

TITLE I. have an execution issued thereon to sell the premises, and thereupon the sheriff shall proceed as upon other executions for the sale of real property; and the owner or any lien creditor shall have the same rights of redemption after a sale.

Mechanics' liens when preferred to other liens. SEC. 7. The liens created in pursuance of the provisions of this chapter, shall have precedence over all other liens, after the commencement of the building, and if upon a sale of the premises by execution, the proceeds be insufficient to pay all such liens, the court shall order them to be paid in proportion to the amount respectively due to each, and any other property of the defendant not exempt from execution, may be sold to satisfy such execution.

Ib., when to extend to lot. SEC. 8. The liens against any building shall also extend to the lot of ground upon which such building is erected, not exceeding one-half of an acre in extent, if the land shall have been, at the time of erecting such building, the property of the person who shall have caused the same to be erected. The metes and bounds of such lot may be determined by the parties, or if they cannot agree upon the same, the court at any time after the rendition of judgment, may appoint one or more referees to determine such boundaries.

Several persons may join; claims how stated. SEC. 9. All, or any number of persons having liens on the same building, pursuant to the provisions of this chapter, may join in one action, but their claims shall be stated distinctly, as in a separate action, and the judgment shall show the amounts to which they are respectively entitled.

Satisfaction of lien must be entered. SEC. 10. Whenever any person having a lien, by virtue of the provisions of this chapter, shall have received satisfaction for his claim and the costs of his proceedings thereon, he shall, upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded, and upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect.

Notice of sub-contractor's claim. SEC. 11. Any sub-contractor, journeyman, or laborer employed in the construction or repairing of any building, or in furnishing any materials or machinery for the same, may give the owner thereof notice in writing, particularly setting forth the amount of his claim, and the service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same, and the owner of the building shall be liable for such claim if indebted to the employer to the amount; if not, then for the amount due from him to said employer at the time such notice was served, which claim or amount may be recovered by an action against the owner, if brought within one year after the completion of the building, or the repairs.

Claims of sub-contractors may be set off against contractor's demand. SEC. 12. Whenever any sub-contractor, journeymen, or laborer shall recover any such claim from the owner of the building, the same may be set off by such owner, in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

TITLE II.

Liens on personal property.

- SEC. 13. Lien of laborer.
 14. Lien of common carrier, grazier, herdsman, &c.
 15. Sale, &c., satisfaction of lien.
 16. Foregoing provisions not to interfere with special agreements.

SEC. 13. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid.

SEC. 14. Any person who is a common carrier, or who shall at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another; and any person who shall safely keep or store any personal property at the request of the owner or lawful possessor thereof; and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property, for his just and reasonable charges for the labor, care, and attention he has bestowed, and the food he has furnished, and he may retain the possession of such property until such charges be paid.

SEC. 15. If such just and reasonable charges be not paid within three months after the care, attention and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction, the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in some newspaper published in the county, if there be one, or if there be no such paper, then by posting up notice of such sale in three of the most public places in the city or township for three weeks before the time of such sale; and the proceeds of such sale shall be applied, first to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

SEC. 16. The provisions of the last three sections shall not interfere with any special agreement of the parties.

CHAPTER II.

OF PROCEEDINGS TO ENFORCE LIENS ON BOATS AND VESSELS.

- SEC. 1. Liens on boats and vessels.
 2. As to the priority of liens.
 3. Action may be against owner, &c., or vessel.
 4. Complaint to be filed and its requisites.

CHAPTER 2.

- SEC. 5. Warrant of seizure, when to be issued.
 6. Proceedings on return of warrant.
 7. As to who may answer complaint.
 8. Judgment, how rendered.
 9. Undertaking and discharge of vessel.
 10. Deposit in lieu of undertaking.
 11. Order of sale, what to require.
 12. Judgment on undertaking.
 13. Bill of sale by whom executed.
 14. Action against vessel by other parties after sale.
 15. Proceeds of sale how distributed.
 16. Order of sale when modified.
 17. Jurisdiction of justice of the peace.
 18. Proceedings by justice.
 19. Warrant of justice when returnable.
 20. Justice may grant continuance.
 21. Fees of officers.
 22. Appeal from justice's court.
 23. Time for commencing actions.
 24. Act when to take effect.

Liens on
boats and
vessels.

SEC. 1. Every boat or vessel used in navigating the waters of this territory, shall be liable and subject to a lien:

1. For wages due to persons employed, for work done or services rendered on board of such boat or vessel;

2. For all debts contracted by the master, owner, agent or consignee thereof, on account of labor done or materials furnished by mechanics, tradesmen or others in the building, repairing, fitting out, furnishing or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof;

3. For all sums due for wharfage, anchorage or towage of such boats or vessels within this territory;

4. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or of 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 for damages or injuries done to persons or property by such boat or vessel.

Priority of
liens.

SEC. 2. The classes of claims above specified, shall have priority according to the order in which they are above enumerated, and the liens under this act shall have precedence of all other liens and claims against such boat or vessel.

Action,
against owner,
&c., or
vessel.

SEC. 3. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of the boat or vessel, may at his option commence an action against such boat or vessel by name.

Complaint,
its requisites

SEC. 4. Any person wishing to commence an action 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 or be. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued, and shall be verified by the plaintiff or some creditable person for him.

Warrant of
seizure.

SEC. 5. Whenever such complaint shall be filed, the clerk shall issue a warrant thereon, commanding the sheriff to seize the boat or vessel mentioned in the complaint, with her tackle, apparel and

furniture, and retain the same until discharged from such custody by due course of law.

SEC. 6. Upon the return of any warrant issued as prescribed in the last section, proceeding shall be had in the district court against the boat or vessel seized, in the same manner as if the action had been commenced 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 answer the complaint.

SEC. 8. If in any action commenced under the provisions of this chapter, the master, owner, agent or consignee shall not appear and answer the complaint, the plaintiff may proceed to take judgment in the same manner and under the same restrictions, as in a civil action against a natural person; if an issue of fact be joined, the same proceedings shall be had as in other actions.

SEC. 9. If the master, owner, agent or consignee shall before final judgment in any action, commenced in pursuance of the provisions of this chapter, enter into an undertaking in favor of the plaintiff, with sufficient security to be approved by the judge or clerk of the court in which the action is pending, conditioned to satisfy the amount which shall be adjudged to be due and owing to the plaintiff, on the determination of the action, together with all costs accruing, such boat or vessel with its tackle, apparel and furniture shall be discharged from further detention by the sheriff.

SEC. 10. Such master, owner, agent or consignee may in lieu of the undertaking specified in the last section, deposit in court such an amount of money as the judge or clerk shall direct, being sufficient to pay the demand of the plaintiff and the costs of suit, which are likely to accrue in such action. If judgment be for the defendant, such deposit shall be returned to the person making the same, or if a balance remain after satisfying any judgment in favor of the plaintiff and costs of suits, such balance shall be so returned.

SEC. 11. If judgment 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 costs which may have accrued in the cause, which order shall be executed and returned in the same manner as other executions.

SEC. 12. If an undertaking with surety shall have been given according to the ninth section of this chapter, and judgment shall have been rendered in favor of the plaintiff, a judgment shall also be rendered upon the undertaking, and execution shall be issued for the amount of judgment and costs in favor of the plaintiff, against the principal and security in such undertaking.

SEC. 13. When any boat or vessel shall be sold in pursuance of the provisions of this chapter, the officer making the sale shall execute to the purchaser a bill of sale therefor, and such boat or vessel shall in the hands of the purchaser and his assigns, be free and discharged from all previous liens and claims under this chapter.

SEC. 14. Any other person having or claiming a lien against any boat or vessel in pursuance of the provisions of this chapter, may

CHAPTER 2.

Proceedings
on return of
warrant.Who may
answer complaint.

Judgment.

Undertaking
and discharge
of vessel.Deposit in
lieu of un-
dertaking.Order for
sale.Judgment on
undertakingBill of sale
how executed.Action
against ves-
sel by other

CHAPTER 2. at any time after the sale upon execution, and before payment over of any surplus in the hands of the sheriff, commence an act against such boat by name as if the same had not been sold, and serve notice thereof upon the former master, owner, agent or consignee. While such action is pending, the sheriff shall not pay over any surplus that may be in his hands to such master, owner, agent or consignee.

SEC. 15. In the distribution of the proceeds of sale, claims of a prior class shall be paid entire before any payment shall be made upon claims of a subsequent class; and when the money to be applied to any class shall be insufficient to pay all the claims of that class, it shall be apportioned rateably among the claims of such class.

SEC. 16. If it shall appear to the court in which the action is pending, or the judge thereof, that the liens against such boat or vessel, can be satisfied by a sale of the tackle, apparel and furniture, or a part thereof, or a fractional share in such boat or vessel, such court or judge may modify the order of sale accordingly. If in pursuance of such order, a sale be made of a fractional share in such boat or vessel, the purchaser shall hold such share jointly with the other owners.

SEC. 17. Justices of the peace within their respective counties, shall have cognizance of all cases arising under this chapter, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

SEC. 18. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justice's courts, and as near as may be to the provisions of this chapter, as they apply in the district court.

SEC. 19. Each warrant issued by a justice of the peace under this chapter, 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. 20. Upon good and sufficient cause shown by the master, owner, agent or consignee of any boat or vessel seized under the provisions of this chapter, the justice of the peace may grant a continuance of the cause, but no such continuance shall be granted to the plaintiff.

SEC. 21. Sheriffs, constables, and other officers, shall receive the same fees and compensation for their services under this chapter, as are allowed to them in proceedings by attachment.

SEC. 22. In all cases arising under this chapter, before justices of the peace, the plaintiff or the master, owner, agent, or consignee, may appeal to the district court, but if the plaintiff appeal, the constable or other officer shall not detain the boat or vessel in his custody, after the payment of such judgments as shall be rendered in favor of the plaintiff, by the justice of the peace.

SEC. 23. All actions against a boat or vessel, under the provisions of this chapter, shall be commenced within one year after the cause of action shall have accrued.

SEC. 24. This act shall take effect and be in force from and after the first day of May next.

Passed, Dec. 22d, 1853.

AN ACT TO REGULATE ARBITRATIONS.

CHAPTER 1.

CHAPTER I.

ARBITRATIONS.

- SEC.** 1. Controversies that may be submitted.
 2. When submission not to be made.
 3. Submission how made.
 4. Agreement to submit, what to contain.
 5. Submission not to be revoked.
 6. Arbitrators to appoint a time of hearing.
 7. Oath of arbitrators.
 8. Time of making award.
 9. Award to be in writing.
 10. Award to be delivered to clerk.
 11. Cognizance thereof by court.
 12. Award may be accepted, rejected or re-committed.
 13. Grounds for vacating award.
 14. Grounds for correcting award.
 15. Award when to be returned to court.
 16. Judgment costs.
 17. Record of judgment, what to contain.
 18. Effects of judgment.
 19. Arbitrators may award costs in certain cases.
 20. Courts may enforce judgment.
 21. Power of arbitrators.
 22. This act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That 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 chapter.

SEC. 2. No such submission shall be made respecting the claim of any person to any estate in fee or for life to any real estate, but any claim to an interest for a term of years, or for one year or less in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration; but nothing in this chapter contained, shall preclude the submission and arbitrament of controversies according to the common law.

SEC. 3. The parties may appear in person or by their lawful agents, or attorneys, before any justice of the peace or clerk of the district court, and there sign and acknowledge an agreement in substance as follows:

"Know all men that A. B., of _____, and C. D., 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 number of whom being made and reported within _____ days from this date, to the district court for the county of _____, shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing, the other parties may proceed in his absence.

Dated this _____ day of _____, A. D. 185 . A. B.
 C. D."

CHAPTER 1. And the justice or clerk shall subjoin to the said agreement his certificate, in substance as follows:—

Territory of Oregon, }
County of } ss.

Personally appeared before me, the above-named A. B. and C. D., (or personally appeared the above-named A. B., and the said C. D., by his attorney, as the case may be,) and acknowledged the above instrument by them signed, to be their free act.

Dated this day of 185 .

J. P., Justice of the Peace.

Agreement
what to con-
tain.

