debt before any justice of the peace, in the name and for the use of the person whose mark or brand shall be used, and if any person shall knowingly mark or brand the horses, cattle, sheep, or hogs, of any other person with his own mark or brand, the person so offending shall forfeit and pay for every such offense, to the person injured, ten dollars, to be recovered by action of debt before any justice of the peace, in the name and for the use of such person; and if any person shall knowingly and wilfully destroy or alter any mark or brand upon any cattle, horses, sheep, or hogs, the property of another, the person so offending shall, on conviction thereof, before any justice of the peace, forfeit and pay for every such offense, a sum not exceeding ten dollars, and double damages to the party injured.

SEC. 9. That every person elected to the office of township treasurer, shall previous to entering on the duties of his office, give bond with security to the trustees of such township, and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful performance of his duty in receiving and paying over all moneys which may come into his hands for the use of the township, which bond shall be lodged with the clerk of the township, and if the said bond shall become forfeited, the township clerk, by order of the trustees, is hereby authorized to proceed in a summary manner, by motion in the district court, to recover and collect the same for the use of the township or any other person or party entitled to the same.

SEC. 10. That each township treasurer shall be allowed and may retain three per centum of all moneys paid into the township treasury for receiving, safe keeping, and paying over the same to the order of the trustees.

SEC. 11. That it shall be the duty of the trustees of the township to [621] settle the accounts of the supervisors of the highways and overseers of the poor, and to examine and settle all accounts and demands against the township, for which purpose the said trustees, supervisors of highways, overseers of the poor, and clerk, shall meet on the first Monday of March annually, at the place of holding the township meetings, and at the same time and place it shall be the further duty of the trustees to divide their respective townships into road districts where they have not already been divided, to make any alteration they may deem proper in road districts previously made, and to determine the

number of supervisors to be chosen at the annual township election, one of which supervisors shall be chosen in each road district: provided, that the electors of any township set off by the board of county commissioners for organization, shall at their first meeting vote for four or more supervisors, as they may deem necessary, and after the trustees have taken the oath of office they shall proceed to divide the townships into road districts, and allot each district to such supervisor resident therein, as may have received the highest number of votes, and if no supervisor shall have been elected in any district, then the trustees shall appoint the same.

SEC. 12. That the supervisor of any road district, is hereby authorized to purchase, and keep in repair for the use of his district, one scraper, and such ploughs as he may deem necessary, which tools shall be used exclusively in making and repairing roads, and a receipt for the money paid in purchasing or repairing the same, shall be a competent voucher for the amount in the annual settlement of his accounts.

SEC. 13. That the trustees of each and every township, whenever a majority of the whole number of electors in said township shall deem it expedient, or when it shall become necessary for the support of the poor, shall have power and authority to lay a tax: provided, that such articles only shall be subject to taxation as are made liable by the laws for assessing and collecting county revenue, and that the amount of tax so levied, shall not exceed the amount authorized to be levied on the same articles for county purposes, and if a poor tax, it shall not exceed one mill on the dollar; and when a tax is so assessed, either for township purposes, or for the support of the poor, it shall be the duty of the township clerk to make out from the county assessment roll for the township, an assessment of the tax voted for by the township, or ordered by the trustees for the support of the poor, a duplicate of which he shall deliver within twenty days to such constable of the township as the trustees shall direct, and the other duplicate within [622] the like time to the township treasurer, and the constable receiving such duplicate, shall before he proceeds to the collection of the taxes charged therein, give bond with two or more securities, to be approved by the trustees of the township, to the treasurer of the township, conditioned to collect and pay over to the said treasurer, or his successor in office, the amount of said tax within four months, and in case the said constable shall neglect or refuse to collect and pay over the whole amount of said tax, within the time specified in said bond, it shall be the duty of the township treasurer, after giving ten days' written notice to said constable and his securities, to proceed in a summary manner by motion before the district court, and recover the amount due from such constable with twenty per centum damages thereon for such neglect or refusal, and shall have execution therefor against said constable and his securities; and the constable collecting such tax shall receive like compensation as is or may be allowed at the time to the county collector for like services.

SEC. 14. That at least twenty days before the annual township meeting, the trustees shall issue their warrant to a constable of the township, directing him to notify the electors of such township to assemble at the time and place of their annual meeting, and said warrant shall enumerate the officers to be chosen at such meeting, and on the application of two or more freeholders of the township for that purpose, said trustees shall insert in said warrant such other business as may be proposed, to be submitted to said township meeting, and no tax shall be laid at such meeting unless notice thereof shall have been given in said warrant, and the constable who shall receive such warrant, shall warn the electors of such township by setting up copies of said warrant in three of the most public places in each township, at least fifteen days before the meeting of such electors.

SEC. 15. That any person chosen to any office under this act and not exempted by law, who shall neglect, or refuse to serve in such office, shall forfeit and pay to, and for the use of the township the sum of two dollars, to be recovered before any justice of the peace, and it is hereby made the duty of the township treasurer to sue for the same, and for all fines and forfeitures under this act for neglect or misconduct in office of any township officer: provided, that no person chosen to any office by this law created shall be obliged to serve in such office two years successively.

SEC. 16. That when by reason of non-acceptance, death, or removal of any person chosen to an office in any township, at the annual meet-[623]-ing in April, or in any case where there is a vacancy, the trustees shall fill such vacancy, and the person thus chosen shall take the same oath and be liable to the same penalties as though he had been chosen at the annual meeting; and in case there should not, at any annual meeting under this act, be a sufficient number of electors assembled for the choice of a chairman, as is hereinbefore provided, between the hours of ten o'clock in the forenoon, and four in the afternoon, so that no township officers can be chosen by the electors, it shall then be the duty of the trustees to appoint all officers in this law enumerated, and the township officers thus appointed shall take the same oaths and be liable to the same penalties as though they had been elected at the annual meeting.

SEC. 17. That it shall be the duty of all township officers, to deliver over to their successors in office under this act, all books and papers relating to their respective offices.

SEC. 18. That whenever the board of county commissioners may deem it conducive to the public convenience, to alter the size and boundaries of any township, they shall be and are hereby authorized, to make such alteration.

SEC. 19. That any township desirous of being set off for organization, shall apply to the board of county commissioners, and it shall be the duty of said board, when satisfied that a majority of the legal voters of said township are desirous of organization, to direct their clerk to record the boundaries of said township in a book provided for that purpose, and give said township such name as the citizens thereof may prefer: provided, that no two townships in any one county, shall have the same name.

SEC. 20. That all applications for laying out any cart-way or private road, shall be by petition to the board of trustees, signed by at least six freeholders of the township, residing in the vicinity where the said private road or cart-way is to be laid out; and the said petition shall specify the place of beginning, intermediate points, if any, and place of termination of said road; and one or more of the signers of said petition, shall enter into bonds with sufficient security, payable to the treasurer of said township, conditioned for the payment of all costs and expenses arising from the view and survey of said private road or cart-way.

SEC. 21. That previous to the presentation of any petition, for such cart-way or private road, notice thereof shall be given, by posting [624] up two written notices, one at the place of holding the township election, and one in the immediate vicinity of the proposed cart-way, or road, at least three weeks before the sitting of the board at which said petition shall be presented, and the petition being presented, and the board being satisfied that notice has been given as aforesaid, they shall appoint three disinterested freeholders of said township, as viewers of said road, and a surveyor, if required by the petitioners, to survey the same, and shall issue an order directing the viewers, after they have been duly sworn, to proceed, on a day named in said order, or within five days thereafter, to view and lay out said road, or if a surveyor be appointed to lay out and survey said road and make a report to the board aforesaid, at their next meeting, and if no remonstrance, signed by at least six signers,

shall be filed with said board, or presented the day on which said viewers make their report, and said viewers shall report in favor of establishing said road, then the same shall be recorded in the record of said township as a private road or cart-way, which said record shall be a bar to any application for damages and the said trustees shall issue their order to the owner or owners of the land through which said road or cart-way may be established, directing him or them, within such time as they may deem proper, to provide such gates as may be necessary for a quick and convenient passage through such fences as may cross said road.

SEC. 22. That if any person or persons, through whose land any such cart-way or private road may be laid out, shall feel injured thereby, and remonstrance having been made as provided for in the preceding section, shall make application to the said trustees at their first session after the view of said cart-way or private road, it shall be the duty of said trustees to appoint three disinterested freeholders of said township, whose duty it shall be to proceed, after being first duly sworn, to view that part of said cart-way or private road through the premises of said complainant, and assess the damages of said complainant, if any, and make report in writing to said board, and if said viewers shall report that the advantages of said private road or cart-way are not equal to the damages occasioned thereby to the premises of the complainant, and shall therein report the amount of damage, the petitioners shall be required to pay the damages so assessed, and until he does so said trustees shall refuse to establish said private road or cart-way, and all the expenses of the viewers and surveyor, if any, both at the first and second view, shall be paid by the said petitioners, and if they shall neglect or refuse so to do, it is hereby made the duty of the [625] said treasurer to commence suit on the bond, and prosecute the same to final judgment and execution.

SEC. 23. That the constables shall take the oath and file the bond required in the "act for electing constables, and defining their duties," approved January 24, in the year 1839.

SEC. 24. That the trustees, by virtue of their office, shall be judges of all general and special elections, held within their respective townships, and shall conform to the requirements, in that respect, of the act regulating general elections, and a majority of the trustees at any township meeting, shall be a quorum for the transaction of any business.

SEC. 25. That the act providing for the organization of townships, approved January 10, 1840, and an act to amend an act providing for the organization of townships, approved January 15, 1841, are hereby repealed.

SEC. 26. That the judges and clerks of election, in said township, shall receive no compensation from the county treasury, for services as such.

SEC. 27. This act shall take effect and be in force from and after its passage. Approved, February 17, A. D. 1842.

CHAPTER 153.

VENDERS OF PROVISIONS.

AN ACT to punish the venders of unwholesome liquors and provisions.

SECTION.

1. Penalties for violation of this, form of recovery.
2. To whom fines paid.

SECTION.

3. Proceedings under former acts not vitiated.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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, [626] or liquor, whatsoever, he shall be adjudged to be guilty of a misdemeanor, and on conviction, shall be punished by fine for every such offense, 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.

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.

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.

Approved December 29, A. D. 1838.

CHAPTER 154.

VAGRANTS.

AN ACT concerning vagrants.

SECTION.

1. Who to be deemed and considered vagrants.
2. Proceedings against vagrants before justice, and before district courts, in case of minors may bind them out, married vagrants to enter into bonds.

SECTION.

3. Hire of vagrants how disposed of, proceedings against his securities in case forfeiture of bond.
4. Duties of all justices, sheriffs, constables, grand jurors as to vagrants and persons suspected of vagrancy.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That every person, who does, or is suspected to, get his livelihood by gaming, and every able bodied person who is found loitering, and wander-

ing about, and not having wherewithal to maintain himself, by some visible property, and who does 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 [627] visible means of subsistence, shall be deemed, and considered, as vagrants.

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, they shall direct the sheriff to bind him to some person of useful trade, or occupation, until he shall arrive to 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.

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 towards lessening the county tax.

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 [628] 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.

Approved January 24, A. D. 1839.

CHAPTER 155.

VALUATION LAW.

AN ACT subjecting real and personal estate to execution.

SECTION.

1. What property or interest in lands may be taken in execution. Proviso.
2. Duty of officers in making levy on lands and directions relative to the same.
3. Appraisement after levy, sale of the same, to what this section extends.
4. Levy on, and appraisement of goods and chattels, sale of the same, failure to sell, to be offered to plaintiff, etc., etc.
5. What articles shall be exempt from execution and sale.
6. Number of sheep exempt.
7. Return of executions.
8. Notice of sale of real and personal estate to be given.
9. Additional execution issued when first does not satisfy debt.
10. Provides for making deeds to purchaser in case of death of sheriff before doing so.
11. Duty of sheriffs as regards the property of principal defendants and their securities.
12. Proceedings when property levied upon is claimed by a person or persons not named in the execution.
13. Change of venue, continuances, new trials, etc., to be had as in other cases before justice.
14. Cause determined by justice unless jury be required by either party.
15. Judgment and its effect.
16. Appeal allowed.

SECTION.

17. Claim of partners not to affect execution on undivided interests of defendant.
18. Relating to the claiming of personal property taken under attachment. Proviso.
19. When, by whom and to whom, and under what regulations executions may be directed into any county of this territory, and return of the same.
20. Release of personal estate and manner of obtaining the same.
- [629] 21. Stay of execution on judgments in district courts, and how to obtain same. Proviso relative to 3rd and 4th sections.
22. Execution when issued may.
23. Judgments against certain officers, no stay of execution allowed.
24. Replevy bonds, etc., to be entered on dockets.
25. Proceedings in executions against the estates of testators and intestates, notice to heirs and devisees, residents and non-residents.
26. Overplus to be returned to defendant.
27. Mutual judgments may be set off against each other.
28. Deeds for real estate sold under execution to be recorded, otherwise not valid against innocent purchaser.
29. Certain acts repealed.
30. Act when in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 warrantee 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: provided, that necessary wearing apparel shall not be considered as any part of the estate of any defendant or defendants in execution.

SEC. 2. That hereafter, when any writ of execution may issue against the goods, chattels, lands, tenements, and hereditaments of any defendant or de-

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 messuage, 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 exists any reasonable doubts whether such defendant or defendants is or are the *bona fide* owners of such property so selected.

[630] SEC. 3. That in all cases when a sheriff, or other officer, shall, by virtue of an execution, order, or decree of any court of record, levy upon any lands and tenements, he shall call an inquest of three disinterested persons having the qualifications of jurors, who shall be residents within the township or precinct where the lands are situated, and administer to them an oath, or affirmation, impartially to appraise said estate, so levied on, and said appraisers shall return to said officer, under their hands and seals, an estimate of the real value of said estate, so levied on, upon actual view of the premises forthwith after such view, and the officer receiving such return shall deposit a copy thereof, with a particular description of said land, with the clerk of the district court, from which the said writ issued, and advertise and sell the same agreeably to this act, as hereinafter provided, and if the said real estate, when offered for sale, shall not sell for two-thirds of its appraised value, the officer shall offer the said lands to the plaintiff, his agent or attorney, who may take the same at two-thirds of its appraised value, and if the said plaintiff, or execution creditor, shall not accept the same, the said real estate shall not be offered for sale again on said execution, order or decree, for the term of twelve months thereafter, except at the costs of the plaintiff in execution, unless a sale be effected, when the costs of the sale shall be paid by the defendant in execution: provided, that said sheriff, or other officer, making such levy, shall, whenever the said lands are divisible, levy upon such part, and so much thereof as may be sufficient to satisfy such execution: and provided, in all cases, that real and personal property shall sell at public out-cry for the best price the same will bring over and above the two-thirds of its appraised value, according to the provisions of this act, and a deed in fee simple, conveying the real estate, shall be made to the purchaser, executed by the officer selling the same, which shall be *prima facie* evidence of the regularity of the officer's proceedings. The provisions of this section shall extend to sales of real estate under deeds of trust, whether the sale be by any order or decree of court, or otherwise.

SEC. 4. That if execution be levied on goods and chattels, the officer levying the same shall take to his assistance two disinterested persons having the qualifications of jurors to whom he shall administer an oath or affirmation to appraise the property so levied on, and who shall proceed, together with such appraisers, to estimate the value of each article or piece of property, levied on, at its fair value, and the officer shall endorse upon the back of his execution, or attach to it as a part of his return, a schedule of the property so levied on, with a pertinent de-[631]-scription of each article, with its appraised value, and shall proceed to advertise and sell the same, always describing said property in the notice of sale, precisely as the same is described in the schedule returned with the writ: provided, always, that no property, hereafter levied on, shall be sold by any officer for less than two-thirds of the appraised valuation: provided further, that no personal property shall be offered for sale more than once in every six

months, except at the cost of the person ordering such sale, unless sold at such subsequent sale, in which case the cost shall be paid as in other cases: provided further, that said officer shall again offer the property to said plaintiff, and if the same shall not be accepted by the plaintiff the officer shall require of the defendant in execution a bond for the delivery of the property levied on as aforesaid, at the expiration of six months from and after the time when said property was offered for sale, or that said defendant will deliver other property, of the same amount and value, to the said officer, within the time aforesaid, if the delivery of the same shall be required by the said plaintiff in execution, which shall be appraised and offered for sale as hereinbefore provided, and in the event the said property shall not sell at such second sale, for two-thirds of its appraised value, the officer shall again offer the same to the plaintiff in execution, who shall accept the said property, or so much thereof as may be necessary to satisfy said execution, at two-thirds of its appraised value, or shall lose his lien on the same, and the bond taken as aforesaid, shall be considered null and void, and be delivered up to be cancelled: provided always, that the officer levying any execution on any goods and chattels shall levy on such property, and so much thereof, as may be proportioned to the amount of the debt and costs, at two-thirds of its appraised value, out of any property given up by said defendant, and if the defendant shall neglect or refuse to turn out such property to said officer, when he shall have such property, it shall be the duty of such officer to make such levy on any property belonging to said defendant, as may be set off to said plaintiff in payment of his demand and costs of suit; each appraiser shall be allowed each, fifty cents per day for their services.

SEC. 5. 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, twelve sheep, and the wool that may be shorn from them, five head of hogs, and all pigs under six months old, [632] all the flax in the possession of such family, and the yarn or thread manufactured therefrom; one bedstead and the necessary bedding therefor for every two in family, and any quantity of cloth manufactured by such family, not exceeding one hundred yards, household and kitchen furniture not exceeding in value fifty dollars; one stove and pipe for the same, all spinning wheels and looms put up and kept for use, all farming utensils not exceeding in value fifty dollars, the necessary food for all animals exempted from execution. Four months provisions for the family, and necessary fuel for the use of the family for sixty days. The surgical instruments and medical library of every practising physician, and the library of every practising lawyer or counsellor. All private libraries not exceeding one hundred dollars in value, and all family portraits. All mechanics tools necessary in their particular calling. The astronomical and mathematical instruments of every teacher or schoolmaster, and the instruments of every practical surveyor necessary in their professions. All property exempt from execution shall be exempt from attachment or other process of law, and it shall be the duty of the said officer not to execute any of the above exempt property.

SEC. 6. That in addition to the property exempt from execution and attachment in the preceding section, it shall be lawful for the defendant to claim, as exempt from process, founded upon contracts hereafter made, fifty head of sheep, and the wool that may be shorn therefrom.

SEC. 7. That all executions hereafter issued from any of the courts of record of this territory, shall be made returnable within seventy days from the date of the same: provided, that when said execution is directed to an officer of any

other county than that in which the same is issued, there shall be one additional day for every twenty miles travel, calculating the distance from the county seat of the county from which said execution is issued, to the county seat of the county into which the same is directed.

SEC. 8. That any sheriff, or other officer, levying an execution upon any real estate, shall, previous to offering the same for sale, give at least four weeks notice of the time and place of such sale, by posting up written advertisements thereof in four of the most public places in the county, in which such real estate may be situated, 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 [633] place of such sale, by posting up written notices of the same at three of the most public places in the county in which such sale may be made.

SEC. 9. 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 proceed to levy and sell in the manner hereinbefore prescribed, making return of his doings thereon as in other cases, and in all cases, in addition to the above notifications of such sales, the officer shall give notice in writing to the defendant in execution, or leave such notice at his last or usual place of abode.

SEC. 10. 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 purchasers: provided, the purchase money has been duly paid.

SEC. 11. That if it shall appear upon the face of any writ or 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 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.

SEC. 12. That when any person, or persons, other than the defendant or defendants, by himself, herself, or themselves, his, her, or their agent or attorney, shall present a claim in writing to 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, to file the said claim without delay in the office of some justice of the peace in the proper county, and the said [634] justice shall thereupon proceed to docket the cause, making the claimant the plaintiff, and the execution plaintiff the defendant, and fix a day for trial, within five days thereafter, of which the parties interested, their agents or attorneys, shall have three days notice unless the same be waived, and a speedier trial agreed to by the said parties, and further proceedings on such execution shall be suspended until such claim may be abated or a final decision thereon had.

SEC. 13. A change of venue may be granted, continuances had, new trials awarded, judgments and executions and other proceedings had in any such

cause as in other civil causes had before justices of the peace so far as the rules in such last mentioned causes are applicable, except as herein otherwise provided.

SEC. 14. Such justice shall hear and try such cause unless either party should request a jury, in which case a jury shall be summoned as in other cases before justices of the peace, to try such cause and give a verdict, on which judgment shall be rendered as in other cases, so far as applicable.

SEC. 15. If the judgment is in favor of the claimant, the property in dispute shall be delivered to him, and the execution plaintiff shall pay the costs, if it is against the claimant the costs shall be paid by such claimant, and the judgment shall justify the officer in selling the property.

SEC. 16. An appeal may be taken from the judgment of the justice in any such cause within ten days from the rendition thereof, and not after, under the same rules and provisions that obtain in other cases before justices of the peace.

SEC. 17. No claim interposed by one or more partners for their individual interest in any personal property so levied on, shall prevent the sale under execution of the undivided interest therein belonging to an execution defendant or defendants.

