

CHAP. 34, 35

a jail suited for that purpose; and the expenses of such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offence was committed.

Death warrant.

SEC. 7. When judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of judgment.

Punishment how and by whom inflicted.

SEC. 8. The mode of inflicting punishment of death in all cases under this act, shall be by hanging by the neck until the person be dead; and the sheriff, and in case of his death, inability, or absence, the coroner of the county in which sentence of death shall have been pronounced, by virtue of this act, shall be the executioner; except in cases where a change of venue has been taken, in which case, the prisoner shall be sent back and executed in the county in which the prosecution originated.

Sheriff's warrant, &amp;c. to be filed.

Abstract of clerk.

SEC. 9. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

## CHAPTER XXXIV.

### OF PARDONS.

SEC. 1. Governor may grant pardons or reprieve.

Governor may grant pardons.

SEC. 1. In all cases in which the governor is authorized to grant pardons, he may upon the petition of the person convicted, grant a pardon upon such conditions and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all public officers to carry into effect such constitutional pardon; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper.

## CHAPTER XXXV.

### TIME FOR COMMENCING CRIMINAL ACTIONS.

SEC. 1. Prosecution for murder not barred by lapse of time.

2. Indictments for other felonies, within three years.

3. Indictments for misdemeanors, within two years.

4. If defendant be absent from territory, secreted, &c., time of such absence not included in limitation.

5. Indictment when deemed found.

For murder.

SEC. 1. There shall be no limitation of time within which a prosecution for murder shall be commenced. It may be commenced at any time after the death of the person killed.

SEC. 2. An indictment for any other felony than murder, shall be found within three years after its commission. CHAP. 36.

SEC. 3. An indictment for any misdemeanor shall be found within two years after its commission. Other felonies. Misdemeanors.

SEC. 4. If the defendant shall absent himself from the territory, or shall secrete himself so as to prevent process being served upon him, the indictment may be found within the term herein limited after his coming within the territory, or within the reach of process, and no time during which defendant is not an inhabitant of, or usually resident within the territory, or shall secrete himself, shall be a part of the limitation. Exceptions to the foregoing provisions.

SEC. 5. An indictment is found within the meaning of this chapter, when it is duly presented by the grand jury in open court, and there received and filed. Indictment when found.

## CHAPTER XXXVI.

### MISCELLANEOUS PROVISIONS.

SEC. 1. In case of doubt as to degree of guilt, may be convicted of the lowest degree.

2. Joint defendants may have separate hearings.

3. Co-defendant, how made a witness.

4. Co-defendant may be witness for other defendants.

5. Confession not evidence, if extorted by threats.

6. As to what constitutes rape.

7. Testimony of accomplice must be corroborated.

8. When juror must be sworn as witness.

9. Court to decide question of law.

10. Right of defendant to except; questions of fact to be decided by law.

11. Court must inform jury that they are exclusive judges of the facts.

12. Jury may retire or decide in court.

13. When defendant appearing on trial may be committed.

14. Jury may take with them papers received in evidence.

15. Jury may take with them notes of testimony.

16. When jury disagree as to testimony, may inquire of court.

17. If juror be taken sick, jury may be discharged.

18. Where jury may find defendant guilty of a less degree than that charged.

19. Jury may find defendant guilty, &c.

20. Jury may find part of defendants guilty of any offence charged in indictment.

21. Jury may be polled.

22. Clerk must record verdict.

23. Acquittal on grounds of insanity to be stated.

24. Court may hear circumstances in aggravation or mitigation of sentence.

25. Such circumstances, how introduced.

26. Justification of bail.

27. Clerk must issue blank subpoenas on application of either party.

28. When person held to answer, if indictment be not found at next term, prosecution to be dismissed.

29. If defendant on prosecution be not tried, when prosecution to be dismissed.

30. When court may order action to be continued.

31. Discharge of defendant on dismissal of action.

32. When court may dismiss action after indictment.

33. *Nolle-prosequi* abolished.

34. When order of dismissal a bar to another action.

35. Stolen or embezzled property, how disposed of.

36. Stolen, &c., property to be returned to owners.

SEC. 1. When it appears that a defendant has committed a public offence, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only. Doubt as to degree of guilt.

## CHAP. 86.

Joint de-  
fendants  
may have  
separate  
hearings, &c.  
Co-defend-  
ant how  
made a wit-  
ness.