SEC. 4. If any specific demand be submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement of submission, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other, or the submission may be varied in this respect, in any other manner, according to the agreement of the parties.

Submission
not to be re-
voked.

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.

Time, &c., of
hearing. 1
Barb. 325; 3
Barb. 275.

SEC. 6. The arbitrators thus selected shall appoint a time and place for the hearing, and shall adjourn the same from time to time, as may be necessary; and on the application of either party, and for good cause, they may postpone such hearing to a time, not extending beyond the day fixed in such submission, for rendering their award.

Oath of arbi-
trators.
1 Denio, 440.

SEC. 7. Before proceeding to hear any testimony, the arbitrators shall be sworn by any officer, authorized to administer oaths, faithfully and fairly to hear and examine the matters in controversy, and to make a just award according to law and evidence, to the best of their understanding.

Time of mak-
ing award.

SEC. 8. 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 the time so agreed upon, shall have any legal effect or operation, unless made upon a re-commitment of the award by the court to which it is reported.

Award to be
in writing.

SEC. 9. To entitle any award to be enforced according to the provisions of this chapter, it must be in writing, and subscribed by the arbitrators making the same.

To be deli-
vered
to clerk.

SEC. 10. The award shall be delivered by one of the arbitrators to the clerk of the district court, designated in the agreement of submission, or shall be inclosed and sealed by them and transmitted to the clerk, and shall remain sealed, until opened by such clerk.

SEC. 11. The court to which the award is returned, shall have cognizance thereof in the same manner, and the same proceedings shall be had thereon, as if it had been made by referees, appointed by a rule of the same court.

CHAPTER 1.
Cognizance
thereof by
court.

SEC. 12. The award may be rejected by the court for any legal and sufficient reason, or it may be re-committed to the same arbitrators, for a re-hearing by them; and when an award is accepted and confirmed by the court, judgment shall be rendered thereon, in the same manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly.

Award may
be accepted,
rejected or
recommitted

SEC. 13. Any party complaining of such award may move the court, designated in such submission, to vacate the same upon either of the following grounds:—

Grounds of
vacating
award.

1. That such award was procured by corruption, fraud, or other undue means; 10 Wen. 589; 17 do. 410.

2. That there was evident partiality or corruption in the arbitrators or either of them; 4 Denio 194; 4 Com. 268.

3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or other misbehavior by which the rights of such party shall have been prejudiced;

4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final, and definite award on the subject matter submitted was not made; 1 Barb. Ch. 173; 4 Denio 249; 1 Barb. 325; 3 do. 56; 7 do. 491.

5. That the award was contrary to law and evidence.

SEC. 14. Any party to such submission may also move the court, designated therein, to modify or correct such award in the following cases:—

1b. Of cor-
recting
award.

1. When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in such award; 10 Wen. 589.

2. Where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision upon the matters submitted; 1 Barb. 325; 4 do 250; 7 do. 431.

3. Where the award shall be imperfect in some matter of form not affecting the merits of the controversy, and where if it had been a verdict, such defect could have been amended or disregarded by the court, according to the provisions of law.

SEC. 15. The award may be returned at any term or session of the court, that shall be held within the time limited in the submission; and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner, as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceeded to act upon the award.

Return
of
award.

SEC. 16. Upon such award being confirmed or modified, the court shall render judgment in favor of the party, to whom any sum of money or damages shall have been awarded, that he recover the same, and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order. The costs of proceedings shall be taxed as

Judgment.

Costs
taxed. how

CHAPTER 1. in suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make a suitable allowance.

Record of judgment. SEC. 17. A record of such judgment shall be made, commencing with a memorandum reciting the submission, then stating the hearing before the arbitrators, their award, the proceedings of the court thereupon, in modifying or confirming such award, and the judgment of the court for the recovery of the debt or damages awarded, or other act to be done, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

Effects of judgment; execution. SEC. 18. Such record shall be filed and docketed as records of judgments in other cases; shall have the same force and effect in all respects; be subject to all the provisions of law in relation to judgments in actions, and may in like manner be moved and reversed by writ of error or appeal, and execution shall issue thereupon.

Arbitrators may award costs. SEC. 19. If there be no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators, if it shall appear to them unreasonable.

Enforcing judgment. SEC. 20. Where by such judgment any party shall be required to perform any act, other than the payment of money, the court rendering such judgment shall enforce the same by rule; and the party, refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court.

Power of arbitrators. SEC. 21. The arbitrators shall hear and receive the testimony of either party under oath; and shall have full power to administer all necessary oaths to parties, or witnesses appearing before them; and any such party or witnesses swearing wilfully and corruptly false, on any such hearing or examination, shall be deemed guilty of perjury.

SEC. 22. This act shall take effect and be in force from and after the first day of May next.

Passed January, 18th, 1854.

AN ACT RELATING TO THE WRIT OF HABEAS CORPUS AND PROCEEDINGS THEREON.

CHAPTER I.

OF HABEAS CORPUS.

- SEC. 1. Who may prosecute *habeas corpus*.
 2. Application for writ how and to whom made.
 3. Proof required when application made in another county.
 4. Petition for writ, what to state.
 5. When writ to be granted; and without delay.
 6. Form of writ of *habeas corpus*.
 7. When writ sufficient.
 8. Penalty on officers for refusing writs.
 9. Return to writ, its contents; when to be sworn to.

CHAPTER 1.

10. Body of prisoner to be brought up on *habeas corpus*.
11. Proceedings on disobedience of writ.
12. Proceedings against sheriff for neglect.
13. Prisoner to be produced before judge.
14. Officer executing attachment may call power of the county.
15. Proceedings on return of writ.
16. Prisoner when to be discharged.
17. When to be remanded.
18. Prisoner on civil process when to be discharged.
19. Legality of certain commitments not to be inquired into.
20. Proceedings in irregular criminal commitments.
21. Proceedings when prisoner is not discharged or bailed.
22. Custody of prisoner between judgment and return thereon.
23. Notice when to be given.
24. Notice to prosecuting attorney.
25. Return may be controverted.
26. Proceeding in case of sickness of prisoner.
27. Obedience to writ and order how enforced.
28. Officer not liable to action for obeying writ.
29. Persons once discharged cannot be re-imprisoned.
30. Penalty for re-committing person discharged.
31. Penalty for concealing prisoner, &c., after writ allowed.
32. When warrant may issue to take person illegally confined.
33. When to take person confining him.
34. Warrant how executed, proceedings thereon.
35. Proceedings against person detaining prisoner.
36. Penalty for refusing copy of process to prisoner.
37. *Habeas corpus* how to be made returnable.
38. Allowance to be indorsed; how signed.
39. *Habeas corpus* how served; when fees and bond required.
40. Mode of serving writ of *habeas corpus*.
41. How served when person conceals himself, &c.
42. When and how fees allowed to persons not officers.
43. Time allowed for making return to writ.
44. This act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, 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 by the party for whose relief it is intended, or by some person in his behalf, to any judge of the supreme or district court being within the county where the prisoner is detained, or if there be no judge within such county, or if he be absent, or for any cause be incapable of acting, or having refused to grant such writ, then to any other judge of the supreme or district court most convenient to the place where such prisoner is detained.

SEC. 3. Whenever application for any such writ shall be made to such judge, not being within the county where the prisoner is detained, he shall require proof by the oath of the applicant or other sufficient evidence, that there is no judge in such county authorized to grant the writ; or if there be one, that he has refused to grant it; or for 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 shall state in substance:

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming

Who may prosecute a writ of *habeas corpus*.

Application for writ. 3 Hill 405.

1b. In another county proof required.

Petition for writ and what to state

CHAPTER 1. all the parties, if their names be known, or describing them if they be not;

2. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the applicant;

3. If the confinement or restraint be by virtue of any warrant, order or process, a copy thereof shall be annexed, or it shall be averred that by reason of the prisoner 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 shall also state in what the alleged illegality consists;

5. It shall be verified by the oath of the applicant, or some other competent person.

When writ to be granted.
SEC. 5. Any judge empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it appear from the petition itself, or the documents annexed, that the party can neither be discharged, admitted to bail, nor in any other manner relieved under the provisions of this chapter.

Form of writ.
SEC. 6. Every writ of *habeas corpus* shall be substantially in the following form:

"In the name of the United States:

To the sheriff of, &c., (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) at, &c. —, on the — day, &c., (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, &c."

When writs sufficient.
SEC. 7. Such writ of *habeas corpus* shall not be disobeyed for any defect in 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.

Penalty for refusing writ.
SEC. 8. If any judge authorized by the provisions of this chapter, to grant writs of *habeas corpus*, shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence 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: CHAPTER 1.
Return to writ.

1. Whether he have or have not the party in his custody or power or under his restraint, and if he have not, whether he has had the party in his custody, or under his power or restraint at any, and what time prior or subsequent to the date of the writ;

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 judge, before whom the same is returnable;

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 shall 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 oath.

To be signed and when to be sworn to.

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.

Body of prisoner when to be brought up.

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 chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the judge 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 bring him immediately before such judge; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such judge shall be, until he shall make return to such writ, and comply with any order that may be made by the judge in relation to the person for whose relief such writ shall have been issued.

Proceedings on disobedience of writ.

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.

Ib. Against a sheriff.

SEC. 13. The judge, by whom any such attachment shall be issued, may also, at the same time, or afterwards, issue a precept to the sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith, before such judge, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, un-

Prisoner to be produced.

CHAPTER 1. til he shall be discharged, bailed, or remanded, as the judge shall direct.

Power of the county. SEC. 14. In the execution of such attachment or precept, or 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.

Proceedings on return of writ. 25 Wen. 506. SEC. 15. The judge, 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.

When prisoner to be discharged. 4 Barb. 81; 6 do. 366. SEC. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the judge shall discharge such party from the custody or restraint under which he is held.

When to be remanded. SEC. 17. It shall be the duty of the judge forthwith to remand such party, if it shall appear that he is legally detained in custody, either:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has conclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

3. For any contempt, specially and plainly charged in the commitment, by some court officer or body having authority to commit for the contempt so charged; and

4. That the time during which such party may be legally detained, has not expired.

SEC. 18. 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 an officer, in the course of judicial proceeding before him, authorized by law, such prisoner shall only be discharged in one of the following cases:

1. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person;

2. When, 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. When the process is defective in some matter of substance required by law, rendering such process void;

4. When the process, though in proper form, has been issued in a case not allowed by law;

5. When the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or

6. When the process is not authorised by any judgment or decree of any court, nor by any provision of law.

SEC. 19. But no judge, on the return of any *habeas corpus* issued under this chapter, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in section seventeen.

SEC. 20. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, upon the hearing thereof, to be guilty of such an

1 Hill 157; 5 do. 167; 10 Paige 254.

When to be discharged in civil cases.

4 Barb. 81.

Restriction on judge. 5 Hill 167.

Irregular criminal commitments.

CHAPTER 1. offence, although the commitment be irregular, the judge, 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. 21. If the party be not entitled to his discharge, and be not bailed, the judge shall remand him to the custody, or place him under 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 judge to the custody of such officer or person as by law is entitled thereto.

SEC. 22. Until judgment be given upon the return, the judge before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such judge shall be, or place him in such care, or under such custody, as his age and other circumstances may require.

SEC. 23. When it appears from the return of 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 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. 24. When it shall appear from the return that such party is detained upon any criminal accusation, such judge shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the prosecuting attorney of the county in which such judge shall be, if to be found within the county.

SEC. 25. The party brought before any judge 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 the judge 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. 26. Whenever from sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot without danger be brought before the judge before whom the writ is made returnable, the party in whose custody he is, may state the fact in his return to the writ, verifying the same by his oath, and if the judge 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 judge 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 judge shall cease from all further proceedings thereon.

Remanding prisoner, &c.

Custody of prisoner

Notice to parties. 12 Wen. 231.

Notice to prosecuting attorney. 10 Paige 606, 611.

Evidence against return, &c. 3 Hill 647, note; 1 Barb. 349.

Sickness, &c. of prisoner.

CHAPTER 1.

Writ of discharge, &c., how enforced.

SEC. 27. Obedience to any writ of discharge or to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the judge 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 dollars, in addition to any special damage such party may have sustained.

Officers protected for obeying.