SEC. 18. Personal property taken by virtue of a writ of attachment may be claimed, and such further proceedings thereon had as is herein provided in cases of personal property taken in execution: provided, that nothing herein shall be construed to prevent the claimant of property taken as aforesaid, from seeking his remedy in an action of replevin, detinue, trespass or trover, and provided further, that no officer shall be liable to any prosecution for taking any goods in execution in the possession of the defendant, unless notified or informed of the ownership thereof previous to the sale of such goods under execution.

SEC. 19. That the clerks of the district court may upon request issue executions, directed to the proper officer of any county within this [635] 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 was issued, within the time prescribed by law, such officer shall not be liable to any amercement or penalty for any failure of the safe arrival of such execution, any thing 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 specially instructed so to do by the plaintiff or his agent.

SEC. 20. 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 the surety shall in

no case be liable for a greater amount than the value of the property so bonded, 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: and provided also, the officer shall be liable to the plaintiff for the value of the property so delivered, unless such officer shall make it appear to the satisfaction of the court, that said bail was good at the time of taking the same.

SEC. 21. 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 of one hundred dollars and upwards, a stay of six months; on all sums less than one hundred dollars, and over fifty dollars, a stay of four months; and all sums of fifty dol-[636]-lars and under, 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: provided, that any person who stays any judgment, shall not be entitled to the benefit of the appraisement law, as provided for in this act.

SEC. 22. 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 replevable and also the date of 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 thirteenth 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 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 doings 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.

SEC. 23. 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 replevable, and such court shall also order that no stay of execution shall [637] be allowed, nor the benefit of the provisions of this act, which requires property to sell for two-thirds of its value; and executions issuing on such judgments, shall be returnable in sixty days from the date thereof.

SEC. 24. 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.

SEC. 25. 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 terre tenants 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 in 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 show 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.

SEC. 26. 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 interests and costs accruing thereon, the sheriff, or other officer, [638] making sale of the same, shall tender the overplus to the defendant or defendants, and then, and not till then shall such officer be discharged therefrom upon the records of the same court to which he shall make return of his proceedings concerning such sales.

SEC. 27. That when mutual judgments are existing in any county or counties of this territory, it shall be the duty of the officer or officers in whose hands the executions may be, to set off one execution or judgment against the other, so far as the same shall extend; and execution 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 execution shall come to their hands, to allow the same.

SEC. 28. All deeds of real estate, made by any sheriff or other officer, under this act, shall be recorded in the same manner as other deeds of real estate are now required by law to be recorded; and in failure of such record, such deeds shall not be valid as against an innocent purchaser without notice.

SEC. 29. That the act approved January 25, 1839, and all acts now in force, subjecting real and personal estate to execution, be and the same are hereby repealed.

SEC. 30. This act to take effect from and after the twentieth day of February inst., A. D. 1843.

Note:—(This act passed the Council and House, and was presented to the Governor February 10, 1843, at 4 p. m. There appears no record of the Governor's approval.)

CHAPTER 156.

VENUE.

AN ACT to provide for changing the venue in civil and criminal cases.

SECTION.

1. Causes for change of venue in civil cases.
2. Causes to be set forth by applicant.
3. Judge or court on a hearing may grant a change.
4. More than one change not to be allowed.
5. Judge being interested or prejudiced, change to be awarded without application from either.
6. Duty of judge granting change in vacation.
7. Change granted when both parties willing as in other cases.
8. Duty of clerk relative to order petition, etc., when a change has been granted.
9. To retain authenticated copies of original papers.

SECTION.

- [639] 10. Docketing and determination of suit in court to which it has been certified.
11. Costs of change to be paid by petitioner, and manner of taxing and collecting the same.
12. Failure or neglect of clerk to transmit a transcript of papers not to operate as a discontinuance.
13. Parties, witnesses, etc., etc., having a notice of change to attend at the place of trial under pain of forfeiture for failure.
14. Change in criminal case granted in term time, witnesses for prosecution to be recognized to appear.
15. Removal of prisoner by whom made, expenses of same and by whom borne.
16. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That in any civil cause, in law or equity, pending in any district court, either party may have a change of venue, for the following causes:

1. That the inhabitants of the county are so prejudiced against the applicant, that he cannot expect an impartial trial.
2. That the opposite party has an undue influence over the minds of the inhabitants of the county.
3. That the judge is prejudiced against the applicant.

Sec. 2. Any party to a suit may present to the court, or judge thereof in vacation, a petition setting forth the cause of his application for a change of venue, to which shall be appended the affidavit of the applicant, verifying the truth of the facts set forth in said petition, and alleging that he has just reason to believe that he cannot receive a fair and impartial trial on account of the causes set forth in his petition.

Sec. 3. If reasonable notice shall have been given to the adverse party, or his attorney, of the time and place of such intended application for a change of venue, the court, or judge thereof in vacation, shall hear the case, and if the application is in accordance with the provisions of this act, a change of venue shall be awarded to some other county, in the same district where the causes complained of do not exist as convenient as may be to the opposite party: provided, that if the judge of said district be interested or prejudiced, or related to either party, then, and in that case to some other district.

Sec. 4. No party to a suit shall be entitled to more than one change of venue in the same cause.

Sec. 5. That in all cases where the judge is interested or prejudiced, or is related to, or shall have been counsel for either party, the [640] court shall in

term time, without application from either party award a change of venue as aforesaid.

SEC. 6. If a change of venue shall be awarded by a judge in vacation, he shall immediately transmit to the clerk of the court where the cause is pending, the petition and affidavit with an order for a change of venue endorsed thereon.

SEC. 7. If the parties, their agents or attorneys, consent to a change of venue, the court shall make an order for such change as in other cases.

SEC. 8. When any such order shall be made by the court, or judge thereof in vacation, the clerk of such court shall immediately make out and transmit to the proper court, a copy of the order, petition, and affidavit, and a full transcript of the record and proceedings in such cause, with all the original papers filed therein, and comprising a part of the record.

SEC. 9. It shall be the duty of the clerk to make out, and file in his office, an authenticated copy of all the original papers filed in such cause, prior to transmitting such papers to the county to which the venue may have been changed.

SEC. 10. The clerk of the court, to which such cause may have been certified, shall file in his office all the papers in the cause transmitted to him, and the cause shall be docketed, proceeded in, and determined, as if it had originated in such court.

SEC. 11. All the costs attending any change of venue, including the expenses of the copy of the original papers, required by this act, to be filed in the office of the clerk making the same, shall be paid by the petitioner, and 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 the 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.

SEC. 12. If any clerk shall fail to transmit the transcript and papers in any cause, the change of venue of which has been awarded, or if such papers shall have been sent and lost, such failure or loss shall not operate as a discontinuance in such suit, but such transcript and papers may be filed at the next term of such court, or if such papers shall have been lost, copies thereof may be filed, and such cause shall proceed as if no failure or loss had happened.

SEC. 13. 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.

SEC. 14. That when the venue is changed in term time, in a criminal case, the attorney general, or district prosecutor, shall have all witnesses on the part of the prosecution recognized to appear at the court on the first day of the term thereof, when the trial is to be had.

SEC. 15. 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

offense 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.

SEC. 16. An act to provide for changing the venue in civil and criminal cases, approved January 18, 1839, shall be and the same is hereby repealed.

Approved February 13, A. D. 1843.

[642] CHAPTER 157.

WASTE.

AN ACT to allow and regulate the action of waste.

SECTION.

1. By and against whom this action may be brought.
2. Who may be deemed to have committed waste.
3. Estates in remainder or reversion owner may maintain action.
4. Heirs may maintain action.
5. Limitation of action.
6. Original process by summons and form.
7. Writ how served.
8. Declaration.
9. Proceedings and analogies herein.

SECTION.

10. Judgment and damages.
11. Specification in the verdict.
12. When the premises wasted shall be recovered.
13. When purchasers may maintain this action.
14. Right of possession and incidents thereto.
15. Repairs to buildings.
16. Use of lands and rights to crops.
17. What timber may be used.
18. Quality of timber and its application.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 anything thereunto appertaining, shall be subject to an action of waste, at the suit of any party thereby injured.

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

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.

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.

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

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

“_____ County, ss.

The United States of America, to the sheriff of said county, you are [643] hereby commanded to summon C. D., if he be found in your county, to appear be-

fore 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

[644] 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.

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.

Approved January 21, A. D. 1839.

CHAPTER 158.

WATER CRAFTS, LOST GOODS AND ESTRAYS.

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

SECTION.

1. Water crafts taken up, proceedings relative to the same.
2. Proceedings when value does not exceed twenty dollars.
3. Lost goods, bank notes, etc., found, proceedings relative to.
4. Where value does not exceed ten dollars.
5. Where water crafts, money, notes, etc., does not amount to five dollars.
6. Proceedings relative to estray horses, mares, &c.
7. Relative to estray neat cattle, sheep, hogs, &c.
8. When found without the settlements.
9. Compensation for taking, finding, &c., of any of the aforementioned

SECTION.

- articles—See note at the end of this section.
10. Disposition of property when owner does not apply for it within time specified.
 11. When proceeds of sale to be forfeited, and to whose use.
 12. Unavoidable accidents provided for.
 13. Forfeiture for selling or removing out of the territory any property found or taken up, and how recovered.
 14. Forfeiture for failure to comply with this act, and how recovered.
 15. Fees of officers or other persons for services under this act.
 16. Examination of estray book to be allowed at all times.
 17. When this act in force.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. 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 [645] 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 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 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 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.

SEC. 2. In all cases, where the appraisement 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 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 appear 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. 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 justices 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 [646] 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 vessel, be not claimed or 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 to the sheriff of the county, wherein such boat or vessel may have been so taken up, 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 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.

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 justices said [647] 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 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 treasury, after deducting the necessary expenses

hereinafter provided for, if in bank bills, notes of hand, patents, 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.

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.

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 [648] 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 justices 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 of 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 justice shall also cause such estray, or estrays, last mentioned, as aforesaid, to be appraised, in like manner as is required to be done in the case of an estray 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 make publication, in a newspaper, where the valuation of the property shall not exceed the [649] sum of fifteen dollars: provided, 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 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 estray 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 estray, or estrays, and if the appraisement of an estray 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.

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: provided, 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.

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 [650] 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.

Note—The last four lines of this section were stricken out as directed by the act to amend the several acts therein named.—See chapter 20.

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 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, 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.

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 [651] 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 the common schools, whenever applied for by law.

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.

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 any 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.

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 the 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.

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 [652] 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: 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 to deposit with the clerk of the board of county commissioners, a sum of money sufficient to pay for the 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.

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 stray 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.

SEC. 17. This act to take effect, from and after the first day of May next.

Approved January 22, A. D. 1839.

[653] CHAPTER 159.

WOLVES.

AN ACT to encourage the destruction of wolves.

SECTION.

1. Commissioners may offer reward for killing wolves.
2. Evidence of killing shall be the scalp, and to be produced before

SECTION.

- justice, who shall certify the same.
3. Commissioners to order payment.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the board of commissioners of the several counties in this territory, be and they are hereby authorized and empowered, at their discretion, to offer a reward of not less than twenty-five cents nor over one dollar, to any

person who shall kill any wolf within their respective counties, not exceeding six months old; and the sum of not less than fifty cents nor more than three dollars for every wolf over that age. And the commissioners aforesaid may renew or withdraw the offer of the above bounties from time to time, as in their discretion they may deem expedient, by publishing notices thereof in at least three public places within their respective counties.

SEC. 2. Any person claiming the benefit of this act, shall produce before some justice of the peace for the county where such wolf was killed, the scalp, with the ears thereon, and the justice shall administer to such person, the following oath, to-wit: "you do solemnly swear that the scalp now produced by you was taken from a wolf killed by you in this county; that you did not bring the same into this county from any other place, and that you believe that said wolf was more (or less as the case may be) than six months old, and that said wolf was killed on or about" (here state the time when.) Said justice shall thereupon grant to said person a certificate, stating the name of the killer, the age of the wolf, and the time when killed; and said justice shall receive, for his services above mentioned, twelve and one-half cents. And it shall be the duty of said justice to destroy the scalp upon granting such certificate.

SEC. 3. When any certificate granted under the provisions of this act, is presented to the board of county commissioners of the county [654] where the certificate was issued, said board of commissioners shall order that the person presenting said certificate be paid out of the county treasury, the sum to which he is entitled under the provisions of the first section of this act.

Approved January 7, A. D. 1840.

CHAPTER 160.

WEIGHTS AND MEASURES.

AN ACT to regulate weights and measures.

SECTION.

1. County commissioners to procure weights and measures.
2. Yard measure.
3. Bushel measure.
4. Half bushels and pecks.
5. Gallon measure.
6. Half gallon and quarts and pound weight avoirdupois.
7. The foregoing to be the standard of weights and measures in this territory. Proviso.
8. Inspector of weights and measures elected, to give bond and take oath.
9. Brand of inspector.
10. Measures to be branded, compensation for same.
11. Resignation or death of inspector provided for.

SECTION.

12. The same.
13. Action may be maintained against inspector or representatives for violation of the above sections.
14. Action against seller or purchaser for using, to the injury of any person, weights or measures not conformable to this standard.
15. Ton and hundred weight.
16. Bushel of wheat, rye or corn, to consist of 60 pounds.
17. F. G. Schwatka inspector for Des Moines county.
18. County commissioners in other counties to appoint until general election.
19. Certain act repealed.
20. When act to take effect.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That the several boards of county commissioners within this territory, be and they are hereby authorized and required to procure for their re-

spective counties, and at the expense of the same, a set of the following weights and measures, for the use of their respective counties.

SEC. 2. That the yard for the measurement of cloths, and other commodities commonly sold by the yard, shall contain three feet of twelve [655] inches each, and may be divided into halves, quarters, eighths, and sixteenths.

SEC. 3. That the bushel for measuring all substances not being liquid, nor sold by heaped measure, shall contain two thousand one hundred and fifty and two-fifths solid inches, and shall be denominated the bushel for dry measure.

SEC. 4. That all other measures of capacity for substances not being liquid, nor sold by heaped measure, shall be derived from the bushel for dry measure by continual division by the number two, so as to constitute half bushels, pecks, (or fourths of a bushel,) and half pecks, (or eighths of a bushel.)

SEC. 5. That the gallon for liquid measure, shall contain two hundred and thirty-one solid inches.

SEC. 6. That all measures of capacity for liquids, shall be derived from the liquid gallon, by continual division by the number two, so as to constitute half gallons, quarts, pints, half pints and gills, which measures are to be of wood, or any metal the board of commissioners may think proper. Also one set of weights, commonly called avoirdupois weight, the pound of which is sixteen ounces.

SEC. 7. That all contracts hereafter to be made or executed in this territory, for any work to be done, or for anything to be sold, delivered, done, or agreed for by weight or measure, shall be taken and construed to be made according to the standard weight and measure hereby established: provided, that nothing herein contained, shall be construed to prevent parties from adopting a different standard of weight and measure by mutual agreement.

SEC. 8. That there shall be elected annually, in each and every organized county in this territory, at the general elections, one person to be inspector of weights and measures, who shall give bond and security, to be approved of by the board of commissioners, for the faithful performance of his duties as such inspector of weights and measures, and shall take an oath faithfully and impartially to discharge the duties of his office, to the best of his abilities.

SEC. 9. That the board of county commissioners in each and every organized county in this territory, shall furnish to the inspector of weights and measures of their respective counties, a seal or brand, which shall make an impression of the word Iowa.

SEC. 10. That all liquid and dry measures shall be sealed on the bottom, on the inside, and branded on the upper edge or side, as near the upper edge as possible of such measure, and shall be done only by [656] such inspector of weights and measures, and for every impression so made by such inspector, he shall receive twelve and a half cents, to be paid by the person applying to have his weights or measures so sealed or branded.

SEC. 11. That whenever the inspector of weights and measures mentioned in this act, shall resign or be removed from office, or whenever the office shall become vacant in any way, except by death, it shall be the duty of such inspector to deliver to his successor in office, all the standards, beams, weights and measures in his possession.

SEC. 12. That in case of the death of such inspector of weights and measures, his representatives shall in like manner deliver to his successor in office, such beams, weights and measures.

SEC. 13. That in case of refusal or neglect to deliver such standards, entire and complete, the successor in office may maintain an action on the case, against the person or persons so refusing or neglecting, and shall recover double the value of such standards as shall not have been delivered. And in every such action in which judgment shall be rendered for the plaintiff, he shall recover

double costs, and one moiety of the damage recovered in such action, shall be retained by the person recovering, and the other moiety shall be applied by him to the purchase of such standards as may be required in his office.

SEC. 14. That if any person or persons, shall hereafter use any weights, measures, beams or steelyards, in weighing or measuring, which shall not be conformable to the standards of this territory, as established by this act, whereby any purchaser or seller of any commodity, or article of trade or traffic, shall be injured or defrauded, such seller or purchaser may maintain an action on the case, against the offender, and if judgment shall be rendered for the plaintiff, he shall recover treble damages and costs of suit.

SEC. 15. That the hundred weight, shall consist of one hundred pounds avoirdupois weight, and twenty such hundreds shall constitute a ton.

SEC. 16. That whenever wheat, rye, Indian corn, barley or oats, shall be sold by the bushel, and no special agreement as to the measurement or weight thereof, shall be made by the parties, the bushel shall consist of sixty pounds of wheat, fifty-six pounds of rye or Indian corn, forty-five pounds of barley, and thirty-two pounds of oats.

SEC. 17. That Frederick G. Schwatka, of Des Moines county, is hereby appointed inspector of weights and measures for the county of [657] Des Moines, who shall continue in office until the next general election.

SEC. 18. That the several boards of county commissioners are hereby authorized to make the appointment of inspectors of weights and measures in their respective counties, which appointment shall continue until the next general election.

SEC. 19. That the act, entitled an act, concerning weights and measures, approved, January 4th, eighteen hundred and thirty-nine, be and the same is hereby repealed.

SEC. 20. This act to take effect and be in force, from and after the first day of May, 1843.

Approved February 7, A. D. 1843.

CHAPTER 161.

WORSHIPPING CONGREGATIONS.

AN ACT to preserve good order in all worshipping congregations, in this territory.

SECTION.

1. What constitutes a misdemeanor relative to churches, and penalty for the same.
2. Jurisdiction and duties of justices of the peace.

SECTION.

3. Trial and punishment of persons guilty of misdemeanors under this act.
4. Appeal to district court allowed.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

SECTION 1. That any person who shall, by menace, profane swearing, vulgar language, or any disorderly, or immoral conduct, interrupt and disturb any congregation, or collection of citizens, assembled together for the purpose of worshipping 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 worshipping 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.

[658] SEC. 2 Justices of the peace respectively, in their several counties, shall have jurisdiction of the aforesaid offense, 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, A. D. 1839.

CHAPTER 162.

WILLS, ADMINISTRATORS, ETC.

AN ACT relative to the probate of wills, executors, administrators, guardians, trustees of minors and probate courts, and for defining their duties.

SECTION.

CHAPTER I.

Wills of real and personal estate.

1. Devise of real estate.
2. What it shall be construed to convey.
3. Lands or interest therein acquired after will being made to be included.
4. Disposition of personal estate by will.
5. Signing and attestation of wills.
6. Noncupative wills not to be affected by the foregoing section.
7. Beneficial devises, legacies how attested.
8. Legacies to witnesses in such cases.
9. Revocation of wills.

SECTION.

10. Wills may be deposited with judge of probate.
11. Duty of judge relative to the same.
12. Duty of other persons having possession of wills.
13. When probate may be granted upon wills.
14. Appeals from probate to district courts.
15. Wills made in any states of the United States may be recorded in this territory.
16. Will and probate thereof to be produced before judge of probate.
17. After hearing, judge may order it to be recorded.
18. Letters testamentary granted upon the same, and its effects.

SECTION.

19. Failure of testator to provide for his children, provided for.
20. Provision for children born after fathers children.
21. Provision for posthumous child.
22. Issue of devisee dying before testator, to take devisee's portion.
23. Debts of testator to be borne equally by devisees.
24. Unless by specific devise some be exempt, or special provision be made for debts.
25. Preceding sections not to affect liability of whole estate for payment of debts.
26. Estate descending to children in consequence of provision not having been made for them in will, subject to the three preceding sections.
27. Insolvency of devisee in such cases to be borne by other devisees.
28. Personal estate of testator insufficient to pay his debts, real estate to be chargeable.
29. Contribution by legatees to make up share of child.
30. Will not effectual to pass estate without having been duly proved and allowed before probate court.

CHAPTER II.

Of letters testamentary, and other proceedings on the probate of a will.

1. Letters testamentary to be granted, and to whom.
2. Executors to give bond, and conditions of the same.
3. When residuary legatee, to whom to give bond.
4. Such bond not destroy lien on real estate of testator.
5. To whom letters may be granted.
6. To whom, when person appointed executor is a minor.
7. Executors failing or becoming unable to perform duties may be removed.
8. Administrators, with the will annexed, to give bond.
9. Power and duty of such.
10. Executrix marrying, to lose her authority as such.
11. When executor of an executor may administer estate.

CHAPTER III.

Of the administration and distribution of the estates of intestates.

1. Distribution of personal estate of deceased person not disposed of by will.

SECTION.