SEC. 2. When two or more defendants are jointly indicted for a felony, any defendant requiring it shall be tried separately; in other cases, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

SEC. 3. When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defence, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the territory.

May be wit-  
ness for the  
other de-  
fendants.

SEC. 4. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant, there is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant; the order shall be an acquittal of the defendant discharged, and a bar to another prosecution for the same offence.

Confession  
not evidence  
if extorted  
by threats.

SEC. 5. A confession of the defendant, whether made in the course of judicial proceedings, or to a private person, cannot be given in evidence against him, when made under the influence of fear produced by threats, nor is it sufficient to warrant his conviction without proof that the offence charged has been committed.

What con-  
stitutes rape

SEC. 6. Proof of actual penetration into the body, is sufficient to sustain an indictment for rape, or for the crime against nature.

Accomplice's  
testimony  
must be cor-  
roborated.

SEC. 7. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to convict the defendant of the commission of the offence; and the corroboration is not sufficient if it merely show the commission of the offence, or the circumstances thereof.

When juror  
must be  
sworn as  
witness.

SEC. 8. If a juror have any personal knowledge respecting a fact in controversy in a cause, he shall declare it in open court during the trial; if, during the retirement of a jury, a juror declares a fact which could be evidence in a cause, as of his own knowledge, the jury shall return into court; in either of these cases, the juror making the statement shall be sworn as a witness, and examined in the presence of the parties.

Courts shall  
decide ques-  
tions of law.  
Questions of  
fact, how de-  
cided.

SEC. 9. The court shall decide all questions of law which shall arise in the course of the trial.

SEC. 10. On the trial on an indictment for an offence, questions of law are to be decided by the court, except in cases of libel, saving the right of the defendant to except. Questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Charge to ju-  
ry.

SEC. 11. In charging the jury the court shall state to them all matters of law which it thinks necessary for their information, in giving their verdict; and if it present the facts of the case, shall, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

Jury may re-  
tire or de-  
cide in court.

SEC. 12. After hearing the charge, the jury may either decide in court, or may retire for deliberation; if they do not agree without retiring, one or more officers shall be sworn to keep them together in some private and convenient place, and not to permit any

## CHAP. 86.

person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court, when they have so agreed, or when ordered by the court.

SEC. 13. When a defendant who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly.

When de-  
fendant on  
appearing  
may be com-  
mitted.

SEC. 14. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Jury may  
take certain  
papers.

SEC. 15. The jury may also take with them notes of the testimony, or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

Ib. Notes of  
testimony.

SEC. 16. After the jury has retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they shall require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the district attorney, and the defendant or his counsel.

When jury  
may inquire  
of the court.

SEC. 17. If at any time during the trial, any of the jury become so sick as to prevent the continuance of their duty, or any other accident or cause occur to prevent them being kept together for deliberation, the jury may be discharged by the court, and the trial commence anew at the same or another term.

Causes for  
discharging  
jury.

SEC. 18. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offence, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the defendant not guilty thereof, they may upon the same indictment, find the defendant guilty of manslaughter.

Jury may  
find defend-  
ant guilty of  
less degree,  
&c.

SEC. 19. In all other cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment.

SEC. 20. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Verdict as to  
part of de-  
fendants.

SEC. 21. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they shall be severally asked whether it is their verdict; and if any one answer in the negative, the jury shall be sent out for further deliberation.

Jury may be  
polled.

SEC. 22. When a verdict is given, and is such as the court may receive, the clerk shall immediately record it in full on the minutes, and shall read it to the jury, and inquire of them whether it is

Clerk must  
record ver-  
dict.

CHAP. 36. their verdict; if any juror disagree, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury shall be discharged from the case.

Acquittal for insanity to be stated. SEC. 23. If the defence to an indictment be the insanity of the defendant, the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict.

Aggravation or mitigating circumstances. SEC. 24. After a plea or verdict of guilty in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

How introduced. SEC. 25. The circumstances shall be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition shall be taken by a magistrate of the county, out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

Justification of bail. SEC. 26. Bail shall, when requested by either party, or ordered by the court, judge or magistrate, justify by affidavit before the court, judge or magistrate, as the case may be.

Clerk to issue blank subpoenas. SEC. 27. The clerk of the court at which any indictment is to be tried, shall at all times, upon the application of either party, issue as many blank subpoenas under the seal of the court, and subscribed by him as clerk, for witnesses within the territory as may be required.