SEC. 28. No sheriff or other officer shall be liable to any action at law 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 set up the same in answer in bar of the action.

Not to be re-imprisoned.

SEC. 29. No person who has been discharged by the order of any judge, upon a *habeas corpus*, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause:

May be in certain cases

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence by legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence; or

By court upon indictment, &c.

Upon new proof for process.

2. If after a discharge for defective proof, or for any material defect in the commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence; or

Legal process in civil action.

3. If in a civil action the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or

In another action or in execution.

4. If in any civil action he shall have been discharged from commitment on process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause, after such first action shall have been discontinued.

Penalty for re-committing.

SEC. 30. If any person shall knowingly re-commit, imprison, or restrain of his liberty, or cause to be committed, imprisoned, or restrained of his liberty, for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved one thousand dollars.

Ib. for concealing prisoner after writ allowed.

SEC. 31. Any one having in his custody, or under his power, any person for whose relief a writ of *habeas corpus* shall have been, or is about to be duly issued, pursuant to this chapter, who, with the 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, and every person who shall knowingly aid or assist in so doing, shall forfeit to the party aggrieved five hundred dollars.

Warrant for prisoner.

SEC. 32. Whenever it shall appear by satisfactory proof that any person is held in illegal confinement, or custody, and that there is

CHAPTER 1.

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 judge authorized to issue such writs, may issue a warrant 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 judge, to be dealt with according to law.

SEC. 33. 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 offence, committed in the taking or detaining of such prisoner, the warrant may also contain an order for the arrest of such person for such offence.

SEC. 34. 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 judge 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. 35. If the person having such prisoner in his custody, shall be brought before the judge as for a criminal offence, he shall be examined, committed, bailed or discharged by the judges in like manner as in other criminal cases of the like nature.

SEC. 36. 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 therefor, shall forfeit two hundred dollars to the person so detained.

SEC. 37. Every writ of *habeas corpus* may be made returnable at a day certain or forthwith, as the case may require.

SEC. 38. Every such writ shall be indorsed with a certificate that the same has been allowed, and with the date of such allowance, which indorsement shall be signed by the judge allowing the writ.

SEC. 39. Writs of *habeas corpus* shall only be served by an elector of some county within this territory; and the service thereof, shall not be deemed complete, so as to require the prisoner to be brought up before the judge issuing the same, unless the party serving the same, shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also enter into an undertaking to such sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money; and if not, then in such a sum as the judge granting the writ shall direct, not exceeding one thousand dollars, conditioned that such person shall pay the charges for carrying back such prisoner if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is to be taken. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed, shall make return thereto, in the manner required by section nine of this chapter, and thereupon, the judge granting the writ, may proceed as if the prisoner were

For persons detaining him.

Execution of warrant; proceedings.

Ib. against persons detaining prisoners

Refusing copy of process

Return day.

Allowance.

Serving writ, fees, bond, &c.

CHAPTER I. before him, or he may order him to be brought up notwithstanding.

Mode of serving writ. SEC. 40. Every writ of *habeas corpus*, issued pursuant to this chapter, 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.

Id., where person conceals himself &c. SEC. 41. 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.

Fees to persons not officers. SEC. 42. The judge, 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 applicant, and in such case, he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

Time for returning writ. SEC. 43. If the writ be returnable at a day certain, such return shall be made, and such prisoner 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.

Act when to take effect. SEC. 44. This act shall take effect and be in force from and after the first day of May next.

Passed January 5th, 1854.

AN ACT RELATING TO THE QUALIFICATIONS OF JURORS, AND THE MODE OF SELECTING THEM.

CHAPTER I.

QUALIFICATIONS AND EXEMPTION OF JURORS.

- SEC. 1. Qualifications of jurors.
2. Persons exempt from acting as jurors.
3. When persons may be excused from acting as jurors.

Qualifications of jurors. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That a person shall not be competent to act as a juror, unless he be:

1. A citizen of the United States;
2. An elector of the county in which he is returned;
3. Over twenty one and under sixty years of age; and
4. In possession of his mental faculties;
5. Nor shall any person be competent to act as a juror who has

been convicted of a felony or a misdemeanor involving moral turpitude. **CHAPTER 2.**

SEC. 2. A person shall be exempt from liability to act as a juror, if he be: **Persons exempt.**

1. A judicial officer;
2. Any other civil officer of this territory or of the United States, whose duties at the same time are inconsistent with his attendance as a juror;
3. An attorney or counsellor;
4. A minister of the gospel, or a priest of any denomination;
5. A teacher in a college, academy or school;
6. A practising physician;
7. An officer, keeper or an attendant of an alms-house, poor-house, hospital, asylum or other charitable institution, created by or under the laws of this territory;

8. The captain, mate, or other officer or any person employed on board of a steamer, vessel or boat navigating the waters of this territory; also, ferrymen, millers and supervisors of roads.

SEC. 3. A person may be excused from acting as a juror, when for any reason his interests or those of the public, will be materially injured by his attendance, when his own health or the sickness or death of a member of his family requires his absence. **When persons may be excused.**

CHAPTER II.

MANNER OF FORMING JURY LIST.

- SEC. 1. County commissioners when and how to form jury list.
2. Persons to be selected as jurors.
3 & 4. Jury list; what to contain.
5. Clerk to keep jury box, ballots how deposited.

SEC. 1. The county commissioners of each county shall at their first session of each year, or, in case of omission or neglect, then at any following session, make from the assessment roll of the county, a list containing the names of persons to serve as jurors, until new lists be returned. **List of county commissioners.**

SEC. 2. In preparing the jury list, the names of those persons only shall be selected who are known or believed to be possessed of the qualifications prescribed in this act, and not entitled to exemption. **Persons to be selected.**

SEC. 3. The jury list shall contain the names of one hundred and fifty persons, if there are that number of qualified jurors within the county. They shall be apportioned among the different sections of the county, according to the number of persons on the assessment roll. **Jury list, what to contain.**

SEC. 4. The jury lists shall contain the christian and surname at birth, length, and the place of residence and occupation of each person named therein, and shall be certified by the county commissioners and filed with their clerk.

SEC. 5. The said clerk shall keep in his office a sufficient box, in which he shall prepare and deposit separate ballots, containing the names of all the jurors on the list. Each ballot shall be folded so that the name cannot be seen. **Ballot box.**

CHAPTER III.

MANNER OF DRAWING AND SUMMONING JURY.

- SEC. 1. Clerk to draw ballots; who to assist him.
 2. Drawing when and where to take place.
 3. Drawing, how to be conducted.
 4. Trial jury; where and how to be drawn.
 5. Clerk, &c., to sign the minutes of drawing.
 6. Certified list of trial and grand jurors to be given to sheriff.
 7. Sheriff when and how to summon grand jurors.
 8. Sheriff to return list of jurors summoned.
 9. Jurors, when and how punished for failing to appear.
 10. Number of jurors to constitute grand jury; deficiencies how filled.

Mode of drawing. SEC. 1. The clerk of the board of commissioners shall call to his assistance the sheriff or his deputy, or a justice of the peace, and proceed to draw the ballots as hereinafter provided.

When and where drawing shall take place. SEC. 2. The drawing shall take place at the office of the said clerk, not less than ten nor more than thirty days before the holding of each regular term of court, provided that when any judge shall appoint a district court for the indictment and trial of any person, the drawing may take place at any time ordered by the judge, and the jurors for such appointed court shall be summoned forthwith by the sheriff.

Drawing how conducted. SEC. 3. The drawing shall be conducted as follows:
 1. The clerk shall shake the box containing the ballots so as to mix them as much as possible;

For grand jury. 2. He shall then draw out of the box twenty-three ballots, which said twenty-three ballots first drawn shall constitute the grand jury;

Each name drawn to be entered. 3. A minute of the drawing shall be kept, in which shall be entered the name contained on every ballot drawn, before any other shall be drawn.

Drawing of trial jury. SEC. 4. After the grand jury is completed, the clerk shall proceed to draw twenty-four ballots, which shall constitute the trial jury.

Minutes to be signed and filed. SEC. 5. The minutes of the drawing shall then be signed by the clerk and the attending officer, and forthwith filed in the office of the clerk of the board of commissioners.

Certified list to be given to sheriff. SEC. 6. A list of the names of persons drawn as grand jurors, and a list of the names of persons drawn as trial jurors, shall then be made, and certified by the clerk, and delivered to the sheriff of the county without delay.

Summoning jurors. SEC. 7. At least five days before the opening of the court, the sheriff shall summon the persons named in the lists delivered to him, to attend the court, by giving written notice to each of them personally, or by leaving the same at his place of residence, with some person of suitable age and discretion.

Return of lists. SEC. 8. The sheriff shall also return the lists to the district court at its opening, specifying the persons summoned, and the manner in which each was summoned.

Fine for default. SEC. 9. Every person who shall fail to appear when lawfully summoned as a grand or petit juror, 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 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 of the district court, when directed by the court, to issue a summons against such delinquent, when such person shall not come in without process, to show cause at the next term of court why he should not be fined for such contempt; *Provided*, that the oath or affirmation of any such delinquent, shall at all times be received as evidence in his favor.

SEC. 10. When of the persons summoned as grand jurors, sixteen or any number over shall attend, they shall constitute the grand jury. If any number less than sixteen shall attend, they shall be placed upon the grand jury, and the court shall order the sheriff to summon from the body of the county a sufficient number of persons to make up the deficiency. If the grand jury shall be diminished by challenge, or disqualifications, the panel may be filled in like manner.

Deficiency of grand jurors how filled.

CHAPTER IV.

FORMATION OF JURIES.

- SEC. 1. Jury how drawn.
 2. When court may order sheriff to summon more jurors.
 3. Clerk's certificate of juror's fees: fees how paid.
 4. Privilege of jurors.
 5. Act when to take effect.

SEC. 1. The clerk of the district court, shall prepare separate folded ballots, containing the names of the petit or trial juries, and deposit them in a box. He shall then draw from the box twelve names, and the persons drawn shall form a jury unless some are rejected by challenge, disqualification, or otherwise, in which case the clerk shall continue to draw until the panel is complete.

SEC. 2. If necessary, the court may order the sheriff to summon persons from the body of the county to fill up the trial jury.

SEC. 3. It shall be the duty of the clerk of the district court at the close of each term of said court, to make out a list of the grand and petit juries, certifying the number of days of attendance, and amount of compensation due to each one; 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 day's attendance as a juror in the district court of the territory, for which he may have received, or be entitled to receive pay as a juror of the district court of the United States.

SEC. 4. All grand and petit jurors shall be privileged from arrest, in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going to and returning from the same; *Provided*, that when any grand jury shall make presentment of one of their own body, he shall be liable to be proceeded against in the usual form.

Jury how drawn.

Vacancies how filled.

Certificate of juror's fees.

Privilege of jurors.

CHAPTER 1. SEC. 5. This act shall take effect and be in force from and after the first day of May next.

Passed January 10th, 1854.

AN ACT FOR THE LIMITATION OF ACTIONS.

CHAPTER I.

LIMITATION OF ACTIONS.

- SEC. 1. Time of commencing actions in general.
2. *Within twenty years.*
 3. *Within ten years.*
 4. *Within six years.*
 5. *Within three years.*
 6. *Within two years.*
 7. *Within one year.*
 8. *Actions for penalties, &c., by any person who will sue, when to be brought.*
 9. *Actions for relief not before provided for.*
 10. *When cause of action accrued, in an action upon a current account.*
 11. *Actions by the territory subject to the same limitation.*
 12. *When action deemed to have been commenced.*
 13. *Attempt to commence deemed equivalent to commencement of action.*
 14. *Exception when defendant is out of territory or concealed.*
 15. *Exceptions as to persons under disabilities.*
 16. *Provisions where person entitled, dies before limitation expires.*
 17. *In actions by aliens, time of war to be deducted.*
 18. *Time of stay, by injunction, or statutory prohibition, to be deducted.*
 19. *Provision when judgment has been reversed.*
 20. *Disability must exist, when right of action accrued.*
 21. *Where several disabilities, limitation does not attach, till all removed.*
 22. *Acknowledgments or new promise must be in writing.*
 23. *Limitation to commence from time of partial payment.*
 24. *No cause of action barred by statute of state where it accrued, is actionable.*
 25. *This chapter not to extend to actions already commenced.*
 26. *Act when to take effect.*

Time for commencing civil actions. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That actions shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute. But in the district court the objection that the action was not commenced within the time limited, can only be taken by answer.