- 1st. Allowance to widow.
- 2nd. Payment of debts provided for.
- 3rd. Residue to be distributed, and how.
- 4th. When intestate is a married woman.
- 5th. One third of residue to widow, if there be issue.
- 6th. No issue, one half.
- 7th. No kindred, the whole.
- [660] 8th. Neither husband, widow or kindred, to escheat to the county.
2. Advancement to issue in life time of intestate not to be considered in computing widow's dower.
3. Letters to be granted by judge of probate in the county of which intestate was a resident.
4. To whom administration may be granted.
 - 1st. Widow or next of kin.
 - 2nd. One or more principal creditors.
 - 3rd. Or to other persons, in the discretion of the judge.
 - 4th. If married woman, in all cases to her husband, when willing and competent.
5. Administrator to give bond, and its conditions.
 - 1st. To make and return inventory of deceased estate.
 - 2nd. To administer on the same.
 - 3rd. To render account of his administration.
 - 4th. To pay over balance as directed by judge.
 - 5th. To deliver over letters, in case a will should be proven.
6. Special administrator may be appointed, and when.
7. To give bond, condition of same.
8. Power and duty of such administrator.
9. When to cease.
10. Such administrator not liable to action of creditors of deceased.
11. Persons selling or embezzling any of the effects of the deceased, liable as executor in his own wrong.
12. Also liable to the rightful executor or administrator.
13. Limitation of original administration.
14. Executor or administrator dying before completing administration, letters upon the balance to be granted.

SECTION.

15. Administrator residing out of the territory, failing or becoming incompetent, others to be appointed.
16. If after granting letters of administration, as if an intestate estate, a will be proven and allowed, same to be revoked and others granted.
17. Unmarried female administratrix marrying, to forfeit her authority thereby.
18. Administrators may use money belonging to the estate in certain cases.

CHAPTER IV.

Of the inventory and collection of the effects of deceased persons.

1. Administrator to return inventory, and when.
2. Effects to be appraised.
3. Order of appraisalment.
4. Certain articles to be omitted in making inventory.
 - 1st. Wearing apparel of deceased to certain amount.
 - 2nd. If a widow and minor children be left, loom, spinning, cow, ten sheep, etc.
5. The above not to be included in any case.
6. Proceedings against persons suspected of embezzling property of deceased person.
7. Goods and chattels insufficient to pay debts, real estate to be sold.
8. Proceeds to be considered as assets.
9. Executor may compound with debtor of deceased.
10. Debts secured on mortgages to be considered assets.
11. Executor empowered to give releases.
12. Real estate held in mortgage, may be sold by executor for payment of debts or legacies.
13. If not redeemed nor sold, to be divided as part of the personal [661] estate of deceased.

CHAPTER V.

Of the payments of debts and legacies of deceased persons.

1. Notice of appointment as administrators to be given.
2. Evidence of such notice.
3. Limitation of suits against administrator.
4. Accountability of administrator for money coming into his hands after such limit expires.

SECTION.

5. Right of action accruing after such limitation.
6. Decision of probate judge upon such claims not conclusive.
7. How action to be brought for recovery.
8. How conducted.
9. The preceding sections not to bar action against heirs, devisees, etc., as provided for in the chapter concerning settlement of estates.
10. What suits against executor under such circumstances, not good.
11. When administrator may pay debts due by estate.
12. Payment of accounts presented after one year from notice.
13. When action against executor not good in the settlement of an insolvent estate.
14. When legatees receiving their legacy, may be required to give bond and security to refund the same.
15. Nothing in this act to bar action for recovery of legacy.
16. Executor liable for delay or neglect in administration.
17. Settlement of disputed claims against estate by executor, to be by arbitration.
18. Or in case of disagreement, to be decided by judge of probate or jury.
19. Upon a new administration additional time granted to creditors.
20. New administrator liable for two years longer.
21. If first administrator had not given notice, to be liable for four years longer.
22. New administrator to give notice of his appointment.
23. Liable for assets in his hands after periods limited as before.
24. Failure to give notice provided for.
25. Not to exempt administrator from damages on account of such failure.
26. Liability of persons on joint contract.

CHAPTER VI.

Executors and administrators rendering their accounts and settling estates.

1. Executors to render first account within one year, and others when required.
2. How to account for personal estate.

SECTION.

3. Not to profit by increase nor be held liable for decrease of estate. Provided.
4. Judge of probate on application may order sale of personal estate within six months.
5. Executor not liable for debts he is unable to collect.
6. With what executor to be charged in his account.
7. To account for income of estate used by him.
8. Compensation for services.
9. May be prosecuted for neglect or failure to render account.
10. Account may be contested by persons interested.
11. Errors in former accounts may be corrected upon final settlement.
12. Judgment and executions against executor in suits against him as such.

CHAPTER VII.

Regulating the proceedings when the estate of a deceased person is insolvent.

1. Payment of debts due by an insolvent [662] estate, and how.
2. Claims to be examined by commissioners of insolvency.
3. Power of commissioners to examine claimants.
4. Time allowed to claimants to present and prove claims.
5. Contingent claims provided for.
6. When entitled to an equal dividend.
7. When not established, or it does not exhaust assets, remainder to be divided as before.
8. Appeals to district courts on disallowed claims.
9. Notice of appeal to be given.
10. Trial before district court.
11. Parties may waive trial at law and submit the case to arbitration.
12. Costs by whom paid.
13. Persons failing from inability or accident to prosecute appeal as above, to be allowed to do so under direction of the court.
14. Decision not to disturb any distribution made before notice of such appeal.
15. Commissioners may require claimant to make oath.
16. Commissioners may administer the same.
17. When decree of distribution to be made.

SECTION.

18. Decree for distribution of assets in the hands of administrator after first decree.
19. Regulation of action against insolvent estates.
20. Creditors against insolvent estates not presenting claims according to this act to be forever barred unless.
21. Payment of debts after report of commissioners of insolvency, assets proving sufficient.
22. When two or more creditors apply how paid.
23. Execution upon such assets.
24. Executor to be removed upon refusal or neglect to return accounts, and liable for all damages occasioned thereby.
25. Allowance to widows in case of insolvent estates.
26. Solvency of estate not being determined within three years, any creditor whose claim has not been before commissioners may bring suit.

CHAPTER VIII.

For the appointment of trustees for minors and of their powers and duties.

1. Trustees to give bond, and conditions of such.
2. When not to give bond.
3. When not to give bond under this act.
4. Persons not giving bond when required considered as declining the trust.
5. Trustees may resign.
6. Executor of trustees not bound to accept trust.
7. Trustees becoming incompetent to be removed.
8. Manner of appointment of trustees by judge of probate.
9. Same to give bond.
10. Inventory required of trustee how made.
11. Sale and disposition of personal estate by trustee.
12. Bond of trustee may be put in suit and by whom.

CHAPTER IX.

General provisions concerning the settlement of the estates of deceased persons.

1. When case may be transferred from one county to another.
2. Bond and securities of executors and administrators.
3. When may be put in suit by creditor.

SECTION.

4. If the estate be insolvent.
5. When may be brought by next of kin.
6. When judge may authorize action upon bond.
7. By whom the writ in such cases is to be endorsed.
- [663] 8. Principal on a bond to be made a defendant.
9. Service and form of writ upon principal.
10. Where suit must be brought, and award of execution.
 - 1st. When for the benefit of creditor or next of kin.
 - 2nd. For breach of conditions.
 - 3rd. On not accounting for estate.
 - 4th. For any other breach.
 - 5th. For the use of two or more.
 - 6th. Costs of suit to be included.
 - 7th. In whose name execution to be levied.
11. To whom moneys received on execution to be paid.
12. When writ of scire facias on original judgment may be sued out.
13. Liability of heirs, &c., for debts which could not be sued for against executors.
14. Amount of liability of each.
15. In case of death of heir, &c., before payment, same to be paid by his executor.
16. How recovered, when more than one is liable.
17. If one of the heirs, &c., be insolvent, others liable for whole amount.
18. Suit not to be dismissed because all that might have been are not included as defendants.
19. Persons in such cases failing on any account to pay their proportion, liable to those who may do so.
20. Sales made, not affected by revocation of letters of administration.
21. Disposition of property found in this territory belonging to person deceased in another.
22. The same.
23. Disposition when insolvent.
24. Not to be transmitted to foreign executor until creditors in the territory receive their just proportion.
25. Citizens of this territory to be preferred.
26. Residue may be paid to other creditors.

SECTION.

27. Bill in equity allowed to enforce performance of a contract by heirs.
28. Decree of court in such cases.
29. Power of court to authorize a conveyance.
30. Such conveyance effectual.
31. Defendant refusing to make conveyance, writ of seisin to issue.
32. Qualification of preceding section.
33. Provision in case of the death of person to whom conveyance is to be made.
34. When conveyance may be made by executor of deceased person.
35. Bill in equity in favor of executor of deceased person.
36. Conveyance made, to be a performance of the contract.
37. When a new bond may be required by judge of probate.
38. Surety in a bond may be discharged after six years.
39. Bond not being given in good time, principal to be removed.
40. New bond required not to release sureties on old ones for breaches under it.
41. Account may be allowed upon oath of one trustee or executor, etc., in case there be two or more.
42. Final discharge of executors.
43. Money unclaimed for 6 months to be invested under the direction of the court of probate.
44. When to be paid over.
45. When court of chancery to hear disputes between co-executors and co-administrators, etc.
46. Appeals from decisions of judge of probate, to the district court.

CHAPTER X.

Of the sale of lands for the payment of debts by executors, administrators and guardians.

1. Goods and chattels insufficient to pay debts, real estate may be sold.
2. By whom license may be granted.
3. How to obtain license.
4. Conditions of license.
5. When petition for sale is made to district court, it must be accompanied with certificate of judge of probate.
6. Executor to give bond for the proceeds of sale.
7. Proceedings when circumstances require a deviation from provisions of a will.

SECTION.

8. Notice of petition for license to sell real estate, to be given to all interested.
9. Any of them being willing to give bond for the payment of such debts, license not to be granted.
10. Upon satisfactory proof of the necessity of the sale, license to be granted.
11. Oath of executor before sale.
12. Certificate of the same to be returned to judge of probate.
13. Notice of sale to be given.
14. Evidence of notice.
15. How sale to be made.
16. Notice of adjournment, if any, to be given.
17. Limitation of license.
18. Sale of real estate to pay a legacy.
19. Sale of property granted to a foreign executor.
20. To give bond for proceeds of sale.
21. To give bond for the proceeds of sale.
22. To take oath, and give public notice of sale.
23. Where proceedings by foreign executor, to be had.
24. Guardians of minors may be licensed to sell real estate.
25. If necessary to sell more than is required to pay the debts to give bond for the surplus.
26. Conditions upon which license to be granted.
27. Who are considered as persons interested.
28. By whom license may be granted.
29. Foreign guardians may be allowed to sell real estate of ward in this territory.
30. When bond shall not be required.
31. When licensed to sell more than is necessary, to give bond for surplus.
32. Surplus of sales, under license by court, to be considered as real estate.
33. Every guardian to take oath, and give notice of sale.
34. Discretion of court as to costs.
35. Limitation of actions for recovery of lands sold under license.
36. Sale not to be avoided on account of any irregularity in proceedings. Provided.
 - 1st. The executor was licensed by a competent court.
 - 2nd. That he gave bond.
 - 3rd. And took the oath.

SECTION.

- 4th. That he gave notice of sale.
- 5th. And sold the premises at public auction.
37. Executor liable on his bond for any misconduct.
38. Sale not void on account of any inequality in the proceedings. Provided.

CHAPTER XI.

Of the sale of lands of minors and other persons under guardianship and securing the proceeds for their use.

1. Guardian under license may sell real estate for the maintenance of ward.
2. Or when for the advantage of ward, for investment.
3. If sold for support or education of ward, surplus to be invested.
- [665] 4. If for investment, regulations for doing so.
5. Residue, upon final settlement, to be considered as real estate.
6. By whom licenses may be granted, and how.
7. And when.
8. Not to be granted under any circumstances, until all interested are notified.
9. Or unless the director of the poor certifies his approbation.
10. Guardian to give bond before sale.
11. And take oath.
12. Notice must also be given.
13. Limitation of license.
14. Foreign guardian may be licensed to sell real estate.
15. Must take oath and give notice of sale.
16. Where sale to be held.
17. Residue of sale to be considered as real estate, and disposed of as such.
18. Discretion of court to be exercised as to costs.
19. Limitation of actions against guardian.
21. Sale not to be avoided on account of any irregularity of proceedings. Provided.
21. Guardian liable on his bond for misconduct.
22. Sale not void on account of irregularity in the proceedings. Provided.

SECTION.

CHAPTER XII.

Relative to probate court and defining its powers.

1. Probate courts, when and where held.
2. What may be done in vacation.
3. Powers of judges of probate relative to wills, administrators, &c.
4. Jurisdiction of judge of probate.
5. Duties relative to records, &c.
6. Authorized to make rules.
7. To make and issue all warrants and processes.
8. Shall keep order in his court.
9. Sheriffs and other officers to serve process for judge of probate.
10. Jurisdiction of judge of probate not to be contested except in an appeal.
11. Validity of decrees to be presumed after certain time.
12. Cases how disposed of when within the jurisdiction of probate court, in two or more counties.
13. Case in which judge of probate is interested, to be transferred to any other adjoining county.
14. Judge of probate not to be employed as counsel or attorney.
15. No clerk in probate court to be appraiser, commissioner of insolvency, &c.
16. Oaths of executors may be administered by justices out of court, in certain cases.
17. Other oaths may be administered out of court.
18. Warrants or commission of appraisement may be revoked by judge of probate.
19. All bonds to be approved by judge.
20. Appeals to district court allowed.
22. When to be claimed.
23. Appellant to file his reasons for appeal.
24. Persons failing to prosecute appeal from unavoidable cause, to have revision of his case.
25. Appeal not allowed without due notice to adverse party.
26. Proviso relative to persons without the U. S.
27. Petition may be filed in vacation.
28. All proceedings stopped after appeal, until determination of district court be known.

SECTION.

29. Power of district court.
30. Appellant failing to prosecute his appeal, former sentence to be affirmed.
- [666] 31. When case may be tried by jury.
32. Discretion of court as to costs.
33. Execution to be issued for costs.
34. Stationery, blanks, etc., to be furnished by judge of probate.
35. Term for probate court specified.

CHAPTER XIII.

Of the descent of property.

1. Disposition of property of person dying without a will.
 - 1st. To his children or lineal descendants.
 - 2nd. To his father.
 - 3rd. To his brothers and sisters.
 - 4th. To his mother.
 - 5th. To his next of kin in equal degree.
 - 6th. Division of property among children of deceased brothers.
 - 7th. Children being dead, estate to go to their issue.
 - 8th. If intestate leaves no kindred, estate to escheat to the territory.
2. Illegitimate heirs of their mother.
3. Such child dying without issue estate to descend to his mother, except.
4. His parents marry.
5. How degrees of kindred to be computed.
6. Advances made in the life time of intestate to be considered as a part of estate.
7. If such advance exceeds amount of such heirs share, he is to be excluded from any further portion.
8. Proceedings when in real, and when in personal estate.
9. When gifts and grants to be considered as advanced.
10. Value of the estate.
11. Disposition of such advancement if such descendant die before intestate.
12. Nothing in this act to effect title of husband by courtesy.
13. When inheritance by right of representation takes place.
14. Repealing clause.

Be it enacted by the Council and House of Representatives of the Territory of Iowa:

CHAPTER. I.

Wills of real and personal estate.

SECTION 1. That every person of full age and sound mind, being seized in his own right, of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, descendible to his heirs, may devise and dispose of the same by his last will and testament in writing, and all such estate not disposed of by the will, shall descend as the estate of an intestate, being chargeable in both cases with the payment of all his debts.

SEC. 2. Every devise of land in any will hereafter made, shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will, that the devisor intended to convey a less estate.

SEC. 3. Any estate, right or interest in lands acquired by the testator, after the making of his will, shall pass thereby in like manner as if [667] possessed at the time of making the will, if such shall clearly and manifestly appear by the will, to have been the intention of the testator.

SEC. 4. Every person of full age and sound mind, may by his last will and testament, in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his right thereto, and interest therein, and all such estate not disposed of by the will, shall be administered as intestate estate.

SEC. 5. No will, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to change, or in any way affect the same, unless it be in writing and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses, and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

SEC. 6. Nothing herein contained shall affect the validity of a nuncupative will in which the value of the estate bequeathed shall not exceed three hundred dollars, provided the same shall be proved by two competent witnesses, nor prevent any soldier being in actual military service, nor any mariner, being at sea, from disposing of his wages and other personal estate, by a nuncupative will, as he might heretofore have done.

SEC. 7. All beneficial devises, legacies, and gifts whatsoever, made or given in any will to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

SEC. 8. But if such witness, to whom any beneficial devise or legacy may have been made or given, would have been entitled to any share of the testator's estate in case the will was not established, then so much of the share that would have descended or have been distributed to such witness, shall be saved to him as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will in proportion to, and out of, the parts devised and bequeathed to them.

SEC. 9. No will, nor any part thereof, shall be revoked unless by burning, tearing, cancelling, or obliterating the same, with the intention [668] of revoking

it, by the testator himself, or by some person in his presence, and by his direction, or by some other will or codicil in writing, executed as prescribed in this act, or by some other writing signed, attested and subscribed in the manner provided in this act for the making of a will, excepting only, that nothing contained in this section shall prevent the revocation implied by law, from subsequent changes in the condition or circumstances of the testator.

SEC. 10. Any will, in writing, being enclosed in a sealed wrapper, and having endorsed thereon the name of the testator, and his place of residence, and the day when, and the person by whom, it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will and give a certificate of the deposit thereof.

SEC. 11. Such will shall, during the lifetime of the testator, be delivered only to himself or to some other person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness, and after the death of the testator, and at the first probate court held after notice thereof, it shall be publicly opened by the judge of probate and be retained by him; and the judge of probate shall give notice of such will being in his possession to the executor therein appointed, if any such there be, otherwise, to the persons interested in the provisions of the will, or if the jurisdiction of the case belongs to any other court, such will shall be delivered to the executor or to some other trusty person interested in the provisions of the same, to be presented for probate in such other court.

SEC. 12. Every person, other than the judge of probate, having the custody of any will, shall, within thirty days after notice of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the executors named in the will, and if he shall, without any reasonable cause, neglect to do so after being duly cited for that purpose, by the judge of probate, he may be committed to the jail of the county, by warrant of the said judge, there to be kept in close custody until he shall deliver the will as above directed, and he shall be further liable to the action of any party aggrieved, for the damage which may be sustained by such neglect.

SEC. 13. When it shall appear to the judge of probate, by the consent, in writing, of the heirs at law, or by other satisfactory evidence, that no person, interested in the estate, intends to object to the probate of the will, he may, in his discretion, grant probate thereof, upon the [669] testimony of one of the subscribing witnesses, without requiring the attendance of all of them, although the others should be within reach of the process of the court.

SEC. 14. In case of an appeal from the probate court, concerning the probate of the will, if it shall appear from the reasons of the appeal, that the sanity of the testator, or the attestation of the witness in his presence, is in controversy, the district court may, for the determination thereof, direct a real or feigned issue to be tried by a jury in the same court, at the expense of the appellant, if the issue be found against him.

SEC. 15. Any will that shall have been proved, and allowed, in any of the United States, or in any foreign country, according to the laws of such state or country, may be allowed and recorded in this territory, in the manner, and for the purposes, mentioned in the following sections.

SEC. 16. A copy of the will, and of the probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the judge of probate, in any county in which there is any estate, real or personal, on which the will may operate, whereupon the judge shall assign the time and place for hearing the case, and shall cause notice thereof, to all persons interested, to be given in some public newspaper three weeks succes-

sively; the first publication to be thirty days, at least, before the time so assigned.

SEC. 17. If, on hearing the case, it shall appear to the judge that the instrument ought to be allowed in this territory, as the last will and testament of the deceased, he shall order the copy to be filed and recorded, and the will shall then have the same force and effect as if it had been originally proved and allowed in the same court, in the usual manner: provided, however, that nothing herein contained shall be construed to make valid any will that is not executed, attested, and subscribed in the manner prescribed by the laws of this territory, nor to give any operation and effect to the will of an alien, different from what it would have had if originally proved and allowed within this territory.

SEC. 18. After the allowing and recording of any will, pursuant to the preceding sections, the judge of probate shall grant letters testamentary thereon or letters of administration with the will annexed, and shall proceed in the settlement of the estate that may be found in this territory, in the manner provided in the chapter concerning the settlement of estates of deceased persons, with respect to the estates of persons who were inhabitants of any state or country; and the letters tes-[670]-tamentary, or of administration, thus granted, shall extend to all the estate of the deceased within the territory, and shall exclude the jurisdiction of the probate court in every other country.

SEC. 19. When any testator shall omit to provide in his will, for any of his children, or for the issue of any deceased child, they shall take the same share of his estate, both real and personal, that they would have been entitled to if he had died intestate, unless they shall have been provided for by the testator, in his lifetime, or unless it shall appear that such omission was intentional, and not occasioned by any mistake or accident.

SEC. 20. When any child of a testator, born after his father's death, shall have no provision made for him by his father, in his will, or otherwise, he shall take the same share of his father's estate, both real and personal, that he would have been entitled to, if his father had died intestate.