Charge against person for public offence when to be dismissed. SEC. 28. When a person has been held to answer for a public offence, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the charge to be dismissed, unless good cause to the contrary be shown.

How indictment be not tried. SEC. 29. If a defendant indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

Action may be continued. SEC. 30. If the defendant be not indicted or tried as is provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the mean time may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Discharge of defendant on dismissal of action. SEC. 31. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

Dismissal of action after indictment. SEC. 32. The court may in its discretion, or upon the application of the district attorney, and in furtherance of justice, order an action after indictment to be dismissed; but in that case the rea-

sons of the dismissal shall be set forth in the order, which shall be entered upon the minutes. CHAP. 37.

SEC. 33. The entry of a *nolle prosequi* is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offence, except as provided in the last section. *Nolle prosequi abolished.*

SEC. 34. An order for the dismissal of the action as provided in this chapter, shall be a bar to another prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar, if the offence charged be a felony. *Dismissal, when a bar, &c.*

SEC. 35. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the magistrate authorized by the next section, to direct the disposal thereof. *Stolen property, &c., how disposed of.*

SEC. 36. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, shall order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property. *How to be returned to owner.*

## CHAPTER XXXVII.

### OF JUDGMENT ROLL.

- SEC. 1. Judgment roll how made and what to contain.
2. Copy of judgment, &c., how to be attested, for purposes of evidence.
3. Writ of error not to delay execution, unless ordered.
4. Consequence if defendant bailed after verdict not appearing.
5. This act how to be construed.

SEC. 1. When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offence for which the conviction has been had, and shall immediately annex together and file the following papers which, constitute the judgment roll: *Judgment roll, how made and what to contain.*

1. A copy of the minutes of challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon;
2. The indictment, and a copy of the minutes of the plea or demurrer;
3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, to an individual juror, and the proceedings and decision thereon;
4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. The bill of exceptions, if there be one.

SEC. 2. A copy of the minutes of any conviction and judgment, duly certified by the clerk, in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence in all courts and places, of such conviction and judgment, without the production of the judgment roll. *Copy of minutes and judgment, when evidence.*

## CHAP. 37.

Writ of error not to delay execution, unless, &c.

SEC. 3. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the supreme court, with an express direction therein that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And upon such direction being given, during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail if it be a bailable offence.

Defendant bailed after trial, &c. not appearing.

SEC. 4. If a defendant in any indictment shall have been let to bail after verdict or trial, and shall neglect to appear before any court or officer, at any time or place at which he is bound to appear, and submit to the jurisdiction of the proper court or officer, the court or officer before which he shall have been bound to appear, may cause such defendants to be arrested in the same manner as upon the finding of an indictment, and may direct his recognizance to be prosecuted.

This act how construed.

SEC. 5. Nothing in this act contained shall invalidate an action, suit, prosecution, process, pleading or proceeding commenced, issued, had or taken before, or pending when it goes into effect.

SEC. 6. 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 PROVIDE AGAINST DANGEROUS AND VICIOUS CATTLE.

SEC. 1. Owners of vicious cattle, suffering them to run at large after notice, liable to a fine; fine, how recovered.

2. Killing vicious cattle, when justifiable.

Owners when liable.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person or persons, who own or are owners of dangerous and vicious cattle, which animal or animals, are known to endanger the safety of persons travelling through neighborhoods, by their dangerous and vicious dispositions, such person or persons, having twelve hours' notice of the dangerous disposition of such animal or animals, and will not keep such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five dollars, nor exceeding fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

When may be killed.

SEC. 2. That any person who should in defence of himself or others, kill one or more cattle, shall not be liable to any damages for any such act done in self-defence.

Passed 3d September, 1849.

## AN ACT TO PROHIBIT THE SALE OF ARMS AND AMMUNITION TO INDIANS.

SEC. 1. Sale of arms, &c., to Indians, how punished.

2. Prosecutions to be by indictment, where to be commenced.

3. Act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That if any white citizen, or other person than an Indian, shall sell, barter, or give to any Indian in this territory any gun, rifle, pistol or other kind of firearms, any powder, lead, percussion caps or other ammunition whatever, any person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than six months, nor less than one month, and by fine not exceeding five hundred, nor less than one hundred dollars.