Within twenty years 3 Hill 85; 6 do. 634. SEC. 2. The periods prescribed in the preceding section for the commencement of actions, shall be as follows:

Within twenty years:

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seised or possessed of the premises in question, within twenty years before the commencement of the action.

SEC. 3. *Within ten years:*

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States;

Within ten years. 7 Wen. 242; 5 Hill. 409.

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Within six years. 1 Sandf. 98, 220; 5 Barb. 171.

2. An action upon a sealed instrument.

SEC. 4. *Within six years:*

1. An action upon a contract or liability, express or implied, excepting those mentioned in the last section;

2. An action upon a liability created by statute, other than a penalty or forfeiture;

3. An action for waste or trespass upon real property;

4. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof; 6 Barb. 436.

5. An action for criminal conversation, or for any other injury to the person or rights of another, not hereinafter enumerated.

6. An action for relief, on the ground of fraud in cases cognizable in a court of chancery; the cause of action in such case not to be deemed to have accrued, until the discovery by the aggrieved party of the facts constituting the fraud.

SEC. 5. *Within three years:*

1. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office; or by the omission of an official duty; including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

Within three years. 13 Wen. 40; 19 do. 253.

2. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the territory, except where the statute imposing it prescribes a different limitation. 1 Coms. 47.

SEC. 6. *Within two years:*

1. An action for libel, slander, assault, battery, or false imprisonment.

Within two years.

2. An action upon a statute for a forfeiture or penalty to the territory.

SEC. 7. *Within one year:*

An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

Within one year. 7 Wen. 459.

SEC. 8. An action upon a statute for a penalty given in the whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offence; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the territory, by the district attorney of the county where the offence was committed.

Actions for penalties, &c., by any person who will sue.

SEC. 9. An action for relief not hereinbefore provided for, shall be commenced within ten years after the cause of action shall have accrued.

Actions for relief, not before provided for.

SEC. 10. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

Action on a current account. 1 Sanf. 220.

SEC. 11. The limitations prescribed in this chapter, shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

Actions by the territory subject to the same limitation. When action deemed to

SEC. 12. An action shall be deemed commenced as to each de-

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have been commenced. Attempt to commence deemed equivalent to commencement.

Sec. 12. Plaintiff, when the summons is served on him, or on a co-defendant who is a joint contractor, or otherwise united in interest with him.

SEC. 13. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the summons is delivered, with the intent that it shall be actually served to the sheriff, or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt shall be followed by the first publication of the summons, or the service thereof within sixty days.

Exception where defendant is out of the territory or concealed. 1 Denio 151; 5 do. 592; 2 Barb. 399; 1 do. 76; 2 Sanf. 518.

SEC. 14. If when the cause of action shall accrue against any person, who shall be out of the territory, or concealed, such action may be commenced within the terms herein respectively limited, after the return of such person into the territory, or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this territory, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exception as to persons under disabilities.

SEC. 15. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be, at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life; or
4. A married woman;

The time of such disability shall not be a part of the time limited for the commencement of the action.

Provision where person entitled dies before limitation expires. 10 Wen. 278.

SEC. 16. If a person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time, and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

In actions by aliens time of war to be deducted.

SEC. 17. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Time of stay by injunction or statutory prohibition to be deducted.

SEC. 18. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition, shall not be a part of the time limited for the commencement of the action.

Provisions where judgment has

SEC. 19. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be re-

versed on appeal, the plaintiff, or if he die, and the cause of action survives, his heirs or representatives, may commence a new action within one year after the reversal.

SEC. 20. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 21. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 22. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

SEC. 23. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

SEC. 24. When the cause of action has arisen in another state, territory or country, between non-residents of this territory, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this territory.

SEC. 25. This chapter shall not extend to actions already commenced, but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revised by the provisions of this chapter.

SEC. 26. This act shall take effect and be in force from and after the first day of May next.

Passed Jan. 6th, 1854.

AN ACT TO REGULATE PROCEEDINGS IN SUITS IN EQUITY.

CHAPTER I.

SUITS IN EQUITY.

TITLE I. *Proceedings in Equity.*

TITLE II. *Of Writs of Ne Exeat.*

TITLE III. *Of the Granting of Injunctions.*

TITLE IV. *Of the Foreclosure of Mortgages.*

TITLE V. *Miscellaneous Provisions.*

TITLE I.

Proceedings in Equity.

- SEC. 1. Exclusive jurisdiction of district court in equity.
2. Suits in equity where brought.
3. Complaint, how addressed and what to contain.
4. Pleadings of defendant.
5. Exceptions for insufficiency abolished, allegations deemed true unless denied.

TITLE 1.
been reversed.

Disability must exist when right of action accrued. Where several disabilities all must be removed. Acknowledgment or new promise must be made in writing.

Limitation from time of partial payment.

When cause of action is barred by the statutes of another state.

This chapter not to extend to actions already commenced.

- TITLE 1. SEC.**
6. Complaint and answer, how verified.
 7. Rule requiring answer to be overcome, by two witnesses, &c., abolished.
 8. Examination of parties, consequence of parties refusing to be examined.
 9. Admissions of fraud &c., not to be used except for relief.
 10. In suits for recovery of money, set-offs, how to be allowed.
 11. Subpoena, how to issue and when returnable.
 12. Subpoenas, when several defendants reside in different counties.
 13. Service, how made.
 14. Copy of bill to accompany subpoena.
 15. Notice of suit by order, when and how given to non-residents.
 16. Notice of suit by order when defendant cannot be found by sheriff.
 17. When names of parties are unknown to defendant.
 18. Order against non-resident, absent or unknown defendant, how published.
 19. When complainant may serve copy of bill out of territory.
 20. Delivery, in such case how made.
 21. Proceedings when several absent defendants have not been served.
 22. Time allowed defendant to plead after service of subpoena.
 23. Proceedings when defendant neglects to plead.
 24. Defendant may exhibit interrogatories to complainant.
 25. Complainant's answer evidence.
 26. Complainant, when required to answer cross bill.
 27. Rules by consent to be entered.
 28. Amendments, how allowed.
 29. Cause, when deemed at issue.
 30. Issue of fact, how tried.
 31. Rules for taking depositions.
 32. Bill, when dismissed.
 33. Proceedings if defendant does not appear.
 34. Complainant to give bond after decree and before issue of process against absent defendant.
 35. When defendant may have the decree opened.
 36. Rights of bona fide purchaser protected.
 37. Effects of final decree.
 38. Decree, when to be considered executed.
 39. Decree, how enforced.
 40. Certain duties not to abate.
 41. Proceedings by surviving parties.
 42. Bill of revivor not necessary to revive suits against representatives, &c.
 43. Service of order of revival, &c.
 - 44 & 45. Proceedings in such cases, if no answer or disclaimer.
 - 46 & 47. Husband, how made a party, and his privileges as such.

Jurisdiction of district court in equity. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* that the district courts shall have exclusive jurisdiction of all suits in equity.

Suit where brought. SEC. 2. A suit in equity shall be brought in the county in which an action at law might be brought for a like purpose.

Complaint what to contain. SEC. 3. The bill of the complainant shall be addressed "to the District Court of the county of —," and shall consist of a statement of the facts constituting the cause of action, and a prayer for specific relief; upon which any relief may be given applicable to the facts stated; the charges and interrogatories, the confederacy and jurisdiction clauses, and the prayers for answer, for process, and for general relief shall be omitted.

Pleadings of defendant. SEC. 4. The defendant may disclaim, demur, plead or answer as heretofore, omitting all savings, protestations, prayers for dismissal, and other matters of mere form.

Exceptions for insufficiency abolished. SEC. 5. Exceptions for insufficiency are hereby abolished, and every allegation in the bill not directly denied by the answer, or denied on belief, shall be taken to be true until disproved.

Verification of complaint and answer. SEC. 6. The bill of the complainant, as well as the answer of the defendant, shall be verified by oath, to the effect that the same is true to the knowledge of the person making it, except as to mat-

ters stated on information and belief, and as to those matters that he believes it to be true.

TITLE 1. SEC. 7. The rule requiring the answer to be overcome by two witnesses, or their equivalent, is hereby abolished, and the credibility and effect of the answer, as evidence, shall be judged of as the statement of a witness in the same situation.

SEC. 8. Either party may examine the adverse party as a witness, and his refusal to testify, shall be taken as a confession of the bill or answer, as the case may be, saving the privilege of declining to answer questions which might subject the party to prosecution for felony; but an improper refusal to answer, under pretence of privilege, and other evasion in testifying, shall be taken as proof of the particular fact sought to be established.

SEC. 9. No person shall be privileged from disclosing his fraudulent conveyances, confessions of judgment, or other fraudulent, illegal, or improper acts or omissions, affecting the rights of others, but his admissions shall not be used against him except for the relief of the injured party.

SEC. 10. In suits for the payment, or recovery of money, set-off shall be allowed in the same manner, and with the like effect, as in actions at law.

SEC. 11. Upon the filing of the bill the clerk shall issue a subpoena, returnable to the next term of the court, and directed to the sheriff of the county in which the defendant resides, requiring him to summon the defendant to appear and answer the bill.

SEC. 12. When there are several defendants residing in different counties, a separate subpoena shall be issued to each county, including all the defendants residing therein.

SEC. 13. Every subpoena or process for appearance shall be served on the person to whom it is directed, by giving him a copy thereof, or if he be not found, by leaving a copy with some white person of the family above the age of fourteen years, at the dwelling-house or usual place of abode of the defendant.

SEC. 14. A copy of the bill shall accompany the subpoena and be delivered to the defendant, or left at the dwelling-house or place of abode of the defendant. If there be more than one defendant, such copy shall be given to the defendant, who shall be first served with the subpoena.

SEC. 15. If any complainant or any person for him, shall file with his bill an affidavit, stating that part or all the defendants are non-residents of the territory, the clerk shall make an order directed to the non-residents, notifying them of the commencement of the suit, and stating briefly the object and general nature of the bill, and requiring them to appear on a day to be named therein, (allowing sufficient time for publication) to appear and answer the bill, or that the same will be taken as confessed.

SEC. 16. When a subpoena shall be issued against any defendant, and the sheriff to whom it is directed, shall make return that the defendant cannot be found, the court being first satisfied that process cannot be served, shall make an order as is required in the preceding section in the case of non-resident defendants.

SEC. 17. If any complainant shall allege in his bill that there are, or that he verily believes there are persons interested in the subject

TITLE 1.
Rule requiring answer to be overcome by two witnesses, &c., abolished.
Examination of parties, &c.

Admissions of fraud, &c., not to be used except for relief.

Set-offs.

Subpoena when issued.

Subpoenas when defendants reside in different counties:
Ib. How served.

Ib. Of copy of bill.

Notice by order non-residents to

When defendant cannot be found.

Ib. when names of parties are

TITLE 1.
unknown to complainant

matter of the bill, whose names he cannot insert therein because they are unknown to him, and shall describe the interest of such persons, and how derived so far as his knowledge extends, and shall verify such allegations by affidavit to his bill annexed, the court, or in vacation, the judge or clerk thereof, shall make an order as in case of non-residents, reciting moreover all allegations in relation to the interest of such unknown parties.

Publication of order.

SEC. 18. Every order against non-resident, absent, or unknown defendants, shall be published in some newspaper printed in this territory, for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

Complainant may serve copy of bill out of territory.

SEC. 19. The complainant may cause a copy of the bill with a notice of the suit, to be delivered to any known defendant residing or being out of this territory, at any place within the United States or their territories, two months before the commencement of the term at which such defendant is required to appear.

It. Delivery how made, &c.

SEC. 20. Such delivery may be made by any white person above the age of twenty-one years, who is a competent witness in the cause, and being proved by the affidavit or deposition of such person, shall be as effectual as the service of the subpoena, and the delivery of a copy of the bill in this territory.

Proceedings where several absent defendants, not served.