SEC. 21. When any portion is assigned to a posthumous child, or to a child, or the issue of a child, omitted in the will of his parent, as mentioned in the two preceding sections, the same shall be taken equally from all the devisees and legatees, in proportion to the value of what they shall receive, respectively, under the will, unless in consequence of a specific devise, or bequest, or of some other provisions in the will, a different apportionment among the devisees and legatees shall be found necessary in order to give effect to the intention of the testator as to that part of his estate which shall pass by his will.

SEC. 22. When a devise of real or personal estate is made to any child, or other relation of the testator, and the devisee shall die before the testator, leaving issue who survive the testator, such issue shall take the estate so devised in the same manner as the devisee would have done if he had survived the testator, unless a different disposition thereof shall be made or required by the will.

SEC. 23. When any estate, real or personal, that is devised, shall be taken from the devisee for the payment of the debts of the testator, all the other devisees and legatees shall contribute their respective proportions of the loss to the person from whom the estate is taken, so as to make the loss fall equally on all the devisees and legatees, according to the value of the property received by each of them, excepting as provided in the following section:

SEC. 24. If in any such case the testator shall, by making a specific devise or bequest, have virtually exempted any devisee or legatee from his liability to contribute with the others for the payment of the debts, [671] or if he shall, by

any other provision in his will, have prescribed or required any appropriation of his estate for the payment of his debts, different from that prescribed in the preceding section, the estate shall be appropriated and applied in conformity with the provisions of the will.

SEC. 25. Nothing contained in the two preceding sections shall impair, or in any way affect, the liability of the whole estate of the testator for the payment of his debts, but the provisions in these sections shall apply only to the marshalling of the assets as between those who hold or claim under the will.

SEC. 26. When any part of the estate of a testator descends to a child, or other descendant, by reason of his having no provision made for him in the will; or when it descends to a posthumous child, such estate shall, for all the purposes of the three preceding sections be considered as if it had been devised to such child, or other descendant, and he shall accordingly be bound to contribute with the devisees and legatees, as before provided, and shall be entitled to claim contributions from them accordingly.

SEC. 27. When any of the persons who are liable to contribute towards the discharge of such debts, according to the provisions contained in the four preceding sections, shall be insolvent, or unable to pay the just proportion thereof, the others shall be severally liable for the loss occasioned by such insolvency, each one in proportion to the value of the property received by him from the estate of the deceased, and if any one of the persons, so liable, shall die without having paid his proportion of such debt, his executors or administrators shall be liable therefor, in like manner, as if it had been his proper debt, to the extent to which he would have been liable if living.

SEC. 28. When any part of the real estate of a testator shall descend to his heirs, by reason of its not being devised or disposed of in his will, and his personal estate shall be insufficient for the payment of his debts, the undevised real estate shall be first chargeable with the debts, in exoneration, as far as it will go, of the real estate that is devised, unless it shall appear from the will that a different arrangement of his assets, for the payment of his debts, was made by the testator, in which case they shall be applied for that purpose, in conformity with the provisions of the will.

SEC. 29. All cases arising under this act, in which devisees or legatees may be required to contribute to make up the share of any child of the testator, or of the issue of any child, or in which contribution is to be made among the devisees, legatees, and heirs, or any of [672] them, may be decided in an action at law, when the case is such as to allow of that course of proceeding, or may be heard and determined in the probate court, allowing an appeal to the district court, as in other cases, or they may be originally brought and determined in the court of chancery.

SEC. 30. No will shall be effectual, to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court, and the probate of a will devising real estate shall be conclusive as to the due execution of the will, in like manner, as it is of a will of personal estate.

CHAPTER II.

Of letters testamentary and other proceedings on the probate of a will.

SECTION 1. That when any will shall have been duly proved and allowed, the judge of probate shall issue letters testamentary thereon, to the executor, if any named therein, if he is legally competent, and if he shall accept the trust, and shall give bond to discharge the same, otherwise the judge of probate shall grant letters of administration on the estate, as hereinafter provided.

SEC. 2. Every executor, before entering upon the execution of his trust, shall give bond with sufficient surety or sureties, in such sum as the judge of probate shall order; payable to said judge, or to his successor, with condition as follows:

1. To make and return to the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the testator which are by law to be administered, and which shall have come to his possession or knowledge.

2. To administer according to law, and to the will of the testator, all his goods, chattels, rights and credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies which shall, at any time, come to the possession of the executor, or to the possession of any person for him. And,

3. To render, upon oath, a just and true account of his administration within one year, and at any other time when required by the judge of probate; and when there are two or more persons appointed executors, none shall intermeddle nor act as such but those who actually give bond as before prescribed.

[673] SEC. 3. Provided, however, that if the executor is residuary legatee, he may instead of the bond prescribed in the preceding section, give bond in a sum, and with sureties, to the satisfaction of the judge of probate, with condition to pay all the debts and legacies of the testator, in which case he shall not be required to return an inventory.

SEC. 4. The giving of such bond, as is provided in the preceding section, shall not discharge the lien on the real estate of the testator, for the payment of his debts, excepting only on such part thereof as shall have been sold by the executor, to one who purchased in good faith, and for a valuable consideration; and all the estate, not so sold, may be taken in execution, by any creditor who is not otherwise satisfied, in like manner as if a bond had been given in the other form.

SEC. 5. If any person, who is appointed an executor, shall refuse to accept the trust, or if, after duly cited for that purpose, he shall neglect to appear and accept the same, or if he shall neglect for twenty days after probate of the will, to give bond, as before prescribed, the judge of probate shall grant letters testamentary to the other executors, if there be any capable and willing to accept the trust, and if there be no such other executor, the judge of probate shall commit administration of the estate, with the will annexed, to the widow of the deceased, or to his next of kin, or to such other person as would have been entitled thereto if the deceased had died intestate.

SEC. 6. When a person, appointed executor, is under the age of twenty-one years at the time of proving the will, administration may be granted, with the will annexed, during his minority, unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the minor shall arrive at full age, when he may be admitted as joint executor with the former, upon giving bond as before provided.

SEC. 7. When an executor, residing out of this territory, shall, after being duly cited by the judge of probate, neglect to render his accounts, and to settle the estate according to law, or when any executor shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate may remove him, and the other executor, if there is any, may proceed in discharging the trust, as if the executor so removed were dead, and if there is no other executor to discharge the trust, the judge may commit administration, with the will annexed, of the estate not already administered, to such person as he shall think fit, in like manner as if the executor so removed were dead.

SEC. 8. Every person who is appointed administrator, with the [674] will annexed, shall before entering on the execution of his trust, give bonds to the judge of probate in like manner, and with like condition, as is required of an executor.

SEC. 9. In all cases where letters of administration, with the will annexed, shall be granted, the will of the deceased shall be observed and performed, and administrators, with the will annexed, shall have the same rights and powers, and be subject to the same duties, as if they had been appointed the executors of such will.

SEC. 10. When an unmarried woman, who is executrix, either alone or jointly with another person, shall marry, her husband shall not be an executor in her right, but the marriage shall operate as an extinguishment of her authority as executrix, and the other executor, if there is any, may proceed in discharging the trust as if she were dead, and if there is no other executor, administration with the will annexed, may be granted of the estate not already administered.

SEC. 11. The executor of an executor shall have no authority, as such, to administer the estate of the first testator, but on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the judge of probate may think fit to appoint.

CHAPTER III.

Of the administration and distribution of the estates of intestates.

SECTION 1. That when any person shall die, possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all her articles of apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries, for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of the chapter concerning "inventory and collection of the effects of deceased persons," and this allowance shall be made as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate.

2. The personal estate, remaining after such allowance, shall [675] be applied to the payment of the debts of the deceased, with the charges of his funeral and of settling his estate.

3. The residue, if any of the personal estate, shall be distributed among the same persons who would be entitled to the real estate under the provisions of the chapter concerning "the descent of real property," and in the same proportion as there prescribed, excepting as is herein further provided, that is to say,

4. If the intestate were a married woman her husband shall be entitled to the whole of the residue of the personal estate.

5. If the intestate leave a widow and issue, the widow shall be entitled to one-third of the said residue.

6. If there be no issue, the widow shall be entitled to one-half thereof.

7. If the intestate have no kindred, the widow shall be entitled to the whole of the said residue. And,

8. If there be no husband, widow, or kindred, of the intestate, the whole shall escheat to the county where the deceased resided, subject to any claim that may be legally established within three years after said escheat.

SEC. 2. If the intestate leave a widow and issue, and any of the issue shall have received an advancement from the intestate in his lifetime, the value of

such advancement shall not be taken into consideration in computing the one-third part to be assigned to the widow; but she shall be entitled to the third part only of the residue, after deducting the value of the advancement.

SEC. 3. Upon the decease of any inhabitant of this territory, letters testamentary, or letters of administration on his estate shall be granted by the judge of probate, of the county in which the deceased was an inhabitant or resident at the time of his death; and when any person dies intestate in any state or country, leaving any estate to be administered within this territory, administration thereof shall be granted by the judge of probate, in any county in which there is any estate to be administered, and the administration which shall be first lawfully granted in the last mentioned case, shall extend to all the estate of the deceased within the territory, and shall exclude the jurisdiction of the probate court in every other county.

SEC. 4. Administration of the estate of an intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled thereto in the following order to wit:

1. His widow, or next of kin, or both, as the judge may think [676] fit, and if they do not, voluntarily, either take or renounce the administration, they shall, if resident within the county, be cited by the judge for that purpose.

2. If the persons so entitled to administration are incompetent, or evidently unsuitable for the discharge of the trust, or if they neglect, without any sufficient cause for thirty days after the death of the intestate, to take administration of his estate, the judge of probate shall commit it to one or more of the principal creditors, if there be any competent and willing to undertake the trust.

3. If there be no such creditor, the judge shall commit administration to such other person as he shall think fit: provided however,

4. That if the deceased were a married woman, administration of her estate shall, in all cases, be granted to her husband if competent and willing to undertake the trust, unless she shall, by force of a marriage settlement, or otherwise, have made some testamentary disposition of her separate estate, or some other provision which shall render it necessary or proper to appoint some other person to administer her estate.

SEC. 5. Every administrator shall, before entering on the execution of his trust, give bond, with sufficient surety or sureties, in such form as the judge of probate shall order, payable to the said judge or to his successors, with conditions as follows:

1. To make, and return into the probate court, within three months, a true inventory of all the real estate, and all the goods and chattels, rights and credits, of the deceased which have or shall come to his possession or knowledge.

2. To administer according to law, all the goods, chattels, rights and credits, of the deceased, and the proceeds of all his real estate that may be sold for the payment of his debts, which shall at any time come to the possession of the administrator, or to the possession of any person for him.

3. To render upon oath, a true account of his administration within one year, and at any other times, when required by the judge of probate.

4. To pay any balance remaining in his hands, upon the settlement of his account to such persons as the judge of probate shall direct. And,

5. To deliver the letters of administration into the probate court, in case any will of the deceased shall be thereafter duly proved and allowed.

[677] SEC. 6. When by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may, in his discretion, appoint a special

administrator to collect and preserve the effects of the deceased, and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his duties, until it shall be otherwise ordered by the district court.

SEC. 7. Every such administrator shall before entering on the duties of his trust, give bond with sufficient surety or sureties in such form as the judge of probate shall order, payable to the said judge or his successors, with condition that he will make and return into the probate court, within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge, and that he will truly account on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

SEC. 8. Such special administrator shall collect all goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall be thereafter appointed, and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his services as the judge of probate shall think reasonable.

SEC. 9. Upon the granting of letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

SEC. 10. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time of limitation for all suits against the estate, shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted.

[678] SEC. 11. If any person shall sell or embezzle any of the goods or effects of a deceased person, before having taken out letters testamentary or of administration thereon, and given bond as executor or administrator, or without an appointment as special administrator, he shall be liable to the actions of the creditors and other persons aggrieved as an executor in his own wrong.

SEC. 12. Every executor in his own wrong shall be liable to the rightful executor or administrator for the full value of the goods or effects of deceased taken by him, and for all damages caused by his acts to the estate of the deceased, and he shall not be allowed to retain or deduct any part of the goods or effects, excepting for such funeral expenses or debts of the deceased or other charges actually paid by him as a rightful executor or administrator might have been compelled to pay.

SEC. 13. Administration shall not be originally granted after the expiration of ten years from the death of the testator or intestate.

SEC. 14. When a sole executor or administrator shall die without having fully administered the estate, the judge of probate shall grant letters of administration, with the will annexed, or otherwise as the case may require, to some suitable person to administer the goods and estates of the deceased not already administered; provided there be personal estate of the deceased not administered, to the amount of twenty dollars, or debts to the like amount remaining due from the estate.

SEC. 15. When the administrator, residing out of this territory, having been duly cited by the judge of probate, shall neglect to render his accounts and to settle the estate according to law, or when any administrator shall become insane, or otherwise incapable of discharging the trust, or evidently unsuitable therefor, the judge of probate may remove him, and thereupon the other administrators, if there be any, may proceed in discharging the trust as if the one so removed were dead, and if there be no other administrator to discharge the trust the judge may commit administration of the estate, not already administered, to such person as he shall think fit, in like manner as if the administrator so removed were dead.

SEC. 16. If, after granting letters of administration as if an intestate estate, a will of the person deceased shall be duly proved and allowed, the first administration shall be revoked, and the executor or the administrator, with the will annexed, shall be entitled to demand, collect, and sue for the goods, chattels, rights and credits of the deceased remaining unadministered.

[679] SEC. 17. When an unmarried woman who is administratrix, either alone, or jointly with another person, shall marry, her husband shall not become an administrator in her right, but the marriage shall operate as an extinguishment of her authority as administratrix, and the other administrator, if there be any, may proceed in discharging the trust as if she were dead, and if there be no other administrator, the judge of probate may grant administration of the estate not already administered.

SEC. 18. That administrators may, with the consent of the judge of probate of the proper county, use money belonging to the estate of which they are administrators, to enter lands claimed by the deceased at the time of his death: provided, that such entry be in the name of the heirs of the deceased.

CHAPTER IV.

Of the inventory and collection of the effects of deceased persons.

SECTION 1. That every executor and administrator shall, within three months after his appointment, make and return upon oath into the probate court, an inventory of the real estate and all the goods, chattels, rights and credits of the deceased which are by law to be administered, and which shall have come to his possession or knowledge, except only, that an executor who is a residuary legatee having given bond to pay all the debts and legacies of the deceased, shall be excused from returning such an inventory.

SEC. 2. The estate and effects comprised in the inventory shall be appraised by three suitable disinterested persons, who shall be appointed by the judge of probate, or by a disinterested justice of the peace, and sworn to the faithful discharge of their trust, and if any part of such estate or effects be in any other county, any disinterested justice of such county may appoint the appraisers thereof.

SEC. 3. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them in substance as follows:

—ss.

To _____ of _____ in said county:

You are hereby appointed to appraise, on oath, the estate and effects of _____, late of _____, deceased, which may be in said county. When you have performed that service, you will deliver this or-[680]-der and your doings in pursuance thereof to _____ (executor or administrator, as the case may be,) of said

deceased, that he may return the same to the probate court for said county of _____.

Given under my hand this day of in the year

A. B.,

Justice of the peace.

SEC. 4. The following articles shall be omitted in making the inventory, and shall not be considered as assets, nor be administered as such, to-wit:

1. The wearing apparel of the deceased, not exceeding one hundred dollars in value, which shall be distributed at the discretion of the executor or administrator, among the family of the deceased.

2. If the deceased shall leave a widow, or minor child, or children, there shall be omitted all the articles of apparel, or ornament, of the widow and minor children, according to the degree and estate of the deceased; all spinning wheels and weaving looms, kept for use by the family, and the iron stoves used for warming the house; the family pictures, and the bibles and school books used in the family, and the books kept and used as the family library, not exceeding in value fifty dollars; a bedstead and bedding for every two persons in the family; one cow, ten sheep, and their fleeces, and the yarn and cloth made from the same; three swine, and three tons of hay; provisions necessary for the family for three months; cooking utensils and necessary furniture, not exceeding in value fifty dollars, and such further necessaries as the judge of probate shall, in his discretion, order to be allowed to the widow, for the use of herself and the minor children, if any, under her care.

SEC. 5. All the articles, above mentioned, shall be omitted in the inventory, although it should thereby become necessary to sell the estate of the deceased for payment of his debts, and, although his estate should be insolvent, they shall also be omitted, whether the deceased left a will or died intestate, and notwithstanding the widow may have waived the provision made for her by the will.

SEC. 6. Upon complaint made to the judge of probate, by any executor or administrator, or by any other person interested in the estate of any deceased person, against any one suspected of having concealed, embezzled, or conveyed away, any money, goods, or effects, of the deceased, the judge may cite such suspected person, and summon witnesses to appear before him and be examined on oath upon the matter of such complaint, and if the person so cited shall refuse to appear and [681] submit to such examination, or to answer such interrogatories, as shall be lawfully propounded to him, the judge may commit him to the common jail of the county, there to remain in close custody, until he shall submit to the order of the court.

SEC. 7. When the goods and chattels, rights and credits, in the hands of an executor or administrator shall not be sufficient to pay the debts of the deceased, with charges of the administration, his real estate, or so much thereof as may be necessary, shall be sold for that purpose, by the executor or administrator, upon obtaining a license therefor, in the manner provided for in the chapter providing for the sale of lands for the payment of debts by executors, administrators, and guardians.

SEC. 8. The proceeds of any real estate, sold as aforesaid, shall be considered as assets in the hands of the executor or administrator, in like manner as if the same had originally been part of the goods and chattels of the deceased, and such executor or administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

SEC. 9. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 10. When any mortgagee of real estate, or any assignee of such mortgage, shall die without having foreclosed the right of redemption, the mortgaged premises, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and shall be administered and accounted for as such, and if the mortgagee or assignee shall not have obtained possession of the mortgaged premises in his life time, his executor or administrator may take possession thereof by open and peaceable entry, or by action, in like manner as the deceased might have done if living.

SEC. 11. In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein, or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts, and, until such redemption or sale, the executor or administrator, if possession shall have been taken, either by himself or the deceased, shall be seized of the mortgaged premises for the same persons, whether creditors, next of kin, or others, who would be entitled to the money if the premises had been redeemed or sold.

[682] SEC. 12. Any real estate so held by an executor or administrator in mortgage may be sold (subject to the right of redemption if not foreclosed,) for the payment of debts or legacies, and the charges of administration, in the same manner as any real estate of which the deceased died seized, such sale to be made by the executor or administrator upon obtaining a license therefor in the manner provided for in the chapter providing for the sale of lands for the payment of debts by executors, administrators and guardians.

SEC. 13. If any land so held by an executor or administrator in mortgage, shall not be redeemed nor sold in the manner provided by law, it shall be assigned and distributed to the same persons, and in the same proportions, as if it had been part of the personal estate of the deceased, and if upon such distribution the estate shall come to two or more persons, the judge of probate may cause partition thereof to be made between them, in like manner as if it had been real estate held by the deceased in his lifetime.

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CHAPTER V.

Of the payment of debts and legacies of deceased persons.

SECTION 1. That every executor and administrator shall within three months after giving bond for the discharge of his trust, cause notice of his appointment, to be posted up in two or more public places in the town in which the deceased last dwelt, or instead of such posting up, he may be required by the judge of probate to give notice of his appointment, by publishing the same in some newspaper, or in such other manner as the judge of probate, taking into consideration the business of the deceased, and the circumstances of his estate, shall direct.

SEC. 2. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made before the judge of probate, or before any justice of the peace, and filed and recorded, together with a copy of the notice in the probate court, within one year after giving bond as aforesaid, shall be admitted as evidence of the time, place, and manner in which notice was given.

SEC. 3. No executor or administrator after having given notice of his appointment as provided in the first section, shall be held to answer to the suit of any creditor of the deceased, unless it be commenced within four years from the time of his giving bond as aforesaid, excepting in cases hereinafter mentioned.

[683] SEC. 4. When assets shall come to the hands of an executor or administrator after the expiration of the said four years, he shall account for and apply

the same in like manner as if they had been received within the four years, and he shall be liable to an action at law, or to any suit or process in the probate court, on account of such new assets by or for the benefit of any creditor, in like manner, as if they had been received within the said four years: provided, that such action or other proceeding be commenced within one year after the creditor shall have notice of the receipt of such new assets, and not more than four years after the same shall be actually received.

SEC. 5. Any creditor of the deceased whose right of action shall not accrue within the said four years after the date of the administration bond, may present his claims to the judge of probate, at any time before the estate is fully administered, and if on examination thereof it shall appear to the judge that the same is justly due from the estate, he shall order the executor or administrator to retain in his hands sufficient assets to satisfy the same, or if any of the heirs of the deceased, or the devisees or others interested in the estate, shall offer to give bond to the alleged creditor with sufficient surety or sureties for the payment of the demand in case the same shall be proved to be due from the estate, the judge may if he think fit order such bond to be taken instead of requiring the executor or administrator to retain assets as aforesaid.

SEC. 6. The decision of the judge of probate upon the claim of such creditor shall not be conclusive against the executor or administrator, or other person interested, opposed to the allowance thereof, and they shall not be compelled to pay the same unless it shall be proved to be due, in an action to be commenced by the claimant within one year after the same shall become payable.