SEC. 2. All prosecutions under the provisions of this act shall be by indictment before the district court in the county where the offence shall have been committed, in the same manner that other offences may be prosecuted in this territory.

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

Passed January 16th, 1854.

## AN ACT TO PREVENT THE SALE OF ARDENT SPIRITS TO INDIANS.

SEC. 1. Persons selling ardent spirits to Indians, how punished.

2. All sheriffs, &c., required to complain of violations of this act; duty of judges of district court.

3. Justice when to issue warrant, jurisdiction of justice.

4. Moneys collected, to be appropriated to common school.

5. Act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That if any tavern-keeper, grocery-keeper or other person or persons shall sell, barter or in any manner dispose of any spirituous liquor, or any other liquor of intoxicating quality, to any Indian or Indians within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, by indictment in any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offence may have been committed, a fine of not less than twenty-five dollars, and not more than five hundred dollars, and shall be committed to the jail in the county in which he or they may live for the term of fifteen days.

SEC. 2. All sheriffs, constables and justices of the peace within their respective counties, are hereby authorized and required, under the penalty of forfeiting their respective offices, to make complaint of such violations of this law as come within their knowledge, in their respective counties, and the judges of the several district courts in this territory are hereby required to give this act in special charge to the grand juries of their respective courts.

SEC. 3. Upon complaint being made to any justice of the peace of the proper county in this territory, it shall be the duty of said justice to issue his warrant to any constable or the sheriff of his

Justices' jurisdiction. county, commanding him to bring said defendant forthwith before the said justice, who may proceed to hear and determine the case as in other cases of misdemeanor, whenever such justice shall be of opinion that the fine should be less than one hundred dollars; and where he is of opinion that it should exceed that sum, he shall bind him over to appear at the next term of the district court, or commit him to the jail of the county in default of bail.

Moneys collected how appropriated. SEC. 4. All moneys collected in accordance with the provisions of this act shall be paid into the county treasury, to be applied to the use of common schools.

When to take effect. SEC. 5. This act to be in force from and after its passage.

*Passed January 23d, 1854.*

#### AN ACT TO PREVENT SABBATH BREAKING.

- Sec. 1. Sabbath how to be observed. Proviso.  
2. Penalty for offending, penalty how appropriated.  
3. This act when to take effect.

Sabbath how to be observed. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That no person shall keep open his or her store, shop, grocery, ball alley, billiard saloon, tippling house, or any place of gaming or amusement, or do any secular business, other than works of necessity and mercy, on the first day of the week, commonly called the Lord's Day or Sunday; *provided, however,* that this act shall not be so construed as to have effect where the circumstances of the case render it necessary that the above provision be not observed.

Penalty for offending. SEC. 2. Any person offending against the provisions of this act, shall, upon conviction before any justice of the peace of the proper county, be fined in any sum not exceeding ten dollars, and such fine when collected shall be paid into the county treasury for the common school fund.

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

*Passed January 13th, 1854.*

#### AN ACT FOR THE PRESERVATION OF OYSTERS.

- Sec. 1. Oysters not to be gathered in certain months. Proviso.  
2. Persons not inhabitants prohibited from gathering oysters for sale.  
3. Complainant entitled to one half the fine.

When not to be gathered. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That it shall not be lawful for any person to take, rake or gather oysters, in any of the rivers, bays or waters of this territory, during the months of May, June, July, or August, in any year, under penalty not exceeding one thousand dollars for each offence, to be recovered by an action in the district court; *provided,* that this section shall not be so construed, as to prevent the taking or gathering of oysters at any season of the year for the purpose of bedding or propagation in any of the waters of this territory.

Persons prohibited from gathering for sale, &c. SEC. 2. It shall not be lawful for any person who is not at the time an inhabitant and resident of this territory, and who shall not have been for three months next preceding, an inhabitant and resident as aforesaid, to take, rake, or gather oysters, for sale or transportation, in any of the rivers, bays, or waters of this territory; and any person offending against the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail, not exceeding three months, or by a fine not exceeding one hundred and fifty dollars, or by both such imprisonment and fine.

Penalty. SEC. 3. Any person instituting suit or informing against any one offending against the provisions of this act, shall be entitled to one-half of the amount recovered, or the fine imposed, and the other half shall be paid into the county treasury.