SEC. 21. When there are several defendants, some of whom have not been served with process, and do not appear, the complainant may proceed against those, if any, who do appear, unless the court for good cause shall otherwise direct; or he may continue the cause, and proceed to bring in the other defendants by process or publication, as the case may require.

Time allowed defendant to plead after subpoena.

SEC. 22. If the subpoena shall have been served thirty days before the return day thereof, the defendant shall file his plea, demurrer or answer to the bill, on or before the third day of the term at which the process is returnable. If it shall have been served less than thirty days before such return day, the defendant shall file his plea, demurrer or answer within thirty days next after such return day. In either case the court may for just cause, allow the defendant further time to file the same.

Proceedings when defendant neglects to plead.

SEC. 23. If the defendant shall not file his plea, demurrer or answer within the time prescribed by the last section, the bill may be taken as confessed, and the court may thereupon, at its discretion, render a decree thereon, or order the complainant to prove the allegations in his bill, or examine him on oath, touching such allegations, and such decree shall then be made, as the court shall deem just and equitable.

Interrogatories to complainant.

SEC. 24. The defendant, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him on oath or affirmation, unless excepted to, and the exception allowed; and if the complainant shall not answer such interrogatories within the time appointed by the court, his bill may be dismissed with costs.

His answer, evidence.

SEC. 25. The answer of the complainant to such interrogatories, shall be evidence in the cause, in the same manner as the answer of the defendant.

TITLE 1.
Answer to cross-bill.

SEC. 26. If a cross-bill be filed by the defendant, he shall put in his answer to the complainant's bill before the complainant shall be required to put in his answer to such cross-bill.

Rules by consent to be entered.

SEC. 27. All rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time or vacation.

Amendments how allowed.

SEC. 28. All proper amendments shall be made with or without costs, and on such equitable terms as the court may direct; and the court shall have the same power to allow amendments or the correction of mistakes, supply omissions or defects, extend the time within which an act may be done, and relieve a party from a judgment, decree, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect, and to allow any proceeding to be conformed to the provisions of the statute as in actions at law.

When at issue.

SEC. 29. Every cause in a court of chancery shall be deemed to be at issue on filing a replication, or at the expiration of the time therefor, if none be filed, nor further time allowed, and it shall not be necessary to issue a subpoena, or enter a rule to rejoin.

Issues of fact how tried.

SEC. 30. If there be an issue of fact which shall render the intervention of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered of record, and may be used on the hearing of the cause. In other cases, the court may order a reference to take and report the proofs and evidence in the cause, or take them in open court in term time or in vacation.

Depositions how taken.

SEC. 31. Depositions may be taken in cases in chancery, in the same manner as is provided in actions at law; and the rules of evidence shall be the same in chancery as at law.

Bill when dismissed.

SEC. 32. If the complainant shall not attend at the time appointed for the hearing of the cause, his bill may be dismissed with costs.

Proceedings if defendant does not appear.

SEC. 33. 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 shall thereupon make such decree as it shall deem equitable and just, or dismiss the complainant's bill.

When complainant to give bond after decree.

SEC. 34. In cases where a decree shall be made upon any bill in equity against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the re-payment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear as hereinafter provided not to have been due to him; and in case no security shall be given, no process or execution shall issue to compel the performance of the decree so made against such absent defendant; but the property of such absent defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as it may think just and proper respecting the same.

When defendant may

SEC. 35. In case any such absent defendant, against whom a

TITLE I. decree shall be made, his heirs, devisees, executors, administrators or assigns, as the case may require, shall, within one year after notice be given to him of such decree, or within three years after such decree shall have been made, if no notice as aforesaid shall have been given, petition the court touching the matter of such decree, and pay or secure, or cause to be paid, such costs as the court may think reasonable to order and direct; then, and in such case, the person aforesaid petitioning, may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had, as if such absent defendant had appeared in due season, and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of review 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, to compel the complainant to refund what he may wrongfully have recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding; but in case no petition shall be presented, or bill filed as before provided for, within one year from the time of notice as aforesaid shall be given, due proof thereof being made, or within three years from the decree, such decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree; and the decree shall be executed and performed as in cases where the defendant had duly appeared.

SEC. 36. The title to any real or personal property which shall have passed into the hands of a *bona fide* purchaser, by virtue of the former decree, shall not be affected by any proceedings under the last section.

SEC. 37. A final decree of a court of chancery shall have the same operation, force and effect from the time of signing the same, as a judgment at law.

SEC. 38. When a decree shall be made for a conveyance, release, or acquittance in any court of chancery, and the party against whom any such 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 acquittal had been executed conformably to such decree.

SEC. 39. A court of chancery, or a judge thereof in vacation, shall have power to enforce its decrees, orders and injunctions by attachment, sequestration, or by such process against the real or personal property, or against the person of any defendant, as the usages of chancery allow; and such process shall be obeyed, executed and returned by the sheriff or other officer to whom the same shall be directed, in like manner and under the same penalties as is provided in cases of process issuing from a court of law.

SEC. 40. When the cause of action shall survive, no suit in chancery shall abate by the death of one or more of the complainants or defendants; but upon satisfactory suggestion to the court, the cause shall proceed in favor of or against the surviving parties.

SEC. 41. When one or more of the complainants or defendants shall die, and the cause of action shall not survive, the suit shall

have decree opened.

When may file bill of review.

Rights of bona fide purchaser protected.

Final decree.

Decree to be considered executed.

Decrees how enforced.

Certain suits not to abate.

May abate as to some of the parties.

abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

SEC. 42. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but the court may, by order, direct the same to stand revived upon the petition of the complainant.

SEC. 43. A copy of such order shall be served upon the representatives against whom the revival is ordered, who shall be allowed thirty days after service, or such further time as the court may allow to appear and answer, or disclaim.

SEC. 44. If they shall not within the time prescribed in the last section, appear and answer or disclaim, the court, upon due proof of the service of such order, may cause their appearance to be entered, and in such case, the answer of the deceased party shall be deemed the answer of such representatives.

SEC. 45. If no answer have been filed by the deceased party, the court may order the bill to be taken as confessed against such representatives, or compel them to answer by attachment or otherwise.

SEC. 46. If a female party to a suit marry at any time before a final decree, her husband may, on his application, be made a complainant or defendant with her, on the order of the court, in which the suit is pending, or the judge thereof, to be granted on due proof of the marriage, and after notice to such female party, and the other parties to the suit.

SEC. 47. Such husband may also be made a party with his wife, on the application of any other party to the suit, by petition, upon proof of the marriage, and notice to such husband and wife, and the other parties to the suit. In such cases the husband may contest all facts in the same manner as if he had originally been made a party.

TITLE II.

Writs of *Ne Exeat*.

SEC. 48. *Ne exeat*, by whom granted.

49. Proceedings to obtain *ne exeat*.

50. When *ne exeat* may be discharged.

SEC. 48. The district court, as a court of chancery, or any judge thereof in vacation, may grant writs of *ne exeat*, to prevent any person from going out of the territory, until he shall give security.

SEC. 49. No writ of *ne exeat* shall be granted, but upon bill or petition filed, and affidavit of the complainant, or some other person, of the truth thereof; and the court or judge granting the writ, shall direct to be indorsed thereon, the amount of the security to be given to the defendant.

SEC. 50. If the defendant shall, by answer or otherwise, satisfy the court or judge granting such writ of *ne exeat*, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged.

TITLE 2.

Bill of revivor.

Order of revival to be served, &c.

Ib. Proceedings if no answer.

Ib.

Husband, may be made a party.

Ib., his privileges as a party.

Ne exeat, how granted.

Proceedings to obtain writ.

When writ may be discharged.

TITLE 8.

TITLE III.

Of Granting Injunctions.

SEC. 51. Injunction, when to issue.

52. How granted.

53. Not to stay proceedings at law unless undertaking be given.

54. Proceedings when injunction for recovery of money has been dissolved.

55. Proceedings of sheriff, when execution debtor obtains injunction.

When to issue.

SEC. 51. No writ of injunction shall be issued in any case, but upon bill or petition filed, verified by the oath of the person applying for such injunction, or by some competent witness.

How granted.

SEC. 52. Writs of injunction may be granted by the court or a judge thereof in vacation; but no injunction shall issue in any case, until the complainant shall execute a bond or undertaking, with one or more sureties, in such sum as the court or judge shall deem sufficient, conditioned that the complainant will abide the decision which shall be made thereon, and pay all sums of money, damages and costs that may be adjudged against him if the injunction should be dissolved.

Not to stay proceedings at law unless undertaking be given.

SEC. 53. No injunction shall operate to stay proceedings at law, before or after judgment, until the party obtaining the same shall give a bond or undertaking with sufficient security, to be approved by the clerk of the court, in the amount required by the court or judge granting such injunction, for the payment of all moneys and costs due, or to become due from the complainant in such action, or judgment at law, and all moneys and costs that may be decreed against him in case such injunction shall be dissolved.

Proceedings when injunction for recovery of money has been dissolved.

SEC. 54. In all cases where an injunction shall be allowed to stay proceedings at law in an action for the recovery of money only, upon the dissolution of the injunction and dismissal of the bill, the court shall render a decree in favor of the defendant (plaintiff at law) for the debt, or damages, interest and costs accruing in chancery, together with five per centum penalty on the amount of debt or damages and interest.

Proceedings of sheriff when execution debtor obtains injunction.

SEC. 55. When a sheriff or other officer has received the whole or any part of the money for the collection of which an execution has issued, and the person against whom such execution has issued, his executors or administrators shall obtain an injunction to stay the proceedings under such execution, the sheriff or other officer shall repay to the person against whom such execution issued, his executors, administrators or attorney of record, the money so received, or such part thereof as may be enjoined, retaining sufficient to pay the costs of the collection by execution; *Provided*, the money has not been paid over to the plaintiff, his executors, administrators or attorney of record.

TITLE IV.

Of the Foreclosure of Mortgages.

SEC. 56. When sale of premises may be decreed.

57. Payment of balance due after sale may be decreed.

58. No proceedings to be had at law during pendency of suit.

59. Payment of balance by surety of mortgagee may be decreed.

60. Proceedings at law to be stated in bill.

TITLE 4.

SEC. 61. In certain case, execution at law must have been returned.

62. Sales of mortgaged premises, when, and by whom to be made.

63. Rights of redemption by mortgagor, or lien creditor after sale.

64. Sheriff's deed, its effect, &c.

65. Proceeds of sale, how applied.

66. Surplus, when to be invested.

67. Defendant may dismiss bill, on paying portions, &c., due.

68. Proceedings if payment made after decree of sale.

69. Proceedings if no payment made; when part of premises to be sold.

70. Proceedings to collect subsequent instalments.

71. In what cases the whole of mortgaged premises to be sold.

72. Proceeds of sale, in such cases, how applied.

SEC. 56. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage and costs of suit.

SEC. 57. When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power not only to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary executions, as in other cases, against other property of the mortgagor.

SEC. 58. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceeding whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

SEC. 59. If the mortgage debt be secured by the obligation or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

SEC. 60. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof has been collected or paid.

SEC. 61. If it appear that any judgment has been obtained in a suit at law for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

SEC. 62. All sales of mortgaged premises under the decree of a court of chancery, shall be made by the sheriff in the county where the premises, or some part of them are situated, unless otherwise directed in the decree of sale.

SEC. 63. Sales of mortgaged premises shall be made by the

Sale of premises may be decreed.

Payment of balance due after sale may be decreed.

How compelled.

No proceedings to be had at law during pendency of suit.

Payment by surety of mortgagor. 9 Paige 91.

Bill to state proceedings at law. 4 Paige 550; 8 do. 648.

When execution must be returned. 4 Paige 550.

Sales by whom and when to be made.

TITLE 4.

1b. Rights of redemption by mortgagor or lien creditor after sale. Sheriff's deed; its effects, &c.

sheriff or other officer, in the same manner as other sales of real property on execution, unless otherwise directed by the court; and the mortgagor, or any lien creditor shall have the same rights of redemption after a sale.

SEC. 64. After the right of redemption shall have passed, deeds shall be executed by the sheriff or other officer, which shall vest in the purchaser the same estate, and no other or greater than would have vested in the mortgagee if the equity of redemption had been foreclosed; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against either of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Proceeds of sale.