SEC. 7. The action for this purpose shall be brought against the executor or administrator in case he shall have been required to retain assets therefor; but if the heirs, or others interested in the estate, shall have given bond as before provided, the action shall be brought on the bond.

SEC. 8. If the action is brought on the bond the defendant may plead a general performance of the condition thereof, whereupon the plaintiff shall, in his replication, set forth his original cause of action against the deceased person in like manner as would be required in a declaration of the same demand against executors or administrators, and may allege the non-payment thereof as a breach of the condition of the [684] bond, and the defendant may rejoin that nothing is due to the plaintiff, on which plea issue may be joined as on a general issue to a declaration, or he may plead any other matter of defense that would be available in law against the same demand if prosecuted in the usual manner against the executors or administrators of the deceased, and the pleadings shall proceed in legal form until the joinder of an issue of law, or of fact, and if it shall appear that any thing is due from the estate of the deceased to the plaintiff he shall have judgment, and execution therefor, with his costs against the obligors in the bond, otherwise they shall recover judgment for costs against him.

SEC. 9. Nothing herein contained shall prevent or bar the action of any creditor against the heirs, next of kin, devisees, or legatees of the deceased as provided in the chapter concerning the settlement of the estates of deceased persons.

SEC. 10. No executor or administrator shall be held to answer to the suit of any creditor of the deceased, if commenced within one year after his giving bond for the discharge of his trust, unless it be for the recovery of a demand that would not be affected by the insolvency of the estate, or unless it be brought after the estate has been represented insolvent, for the purpose of ascertaining a claim that is contested.

SEC. 11. If any executor or administrator who shall have given notice of his appointment as prescribed in this act, shall not, within one year thereafter,

have notice of demands against the estate of the deceased which will authorize him to represent it insolvent, he may, after the expiration of the said one year, proceed to pay the debts due from the estate, and he shall not become personally liable to any other creditor in consequence of any such payments made before notice of his demand, although the remaining estate should be insufficient to satisfy such last mentioned creditor.

SEC. 12. If any executor or administrator shall have paid away, in manner aforesaid, the whole of the estate and effects of the deceased before notice of the demand of any other creditor, he shall not be further liable, and if the executor or administrator shall have paid away, in such manner, so much of the estate that the remainder shall be insufficient to satisfy the demands of which he shall afterwards have notice, the estate may be represented insolvent, and he shall be liable to pay on such last mentioned demands, so much only as may then remain in his hands; but the creditors of the deceased who shall have been previously paid by the executors or administrators as aforesaid, [685] shall not be liable to refund any part of the amount so received by them.

SEC. 13. If it shall appear, upon the settlement of an administration account in the probate court, that the whole estate and effects which have come to the hands of the executors or administrators have been exhausted in paying the charges of the administration, the allowance to the widow and family of the deceased, and the charges of his last sickness and funeral, or any other debts or claims entitled by law to a preference over the common creditors of the deceased, such settlement shall be a sufficient bar to any action brought against the executor or administrator by any creditor who is not entitled to such preference, and the executor or administrator may give the same in evidence under the plea of *plene administravit*, although the estate may not have been represented insolvent.

SEC. 14. When an executor or administrator shall, within four years after having given bond for the discharge of his trust, be required, by any legatee or next of kin, to make payment in whole, or in part, of his legacy or distributive share, the judge of probate may, if he shall think fit, require that the legatee or next of kin shall first give bond to the executor or administrator, with surety or sureties, to be approved by the judge, with condition to refund the amount so to be paid, or as much thereof as may be necessary to satisfy any demand that may afterwards be recovered against the estate of the deceased, and to indemnify the executor or administrator against all loss and damage on account of such payment.

SEC. 15. Every legatee may recover his legacy in an action at the common law, and nothing contained in this chapter shall bar any action brought, at any time, against an executor or an administrator with the will annexed for the recovery of any legacy, annuity, or bequest whatsoever.

SEC. 16. If any executor or administrator shall unreasonably delay to raise money by collecting the goods and effects of the deceased, or by selling the real estate if necessary, if he can obtain a license therefor, or shall neglect to pay what he has in his hands, and if in consequence of such delay or neglect the estate of the deceased shall be taken in execution by any of his creditors, it shall be deemed unfaithful administration in such executor or administrator, and he shall be liable, in an action on his administration bond, for all damages occasioned thereby.

SEC. 17. If any debts claimed by an executor or administrator as [686] due to him from the deceased shall be disputed by any person interested in the estate, the executor or administrator shall file in the probate court a statement of his claim, in writing, setting forth distinctly and fully the particulars thereof, and the same may then be submitted, under an order of the probate court, to one or more arbitrators to be agreed on by the parties interested, and the judge

of probate shall have the same power and control over the rule by which the claim is preferred, and over the award of the arbitrators as might be exercised by the courts of common law with regard to cases referred by a rule of those courts, and the award of such arbitrators, if confirmed by the judge of probate, shall be final and conclusive on all parties interested in the estate.

SEC. 18. If in the case last mentioned, the parties shall not agree in the appointment of arbitrators, or if the award should not be confirmed by the judge of probate, the judge shall himself decide on the claim upon such evidence as shall be adduced before him, having given suitable notice to all persons interested, and saving to such persons an appeal to the district court, as in other cases; and on such appeal, either party may have the claim submitted to a jury, or the court may direct it to be so decided, and thereupon, a real or feigned issue shall be made up under the direction of the court, and shall be tried by a jury as other issues in civil actions are tried, and the verdict thereon, being duly allowed and recorded, shall be conclusive.

SEC. 19. When any executor or administrator shall die, or be removed, without having fully administered the goods and estate of the deceased, and a new administrator of the same estate shall be appointed, the time allowed to the creditors of the deceased for bringing their actions, shall be enlarged as follows, to wit: To so much of the four years provided for the limitation of the said actions, as shall have expired whilst the former executor or administrator continued in office, shall be added so much time after the appointment of the new administrator, as will make five years in the whole, and the new administrator shall not be held to answer to the suit of any creditor commenced after the expiration of the said five years, excepting as is provided in the following sections.

SEC. 20. Every such new administrator shall in all cases, be liable to the actions of the creditors for the space of two years, after he shall have given bond for the discharge of his trust, although the whole time allowed to the creditors, should be thereby extended beyond the said five years.

SEC. 21. If the former executor or administrator shall not have [687] given notice of his appointment, in the manner before prescribed in this chapter, the new administrator shall be liable to the actions of the creditors for the space of four years after the date of the bond given by such new administrator.

SEC. 22. The new administrator shall give notice of his appointment in the same manner that is prescribed in this chapter, with respect to an original administrator, and if he shall fail so to do, he shall have no benefit of the limitations herein provided.

SEC. 23. When assets shall come to the hands of such new administrator, after any of the periods above limited for the commencement of the actions against him, he shall account for the same and shall be liable to an action at law, and to any suit or process in the probate courts, on account of such new assets, by or in behalf of any creditor, in like manner as is provided in this chapter with respect to an original executor or administrator.

SEC. 24. If, by any accident or mistake, notice shall not be given of the appointment of any executor, or of any original administrators or administrator *de bonis non*, within the three months herein prescribed for that purpose, or the evidence thereof shall fail to be perpetuated, as hereinbefore provided, the judge of probate may, on petition of the executor or administrator, order and allow such notice to be given at any time afterwards, in which case the said four years and other periods of time, which are hereinbefore limited for the commencement of actions against executors and administrators, and for other purposes, and which begin to run, as before directed, from the date of the administration bond, shall begin to run respectively from the time of passing such order of the court.

SEC. 25. No order of the court passed by virtue of the preceding section, shall exempt the executor or administrator, or their respective sureties, from liability for any damages for which they would otherwise have been liable by reason of the omission to give notice within the said three months.

SEC. 26. When two or more persons shall be indebted in any joint contract, or upon a judgment founded on any such contract, and either of them shall die, his estate shall be liable therefor, as if the contract had been joint and several, or as if the judgment had been against himself alone.

[688] CHAPTER VI.

Executors and administrators rendering their accounts, and settling estates.

SECTION 1. That every executor and administrator shall, within one year after having given bond for the discharge of his trust, render his first account of his administration upon oath, and he shall render, in like manner, such further accounts of his administration, from time to time, as may be necessary or convenient, or when required by the judge of probate, until the estate shall be wholly settled, and he may be examined on oath, by the judge of probate, upon any matters relating to his accounts.

SEC. 2. Every executor and administrator shall account for the personal estate, at the value at which it shall be appraised, excepting as provided in the following sections.

SEC. 3. No profit shall be made by executors or administrators by the increase, nor shall they sustain any loss by the decrease or destruction, without their fault, of any part of the estate; and if they shall sell any part of the personal estate for more than the appraised value, they shall account for the excess, and if they shall sell any for less than the appraised value they shall be allowed for the loss, if it shall appear to the judge of probate that such sale was expedient and for the interest of all concerned in the estate.

SEC. 4. The judge of probate, on the application of the executors or administrators, or of any person interested in the estate, made within six months after the return of the inventory, may order the personal estate, or any part thereof, to be sold by public auction or private sale, as he shall think most for the interest of all concerned in the estate, and the executor or administrator shall, in such case, account therefor at the price for which it shall be sold.

SEC. 5. No executor or administrator shall be accountable for any debts inventoried as due to the deceased, if it shall appear to the judge of probate that they remain uncollected without his fault.

SEC. 6. Every executor and administrator shall be chargeable in his account with all goods, chattels, rights and credits of the deceased, which shall come to his hands, and which are, by law, to be administered, although they should not be included in the inventory; also with all the proceeds of real estate, sold for the payment of debts or legacies, and with all the interest, profit, and income, that shall in any way [689] come to his hands, or be derived by him from both the personal and the real estate of the deceased.

SEC. 7. If any part of the real estate shall have been used or occupied by the executor or administrator, he shall account for the income thereof as shall be ordered by the judge of probate, with the assent of the executor or administrator, and of such other parties interested as may be present at the rendering of the account, and if the parties do not agree on the sum to be allowed, it shall be determined by three disinterested persons to be appointed for that purpose by the judge of probate, whose award being confirmed by the judge shall be final.

SEC. 8. Executors and administrators shall be allowed the following commissions upon the amount of personal estate collected and accounted for by them,

and of the proceeds of real estate sold under an order of court for the payment of debts, which shall be received in full compensation for all their ordinary services, to wit: For the first thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent; and for all above five thousand dollars, at the rate of one per cent; and in all cases such further allowance shall be made as shall be just and reasonable for their actual and necessary expenses, and for any extraordinary services not required of an executor or administrator in the common course of his duty: provided however, that when provisions shall be made by the will of the deceased for compensation to any executor, the same shall be deemed a full satisfaction for his services in lieu of the aforesaid commissions, or his share thereof, unless he shall, by an instrument filed in the probate court, renounce all claim to such compensation given by the will.

SEC. 9. When any executor or administrator, after being duly cited by the judge of probate, shall neglect to render any account of his administration, his bond may be put in suit as provided in the chapter concerning the settlement of the estates of deceased persons, and if he shall persist in such neglect to account, judgment shall be rendered against him, and he shall be liable in like manner and to the same extent as if he had been an executor in his own wrong.

SEC. 10. Any person interested in the estate as creditor, or next of kin, legatee, or otherwise, may attend the settlement of the account of the executor or administrator and contest the same, and when an account is settled in the absence of any person adversely interested and without notice to him, the account may be opened, on the application of such person, at any time within six months thereafter.

[690] SEC. 11. Upon every settlement of an account by any executor or administrator, all his former accounts may be so far opened as to correct any mistake or error therein, excepting that any matter in dispute between two parties which had been previously heard and determined by the court, shall not again be brought in question by either of the same parties without leave of the court.

SEC. 12. If judgment shall be recovered against an executor or administrator for costs in any suit commenced or prosecuted by him in that capacity, the estate in his hands shall not be taken on execution for such costs, but execution shall be awarded against him as for his own debts, and the amount paid by him thereupon shall be allowed in his administration account, unless it shall appear to the judge of probate that the suit was commenced or prosecuted unnecessarily or without any reasonable cause.

CHAPTER VII.

Regulating the proceedings when the estate of a deceased person is insolvent.

SECTION 1. That when the estate of any person deceased shall be insolvent or insufficient to pay all his debts, it shall, after discharging his necessary funeral expenses and those of his last sickness, and the expenses of administration, be applied to the payment of his debts in the following order.

1. Debts entitled to a preference under the laws of the United States.
2. Public rates and taxes, and debts due the territory.
3. Debts due to all other persons, and if there be not enough to pay all the debts of any one class, all the creditors of that class shall be paid ratably in proportion to their respective debts, and no payment shall be made to creditors of any one class until all those of the preceding class or classes, of whose claims the executor or administrator shall have had notice, shall be fully paid.

SEC. 2. When it shall appear to the judge of probate, from the representation of an executor or administrator, that the estate of the deceased will probably be insufficient for the payment of his debts, the judge shall appoint two or more fit persons to be commissioners, to receive and examine all claims of creditors against the estate of the deceased, and to return to the probate court a list of all the claims that [691] shall have been paid before them, with the sum that they shall have allowed on each claim, and the commissioners, before entering on the duties of their office, shall be sworn to the faithful discharge thereof.

SEC. 3. The commissioners of insolvency shall appoint convenient times and places for their meetings to receive and examine the claims of creditors, and shall give notice thereof by causing notifications to be pasted up in some public place in the town in which the deceased last dwelt, or in such other manner as the judge of probate, having regard to the circumstances of the case, shall order.

SEC. 4. The period of six months after the commissioners are appointed, and such further time, not exceeding eighteen months, as the circumstances of the case may require, shall be allowed by the judge of probate for the creditors to present and prove their claims, and at the expiration of the time so allowed, the commissioners shall make their return to the judge.

SEC. 5. When it shall satisfactorily appear to the judge of probate, that any person has a contingent claim against the estate which could not be proved as a debt before the commissioners, the judge shall, in ordering a dividend, leave in the hands of executors or administrators a sum sufficient to pay such contingent creditor a proportion equal to what shall then be paid to the other creditors.

SEC. 6. And if, at any time within four years after the date of the administration bond, such contingent claim shall become absolute, it may be allowed by the judge of probate, and upon the allowance thereof, the creditor shall be entitled to a dividend thereon equal to what shall have been paid to the other creditors, so far as the same can be done without disturbing the former dividend.

SEC. 7. If such claim shall not be finally established, or if the dividend thereon shall not exhaust the assets in the hands of the executor or administrator, the remaining assets shall be divided among all the creditors who shall have proved their debts.

SEC. 8. Any person whose claim shall be disallowed in whole, or in part, by the commissioners, and any executor or administrator who shall be dissatisfied with the allowance of any claim, may appeal from the decision of the commissioners to the district court of the county in which the probate or administration is granted, and in such case the demand shall be tried and determined in like manner as if an action had been brought therefor by the supposed creditor against the executor or administrator.

[692] SEC. 9. Such appeal shall be claimed and notice thereof given, at the probate office, within thirty days after the return of the commissioners, and in the case of an appeal by an executor or administrator, he shall also give notice thereof to the creditor within the said thirty days.

SEC. 10. The appeal shall be entered at the term of the court which shall be held next after the expiration of said thirty days, the supposed creditor shall there file a statement, in writing, of his claim, setting forth briefly and distinctly all the material facts which should be necessary in a declaration for the same cause of action, and the like proceeding shall be had thereupon in the pleadings, trial, and determination of the cause, as in an action at law prosecuted in the usual manner, excepting that no execution shall be awarded against the executor or administrator for the debt, if any found due to the claimant,

and the final judgment in the case shall be conclusive as to the claim in question, and the list of debts allowed by the commissioners shall be altered, if necessary, to conform thereto.

SEC. 11. After the claiming of such appeal from the decision of the commissioners, the parties may, if they think fit, waive a trial at law, and submit the claim to the determination of arbitrators, to be agreed on between them, and to be appointed accordingly, by a rule of the probate court, in which case the appeal shall not be entered at the court appealed to, and the award of such arbitrators, if confirmed by the probate court, shall be conclusive as to the claim, in like manner as is provided in the preceding section, with regard to a judgment in a court of common law.

SEC. 12. The party prevailing upon any such appeal shall be entitled to costs, to be taxed and recovered as in common actions against the adverse party, which costs, if recovered against the executors or administrators, may be allowed to him in his administration account, out of the assets in his hands.

SEC. 13. Any person, whose claim shall be disallowed by the commissioners, and who shall, by accident, mistake, or otherwise, and not by his own neglect, omit to claim or prosecute his appeal, as before provided, may, upon his petition to the district court therefor, be allowed to claim and prosecute an appeal, in manner aforesaid, upon such terms as the court shall impose, if it shall appear that justice requires a further examination of his claim: provided, that no such petition shall be sustained unless it be presented within two years after the re-[693]-turn of the commissioners, and within four years after the date of the administration bond.

SEC. 14. The allowance of such appeal, and the judgment that may follow thereon, shall not disturb any distribution that may have been ordered before notice of the petition, or notice of the intention to present the same, shall have been given in writing at the probate office, or to the executor or administrator, but the debts, if any proved and allowed in the case last mentioned, shall be paid only out of such assets as may remain in, or come to, the hands of the executor or administrator after payment of the same due on such prior decree of distribution.

SEC. 15. The commissioners may, when they shall think proper, require an oath to be administered to any claimant to make true answers to all such questions as shall be asked of him, by them, relating to his claim, and they may thereupon examine him upon all matters relating thereto, and if he shall refuse to take such oath, or to answer fully all questions that shall be lawfully put to him, the commissioners may disallow his claim, and on any appeal from the award of the commissioners, the court, in which the appeal is pending, shall have like power to examine the claimant on oath, and to disallow his claim if he shall refuse to take the oath, or to answer fully upon his examination thereon.

SEC. 16. Any one of the commissioners may administer the said oath to the claimant, and may also administer the oath to all witnesses produced and examined before the commissioners, and any person guilty of perjury upon such examination, either as claimant or as witness, shall be liable to the punishment provided for perjury in other cases.

SEC. 17. After the expiration of thirty days from the return made by the commissioners, the judge of probate shall make such decree for the distribution of the effects among the creditors, as the case shall require, according to the provisions of this chapter: provided, however, if before making such decree, he shall have notice of any appeal from the commissioners, then claimed or pending, he may suspend his decree until the determination of such appeal, or he may order a distribution among the creditors whose debts are allowed, leaving in the hands of the executor or administrator a sum sufficient to pay the claim-

ants, whose demand is disputed, a proportion equal to what shall be paid to the other creditors.

SEC. 18. If the whole assets should not have been distributed upon the first order of distribution, or if further assets should afterwards [694] come to the hands of the executor or administrator, the judge of probate shall make such further decree, or decrees, for the distribution thereof, as the case may require.

SEC. 19. No action shall be brought against an executor or administrator, after the estate is represented insolvent, unless it be for a demand that is entitled to a preference, and would not be affected by the insolvency of the estate, or unless the assets should prove more than sufficient to pay all debts allowed by the commissioners; and if the estate is represented insolvent, whilst an action is pending against the executor or administrator for any demand that is not entitled to such preference, the action may be discontinued without the payment of costs, or if the demand is disputed the action may be tried and determined, and judgment may be rendered thereon, in the same manner, and with the same effect, as is provided in case of an appeal from the award of the commissioners, or the action may be continued at the discretion of the court, without costs to either party, until it shall appear whether the estate is insolvent, and if it should not prove to be insolvent the plaintiff may prosecute the action as if no such representation had been made.

SEC. 20. Every creditor of an estate that proves to be insolvent, who shall not have presented his claim for allowance, in the manner prescribed in this act, shall be forever barred from recovering the same unless further assets of the deceased shall come to the hands of the executor or administrator, after the decree of distribution, in which case his claim may be proved, allowed, and paid, in the manner, and with the limitations, provided in this chapter for the case of contingent debts.

SEC. 21. If, after the report of the commissioners of insolvency, the assets shall prove to be sufficient to pay all the debts allowed under the commission, the executor or administrator shall pay the same in full, and if any other debts shall afterwards be recovered against him he shall be liable therefor only to the extent of the assets then remaining in his hands.

SEC. 22. If there are two or more such creditors the assets, if sufficient to pay their demands in full, shall be divided among them, in proportion to the amount of their respective debts.

SEC. 23. The executor or administrator, in such case, shall be permitted to prove, under the general issue, the amount of assets in his hands, and thereupon judgment shall be rendered in the usual form, but execution shall not issue for more than the amount of such assets, [695] and if there is more than one judgment the court shall apportion the amount between them.

SEC. 24. If any executor or administrator shall neglect to render and settle his accounts in the probate court, within six months after the return made by the commissioners, or after the final liquidation of the demands of the creditors, or within such further time as the judge of probate shall allow therefor, so as to delay a decree of distribution, such neglect shall be deemed unfaithful administration, and a breach of the condition of his bond, and the executor or administrator may be forthwith removed, and he shall also be liable in a suit on the bond for all damages occasioned by his default.

SEC. 25. When the estate of any deceased person shall be represented insolvent, and an allowance shall be thereupon made to his widow, if the estate shall afterwards prove to be solvent, the judge of probate may, by a new decree, make such further allowance to the widow as the circumstances of the case may require.