*Passed December 22d, 1853.*

#### AN ACT FOR THE PROTECTION OF SCHOOL LANDS.

- Sec. 1. County commissioners to be trustees of school lands.  
2. Trespasses on school lands, liable in double damages.  
3. Moneys collected, where to be deposited, and for what purpose.  
4. County officers, to inform commissioners of such trespasses.  
5. This act, when to take effect.

County commissioners, trustees of school lands. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the several boards of county commissioners are hereby made trustees of the school lands in their respective counties, and they shall execute the duties of trustees of the school lands, so far as relates to the thirty-sixth and sixteenth sections, or such lands as may be selected in lieu thereof, according to law and their best ability.

Trespassers. SEC. 2. If any person shall hereafter trespass upon the school lands, the sixteenth or thirty-sixth sections, or any other lands selected in lieu thereof, by cutting down, destroying, or hauling off of such land, any timber, stone, stone-coal or minerals of any description, every person so offending, shall forfeit and pay double the value of the materials so used or destroyed, to be recovered in the official name of the board of county commissioners, before any justice of the peace, or before any court having competent jurisdiction thereof, or by indictment by the grand jury of the district court of the county in which such offence shall have occurred.

Moneys collected, where to be deposited; for what purpose. SEC. 3. All moneys collected by this act shall be paid into the county treasury, and be an irreducible fund, the interest of which shall be used for the support of common schools, as other school funds are used for that purpose.

County officers to inform county commissioners of trespass. SEC. 4. It shall be the duty of all county officers, when any of the offences described in the second section of this act, shall come to their knowledge, to immediately give notice to the county commissioners of their county, by stating the fact and the circumstances connected with it, and on hearing such complaint from an officer or any other person, the county commissioners or either of them shall immediately proceed to execute their duties as trustees or trustee of the school lands.

When to take effect. SEC. 5. This act to take effect and be in force from and after its passage.

*Passed January 16th, 1854.*

**TITLE I.**  
AN ACT RELATING TO ELECTION OF JUSTICES OF THE PEACE, AND  
CONSTABLES, AND TO PROCEEDINGS IN JUSTICES' COURTS.

**CHAPTER I.**

ELECTION OF JUSTICES OF THE PEACE AND CONSTABLES.

**TITLE I.** *Election of Justices of the Peace.*

**TITLE II.** *Of Constables.*

**TITLE I.**

*Election of Justices of the Peace.*

- SEC. 1. Justices of the peace, when and where elected.
2. When an additional justice may be elected.
3. Persons eligible.
4. Manner of conducting election, certificate of election.
5. Oath of office, when and how taken; its form; oath to be indorsed on certificate.
6. Bond, when to be entered into by justice, its form.
7. Bond, where to be filed, action thereon, &c.
8. Term of office.
9. County commissioners may fill vacancies.
10. Extent of justice's jurisdiction.
11. In case of division of precinct, justice to continue in office.
12. In case of removal, &c., docket, &c., to be delivered to nearest justice in precinct.
13. Penalty for certain persons neglecting to deliver over such papers, &c.
14. Justice to be removed on conviction.
15. Order of removal, how entered up.

**SEC. 1.** *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the qualified voters of each election precinct, in the several organized counties of this territory, shall, at the time and place of holding the annual elections, elect one or more justices of the peace.

**SEC. 2.** Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace, to be elected therein.

**SEC. 3.** No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, and who has not been a resident of the county, in which he is elected, six months next preceding his election; nor shall any sheriff, coroner or clerk of the district court, be eligible to or hold such office.

**SEC. 4.** The election of justice of the peace shall be conducted, and the return of such election made, in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, which may be in the following form:

*Territory of Oregon,* } ss.  
*County of* }

I do hereby certify, that at an election, held on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, in the precinct of \_\_\_\_\_ in said county, J. P. was duly elected a justice of the peace.

In testimony whereof, I have hereunto set my hand, with the seal of the board of county commissioners, hereunto affixed this day of \_\_\_\_\_, A. D. 18\_\_\_\_.

C. D., Clerk of the Board of County Commissioners.

**SEC. 5.** Every person elected a justice of the peace, shall, within twenty days, after receiving his certificate of election, take an oath before any person, authorized to administer oaths, in the following form:

*Territory of Oregon,* } ss.  
*County of* }

I, J. P., do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States, and the laws of this territory: that I will administer justice without respect to persons; and faithfully and impartially discharge, and perform all duties incumbent upon me as a justice of the peace, according to the best of my ability.