SEC. 65. The proceeds of every such sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

Surplus when to be invested.

SEC. 66. If such surplus, or any part thereof, shall remain in the said court for the term of three months without being applied for, the district judge may direct the same to be put out at interest, subject to the order of the court for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

When bill to be dismissed on payment of sum due, &c. 2 Coms. 260.

SEC. 67. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest, with costs.

Proceedings to stay in certain cases

SEC. 68. If after a decree of sale entered against a defendant in such case, he shall bring into court the principal and interests due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court upon a subsequent default in the payment of any portion or instalment of the principal, or any interest thereafter to grow due.

When part of premises to be sold, 2 Paige 302.

SEC. 69. If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the court may direct a reference to a master to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony: and if it shall appear that the same can be sold in parcels without injury to the interests of the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on the mortgage, with costs: and such decree shall remain as security for any subsequent default.

Subsequent instalments, &c.

SEC. 70. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principal, or of any interest due upon such mortgage, the court may, upon petition of the complain-

TITLE 5.

ant, by a further order founded upon such first decree, direct a sale of so much of the mortgage premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon: and the same proceedings may be had as often as a default shall happen.

When whole of premises to be sold

SEC. 71. If in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall in the first instance, be entered for a sale of the whole premises accordingly.

Application of proceeds.

SEC. 72. In such case the proceeds of such sale shall be applied as well to the interest portion or instalment of the principal due, as towards the whole, or residue of the sum secured by such mortgage and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the legal interest for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the instalments or portions of the principal, or the interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

TITLE V.

Miscellaneous Provisions.

SEC. 73. Master in chancery, how appointed, his powers, compensation.

74. Receiver not to be appointed until after notice given.

75. Supreme court may prescribe rules for court of chancery.

76. Appeals from chancery to supreme court.

77. Act when to take effect.

SEC. 73. Whenever it shall be deemed necessary, the court may appoint a master in chancery; such master shall be sworn and give bond if required, for the faithful performance of the duties assigned him, and shall have power to administer oaths in any proceeding before him, and shall receive for his services such reasonable compensation as the court may allow.

Master in chancery how appointed; his compensation.

SEC. 74. No receiver shall be appointed in any cause commenced or pending in chancery, until after notice is given to the adverse party.

Receiver how appointed.

SEC. 75. It shall be lawful for the supreme court from time to time, to make, alter or amend, or revoke any rule of practice, so as to obviate doubts, advance justice and expedite suits in the courts of chancery, so that the same be not contrary to the provisions of any statute.

Supreme court may prescribe rules for chancery.

SEC. 76. Any person aggrieved by the final decision in a suit in equity, may appeal to the supreme court within the same time and under the same regulations as are prescribed for prosecuting writs of error at law, so far as the same may be applicable, but without impairing the general discretionary powers of courts of equity in cases of appeal.

Appeals from chancery to supreme court.

SEC. 77. This act shall take effect and be in force from and after the first day of May next.

Act when to take effect.

Passed January 23d, 1854.

CHAPTER 2.

AN ACT TO DEFINE CRIMES AND MISDEMEANORS, AND REGULATE CRIMINAL PROCEEDINGS.

CHAPTER I.

OF CRIMES AND PUNISHMENTS.

- SEC. 1. Crime or public offence defined.
 2. Felony defined.
 3. Misdemeanor defined.
 4. All felonies and misdemeanors indictable, unless, &c.

Definition of crime.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That a crime or public offence, is an act or omission forbidden by law, and punishable by death, imprisonment, fine, removal from office, or disqualification to hold or enjoy any office of honor, trust or profit, under the laws of this territory.

Def. of felony.

SEC. 2. A felony is a public offence punishable with death, or which is or may be punishable by imprisonment in the penitentiary.

Def. of misdemeanor. Felonies and misdemeanors indictable.

SEC. 3. Every other public offence is a misdemeanor.
 SEC. 4. All felonies and misdemeanors are, unless some other express provision is made by law, indictable offences.

CHAPTER II.

OF RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENCES.

- SEC. 1. Person not held to answer except on presentment or indictment.
 2. Rights of defendants in criminal actions.
 3. Person not to be convicted, except upon confession or verdict of jury.
 4. No person held to answer a second indictment, &c.
 5. Technical acquittal, not a bar to a second indictment.
 6. Person not to be punished for crime, until after a legal conviction.

Persons not held to answer unless on indictment or presentment.

SEC. 1. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury; except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia, when in actual service in times of war, or public danger.

Rights of defendant.

SEC. 2. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial, by an impartial jury of the county wherein the offence shall have been committed, except when the crime is committed on a lake, river, bay, sound, or other stream or body of water situate in two or more counties; or where the boundary line of counties are not distinctly marked out, and there is doubt as to the county in which the crime was committed; then

the trial may be had in any county bordering on such lake, river, bay, sound, or other stream or body of water, and opposite the place where the crime was committed, or in either county having such uncertain boundaries.

SEC. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

Mode of conviction.

SEC. 4. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by the jury, upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

No person held to answer twice, &c.

SEC. 5. If any person indicted for an offence, shall on his trial be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned again on a new indictment, and he may be tried and convicted for the same offence, notwithstanding such former acquittal.

Technical acquittal not a bar to second indictment.

SEC. 6. No person charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the case, and of the person.

Conviction to precede punishment.

CHAPTER III.

OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

- SEC. 1. As to what constitutes murder in the first degree.
 2. & 3. Murder in the second degree.
 4. What proof of malice necessary to constitute murder.
 5. Degree of guilt, how ascertained.
 6. Homicides less than murder.
 7. Justifiable homicide by public officers.
 8. Justifiable homicide by individuals.
 9. Excusable homicide.
 10. Verdict of not guilty to be rendered in certain cases.
 11. 12, 13, 14, & 15. Manslaughter.
 16. Punishment of manslaughter.
 17. When person tried for murder, may be convicted of manslaughter.
 18. Punishment of rape.
 19. Punishment for compelling woman to marry.
 20. Punishment of mayhem.
 21. Punishment for killing in a duel, in territory.
 22. Punishment of accessories in duel.
 23. Punishment of principal, &c. for duelling out of territory.
 24. Punishment for engaging in duel, challenging, &c.
 25. Punishment for accepting, carrying a challenge, &c.
 26. Punishment for posting another, &c.
 27. Punishment for being armed and beating another with cowhide.
 28. Punishment for assault, with intent to commit murder.
 29. Punishment for attempt to poison.
 30. Punishment for robbing, being armed.
 31. Punishment for assault, with intent to rob, &c., being armed.
 32. Punishment for robbing, not being armed.
 33. Punishment for attempt to rob, not being armed.
 34. Punishment for attempting to extort money by threats.

CHAPTER 8.

Murder in the first degree.

SEC. 1. If any person shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery or burglary, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death.

Murder in the second degree.

SEC. 2. If any person shall, purposely and maliciously, but without deliberation and premeditation; or being engaged in the commission of any felony, other than rape, arson, burglary and robbery, without any desire to effect death, kill another, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor during life.

Ib.

SEC. 3. If any person shall, by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual, kill another, such person shall be guilty of murder in the second degree, and shall upon conviction, be imprisoned in the penitentiary, and kept at hard labor during life.

What proof of malice necessary to constitute murder.

SEC. 4. There shall be some other evidence of malice, than the mere proof of the killing, to constitute murder in the first or second degree, unless the killing was effected in the committing, or attempting to commit a felony; and deliberation and premeditation, when necessary to constitute murder in the first degree, shall be evidenced by poisoning, lying in wait, or some other express proof that the design was formed and matured in cool blood, and not hastily upon the occasion.

Degree of guilt, how ascertained.

SEC. 5. Upon the trial of an indictment for murder, the jury, if they find the defendant guilty, shall inquire and by their verdict ascertain whether he be guilty of murder in the first or second degree; but if such defendant be convicted upon his own confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of murder, and award sentence accordingly.

Homicides less than murder.

SEC. 6. The killing of a human being by the act, procurement, or omission of another, in cases where such killing shall not be murder, according to the provisions of this chapter, is either justifiable or excusable homicide, or manslaughter.

Justifiable homicide by public officers.

SEC. 7. Such homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,
3. When necessarily committed in re-taking felons, who have been rescued, or who have escaped; or,
4. When necessarily committed in arresting felons fleeing from justice.

Ib. by individuals.

SEC. 8. Such homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person shall be;

CHAPTER 9.

2 Coms. 193.

2. When committed in the lawful defence of such person, or of his, or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished;

3. When necessarily committed in attempting by lawful ways and means, to apprehend any person, for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

SEC. 9. Such homicide is excusable when committed:

Excusable homicides.

1. By accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent; or,

2. By accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage having been taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner.

SEC. 10. Whenever it shall appear to the jury, on the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances or in cases where by law, such homicide was justifiable or excusable, the jury shall render a general verdict of not guilty.

Verdict of not guilty in certain cases

SEC. 11. Manslaughter shall consist in the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary, in the commission of an unlawful act, or a lawful act, without due caution or circumspection.

Manslaughter.

SEC. 12. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

SEC. 13. Any person who shall administer to any woman pregnant with a quick child, or prescribe for any such woman, or advise, or procure any such woman, to take any medicine, drug, or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child, or of such mother, be thereby produced, be deemed guilty of manslaughter.

Ib. 2 Barb. 216.

SEC. 14. If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person which shall produce the death of such other person, he shall be deemed guilty of manslaughter.

SEC. 15. Every other killing of a human being by the act, procurement, or culpable negligence of another, when such killing is not justifiable or excusable, or is not declared in this chapter to be murder, shall be deemed manslaughter.

SEC. 16. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary not less than one nor more than ten years, and by fine not exceeding five thousand dollars.

Punishment for manslaughter.

CHAPTER 3.

When person tried for murder may be convicted of manslaughter.

Punishment of rape.

Compelling woman to marry, &c.

Punishment of mayhem.

Killing in a duel.

Accessories.

Duel out of territory.

Engaging in duel, challenging, &c.

Accepting or carrying challenge, &c.

SEC. 17. Any person may be convicted of manslaughter under an indictment for murder, if the evidence fail to prove the latter, and establishes the former offence.

SEC. 18. Any person who shall be convicted of a rape, either:
1. By carnally and unlawfully knowing any female child under the age of ten years; or,

2. By forcibly ravishing any woman of the age of ten years, or upwards, shall be punished by imprisonment in the penitentiary not more than twenty nor less than three years; and if the rape shall have been committed upon a sister or a daughter, then the imprisonment shall be for life.

SEC. 19. Any person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than seven years.

SEC. 20. Every person who, from premeditated design, evinced by laying in wait for the purpose, or in any other manner; or with intention to kill, or commit any felony, shall:

1. Cut out or disable the tongue; or
2. Put out an eye; or,
3. Slit the lip, or slit or destroy the nose; or,
4. Cut off or disable any limb or member, on purpose, upon conviction thereof, shall be imprisoned in the penitentiary, not less than one nor more than twenty years.

SEC. 21. Every person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder in the second degree.

SEC. 22. Every person who shall have been the second of either party, in such duel, as is mentioned in the preceding section, and shall have been present when such wound shall have been inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact, to the crime of murder in the second degree.

SEC. 23. Every person who shall fight a duel, or act as second, or surgeon at the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office in this territory, thereafter.

SEC. 24. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the penitentiary not more than ten, nor less than two years, and shall be incapable of voting or holding any office of trust or profit under the laws of this territory.

SEC. 25. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not; and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, second or surgeon, or who shall advise, encourage or promote such duel,

shall be liable to imprisonment in the penitentiary not less than one nor more than two years.

SEC. 26. If any person shall post another, or in writing or print, shall use any reproachful and contemptuous language to, or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be liable to imprisonment in the penitentiary not more than one year, nor less than six months.

SEC. 27. If any person shall assault and beat another with a cowhide, stick or whip, having at the time in his possession a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction, be imprisoned in the penitentiary not less than one or more than ten years.

SEC. 28. If any person shall assault another with intent to murder or to maim, or to disfigure his person in any way, or to commit a rape, he shall be liable to imprisonment in the penitentiary not more than five years, nor less than one year, and by fine not exceeding one thousand, nor less than one hundred dollars.