SEC. 26. If it shall not be ascertained at the end of three years after the granting of letters testamentary, or of administration, whether any estate that has been represented insolvent, is or is not so in fact, any creditor, whose claim shall not have been presented before the commissioners, may commence an action therefor against the executor or administrator, and such action may be continued, without costs, for the defendant, until it shall appear whether the estate is insolvent, and if it should not prove to be so, the plaintiff may prosecute the action as if no such representation had been made.

CHAPTER VIII.

For the appointment of trustees for minors, and of their powers and duties.

SECTION 1. Every person who shall be appointed a trustee for minors, or others, under any last will, excepting such as are exempt by the succeeding sections of this chapter, shall, before entering on the duties of his trust, give bond, with surety or sureties, to the judge of probate for the county in which the will shall have been proved, and in such sum as the judge shall prescribe, with condition as follows:

1. To make a true inventory of all the real estate, and all the goods, chattels, rights and credits belonging to him as trustee, and which [696] shall come to his possession or knowledge, and to return the same into the probate court at such time as the judge shall direct.

2. To dispose of and manage all such estate and effects, and faithfully to discharge his trust in relation thereto, according to law and the will of the testator.

3. To render an account on oath of the property in his hands, and of the management and disposition thereof, within one year, and at any other times when required by the judge of probate. And,

4. At the expiration of his trust to settle his accounts with the judge of probate, and to pay over and deliver all the estate and effects remaining in his hands or due from him on such settlements to the person or persons who shall be entitled thereto, according to law, and the will of the testator.

SEC. 2. Such trustee shall be exempt from giving bond as aforesaid, when the testator, in the will appointing him, shall have ordered or requested that such bond should not be taken, unless from a change in his situation or circumstances, or other sufficient cause, the judge of probate shall think it proper to require him to give bond, and he shall also be exempted when all the persons interested in the trust fund, being of full age and legal capacity, shall certify to the judge of probate their consent that such bond shall not be required.

SEC. 3. No trustee who shall have undertaken the trust before this act shall go into operation, shall be required to give bond in any case in which it shall not have been required by the laws in force at the time of his undertaking the trust, unless from a change in his situation or circumstances, or other sufficient cause, the judge of probate shall think it proper to require him to give bond.

SEC. 4. Every person appointed a trustee, who shall neglect to give bond as aforesaid, within such time as the judge of probate shall allow for that purpose, shall be considered as having declined the trust.

SEC. 5. Every such trustee may upon his own request, be allowed to resign his trust when it shall appear to the judge of probate proper to allow the same.

SEC. 6. No person succeeding to such trust, as executor or administrator of a former trustee, shall be required to accept the same against his will.

SEC. 7. When any trustee appointed either by a testator, or by a judge of probate, shall become insane or otherwise incapable of discharging his trust, or

evidently unsuitable therefor, the judge may after [697] notice to such trustee, and to all others interested, remove him and appoint another in his stead.

SEC. 8. When any person appointed as trustee, shall decline or resign the trust, or shall die before the objects thereof shall be accomplished, if no adequate provision is made by the will for supplying such vacancy, the judge of probate, shall after notice to all persons interested appoint a new trustee, to act alone, or jointly with the others, as the case may be, and every trustee appointed by the judge of probate by force of this or of the preceding section, shall have and exercise the same powers, rights and duties, whether as a sole or joint trustee, as if he had been originally appointed by the testator, and the trust estate shall vest in him in like manner as it did or would have vested in the trustee in whose place he is substituted; and the judge may moreover order such conveyance to be made by the former trustee or his representatives, or by the other remaining trustees, as may be proper or convenient to vest in the trustee newly appointed, either alone or jointly with the others as the case may be, the estate and effects that are to be held in trust.

SEC. 9. Every trustee appointed by the judge of probate, shall before entering on the duties of his trust, give bond in the manner prescribed in the first section, excepting only that the judge may dispense with the making and returning of the inventory unnecessary, in which case the condition of the bond shall be altered accordingly.

SEC. 10. In all cases when an inventory is required to be returned by any trustee, the estate and effects shall be appraised by three suitable persons, to be appointed and sworn as is prescribed by law with respect to the estate of a deceased testator or intestate.

SEC. 11. The judges of probate in their respective counties and also the supreme and district courts when sitting within or for the proper county, may on the application of the trustee, or of any person interested in the trust estate, after notice to all other persons interested therein, authorize or require the trustee to sell any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him in trust, and to invest the proceeds of such sale, and also any other trust moneys in his hands, in real estate or in any other manner that shall be most for the interest of all concerned therein, and the said courts respectively may, from time to time, give such further directions as the case may require, for managing, investing and disposing of the trust fund, subject to any provisions contained in the will respecting the disposal of the trust estate.

[698] SEC. 12. Any bond given by a trustee as provided in this chapter, may be put in suit by order of the judge of probate for the use and benefit of any person interested in the trust estate, and the proceedings in such suit shall be conducted in like manner as is provided in the chapter providing for the settlement of the estates of deceased persons with respect to bonds given by executors or administrators.

CHAPTER IX.

General provisions concerning the settlement of the estates of deceased persons.

SECTION 1. When any judge of probate shall be disqualified to act in any case within his jurisdiction, by reason of his personal interest, or of his relation to any of the parties, such case shall be transferred to the probate court of any adjoining county, and the judge of such adjoining county shall have jurisdiction thereof, and shall proceed therein, in all respects as he would and ought to have done if the case had originated within his own county.

SEC. 2. When two or more persons are appointed executors, administrators or testamentary trustees, the judge may take separate bonds, with sureties from each of them, or a joint bond with sureties from all of them together, and in all bonds with sureties given to any judge of probate all of the sureties shall be inhabitants of this territory, and such as the judge shall approve.

SEC. 3. The bond given by executors or administrators for the discharge of their trust, may be put in suit by any creditor of the deceased for his own benefit, when he shall have recovered judgment for his debts against the executor or administrators, and they shall have neglected, upon demand made by the creditor, to pay the same, or to show sufficient goods or estate of the deceased to be taken in execution for that purpose.

SEC. 4. If the estate be insolvent, a suit on the bond may be brought by any creditor when the amount due to him has been ascertained by the decree of distribution, if the executor or administrator shall neglect to pay the same when demanded.

SEC. 5. Such a suit may be brought by any person as next of kin, to recover his share of the personal estate, after a decree of the probate court declaring the amount due to him, if the executor or administrator shall neglect to pay the same when demanded.

[699] SEC. 6. When it shall appear, on representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee, or other person aggrieved by such mal-administration to bring an action on the bond.

SEC. 7. In all the preceding cases the writ shall be endorsed by the person for whose benefit, or at whose request the action is brought, or by their attorney, and the endorsers shall be liable for the costs of suit, and the execution therefor shall be issued against them and not against the judge of probate; and when the action is brought for the benefit of any person, or persons, as creditors or next of kin as before provided in this chapter, there shall be a further endorsement on the writ, specifying that it is brought for the use or benefit of such creditors or next of kin.

SEC. 8. If the principal in any such bond shall be resident within this territory, and shall not be made a defendant in the action, or shall not be served with process, the court may, at the request of any of the sureties, continue or postpone the action so long as may be necessary to summon or bring in the principal as provided in the following section.

SEC. 9. The sureties may, thereupon, take out a writ in such form as the court shall prescribe, to arrest the principal, or to summon him to appear and answer as a defendant in the original action, and if, after being duly served with such process to appear and answer to the suit, he shall neglect to do so, and if the judgment shall be for the plaintiff, it shall be rendered against the said principal obligor, together with the other defendants, in the same manner as if he had been originally a party to the suit.

SEC. 10. Every suit on the administration bond shall be brought in the district court held in the county in which the bond is taken, and when it shall appear that the condition of the bond has been broken, the court upon a hearing shall award execution in manner following:

1. If the action is brought for the benefit of any particular person as a creditor, or next of kin, execution shall be awarded in the name of the plaintiff, but expressed to be for the use of such person for the amount due him.

2. If it is brought for a breach of the condition, in not accounting for the estate as required in the chapter regulating executors and administrators rendering their accounts and settling estates, the ex-[700]-ecution shall be awarded

in the name of the plaintiff without expressing that it is for the use of any other person.

3. If it is brought for any other breach of the condition of the bond, execution shall be awarded, without expressing that it is for the use of any particular person, for the full value of all the estate of the deceased that shall have come to the hands of the executor or administrator, and for which he shall not satisfactorily account, and for all such damages as shall have been occasioned by his neglect or maladministration.

4. If there be two or more persons for whose use execution is to be awarded, as provided in this section, a separate execution shall be issued for the sum due to each of them.

5. The execution, in every case, shall include the costs of suit as well as debt or damages, and if there is more than one execution, the amount due for costs shall be equally divided between them.

6. In every case the person, for whose use the execution is expressed to be awarded, shall be considered in all respects as the judgment creditor, and may cause the same to be levied in his own name, and for his own benefit, as if the action had been brought and the judgment recovered in his name.

SEC. 11. All moneys received on any execution issued as aforesaid, (unless such execution be awarded for the use of a creditor, or person next of kin, as provided in the first subdivision of the preceding section,) shall be paid over to the co-executor or co-administrator, if there be any, or to whomever shall then be the rightful executor or administrator, and shall be assets in his hands to be administered according to law.

SEC. 12. If, after the awarding of execution as heretofore provided in this chapter, the executor or administrator shall commit a new breach of the condition of the bond, or if any creditor, next of kin, legatee, or other person interested in the estate, shall have a claim for further damages on account of any neglect or maladministration of the executor or administrator, a writ of *scire facias* on the original judgment may be sued out in like manner as is provided for the commencement of the original suit, and the court shall thereupon proceed to award a new execution in like manner as might have been done in the original suit.

SEC. 13. After the settlement of any estate by an executor or administrator, and after the expiration of the time limited for the commencement of actions against him by the creditors of the deceased, the heirs, next of kin, devisees, and legatees of the deceased shall be liable, [701] in the manner provided in the following sections, for all debts which could not have been sued for against the executors or administrators, and for which provisions shall not have been made according to the act regulating the payment of debts and legacies of deceased persons.

SEC. 14. Any such creditor, whose right of action shall first accrue after the expiration of the said time of limitation, and whose claim shall not have been presented to the judge of probate, or if presented, shall not have been allowed as provided in the chapter regulating the payment of debts and legacies of deceased persons, may recover the same against the heirs and next of kin of the deceased, and the devisees and legatees under his will, each of whom shall be liable to the creditor to an amount not exceeding the value, whether of real or personal estate, that he shall have received from the deceased: provided, that if, by the will of the deceased, any part of his estate, or any one or more of the devisees or legatees shall be made exclusively liable for the debts in exoneration of the residue of the estate, or of the other devisees or legatees, the provisions of the will shall be complied with in that respect, and the persons and estate so exempted by the will shall be liable for only so much of the debt, if any, as cannot be recovered from those who are first chargeable therewith: and provided further, that no such

suit shall be maintained unless it be commenced within one year next after the time when the right of action shall first accrue.

SEC. 15. If any of the said heirs, next of kin, devisees or legatees, shall die without having paid his just proportion of such debts, his executors and administrators, shall be liable therefor, as for his proper debt, to the extent to which he would have been liable if living.

SEC. 16. If in the case specified in the two preceding sections, there shall be more than one person liable for the debt, the creditor may recover the same in a bill in equity, in the court of chancery, against all the persons so liable, or as many of them as are within the reach of process, and the court shall thereupon determine what sum, if any, is due to the plaintiff, and also how much each one of the defendants is liable to pay towards the satisfaction of the debt, and may award execution and other process therefor.

SEC. 17. If any one of the heirs, devisees or others, who are originally liable for the debts, shall be insolvent or unable to pay his proportion thereof, or shall be beyond the reach of process, the other shall nevertheless be liable to the creditors for the whole amount of his debt: provided, that no one shall be compelled to pay more than the amount received by him from the estate of the deceased.

[702] SEC. 18. No such suit shall be dismissed or barred, for want of including as defendants, all the persons who might have been so included, but in any stage of the case, the court may award proper process to bring in any other parties, and may allow such amendments as may be necessary to charge them as defendants upon such terms as the court shall think reasonable.

SEC. 19. If in consequence of insolvency, absence or from any other cause, any one of the persons liable for such debt, shall fail to pay his just proportion thereof to the creditor, he shall be liable to indemnify all, who shall by reason of such failure on his part, have paid more than their just proportion of the debt; such indemnity to be recovered by all of them jointly, or in separate actions by any one or more of them for his or their parts respectively, at their election.

SEC. 20. When any letters of administration shall be revoked, or when any executor or administrator shall be removed, all previous sales, whether of real or personal estate, made lawfully by the executor or administrator, and with good faith on the part of the purchaser, and all other lawful acts done by such executor or administrator shall remain valid and effectual.

SEC. 21. When administration shall be taken in this territory, on the estate of any person who was an inhabitant of any other territory, state, or country, his estate found here, after payment of his debts, shall be disposed of according to his last will, if he left any duly executed according to the laws of this territory, and if there be no such will his real estate shall descend according to the laws of this territory, and his personal estate shall be distributed and disposed of according to the laws of the country of which he was an inhabitant.

SEC. 22. Upon the settlement of such an estate, and after the payment of all debts for which the same is liable in this territory, the residue of the personal estate, if any, may be distributed and disposed of in manner aforesaid by the probate court in which the estate is settled, or it may be transmitted to the executor or administrator, if there be any in the territory or country where the deceased had his domicile, to be there disposed of according to the law of the place, as the court under the circumstances of the case shall think best.

SEC. 23. If such deceased person died insolvent, his estate found in this territory shall, as far as practicable, be so disposed of that all his creditors, here and elsewhere, may receive each an equal share in proportion to their respective debts.

SEC. 24. To this end his estate shall not be transmitted to the for-[703]-eign executor or administrator until all his creditors, who are citizens of this territory, shall have received the just proportion that would be due to them if the whole estate of the deceased, whenever found, that is applicable to the payment of common creditors, were divided among all the said creditors in proportion to their respective debts, without preferring any one species of debts to another.

SEC. 25. In such a case no creditor, not being a citizen of this territory, shall be paid out of the assets found here, until all those who are citizens shall have received their just proportion, as provided in the preceding section.

SEC. 26. If there be any residue, after such payment to the citizens of this territory, the same may be paid to any other creditors who shall have duly proved their debts here, in proportion to the amount due to each of them respectively: provided, that no one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors, as before provided, and the balance, if any, may be transmitted to the foreign executor or administrator, or if there be none such, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all the creditors, both citizens and others, who shall have proved their debts in this territory.

SEC. 27. When any person, who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the other party may have a bill in equity, in the court of chancery, to enforce a specific performance of the contract by the heirs, devisees, or the executors or administrators of the deceased party.

SEC. 28. The court shall hear and determine every such case according to the course of proceedings in chancery, and shall make such decree therein as justice and equity shall require.

SEC. 29. If it shall appear that the plaintiff is entitled to have a conveyance, the court may authorize and require the executor or administrator of the deceased party, to convey the estate in like manner as the deceased person might and ought to have done if living, and if his heirs or devisees, or any of them, are within this territory, and competent to act, the court may require them, or either of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or may require them, or either of them, to join in such conveyance with the executor or administrator.

SEC. 30. Every conveyance, made in pursuance of such decree, shall [704] be effectual to pass the estate contracted for, as fully as if when made by the contracting party himself.

SEC. 31. If the defendant, in such suit, shall refuse or neglect to make a conveyance, according to the decree, the court may enter a judgment that the plaintiff shall receive possession of the land contracted for, to hold according to the terms of the intended conveyance, and may issue a writ of seizen thereupon, in the form that is used upon a recovery in real action, and the plaintiff having, by force of such writ, obtained possession of the premises, shall hold the same in like manner as if they had been conveyed in pursuance of the decree.

SEC. 32. The preceding section shall not prevent the court from enforcing their decree by any other proper process, according to the course of proceedings in chancery.

SEC. 33. If any person, to whom the conveyance was to be made, shall die before such suit is brought, or before the conveyance is completed, any person who would have been entitled to the estate under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, may commence such suit, or may prosecute it, if already commenced, and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it.

SEC. 34. If the party to whom any such conveyance was to be made, or those entitled to claim under him, shall not commence and prosecute a suit in the manner before provided, and if the heirs of the deceased person are not within the territory, or are under age or otherwise incompetent to make the conveyance, it may be made by the executor or administrator of the deceased person, upon a decree in the court to be obtained for that purpose in manner following.

SEC. 35. The executor or administrator of the deceased person, or any other one or more of his heirs, may have a bill in equity in the court of chancery, setting forth the contract and the circumstances of the case, whereupon the court may by their decree, authorize and require the executor or administrator, to convey the estate in like manner as the deceased person might and ought to have done if living.

SEC. 36. A conveyance made or tendered in pursuance of such decree shall be deemed a performance of the contracts on the part of the deceased person so far as to hold the other contracting party, and his heirs, executors and administrators to a performance thereof, on his and their part.

SEC. 37. Whenever the sureties in any bond given to the judge of [705] probate shall be insufficient, the district court or the probate court, on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with such surety or sureties as the court shall judge sufficient.

SEC. 38. Any surety in a bond given to the judge of probate, may at any time after the expiration of six years from the date of the bond, upon his petition to the district court or court of probate, be discharged from all further responsibility upon such bond, if the court after due notice to all persons interested, shall think it reasonable and proper to discharge him, and the principal shall thereupon give a new bond with such surety or sureties as the court shall judge sufficient.

SEC. 39. If, in the cases specified in the two preceding sections, the principal shall not give such new bond within such time as shall be ordered by the court, he shall be removed from his trust and some other person may be appointed in his stead, as the circumstances of the case may require.

SEC. 40. When a new bond shall be required as above provided, the sureties in the prior bond shall, nevertheless, be liable for all breaches of the condition committed before the new bond shall be approved by the judge of probate.

SEC. 41. When any account is rendered in the probate court by two or more joint executors, or administrators, or trustees, the judge of probate may, in his discretion, allow the account upon the oath of any one of them.

SEC. 42. When an executor, administrator, guardian, or trustee, shall have paid or delivered over to any person, entitled thereto, the money, or other property, in his hands, as required by any decree of distribution, or other decree of the probate court, he may perpetuate the evidence of such payment by presenting to the said court, within one year after such decree was made, an account of such payments, or the delivery over of such property, which being proved to the satisfaction of the judge, and verified by the oath of the party, shall be allowed as his final discharge, and ordered by the judge to be recorded, and such discharge shall forever exonerate the party and his sureties from all liability under such decree, unless his account shall be impeached for fraud or manifest error.

SEC. 43. If any sum of money, directed by a decree of the probate court to be paid over, as mentioned in the last section, shall remain, for the space of six months, unclaimed, the executor, administrator, guardian, or trustee, may deposit the same in some safe institution, or [706] may invest it in some stock or stocks, as the court of probate shall direct, to accumulate for the benefit of the person entitled thereto, and such deposit or investment shall be made in the name

of the judge of probate, for the time being, and shall be subject to the order of the said judge and his successors in office, as hereinafter provided, and the person making such deposit or investment, shall file in the probate court a memorandum thereof, with the original certificates, or other evidence of title thereto, which shall be allowed as a sufficient voucher for such payment, under the said decree.

SEC. 44. When the person entitled to the money deposited, shall satisfy the judge of probate, for the time being, of his right to receive the same, the judge shall cause it to be paid over and transferred to him.

SEC. 45. The court of chancery may hear and determine, in equity, all disputes and controversies between co-executors and co-administrators, and between their respective legal representatives, in all cases where there is not a plain, adequate and complete remedy at law.

SEC. 46. Any person aggrieved at any order, sentence, decree, or denial, of the judge of probate, in any case, or relating to any matter provided for in this act, may appeal therefrom to the district court, in the manner prescribed by law.

CHAPTER X.

Of the sale of lands for the payment of debts, by executors, administrators, and guardians.

SECTION 1. When the goods and chattels of any deceased person, in the hands of his executor or administrator, shall be insufficient to pay all his debts, with the charges of administering his estate, his executor or administrator may sell his real estate for the purpose, upon obtaining a license therefor, and proceeding therein, in the manner hereinafter provided.

SEC. 2. Such license may be granted by the district court, or by the court of probate, in the county in which the letters testamentary, or of administration, were granted.

SEC. 3. In order to obtain such license the executor or administrator shall present to the court a petition, setting forth the amount of the debts due from the deceased, as nearly as they can be ascertained, and the amount of the charges of administration, and the value of the personal [707] estate, and if it shall be necessary to sell only a part of the real estate, he may also set forth the value, description, and condition of the estate, or of such part thereof as he shall propose to sell, and the court may, in all cases when it is not necessary to sell the whole, decide and direct what specific part of the estate shall be sold.

SEC. 4. If it shall be represented in such petition, and shall appear to the court, that it is necessary to sell some part of the real estate, and that by such partial sale the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may license the sale of the whole estate, or such part thereof as the court shall think necessary and most for the interest of all concerned therein.

SEC. 5. Every such petition, when made to the district court, shall be accompanied by a certificate from the judge of probate of the county where the executor or administrator was appointed, setting forth the amount of the debts due from the deceased, so far as they are ascertained, and the value of his real and personal estate, and when the petitioner shall pray for the sale of more than is necessary for the payment of debts, in order to prevent damage to the residue, the judge of probate shall further certify his opinion, whether it is necessary that the whole or a part of the estate should be sold, and, if part only, what part.