J. P.  
Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

C. D., Clerk of the District Court.

Which oath shall be indorsed on the back of the certificate of election, and together with the certificate, filed in the office of the clerk of the district court for the proper county.

**SEC. 6.** Every person elected a justice of the peace, shall, at the time of filing his oath of office, with the clerk of the district court, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said clerk of the district court, in the sum of five hundred dollars, conditioned, that he will faithfully pay over, according to law, all moneys which shall come into his hands, by virtue of his office as justice of the peace. Said bond may be in the following form:

*Know all men by these presents,* that we, J. P., A. B., and C. D., are held and firmly bound, unto the board of commissioners, of the county of \_\_\_\_\_, in the territory of Oregon, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals, dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Whereas, the said J. P. has been duly elected a justice of the peace, in and for the precinct of \_\_\_\_\_ in the county of \_\_\_\_\_, A. D. 18\_\_\_\_. Now the condition of the above obligation is such, that if the said J. P. shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office, as justice of the peace, then this obligation shall be void, otherwise, in full force.

J. P. [L. S.]  
A. B. [L. S.]  
C. D. [L. S.]

**SEC. 7.** Such bond shall be filed in the office of the clerk of the district court, and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment

**TITLE I.** against the justice and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent. per annum; and upon any such judgment, stay of execution shall not be allowed.

**Term of office.** SEC. 8. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

**Vacancies, how filled.** SEC. 9. All vacancies existing in the office of justice of the peace, whether happening by death, resignation, or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office until the next election; and is required to qualify in the same manner as if he had been duly elected to the office of justice of the peace under the provisions of this act.

**Extent of jurisdiction.** SEC. 10. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this chapter, shall be co-extensive with the limits of the county in which they are elected or appointed, and no other or greater, whether said county be attached to any other county for judicial purposes or not. But every justice of the peace shall continue to reside in the precinct for which he was elected or appointed, during his continuance in office.

**Ib. In case of division of precinct.** SEC. 11. When a precinct shall be divided, and any justice of the peace, of the original precinct, shall fall into the new one, he shall continue to discharge the duties of a justice of the peace until his term of office expires, and his successor is elected and qualified.

**In case of removal, &c., docket, &c., to be delivered to nearest justice in precinct.** SEC. 12. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, and papers appertaining to his office, or relating to any suit, matter, or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and determine such matter, suit, or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced, to have done.

**Penalty for neglecting to deliver over such papers, &c.** SEC. 13. Every person, whose duty it is to deliver over the docket, books, records, and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person.

**Removal of justice on conviction.** SEC. 14. Every justice of the peace, who shall, upon indictment in the district court, be convicted of bribery, perjury, or other infamous crime, or a wilful misdemeanor in office, shall be removed from office.

**Order of removal.** SEC. 15. The court, before whom any justice may be tried and convicted of any of the offences mentioned in the preceding section, shall enter upon an order removing such justice from office, and from the time such order of removal shall be entered, all the authority of such justice shall cease.

**TITLE II.***Of Constables.*

**SEC. 16.** Number of constables.

17. County commissioners to fill vacancies.

18. Election, how conducted; return, how made; certificate, how issued.

19. Oath of office, when to be taken and how filed.

20. Official bond, when entered into and where filed.

21. Duty of constables.

**SEC. 16.** At each general election, there shall be elected by the qualified electors of each precinct, in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct. Number of constables.

**SEC. 17.** All vacancies existing in the office of constable, whether happening by death, resignation, or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county, and every person so appointed shall hold his office until the next election. Vacancies, how filled.

**SEC. 18.** The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same, as in elections of justices of the peace. Election how conducted, &c.

**SEC. 19.** Every person elected or appointed a constable shall, within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be indorsed on the back of the certificate of election or appointment, and filed, together with the certificate, in the office of the clerk of the district court of the proper county. Oath of office.

**SEC. 20.** Every person elected or appointed to the office of constable shall, within the time prescribed for filing his oath of office, enter into a bond to the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the clerk of the district court, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law. The clerk shall indorse thereon his approval of the sureties therein named, and shall file the same in his office. Ib. where filed.

**SEC. 21.** Any constable may, within his county, serve any writ, process, or order lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts by law required of constables. Official bond where filed.