SEC. 29. If any person shall attempt to commit the crime of murder, by poisoning, or by any other means not constituting an assault with intent to murder, every such offender, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one, nor more than ten years.

SEC. 30. If any person shall assault another, and shall feloniously rob, steal, and take from his person, any money, or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed, he shall wound or strike the person robbed, he shall be liable to punishment by imprisonment in the penitentiary, not more than ten nor less than three years.

SEC. 31. If any person, armed with a dangerous weapon, shall assault another with intent to rob or murder, upon conviction, he shall suffer imprisonment in the penitentiary not more than five years, nor less than one year.

SEC. 32. If any person shall by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be liable to punishment by imprisonment in the penitentiary not more than three years, nor less than one year.

SEC. 33. If any person not armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or steal, he shall be subject to punishment by imprisonment in the penitentiary not more than two years, nor less than six months.

SEC. 34. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever; or to compel the person so threatened to do any act against his will, he shall be punished upon conviction, by imprisonment not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars.

CHAPTER 3.

Posting another, &c.

Ib., armed person beating another with cowhide.

Assault with intent to commit murder.

Attempt to poison.

Robbing, being armed.

Assault with intent to rob, &c., being armed.

Robbing, not being armed.

Attempt to rob, not being armed.

Attempt to extort by threats, &c. § 2 Barb. 429.

CHAPTER 4.

CHAPTER IV.

OF OFFENCES AGAINST PROPERTY.

- Sec. 1. Punishment for burning dwelling in night time.
 2. Punishment for burning dwelling in day time.
 3. Punishment for burning church, court-house, vessel, &c., in night time.
 4. Punishment for burning same in day time.
 5. Punishment for burning or attempting to burn certain buildings day or night.
 6. Punishment for burning lumber, hay, &c., day or night.
 7. Married woman liable.
 8. Punishment for burglary, being armed or making assault.
 9. Punishment for burglary, not being armed or making assault.
 10. Punishment for breaking in office, &c., at night.
 11. Punishment for entering house at night, &c., without breaking, &c.
 12. Punishment for larceny in dwelling-house, &c.
 13. Punishment for simple larceny, exceeding \$35.
 14. Punishment for stealing horse, mule, &c.
 15. Punishment for defacing mark on cattle.
 16. Jurisdiction of justice in larcenies.
 17. Buying and receiving stolen property.
 18. Jurisdiction of justice of peace in case of buying, &c., stolen property.
 19. Not necessary in prosecuting to aver principal's conviction.
 20. Officer arresting to secure goods.
 21. Prosecutor and officer to be paid.
 22. Embezzlement by clerks, agents, &c.
 23. Embezzlement by carriers, &c.
 24. Embezzlement or fraudulently selling by warehousemen, &c.
 25. Embezzlement or loaning, &c., of public moneys by officers and others.
 26. Punishment for embezzling public money.
 27. Public moneys when to be paid over; officer cannot set off private demand.
 28. Punishment for uttering false receipt by warehousemen, millers, &c.
 29. Punishment for falsely personating another.
 30. Punishment for obtaining goods, &c., under false pretence.
 31. Frauds at common law, how punishable.
 32. Maliciously killing or maiming cattle, injuring property, &c.
 33. Punishment for selling lands without title.
 34. Malicious injury to mill-dams, &c.
 35. Malicious injury to bridges.
 36. Maliciously burning prairies, woods, &c.
 37. Maliciously injuring fruit or ornamental trees, fences, crops, &c.
 38. Malicious injury to monuments, guide-boards, &c.
 39. Trespassing in gardens, improved land, &c.
 40. Jurisdiction of justice.

Burning
dwelling in
night time.

SEC. 1. Any person who shall maliciously and wilfully burn, in the night time the dwelling-house of another, or shall, in the night time, wilfully and maliciously set on fire any other building, owned by himself or another, by the burning whereof such dwelling-house shall be burned in the night time, shall suffer the same punishment, provided for the crime of murder in the second degree; but if at the time of committing the offence there were no person lawfully residing in the dwelling-house so burned, he shall be subject to imprisonment in the penitentiary not more than ten, nor less than three years.

Ib. In day
time.

SEC. 2. Every person who shall wilfully and maliciously burn, in the day time, the dwelling-house of another, or any building adjoining such dwelling, and shall wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling-house shall be burned in the day time, or shall in the day time wilfully and maliciously set on fire any building

CHAPTER 4.

owned by himself or another, by the burning whereof such dwelling-house shall be burned in the night time, shall be liable to imprisonment in the penitentiary not more than fifteen nor less than five years.

SEC. 3. Any person who shall wilfully and maliciously burn in the night time, any meeting-house, church, court-house, town-house, college, academy, jail, or other building erected for public uses, or any steamboat, ship or other vessel, or any express office, warehouse, store, manufactory or mill of another, or any barn, stable, shop or office of another, within the curtilage of any dwelling-house or any other building, by the burning whereof any building mentioned in this section shall be burned in the night time, shall be subject to punishment by imprisonment in the penitentiary not more than fifteen nor less than five years.

Burning
church,
court-house,
vessel, &c.,
in night
time.

SEC. 4. Every person who shall wilfully and maliciously burn in the day time, any building mentioned in the next preceding section, the punishment for which, if burned in the night time, would be imprisonment in the penitentiary not more than fifteen nor less than five years, shall be punished by imprisonment in the penitentiary not more than eight, nor less than four years.

Ib. In day
time.

SEC. 5. Every person who shall wilfully and maliciously burn any building whatsoever of another, other than are mentioned in the preceding sections of this act, or any bridge, lock, dam or flume, shall be liable to imprisonment in the penitentiary not more than eight nor less than four years; and every person who shall make an unsuccessful attempt to commit either of the offences mentioned in this or the preceding sections of this chapter, shall be liable to imprisonment in the penitentiary for a term not exceeding five years nor less than one year.

Ib. Or at-
tempting to
burn certain
buildings,
&c., day or
night.

SEC. 6. Every person who shall wilfully and maliciously burn any pile or parcel of boards, timber, or other lumber, or any stack of hay, grain or other vegetable product, severed from the soil, but not stacked, or any standing grain, grass or other standing product of the soil, shall be subject to imprisonment in the penitentiary not more than two years, nor less than six months.

Ib. Lumber,
hay, &c.

SEC. 7. The preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property burned or set on fire may belong partly or wholly to her husband.

Married
woman li-
ble.

SEC. 8. Every person who shall break and enter any dwelling-house in the night time, with the intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent, shall break any such dwelling-house in the night time, any person then being lawfully therein, and the offender being armed with a dangerous weapon, at the time of such breaking or entering, or so arming himself in such house, or making any actual assault on any person lawfully therein, shall be liable to punishment by imprisonment in the penitentiary not more than twelve nor less than four years.

Burglary, be-
ing armed
or making
assault.

SEC. 9. Every person who shall break and enter a dwelling-house in the night time, with such intent as is mentioned in the last preceding section, or who having entered with such intent, shall break such dwelling-house in the night time, the offender

Burglary, not
being armed
or making
assault.

CHAPTER 4. not being armed, nor arming himself in such house with a dangerous weapon nor making an assault upon any person being then lawfully therein, shall be liable to imprisonment in the penitentiary not more than five nor less than two years.

SEC. 10. Every person, who shall break and enter, in the night time, any office, shop, or warehouse, not adjoining to, or occupied with a dwelling-house, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, upon conviction, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

SEC. 11. Every person who shall enter in the night time without breaking, or shall break and enter in the day time, any dwelling house or outhouse thereto adjoining, and occupied therewith, or any office, shop, store or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or other felony, upon conviction, shall be punished by imprisonment in the penitentiary not more than three years nor less than six months.

SEC. 12. Every person who shall commit the crime of larceny in any dwelling-house, office, shop, warehouse, store, ship, steamboat or vessel, or shall break and enter in the night time, or day time, any meeting-house, church, court-house, town-house, college, academy or other public buildings erected for public use, and steal therein, upon conviction, shall be punished by imprisonment in the penitentiary, not more than seven years, nor less than one year, or by fine not exceeding five hundred dollars.

SEC. 13. Every person who shall commit the crime of larceny, by stealing the property of another, any money, goods, chattels, or any bank note, bond, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts for, or concerning money or goods due, or to become due, or to be delivered, or any deed or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen shall exceed the value of thirty-five dollars, shall be liable to punishment by imprisonment in the penitentiary not more than five years nor less than one year; that if any person shall steal any money, or other personal goods, or chattels, the property of another—the value of thirty-five dollars or less—the person so offending, shall, upon conviction thereof, be fined in any sum not to exceed two hundred dollars, to be paid into the treasury of the county in which the crime is committed; and shall be liable to confinement in the county jail, at the discretion of the court, not to exceed twenty days.

SEC. 14. Every person who shall commit the crime of larceny, by stealing any horse, mare, gelding, foal or mule, of any value, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than fifteen nor less than three years.

SEC. 15. If any person shall wilfully and knowingly make, alter, or deface any artificial ear-mark or brand upon any horse, mare, gelding, foal, mule, ass, sheep, goat, swine, bull, cow, steer or heifer, the property of another, intending thereby to convert the same to his own use, he shall be deemed guilty of larceny, and upon conviction thereof, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

Breaking in-
to office, &c.,
at night.

Entering
house at
night, &c.,
without
breaking,
&c.

Larceny in
dwelling-
house, &c.

Simple lar-
ceny ex-
ceeding \$35.

Stealing
horse, mule,
&c.

Defacing
mark
cattle.

tion thereof, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

SEC. 16. Every justice of the peace shall have jurisdiction concurrent with the district court, of all the larcenies mentioned in the next preceding section of this chapter, when the money or property stolen shall be alleged to exceed ten and less than twenty dollars; and exclusive jurisdiction of all larcenies whatever, when the money or other property stolen, shall not be alleged to exceed the value of ten dollars, in all which cases the punishment shall be by fine not exceeding fifty, nor less than ten dollars, or by imprisonment in the county jail for the term of three months, saving to every person who shall be convicted before the justice, the right to appeal as in other cases.

SEC. 17. Every person who shall buy, receive, or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than four years, nor less than one year, or by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than one hundred dollars.

SEC. 18. Every justice of the peace shall have jurisdiction concurrent with the district court, or exclusive, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods or other property, in all cases, in which they would have jurisdiction of a larceny of the same goods, or other property; and the punishment of buying, receiving, or aiding in the concealment of such goods or other property, shall be the same as in a case of a larceny of the same goods, or other property, with the same right of appeal on conviction.

SEC. 19. In any prosecution for the offence of buying, receiving, or aiding in the concealment of stolen money, or other property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

SEC. 20. The officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall, if he be able, secure the property alleged to have been stolen, and shall be answerable for the same; and he shall annex a schedule thereof to his return of the warrant, and upon the conviction of the offender, the stolen property shall be restored to the owner.

SEC. 21. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

SEC. 22. If any officer, agent, clerk, or servant of any incorporated company, or if any clerk, agent, or servant of any private person, or of any co-partnership, except apprentices and other persons under the age of sixteen years, shall embezzle, or fraudulently convert to his own use, or shall take and secrete with the intent to embezzle and convert to his own use, without consent of his employers or master, any money or property of another, which shall have come into his possession, or be under his care by virtue

CHAPTER 4.
Jurisdiction
of justice of
peace.

Buying, re-
ceiving, &c.,
stolen prop-
erty. 12
Wen. 76; 3
Hill, 196.

Jurisdiction
of justice.

Not neces-
sary to aver
principal's
conviction.

Officer ar-
resting
to secure goods.

Prosecutor
and officer
to be paid.

Embezzle-
ment, 10
Wen. 298;
5 do. 150, 581;
1 Denio 76.

CHAPTER 4. of such employment, he shall be deemed by so doing to have committed the crime of larceny.