SEC. 6. When the executor or administrator is licensed to sell more than is necessary for the payment of debts, he shall, before the sale, give bond, with sufficient surety or sureties, to the judge of probate for the county in which he

was appointed, with condition to account for all the proceeds of the sale that shall remain after payment of the debts and charges for which the land was sold, and to dispose of the same according to law.

SEC. 7. If there should be, in the last will of the deceased, any disposition of his estate for the payment of his debts, or any provision which may require or induce the court to marshal the assets in any manner different from that which the law would otherwise prescribe, such devises or parts of the will shall be set forth in the petition, and a copy of the will shall be exhibited in the court, and the assets shall be marshaled accordingly, so far as it can be done consistently with the rights of the creditors.

SEC. 8. No such license shall be granted until notice of the petition, and of the time and place of hearing the same, shall have been given to all persons interested in the estate, that they may appear and show cause why the same should not be granted; such notice to be served on them personally, fourteen days at least before the time appointed for [708] hearing the petition, or to be published three weeks, successively, in such newspaper as the court shall order; provided, however, if all the said persons interested signify, in writing, their assent to such sale, the notice may be dispensed with.

SEC. 9. Such license shall not be granted, if any of the persons interested in the estate, shall give bond to the executor or administrator, in such sum, and with such sureties, as shall be approved by the court, with condition to pay all the debts mentioned in the petition that shall eventually be found due from the estate, with the charges of administering the same, so far as the goods and chattels, rights and credits, of the deceased shall be insufficient therefor.

SEC. 10. If the facts set forth in the petition shall be proved to the satisfaction of the court, and if no sufficient cause be shown to the contrary, the court shall grant the license, and the executor or administrator shall be thereupon authorized to execute, in due form of law, conveyances of such real estate as he shall sell, which conveyances shall be effectual to pass to the purchaser all the estate, right, title, and interest in the granted premises which the testator or intestate had therein at the time of his decease, or which was then in any way chargeable with the payment of his debts.

SEC. 11. Every executor and administrator, licensed to sell real estate as aforesaid, shall, before fixing on the time and place of sale, take and subscribe an oath before the judge of probate, or before some justice of the peace, in substance as follows: that in disposing of the estate which he is licensed to sell he will use his best judgment in fixing on the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all interested therein.

SEC. 12. When the oath prescribed in the preceding section shall be taken before a justice of the peace, the executor or administrator shall, within one year thereafter, return into the probate office a certificate thereof under the hand of the justice of the peace before whom such oath was taken.

SEC. 13. The executor or administrator shall give public notice of the time and place of such sale, by causing notifications thereof to be pasted up, thirty days at least before the sale, in some public place in the township where the deceased person last dwelt, and in two adjoining townships, if there be so many in the county, and also in the township where the lands lie, or the court which licenses the sale, may order such notice to be published three weeks, successively, in any news-[709]-paper instead of the pasting up of such notifications, and the executor or administrator shall publish the same accordingly.

SEC. 14. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made before the judge of probate, or before some justice of the peace and filed and recorded, together with a copy of

the notice in the probate office within one year after the sale, shall be admitted as evidence of the time, place and manner of giving the notice.

SEC. 15. Every such sale shall be made by public auction, and if, at the time appointed for the sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn it for any time not exceeding three months.

SEC. 16. In case of such adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale, and if the adjournment shall be for more than one day, further notice thereof shall be given by posting or publishing, as the time and circumstances may admit.

SEC. 17. No such license shall be in force for more than one year after the granting thereof.

SEC. 18. When a testator shall have given any legacy, by a will, that is effectual to pass or charge real estate, and his goods, chattels, rights, and credits, shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or the administrator, with the will annexed, may be licensed to sell his real estate for that purpose in the same manner and upon the same terms and conditions as are prescribed in this act in the case of a sale for the payment of debts.

SEC. 19. When an executor or administrator shall be appointed in any other territory or state, or in any foreign country, on the estate of any person dying out of this territory, and no executor or administrator shall be appointed in this territory, the foreign executor or administrator may file an authenticated copy of his appointment in the probate court for any county in which there may be any real estate of the deceased, after which he may be licensed by the same probate, or by the district court in any county, to sell real estate for the payment of debts or legacies and charges of administration, in the same manner and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this territory, excepting in the particulars in which a different provision is hereinafter made.

[710] SEC. 20. When it shall appear to the court granting the license, that such foreign executor or administrator is bound with sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts or legacies, and charges of administration, and a copy of such bond, duly authenticated, shall be filed in the probate court of the county where the copy of his appointment is filed, no further bond, for that purpose, shall be required of him here, otherwise, before making such sale he shall give bond, with sufficient sureties, to the judge of probate for the same county, with condition to account for and dispose of the said proceeds for the payment of the debts or legacies of the deceased, and the charges of administration according to the law of the state or country in which he was appointed.

SEC. 21. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies, and charges of administration, as before provided for in this act, he shall, before making the sale, give bond, with sufficient surety or sureties, to the judge of probate, with condition to account, before the same judge, for all the proceeds of the sale that shall remain after the payment of the said debts, legacies, and charges, and to dispose of the same according to law.

SEC. 22. Every foreign executor or administrator, licensed to sell real estate as provided in this act, shall, before fixing on the time and place of sale, take and subscribe an oath like that required to be taken in the like cases by an executor or administrator appointed in this territory, and he shall give public notice of the time and place of sale, and shall proceed therein in like manner as

is prescribed for an administrator appointed here when making such a sale, and the evidence of the giving of such notice may be perpetuated in the same manner.

SEC. 23. All proceedings required to be had in a probate court in this territory, respecting such sale by a foreign executor or administrator, shall be had in the court for the county in which an authenticated copy of his appointment is filed, as provided in the twenty-first section.

SEC. 24. When the goods, chattels, rights, and credits in the hands of the guardian of any minor, or of any idiot, or insane person, or of any person under guardianship on account of excessive drinking, gaming, idleness, or debauchery, shall be insufficient to pay all the just debts of the ward, with the charges of managing his estate, the guardian may be licensed to sell his real estate for that purpose, in like manner and upon the like terms and conditions as are prescribed in this chapter in the case of a sale by executor or administrator, excepting in the particulars in which a different provision is hereinafter made.

SEC. 25. If it shall be represented in the petition by the guardian, and shall appear to the court, that it is necessary to sell some part of the real estate of the ward, and that by such partial sale the residue of the estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole estate, or of such part thereof as the court shall think necessary and most for the interest of all concerned, the guardian giving bond to account for the surplus of the proceeds of the sale in like manner as is prescribed in this chapter in the case of a like sale by an executor or administrator.

SEC. 26. No license shall be granted, as provided in the two preceding sections, in any case excepting that of minors, unless the overseers of the poor of the township or county of which the ward is an inhabitant, or in which he resides, shall certify, in writing, their approbation of such proposed sale.

SEC. 27. All those who are next of kin, and heirs, apparent or presumptive, of the ward, shall be considered as interested in the estate, and may appear as such, and answer to the petition of the guardian, and when personal notice of the petition is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales by executors and administrators, contained in this chapter.

SEC. 28. Such license, to a guardian in all the cases specified in this chapter, may be granted by the district court in any county, or by the probate court in which the guardian was appointed.

SEC. 29. When any minor, insane person, or spendthrift, residing without this territory, shall be put under guardianship in the territory or country in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the probate court for any county in which there may be any real estate of the ward, after which he may be licensed to sell the real estate for the payment of the debts of the ward and the charges of managing his estate, in the same manner and upon the same terms and conditions as are prescribed in this chapter, in the case of a guardian appointed in this territory, excepting in the particulars in which a different provision is hereinafter made.

SEC. 30. When it shall appear to the judge of probate that the foreign guardian is bound, with sufficient surety or sureties, in the territory, state, or country, where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the probate court, no further bond shall be required here, otherwise he shall give bond in like manner as is prescribed in this chapter in case of sales by foreign executors or administrators.

SEC. 31. When such foreign guardian shall be licensed to sell more than is necessary to pay the debts and charges, he shall, before making the sale, give bond, with sufficient surety or sureties, to the judge of probate, with condition

to account, before the same judge, for all the proceeds of the sale that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

SEC. 32. In all cases of a sale, by an executor, administrator, or guardian, of part, or the whole, of the real estate of his testator, or intestate, or ward, under a license granted by any court, by virtue of the provisions of this chapter, whether such executor, or administrator, or guardian, shall have been appointed in this territory or elsewhere, the surplus of the proceeds of the sale, remaining on the final settlement of the accounts, shall be considered as real estate, and disposed of among the same persons, and in the same proportion, as the real estate would have been by the laws of this territory, if it had not been sold.

SEC. 33. Every guardian, whether appointed in this territory, or elsewhere, when licensed to sell real estate, as provided in this chapter, shall, before fixing on the time and place of sale, take and subscribe an oath, like that required to be taken in the same case by executors and administrators, and he shall give notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the same case for executors and administrators, and the evidence of the giving of such notice may be perpetuated in the same manner.

SEC. 34. If any person shall appear and object to the granting of any license, prayed for under the provisions of this chapter, by an executor, administrator, or guardian, and if it shall appear to the court that either the petition or objection thereto is unreasonable, they may, in their discretion, award costs to the party prevailing in the case.

SEC. 35. No action, for the recovery of any estate, sold by an executor or administrator, under the provisions of this chapter, shall be maintained by any heir, or other person, claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale, and no action, for any estate, sold in like manner by a guardian, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only that persons out of the territory, and minors, and others under any legal disability to sue at the time when the right of action shall first accrue, may commence such action at any time within five years after the removal of the disability, or after their return to the territory.

SEC. 36. In case of an action relating to any estate sold by an executor, administrator, or guardian, in which an heir, or other person, claiming under the deceased, or in which the ward, or any other person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,

1. That the executor, administrator, or guardian, was licensed to make the sale, by a court of competent jurisdiction.
 2. That he gave a bond, which was approved by the judge of probate, in case any bond were required by the court upon granting the license.
 3. That he took the oath prescribed in this chapter.
 4. That he gave notice of the time and place of sale, as prescribed herein.
- And
5. That the premises were sold accordingly, by public auction, and are held by one who purchased them in good faith.

SEC. 37. If, in relation to such sale, there shall be any neglect or misconduct in the proceedings of the executor, administrator, or guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor in a suit on the probate bond, or otherwise as the case may require.

SEC. 38. If the validity of a sale by an executor, administrator, or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person, or the ward, the sale shall not be held void on account of any inequality in the proceedings; provided it shall appear that the executor, administrator, or guardian, was licensed to make the sale by a court of competent jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

[714] CHAPTER XI.

Of the sale of lands of minors and other persons under guardianship, and securing the proceeds for their use.

SECTION 1. When the income of the estate of any person, under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, and to educate the ward when a minor, and the children of such insane person or spendthrift, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein, in the manner hereinafter provided.

SEC. 2. When it shall appear, upon the representation of any such guardian, that it would be for the benefit of his ward, that his real estate, or any part thereof, should be sold, and the proceeds thereof be put out on interest or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor and proceeding therein, as hereinafter provided.

SEC. 3. If the estate is sold for the maintenance of the ward and his family, and for the education of the ward when a minor, or the children of such insane person or spendthrift, as provided in the first section, the guardian shall apply the proceeds of the sale to that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, and for the education of the ward when a minor, and the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

SEC. 4. If the estate is sold in order to put out and invest the proceeds, as provided in the second section, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made, relating thereto, by the probate court, or by the district court, as provided by law.

SEC. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any, remaining upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same manner as the real estate would have been, if it had not been sold.

SEC. 6. Such license, in either of the cases aforesaid, may be granted by the district court in any county, or by the probate court for the county in which the guardian is appointed, and when the application is made to the district court it shall be accompanied by a certificate from the judge of probate for the same county, setting forth his opinion as to the necessity or expediency of making the proposed sale.

SEC. 7. In order to obtain such license the guardian shall present to the court a petition setting forth the condition of the estate, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale, and if, after a full examination, on the oath of the petitioner or otherwise, it shall appear to the court, either that it is necessary or that it

would be for the benefit of the ward that the real estate, or any part of it, should be sold, they may grant a license therefor, specifying therein, whether the sale is to be made for the maintenance of the ward and his family, or in order that the proceeds may be put out and invested as aforesaid.

SEC. 8. No such license shall be granted until notice, by public advertisement or otherwise, as the court shall order, shall have been given to the next of kin of the ward, and to all persons interested in the estate, to appear and show cause why the same should not be granted.

SEC. 9. No such license shall be granted for the sale of any real estate, excepting that of a minor, unless the director of the poor of the township or place of which the ward is an inhabitant, or in which he resides, shall certify, in writing, their approbation of such proposed sale.

SEC. 10. Every guardian, licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate for the county in which he was appointed, with surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale in the manner prescribed by law.

SEC. 11. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath, in substance, like that required to be taken by executors, administrators, and guardians, when licensed to sell real estate.

SEC. 12. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian, and the evidence of the giving of such notice may be perpetuated in like manner and with the same effect as is provided in the like case in the law regulating the sale of lands for the payment of debts.

SEC. 13. No license, granted in pursuance of this chapter, shall be in force for more than one year after the time of granting the same.

SEC. 14. When any minor, insane person, or spendthrift, residing without this territory, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the probate court for any county in which there may be any real estate of the ward; after which he may be licensed by the probate court for the same county, or by the district court, to sell the real estate of the ward, in any county, in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in this territory, excepting in the particulars hereinafter mentioned.

SEC. 15. Every foreign guardian, so licensed to sell real estate, shall take and subscribe the oath required in the like case of guardians appointed in this territory, and shall give notice of the time and place of sale, and conduct the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of the notice in the same manner.

SEC. 16. All the proceedings required to be had in any probate court in this territory, respecting such sale by a foreign guardian, shall be had in the court for the county in which the authenticated copy of his appointment is filed.

SEC. 17. Upon every such sale, by a foreign guardian, the proceeds of the sale, or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been, according to the law of this territory, if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond, with surety or sureties, to the judge of probate, with condition to account for and dispose of the same accordingly.

SEC. 18. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and if it shall appear to the court that either the petition or the objection thereto is unreasonable, they may, in their discretion, award costs for the party prevailing in the case.

[717] SEC. 19. No action for the recovery of any estate, sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only, that persons out of the territory, and minors, and others under any legal disability, to sue at the time when the right of action shall first accrue, may commence their action at any time within five years after the removal of the disability, or after their return to the territory.

SEC. 20. In case of an action relating to any estate sold by a guardian, under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear,

1. That the guardian was licensed to make the sale by a court of competent jurisdiction.

2. That he gave a bond, which was approved by the judge of probate, in case any bond were required by the court upon granting the license.

3. That he took the oath prescribed in this chapter.

4. That he gave notice of the time and place of the sale, as prescribed herein. And

5. That the premises were sold accordingly, by public auction, and are held by one who purchased them in good faith.

SEC. 21. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor in a suit on the guardianship bond, or otherwise, as the case may require.

SEC. 22. If the validity of any sale made by a guardian, under the provisions of this chapter, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings: provided, it shall appear that the guardian was licensed to make the sale by a court of competent jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

[718] CHAPTER XII.

Relative to probate court, and defining its powers.

SECTION 1. Every judge of probate shall hold a probate court in his county, at the times and places established by law, and may adjourn the same, from time to time, as the occasion may require.

SEC. 2. All orders of notice, and other official acts, which are passed as matters of course, and which do not require a previous notice to an adverse party, may be made and done in vacation as well as at stated court.

SEC. 3. The judge of probate for each county shall have power to take the probate of wills, and to grant administration of the estates of all persons deceased, who were, at the time of their decease, inhabitants of, or residents in, the same county, and of all who shall die without the territory, leaving any estate to be administered within such county, and also to appoint guardians to minors and others, in the cases prescribed by law.

SEC. 4. The judge of probate shall have jurisdiction of all matters relating to the settlement of the estates of such deceased persons, and of such minors and others under guardianship.

SEC. 5. All his decrees and orders shall be made in writing, and the judge of probate shall record in books, to be kept for that purpose, all such decrees and orders, and also all wills proved in court, with the probate thereof; all letters testamentary and of administration; all warrants, reports, returns, accounts, and bonds, and all such other acts and proceedings as ought to be recorded.

SEC. 6. The several judges of probate shall, from time to time, make rules for regulating the practice and conducting the business in their respective courts in all cases not expressly provided for by law, and they shall, within one year after this act shall take effect, return a statement of their rules, and course of proceeding, to the district court, and shall make a like return of all their rules thereafter made, as soon as conveniently may be after making the same, and the district court shall have power to alter and amend all such rules, and to make other and further rules, from time to time, for regulating the proceedings in all the probate courts of the territory, as they shall judge necessary, in order to maintain regularity and uniformity in the said proceedings.

SEC. 7. The judge of probate, for each county, shall make and is-[719]-sue all warrants and processes that may be necessary or proper to carry into effect the powers granted to him, and when no form for any such warrant or process is prescribed by statute, or by the rules of court, he shall frame one in conformity with the principles of law, and the usual course of proceedings in this territory.

SEC. 8. The judge of probate shall have power to keep order in his court, and to punish any contempt of his authority, in like manner as such contempt might be punished in the district court.

SEC. 9. All sheriffs, deputy sheriffs, coroners, and constables shall serve and execute all legal warrants and processes to them directed by the judge of probate.

SEC. 10. The jurisdiction assumed in any case by a judge of probate, so far as it depends on the place of residence of any person, shall not be contested in any suit or proceeding whatever, except in an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

SEC. 11. When the validity of any decree of the probate court shall be drawn in question in any other suit or proceeding, everything necessary to have been done or proved, in order to render the decree valid, and which might have been proved by parol evidence at the time of making the decree, and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved, unless the contrary appears on the same record.

SEC. 12. When a case shall be originally within the jurisdiction of the probate court, in two or more counties, the court which shall first take cognizance thereof, by the commencement of proceedings, shall retain the same throughout.

SEC. 13. When a judge of probate shall be interested in any case within his jurisdiction, the case shall be transferred to the probate court of any adjoining county, and shall there be disposed of and settled in the same manner as if it had originally occurred within the latter county.

SEC. 14. No judge of probate shall be retained or employed as counsel, or attorney, either in or out of court, in any suit or matter whatever, which may depend or in any way relate to any sentence or decree made or passed by him, nor shall he be counsel or attorney for or against any executor, administrator, or guardian, appointed within his jurisdiction, in any suit brought by or against the executor, administrator, or guardian, as such, nor in any suit relating to the official conduct or duty of such party.

[720] SEC. 15. No clerk, or other person, employed in the office of any court of probate, shall be commissioner of insolvency, appraiser or divider of any estate, in any case that is within the jurisdiction of such court.

SEC. 16. When any executor, administrator, or guardian, or trustee, who is required to make oath to an account, is unable, by reason of sickness or otherwise, to attend personally in the probate court for that purpose, the judge may either proceed himself to administer the oath to the accountant out of court, or may, by his commission, authorize any justice of the peace to administer it, and a certificate of the oath, with the account and the vouchers produced therewith, on the commission, if any, shall be returned into the office of the judge of probate, and be there filed and recorded.

SEC. 17. All other oaths required to be taken by executors, administrators, guardians and trustees, and all oaths required of commissioners of insolvency, appraisers, and dividers of the estates or of any other persons, in relation to any proceeding of the probate court may be administered either by the judge of probate or by any justice of the peace, and a certificate thereof, when taken out of court, shall be returned into the office of the judge of probate and be there filed and recorded.

SEC. 18. Any warrant or commission, for the appraisement, of any estate, for examining the claims on insolvent estates, for the partition of real estate, or for the assignment of dower, may be revoked by the judge of probate for sufficient cause, and the judge may thereupon issue a new commission, or proceed otherwise therein, as the circumstances of the case shall require.

SEC. 19. No bond required by law to be given to the judge of probate, or to be filed in the probate office, shall be deemed sufficient unless it shall have been examined and approved by the judge, and his approval thereof, under his official signature, written thereon.

SEC. 21. Any person aggrieved by any order, sentence, decree or denial, of a judge of probate, may appeal therefrom to the district court, to be held for the same county, next after the expiration of thirty days from date of the proceeding appealed from.

SEC. 22. Such appeal shall be claimed, and notice thereof given at the probate office within thirty days after the date of the act appealed from.

SEC. 23. The appellant shall file in the probate office his reasons for such appeal, and cause an attested copy thereof to be served on the [721] adverse party fourteen days at least before the time when the appeal is to be entered.

SEC. 24. If any person aggrieved by any act of the judge of probate shall, from any cause, without default on his part, have omitted to claim or prosecute his appeal, according to law, the district court, if it appears to them that justice requires a revision of the case, may, on the petition of the party aggrieved, and upon such terms as they shall think reasonable, allow an appeal to be entered and prosecuted with the same effect as if it had been done seasonably.

SEC. 25. No such appeal shall be allowed without due notice to the party adversely interested, nor unless the petition therefor be filed within one year after passing the decree or order complained of, except as provided in the following section.

SEC. 26. If the petitioner were without the United States at the time of the passing the decree or order, he may file his petition at any time within three months after his return, provided it be done within two years after the act complained of.