Embezzlement by carriers, &c. SEC. 23. If any carrier, or other person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall have been intrusted with such property, shall embezzle, or fraudulently convert to his own use, or shall secrete with intent to embezzle and convert to his own use, any money, goods, or property, either in the mass, as the same were delivered, or otherwise, and before delivery of such money, goods, or property, at the places where or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

Embezzlement, &c., by warehousemen, &c. SEC. 24. Any warehouseman, storage, forwarding, commission merchant, or miller, or his or their agents, clerks or servants, who shall embezzle or fraudulently convert to his or their own use, or fraudulently sell or otherwise dispose of for their or his own gain, profit or advantage, without the consent of the owner thereof, any grain, flour, pork, beef, wool, or other goods, wares or merchandise, which shall have been received by such warehouseman, miller, or storage, forwarding or commission merchant, to be stored for hire or for any other purpose, shall be deemed to have committed the crime of larceny.

Embezzlement or loaning, &c., of public moneys by officers and others. SEC. 25. If any person having in his possession any money belonging to this territory, or any county, town, city, or other municipal corporation or school district; or in which this territory, or any county, town, city, village, or corporation or school district has any interest; or if any collector or treasurer of any county, incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the territory, or any other person holding an office under any law of this territory, or any officer of any incorporated company, who now is by virtue of his office, or shall hereafter be intrusted with the collection, safe keeping, receipt, transfer or disbursement of any tax, revenue, fine or other money, shall convert to his own use in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money intrusted to him as aforesaid, or who shall wilfully neglect or refuse to pay over the same or any part thereof, according to the provisions of law, so that he shall not be able to meet the demands of any person lawfully demanding the same, whether such demand be made before or after the expiration of his office, he shall be deemed and adjudged guilty of an embezzlement.

Punishment for embezzling public money. SEC. 26. Any person who shall be deemed guilty of embezzling any money, prohibited by the last preceding section, not exceeding in amount the sum of one hundred dollars, shall, upon conviction thereof, be punished by imprisonment in the county jail not more than twelve nor less than three months; and any person convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year, and by a fine in each case of twice the amount so embezzled; and if the court cannot determine from the verdict of the jury, or otherwise, the amount of the sum embezzled, they shall impose such fine as in their discretion shall be adequate,

and corresponding as nearly as possible with the penalty imposed by this section; and any refusal by an officer to pay any sum lawfully demanded, shall be deemed an embezzlement of the same so demanded.

SEC. 27. No officer or other person mentioned in the twenty-fifth section of this chapter, shall be permitted to set up any private demand, as a set-off against any money he may have received by virtue of his office; and all justices of the peace, clerks of the district court, sheriffs and other officers, shall pay into the respective treasuries all the money collected on fines, within thirty days after said moneys shall have been collected.

SEC. 28. If any warehouseman, miller, or storage, forwarding, or commission merchant, or his or their servants, agents or clerks, shall wilfully and fraudulently make or utter any receipt or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them or either of them, or his or their employers, of any grain, flour, pork, beef or wool, or other goods, wares, or merchandise which shall not have been so received, or delivered into such mill, warehouse, store or other building, previous to the making and uttering of such receipt, or other written evidence thereof, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not more than two years, nor less than one year.

SEC. 29. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny.

SEC. 30. If any person shall designedly, by any false pretence, or by any privy, or false token, and with intent to defraud, obtain from any other person any money, or goods, wares or merchandise, or shall obtain with such intent the signature of any person, to any written instrument, the false making whereof would be punishable as forgery, he shall be subject to imprisonment in the penitentiary not more than five years, nor less than one year.

SEC. 31. Any person convicted of any gross fraud or cheat at common law, shall be punished by fine not exceeding one thousand, nor less than fifty dollars, and the party committing such fraud shall be liable to the party defrauded in double damages.

SEC. 32. Every person who shall wilfully and maliciously kill, maim, or disfigure any horse, cow, ox, sheep, or other beast of another person; or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent that the same may be taken or swallowed by them; or shall wilfully and maliciously destroy or injure the personal property of another, in any manner, by any means, not particularly mentioned or described in this chapter, upon conviction thereof, shall be punished by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

SEC. 33. If any person shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same, with intent to de-

CHAPTER 4.

Officer cannot set off private demand: public moneys when to be paid over.

False receipt &c. by warehousemen, millers, &c.

Falsely personating another.

False pretence. 13 J. R. 292; 14 do. 371; 9 Cow. 578; 9 Wen. 180; 11 do. 18; 13 do. 311; 14 do. 31, 560; 17 do. 541. (a)

Frauds at common law.

Maliciously killing or maiming cattle, or injuring personal property.

Selling lands without title.

CHAPTER 4. fraud any person whatever, he shall, upon conviction thereof, be imprisoned in the penitentiary not more than two years, nor less than six months.

Injuring mill
dams, &c.

SEC. 34. Every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash-boards or other appurtenances thereof, or of the wheels, mill-gear or machinery of any mill; or shall wilfully or wantonly, and without color of right, draw off the water contained in any mill-pond, reservoir, canal or trench, shall, upon conviction thereof, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months, or by fine not exceeding four hundred, nor less than fifty dollars.

Injuries to
bridges,
roads, &c.

SEC. 35. Every person, who shall wilfully, or maliciously break down, injure, remove or destroy any public or toll-bridge, railroad, or plank-road, or any turnpike or plank-road gate, or any lock, culvert, or embankment of any canal, or shall maliciously, or wilfully make any aperture or breach in any such embankment, with intent to destroy or injure the same, upon conviction shall be imprisoned in the penitentiary for not more than three years, nor less than six months, or pay a fine not exceeding six hundred, nor less than fifty dollars.

Burning
woods, prair-
ies, &c.

SEC. 36. If any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, prairie or other grounds, other than his own, or shall intentionally or by neglect permit the fire to pass his own premises or grounds to the injury of any other person or persons, every person so offending, shall on conviction thereof, for every such offence, be fined in a sum not exceeding five hundred, nor less than ten dollars.

Injuring
fruit or orna-
mental trees
&c.

SEC. 37. Every person who shall wilfully and maliciously, or wantonly and without cause, cut down and destroy, or by girdling, lopping or otherwise, shall injure any fruit-tree or any other trees not his own, standing or growing for shade, ornament, or other useful purposes; or shall maliciously or wantonly break the glass, or any part of it, in any building not his own; or shall maliciously break down any fence belonging to or enclosing land not his own; or shall maliciously throw down or open any bars, gate or fence, and leave the same down or open; or shall maliciously and injuriously sever from the freehold of another any produce thereof, or anything attached thereto, shall upon conviction be imprisoned in the county jail not more than one year, nor less than three months, or pay a fine not exceeding two hundred, nor less than ten dollars.

Injuring
monuments,
guide-boards
&c.

SEC. 38. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any tract or lot of land, or any tree marked for that purpose; or shall so break down, injure, remove or destroy any mile-stone, mile-board, or guide-board erected upon any highway or other public way, turnpike, railroad or plank-road; or shall wilfully or maliciously deface or alter the inscription on any such stone or board; or shall wilfully or maliciously mar or deface any building or any sign-board, or shall extinguish any lamp, or break or remove any lamp or lamp-post, or any railing or post erected on any bridge, sidewalk, street, highway, court, or passage, shall upon conviction be punished by fine not exceed-

ing five hundred, nor less than fifty dollars, or by imprisonment in the county jail not more than six, nor less than three months.

SEC. 39. Every person who shall wilfully commit any trespass by entering upon the garden, orchard, or other improved land of another, without permission from the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall, upon conviction, be punished by fine not exceeding fifty, nor less than three dollars.

Trespass on
improved
lands.

SEC. 40. Every justice of the peace shall have concurrent jurisdiction in his own county, with the district court, of all offences mentioned in the last three preceding sections of this chapter, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass shall not exceed the sum of one hundred dollars, and in such case the punishment shall be by fine not exceeding one hundred, nor less than three dollars.

Jurisdiction
of justice.

CHAPTER V.

OF FORGERY AND COUNTERFEITING.

- SEC. 1. Forgery of records, deeds, &c.
2. Uttering forged records or instruments.
3. Forging notes, &c., issued by officer.
4. Forging bank notes, &c.
5. Having counterfeit bills in possession, with intent to pass.
6. Passing counterfeit bills, &c.
7. Making or having tools, &c., for counterfeiting.
8. Testimony of president, &c., of banks, may be dispensed with.
9. Sworn certificate of certain officers, evidence.
10. Fraudulently joining instruments, &c.
11. Affixing fictitious signature.
12. In indictment for forgery what allegation sufficient.
13. Counterfeiting coin or having same in possession, with intent, &c.
14. Making or keeping dies, moulds, &c., for coining.
15. Punishment on conviction of second offence.

SEC. 1. Every person who shall falsely make, alter, forge, or counterfeit any public record, or any certificate, return, or attestation of any clerk of the court, register, notary public, justice of the peace, or any other public officer, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof; or any charter, deed, will, testament, bond, writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance, or discharge for money or other property, or any acceptance of a bill of exchange, indorsement or assignment of a bill of exchange, promissory note, or any accountable receipt for money, goods, or other property, with intent to injure or defraud any person, upon conviction, shall be punished by imprisonment in the penitentiary not more than ten nor less than two years, or by a fine of not more than ten thousand, nor less than one hundred dollars.

Forgery
of records,
deeds, &c.

SEC. 2. Every person who shall utter and publish as true, any false, forged, or altered record, deed, instrument, or other writing, mentioned in the next preceding section, knowing the same to be

Uttering
forged re-
cord, &c.

CHAPTER 5. false, forged, or altered, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten years nor less than one year.

Forgering notes, &c. issued by officer.

SEC. 3. Every person who shall falsely make, alter, forge, or counterfeit any note, issued by any commissioner or other officer authorized to issue the same, for any debt of this territory, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten nor less than three years.

To. Bank notes, &c.

SEC. 4. Every person who shall make, alter, forge or counterfeit any bank bill, promissory note, draft, or other evidence of debt, issued by any corporation, or company, duly authorized for that purpose by the laws of the United States, of any state of the United States, of this territory, or of any territory of the United States, or of any other state, government or country, with intent to injure or defraud, shall, upon conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Having counterfeit notes in possession. 21 Wen. 309.

SEC. 5. Every person who shall have in his possession any forged, counterfeit or altered bank bill, promissory note, draft, or other evidence of debt, issued, or purporting to have been issued, as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to have been so forged, counterfeited or altered, as aforesaid, shall, upon conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

Passing counterfeit notes, &c.

SEC. 6. Every person who shall utter or pass, or tender in payment as true, any false, altered, forged, or counterfeit note, certificate, or bill of credit for any debt of this territory, or bank bill, promissory note, draft or other evidence of debt, issued or purporting to have been issued, as is mentioned in the fourth section of this chapter, knowing the same to be false, altered, forged, or counterfeited, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Making or having tools, &c., for counterfeiting, with intent, &c.

SEC. 7. Every person who shall engrave, make, or begin to engrave, make, or mend any plate, block, press, or other tool, instrument, or other implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate, or other bill of credit, in the similitude of the notes, certificates, or bills of credit, issued by lawful authority for any debt of this territory, or any false, counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established within the United States, or any territory thereof, or within any other government or country; and every person who shall have in his possession any such plate or block engraved in any part, or any press, or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills, or notes, shall, on conviction, be punished by imprisonment in the penitentiary not more

than five years, nor less than one year, or by a fine of not more than five thousand, nor less than five hundred dollars.

CHAPTER 5.

SEC. 8. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and false bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

Testimony of president, &c. of bank, when dispensed with.

SEC. 9. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof, with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such note, certificate, bill of credit, or security purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeited.

Sworn certificate of certain officers, evidence.

SEC. 10. If any person shall fraudulently connect together different parts of several bank notes, or other genuine instruments, in such manner as to produce an additional note, or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner as if each of them had been falsely made or forged.

Fraudulently joining instruments, &c.

SEC. 11. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt, issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or such corporation ever have existed.

Affixing fictitious signature.

SEC. 12. In any case where the intent to defraud is necessary to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate, intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an attempt to defraud the United States, or any state, territory, county, city, town, or village, or any body corporate, or any public officer in his official capacity, or any co-partnership, or member thereof, or any particular person.

What allegations sufficient.

SEC. 13. Every person who shall counterfeit any gold or silver coin, current by law, or usage within this territory, and every person who shall have in his possession false money or coin, counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeited, and with the intent to utter or pass the same as true, and any person who shall

Counterfeiting coin, or having same in possession