SEC. 27. The petition may, in all cases, be filed in the clerk's office in vacation as well as in the court in the term time, and the clerk shall note on it the time when it is filed.

SEC. 28. After an appeal is claimed and notice thereof given at the probate office, all further proceedings, in pursuance of the order, sentence, decree, or denial appealed from, shall cease until the determination of the district court shall be had thereon.

SEC. 29. The district court may reverse or affirm, in whole or in part, the sentence or act appealed from, and may pass such decree thereon as the judge of probate ought to have passed, and may remit the case to the probate court for further proceedings, or may take any order therein as law and justice shall require.

SEC. 30. If the appellant in any case shall fail to enter and prosecute his appeal, the district court may, upon the complaint of any person interested in the case, affirm the former sentence or take such other order therein as law and justice shall require.

SEC. 31. If, upon the hearing of an appeal in the district court, any question of fact shall occur that is proper for a trial by jury, the court may cause it to be so tried upon an issue to be formed for the purpose under the direction of the court.

SEC. 32. In all cases that are contested, either before the judge of probate or in the district court, the said courts respectively may, in their discretion, award costs to either party to be paid by the other or [722] to either or to both parties, to be paid out of the estate which is the subject of the controversy, as justice and equity shall require.

SEC. 33. When costs are to be awarded to one party to be paid by the other, the said courts, respectively, may issue execution therefor in like manner as is practiced in courts of common law.

SEC. 34. But all printed blanks used in probate proceedings, and all stationery, and all the incidental expenses of the office shall be furnished and paid by the judge of probate.

SEC. 35. There shall be a probate court held in each organized county on the first Monday of each month, and on such other days as the judge of probate shall appoint.

CHAPTER XIII.

Of the descent of property.

SECTION 1. When any person shall die seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, in manner following:

1. In equal shares to his children, and to the issue of any deceased child by right of representation, and and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants, and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally, otherwise they shall take according to the rights of representation.

2. If he shall leave no issue, his estate shall descend to his father.

3. If he shall leave no issue, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister by right of representation: provided, that if he shall leave a mother also she shall take an equal share with his brothers and sisters.

4. If the intestate shall leave no issue, nor father, and no brother or sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

5. If the intestate shall have no issue, and no father, mother, brother, or sister, his estate shall descend to his next of kin in equal [723] degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: provided, however,

6. If any person shall die, leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died by right of representation.

7. If at the death of such child, who shall die under age and not having been married, all the other children of his said parent shall also be dead and any of the same shall have left issue, the estate that came to said child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child they shall share the said estate equally, otherwise they shall take according to the right of representation.

8. If the intestate shall leave no kindred his estate shall escheat to the people of this territory or state.

SEC. 2. Every illegitimate child shall be considered as an heir of his mother, and shall inherit her estate in whole or in part, as the case may be, in like manner as if he had been born in lawful wedlock, but he shall not be allowed to claim, as representing his mother, any part of the estate of any of her kindred either lineal or collateral.

SEC. 3. If any illegitimate child shall die, intestate, without lawful issue, his estate shall descend to his mother, excepting in the case provided for in the following section.

SEC. 4. When, after the birth of an illegitimate child, his parents shall intermarry, and his father shall, after the marriage, acknowledge him as his child, such child shall be considered as legitimate to all intents and purposes.

SEC. 5. The degrees of kindred shall be computed according to the rules of civil law, and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

SEC. 6. Any estate, real or personal, that may have been given by the intestate in his life time as an advancement to any child or other lineal descendant, shall be considered as a part of the intestates estate, so far as it regards the division and distribution thereof among his is-[724]-sue, and shall be taken by such child or other descendant towards his share of the intestates estate.

SEC. 7. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

SEC. 8. If any such advancement shall be made in real estate, the value thereof shall, for the purposes of the preceding section, be considered a part of the real estate to be divided, and if be in personal estate it shall be considered as a part of the personal estate, and if in either case it shall exceed the share of real and of personal estate respectively that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

SEC. 9. All gifts and grants shall be deemed to have been made in advancement if they are expressed in the gift or grant to be so made, or if charged, in writing, to the intestate as an advancement, or acknowledged, in writing, as such by the child or other descendant.

SEC. 10. If the value of the estate so advanced, shall be expressed in the conveyance or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value in the division and distribution of the estate, otherwise it shall be estimated according to its value when given.

SEC. 11. If any child or other lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

SEC. 12. Nothing contained in this chapter shall affect the title of a husband as tenant by the courtesy, nor that of a widow as tenant in dower.

SEC. 13. Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would [725] have taken if living. Posthumous children are considered as living at the death of their parent.

SEC. 14. That an act relative to wills and testaments, executors and administrators, and the settlement of estates, approved January 25, 1839, and an act to amend an act relative to wills and testaments, approved January 15, 1841, also an act to authorize the appointment of public administrators in the several counties of this territory, and to prescribe their duties, approved January 19, 1839, be and the same are hereby repealed; provided, that nothing herein contained shall be so construed as to prevent executors and administrators heretofore appointed, from proceeding to final settlement of the estates under their care, in the same manner as if this act had not been passed.

Approved February 13, A. D. 1843.

JOINT RESOLUTIONS

RESOLUTION NO. 1.

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, A. D. 1839.

RESOLUTION NO. 2.

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, A. D. 1839.

RESOLUTION NO. 3.

A JOINT RESOLUTION to provide for the sale of the surplus copies of the statutes of this territory.

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That the secretary of the territory be and he is hereby au-[728]-thorized and required, to distribute all the surplus copies of the acts of the several sessions of the territorial legislature (after retaining one hundred and fifty copies of each in the territorial library) in equal portions to the several boards of county commissioners of this territory.

That the said commissioners are hereby authorized to receive and sell the same for the following prices, to wit: The acts of the first session of said legislature for one dollar each, and the acts of the subsequent session for fifty cents each, except the acts of the extra session held in the year 1840, which they are hereby authorized to sell at twenty-five cents each.

That the several boards of county commissioners shall, so soon as the said acts shall be sold, or any part of them, pay over, to the order of the treasurer of the territory, the amount of money for which the same may sell, and return all copies remaining unsold, and deliver the same at their respective offices.

Approved January 3, A. D. 1842.

RESOLUTION NO. 4.

JOINT RESOLUTION relative to the printing of the laws.

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That there shall be re-printed and bound with the laws of a general nature passed at the present session, all the acts of a general nature now in force, except such other acts as have been repealed during the present session.

Resolved further, That there shall also be re-printed and prefixed to said laws, the declaration of Independence, the constitution of the United States, the ordinance of eighty-seven, the organic law and the amendments thereto, and the treaty with France, of April 30, 1803, by which Louisiana was ceded to the United States; and there shall be published as an appendix to said laws, a synopsis of the laws of the United States upon the subject of naturalization of aliens, to be copied from Gordon's Digest, page 312; and also an explanation of technical terms and phrases used in law.

Approved February 16, A. D. 1843.

[729] RESOLUTION NO. 5.

A JOINT RESOLUTION extending the time required to deliver the general laws of the present session.

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That Hughes & Williams, publishers of the laws of the present session be allowed until the twentieth day of June next, to deliver the laws of a general nature to the secretary of the territory.

Approved February 16, A. D. 1843.

RESOLUTION NO. 6.

A JOINT RESOLUTION relative to Iowa manufacture.

WHEREAS, Experience has made it self-evident that the clime and soil of Iowa are equal to any in the United States for wool growing, and that it is the duty of all legislative bodies to give encouragement to home industry and domestic manufactures: Therefore,

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That we recommend that the members of the next annual session of the legislature of Iowa meet and appear clad in Iowa manufacture.

Approved January 6, A. D. 1843.

RESOLUTION NO. 7.

JOINT RESOLUTION authorizing the committee on printing to administer oaths, &c.

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That the joint committee appointed to report a bill of prices hereafter to be allowed for the public printing of this territory, be au-[730]-thorized to administer oaths and examine witnesses before said committee.

Approved January 6, A. D. 1843.

RESOLUTION NO. 8.

JOINT RESOLUTION authorizing Hughes & Williams to print the laws of the present session.

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That Hughes & Williams, publishers of the Iowa Capital Reporter, be and they are hereby employed to print two thousand five hundred copies of the laws of a general nature, and one thousand copies of the laws of a local and private nature, of the present session, at the prices and on the conditions prescribed by law.

Approved February 13, A. D. 1843.

RESOLUTION NO. 9.

JOINT RESOLUTION relative to the printing of the decisions of the supreme court.

Resolved, by the Council and House of Representatives of the Territory of Iowa:

That the reporter of the decisions of the supreme court be requested to cause to be printed five hundred copies of the reports of the decisions of said court, made in the year 1840, and to deposite them with the librarian, in conformity with the joint resolution passed at the extra session of the legislature in that year, to be disposed of according to the terms of said resolution.

And be it further resolved, that the secretary pay to said reporter, therefor, the sum of four hundred dollars, according to the requirements of said resolution, out of any moneys not otherwise appropriated: provided, that said reporter shall hereafter bring no charge against this territory for said reports, and that no money shall hereafter be paid from the territorial treasury therefor.

NUMBER AND TITLE

Of the acts passed at the late session of the legislature, together with the number and the titles of the acts to be reprinted in accordance with the acts upon that subject.

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- Chapter 1. An act relative to pleas in abatement, and the abatement of suits by the death of parties.
- Chapter 2. An act concerning apprentices and servants.
- Chapter 3. An act concerning amendments and jeofails.
- Chapter 4. An act concerning reference to arbitration by agreement before a justice of the peace, or to referees by agreement before the district court.
- Chapter 5. An act for the encouragement of agriculture.
- Chapter 6. An act for the encouragement of agriculture and domestic manufactures. (M)
- Chapter 7. An act to authorize boards of commissioners to appoint agents to dispose of real estate.
- Chapter 8. An act entitled an act supplementary to an act providing for the appointment of a superintendent of public buildings at Iowa City, and the appointment of a territorial agent, and for other purposes.
- Chapter 9. An act to define the duties of territorial agent, and for other purposes. (M)
- Chapter 10. An act to authorize the legislative assembly to punish for contempt, and to privilege the members from arrest.
- Chapter 11. An act to provide for the annual organization of the council and house of representatives of the territory of Iowa.
- Chapter 12. An act fixing the time for the annual meeting of the legislative assembly.
- [732] Chapter 13. An act to repeal an act relative to the officers of the legislative assembly. (M)
- Chapter 14. An act to fix the time for the first session of the supreme court of the territory of Iowa, and for other purposes.
- Chapter 15. An act to regulate the admission of attorneys.
- Chapter 16. An act allowing and regulating writs of attachment. (M)
- Chapter 17. An act providing for the appointment and duties of auditor of public accounts, and regulating the duties of territorial treasurer.
- Chapter 18. An act regulating the salary of the auditor of public accounts, and treasurer. (M)
- Chapter 19. An act to repeal an act entitled an act relating to auctioneers and auction sales, approved January 17th, 1840. (M)
- Chapter 20. An act to amend the several acts therein named.
- Chapter 21. An act concerning bail.
- Chapter 22. An act to restrain unincorporated banking associations.
- Chapter 23. An act concerning bills of exchange.
- Chapter 24. An act to regulate blacks and mulattoes.
- Chapter 25. An act to provide for the collection of demands against boats and vessels.
- Chapter 26. An act in relation to bonds and other securities.
- Chapter 27. An act relative to proceedings in chancery.
- Chapter 28. An act for the election of constables and defining their duties.
- Chapter 29. An act to legalize the acts of county commissioners.

- Chapter 30. An act making the clerk of board of county commissioners elective by the people.
- Chapter 31. An act organizing a board of county commissioners in each county. (M)
- Chapter 32. An act authorizing the several boards of county commissioners to grant permits for constructing dams across navigable rivers. (M)
- Chapter 33. An act in relation to that portion of country which is attached to the several organized counties in this territory for judicial purposes.
- Chapter 34. An act to establish new counties and define their boundaries in the late cession from the Sac and Fox Indians, and for other purposes. (M)
- Chapter 35. An act to repeal an act of the legislative assembly of [733] the territory of Wisconsin, approved January 19, 1839.
- Chapter 36. An act for establishing courts of probate.
- Chapter 37. An act to amend an act establishing the court of probate.
- Chapter 38. An act fixing the terms of the supreme and district courts of the territory of Iowa, and for other purposes.
- Chapter 39. An act to amend "an act fixing the terms of the supreme and district courts of the territory of Iowa, and for other purposes."
- Chapter 40. An act to change the time of holding the district courts in the second and third judicial districts.
- Chapter 41. An act supplemental to an act fixing the terms of the district courts.
- Chapter 42. An act to change the time of holding the district courts in the second judicial district. (M)
- Chapter 43. An act to provide for a special term of the supreme court, and to change the time of holding the annual session of the same.
- Chapter 44. An act to authorize the clerks of district courts of the territory of Iowa, to appoint deputies.
- Chapter 45. An act requiring the clerks of the district court to give bond.
- Chapter 46. An act defining the jurisdiction of the supreme and district courts. (M)
- Chapter 47. An act regulating criminal proceedings.
- Chapter 48. An act supplemental to act regulating criminal proceedings.
- Chapter 49. An act defining crimes and punishments. (M)
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ART. 1096. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise.

That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (1) two (2) years at least, before his admission, that it was bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject.(3)

[740] 1097. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath, or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good

(1) Act May 26th, 1824, sec. 3.

(3) Act 14th April, 1802.

(2) Ibid., sec. 4.

moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof. (1)

1098. From this condition (art. 1096,) is exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same. (2)

1099. Nothing in the first section act 22d of March, 1816,* shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citi-[741]-zen of the United States according to act 26th of March, 1804. Whenever any person without a certificate of such declaration of intention, as aforesaid, 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 fourteenth day of April, one thousand eight hundred and two, 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 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. (1)

1100. 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

(1) Act April 14th, 1802, sec. 1.

[741] (1) Act 22d March, 1816, sec. 2.

(2) Act March 26th, 1804, sec. 1.

*The first section of the act 22d of March, 1816, was repealed by act 24th of May, 1828.

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 [742] States, when satisfactorily 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. (1)

1101. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition (article 1096,) three years previous to his admission: provided, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization. (2)

1102. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (3)

1103. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: The oath of the applicant shall, in no case, be allowed to prove his residence. (4)

1104. In case the alien, applying to be admitted to citizenship shall [743] have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: provided, that no alien, who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States. (1)

1105. When any alien, who shall have complied with the condition specified in article No. 1096, and who shall have pursued the directions prescribed in section 2, act 14th April, 1802,* may die, before he is actually naturalized, the

(1) Act May 24, 1828, sec. 2.

(2) Act May 26, 1824, sec. 1.

(3) Act April 14, 1802, sec. 1, Con. 2.

(4) *Ib. ib.*, Con. 3.

[743] (1) Act April 14, 1802; sec. 1;

Con. 4.

*This second section was repealed by act 24th May, 1828. It provided for the registry of the alien.

widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (2)

1106. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen without the consent of the legislature of the state in which such person was proscribed. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States. (3)

[744] 1107. Every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States. (1)

1108. No person who shall arrive in the United States after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States. (2)†

(2) Act March 26, 1804, sec. 2.
Campbell v. Gordon, al. 6 Cr. 177.
(3) Act 14th of April, 1802, sec. 4.

[744] (1) Act April 14, 1802, sec. 3.
(2) Act March 3, 1813, sec. 12.

†The oath of naturalization, when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting the alien to become a citizen—Campbell v. Gordon, and al. 6 Cr. 176. Nor that it should appear by the record of naturalization that all the requisites presented by law for the admission of aliens have been complied with.—Starke v. Chesapeake Ins. Com., 7 Cr. 520.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.—Con. art. 4, sec. 2.

Citizens of the United States have a right to expatriate themselves in time of war as well as of peace, until restrained by congress. Such right is subject to the control of the legislature, and to render the exercise of it valid, there must be an entire departure from the United States for a purpose which is not illegal, nor in fraud of the duties at home of the emigrant.—Talbot v. Janesen, 3 Dall. 133.—Santissima Trinidad, 7 Wheat. 548.—See U. S. v. Williams, 4 Hall's L. Journal, 461.—U. S. v. Gillies, 1 Pet. 161.

A citizen of the United States by becoming a citizen of another country, does not thereby cease to be a citizen of the United States, nor is he absolved from his original allegiance.—Ibid, ibid. He may acquire in a foreign country the commercial privileges attached to his domicile, and be exempted from the operation of commercial acts embracing only persons resident in the United States or under its protection.—Murray v Charming Betsy, 2 Cranch, 120.

EXPLANATIONS

Of certain terms made use of in the existing Laws of Iowa.

Administrator de bonis non.—Administrator of the goods of the deceased, not administered by the former executor or administrator.

Ad quod damnum.—An inquest of damages, being a jury summoned specially to find a verdict as to the sum of injury to real estate by a road going through lands or such like.

Aid prayers.—When a tenant in a real action prays in aid, or calls for the assistance of another person who is interested, to help him to plead.

Alias.—Otherwise; a second writ, issued when the first has not been served.

Allodial.—Absolute property.

Bona fide.—With good faith.

Capias ad respondendum.—Process of arrest to compel the defendant to appear in court and answer the plaintiff.

Capias ad satisfaciendum.—A writ of execution against the person.

Capias ut lagatum.—A writ against a person outlawed.

Cepi Corpus.—I have taken the body. A return to a writ of capias.

Caveat.—A caution entered in the probate court to stop probates, administrations, licenses, etc.

Certiorari.—To be certified. A writ commanding an inferior to certify the proceedings in a cause to a superior court.

Cestuique trust.—He for whom the trust is; the person for whose benefit a trustee holds an estate.

Choses in action.—Things in action, as notes, bonds, bills, etc.

Covinous.—Secret assent to defraud another.

De bene esse.—That it may be well.

De novo.—Anew.

Distringas.—That you distrain. A writ to compel an appearance of a person previously summoned, by distraining his goods.

Defeazance.—A condition annexed to a deed, bond, recognizance, or judgment, which when performed defeats or destroys it.

[746] *Demurrer.*—Is an issue upon matter of law to be determined by the court, and proceedings are delayed until the matter of law be determined.

Ex officio.—By virtue of office.

Ex parte.—On one side.

Ex post facto.—After the act done.

Exoneretur.—A discharge.

Femme couverte.—A married woman.

Femme sole.—An unmarried woman.

Fieri facias.—That you cause to be made. A writ of execution against goods and chattels.

Habeas corpus.—That you have the body. A writ commanding him who holds the person of another in custody to bring him before the court or judge.

Habeas corpus cum causa.—Is a writ that issues from a superior court when a person is sued in some inferior court, and is desirous to remove the cause into the superior court.

Livery of seizin.—A delivery of possession of lands.

Mandamus.—We command. A writ issuing from a superior court to some individual, corporation, or tribunal, commanding them to do some act.

Mesne process.—Intermediate process. It is the writ by which the defendant is brought into court.

Moiety.—The one-half.

Mortgagor.—The person who mortgages.

Mortgagee.—The person to whom the mortgage is made.

Ne exeat.—A writ to restrain a person from going out of the Territory.

Nihil.—Nothing. A return upon a writ of scire facias.

Nihil dicit.—He says nothing. Is a failure by a defendant to put an answer to the plaintiff's declaration by the day assigned.

Nolle prosequi.—Prosecute no further.

Non compus.

Non compus mentis } Not of sound mind.

Non est inventus.—He is not found. A return on a *capias*.

Non est factum.—It is not the deed.

Non sum informatus.—I am not informed. A formal answer by an attorney who is not informed or instructed to say anything material in defence of his client.

[747] *Prima facia.*—On first appearance. Evidence, *prima facia*, is that which is at least presumptive until it is obliterated by other evidence.

Parol demurrer.—Is a privilege allowed to an infant that the action may stay till he comes of full age.

Posse comitatus.—Power of the county.

Pro confesso.—For confessed.

Procedendo.—To proceed. Is a writ which lies where a cause has been called up from an inferior to a superior court, and such superior court decides the cause of removal sufficient. This writ sends back the cause, and commands the court below to proceed to final judgment.

Quare clausum fregit.—Why he broke the close.

Qui tam.—A writ in the name of the plaintiff, who sues, as well for himself as the public.

Quo warranto.—A writ requiring one to show by what authority he exercises the duties of an office.

Subpoena.—Under penalty. Process to compel attendance of witness or suitors.

Subpoena ad remrendum.—Process to revive a suit in chancery.

Scire facias.—A writ to show cause.

Scire feci.—A return upon a writ of scire facias.

Supersedeas.—A writ to stay proceedings at law.

Tales men.—Such men as are summoned in lieu of jurors who do not attend, in order to make up the deficiency.

Testatum.—It is testified. When a *capias* cannot be served in a county in which it is first issued, a similar writ is sent to some other county, in which writ there is a suggestion that it is testified that the person does not reside in the first county, and such writ is called a *testatum capias*.

Venire. } That you cause to come.

Venire facias. } First process for convening a jury.

Venue.—Vicinage, neighborhood. The county in which the action is laid.

Venditioni exponas.—That you expose to sale. A writ commanding the officer to offer for sale property previously levied, by virtue of a former writ of execution.

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