**Duty of constables.**

## TITLE 1.

## CHAPTER II.

## COURTS OF JUSTICES OF THE PEACE.

TITLE I.	<i>Of Jurisdiction of the Justice of the Peace.</i>
TITLE II.	<i>Of Commencement of Actions: Service and Return of Process.</i>
TITLE III.	<i>Of Pleadings and Adjournment.</i>
TITLE IV.	<i>Of Witnesses and Depositions.</i>
TITLE V.	<i>Of Title to Lands.</i>
TITLE VI.	<i>Of Trial by Jury.</i>
TITLE VII.	<i>Of Judgment.</i>
TITLE VIII.	<i>Of Stay of Execution and Filing Transcript.</i>
TITLE IX.	<i>Of Setting off Judgments.</i>
TITLE X.	<i>Of Executions and Proceedings thereon.</i>
TITLE XI.	<i>Of Reprieve.</i>
TITLE XII.	<i>Of Attachment.</i>
TITLE XIII.	<i>Of Forcible Entry and Detainer.</i>
TITLE XIV.	<i>Action to Recover Possession of a Mining Claim.</i>
TITLE XV.	<i>Of Proceedings for Contempt, before Justice of the Peace.</i>
TITLE XVI.	<i>Certiorari and Proceedings thereon.</i>
TITLE XVII.	<i>Of Appeals to the District Court.</i>
TITLE XVIII.	<i>Of Qualification of Sureties.</i>
TITLE XIX.	<i>Of Criminal Proceedings before Justice of the Peace.</i>
TITLE XX.	<i>Miscellaneous Provisions in Criminal Cases.</i>

## TITLE I.

*Jurisdiction of the Justice of the Peace.*

- SEC. 1. Jurisdiction to be co-extensive with limits of county.  
 2. Justice where to keep office.  
 3. Justice not to hold his office with practising attorney.  
 4 & 5. Powers and jurisdiction of justice.  
 6. Jurisdiction not to extend to civil action in certain cases.

Jurisdiction. SEC. 1. The jurisdiction of all justices of the peace, shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

Where to keep office. SEC. 2. Every justice of the peace shall keep his office in the precinct, for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

Do. Not in same room with attorney. SEC. 3. No justice of the peace shall hold his office in the same room with a practising attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practise as an attorney, in any case tried before such justice of the peace.

Justices to hold court. SEC. 4. Every justice of the peace, elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts

General powers. 10  
 Wen. 218; 2  
 Barb. 390.

## TITLE 2.

of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

SEC. 5. Every justice of the peace shall have jurisdiction over, and cognizance of, the following actions and proceedings:

Justices to have jurisdiction over certain cases

1. Of an action arising on contract, for the recovery of money only, if the sum claimed do not exceed one hundred dollars;

2. Of an action for damages for an injury to the person, or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars;

3. Of an action for a penalty, not exceeding one hundred dollars;

4. Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by instalments, an action may be brought for each instalment, as it shall become due;

5. Of an action on an undertaking or surety bond taken by him, if the amount claimed do not exceed one hundred dollars;

6. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars;

7. Of an action for damages for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars;

8. Of an action for a forcible, or unlawful entry upon, or forcible or unlawful detention of lands, tenements, or other possessions;

9. Of an action to try the right of occupancy or possession to a mining claim;

10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

SEC. 6. The jurisdiction conferred by the last section shall not however extend to the civil action:

Limitation of jurisdiction.

1. In which the title to real property shall come in question;

2. Nor to an action for the foreclosure of a mortgage, or the enforcement of a lien on real estate;

3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or upon a promise to marry;

4. Nor to any action against an executor or administrator as such.

## TITLE II.

*Commencement of Action, Service and Return of Process.*

- SEC. 7. Justice to keep a docket, what to contain.  
 8. Actions how commenced.  
 9. Justice may require security for costs of plaintiff.  
 10. Process to be in name of United States.  
 11. Summons to be the first process, what to contain.  
 12. Summons, how and when to be served.  
 13. Officer serving process, how to make return.  
 14 & 15. Justice may issue warrant of arrest.

## TITLE 2.

- SEC. 16. Before issuing warrant, justice shall require undertaking.  
 17. Warrant how served, another justice when to proceed.  
 18. Notice of arrest to be given to plaintiff.  
 19. Defendant how long to be kept in custody on warrant.  
 20. When an adjournment may be granted to defendant.  
 21. Justice may empower a citizen to execute process.  
 22. Liability of officer failing to execute process.  
 23. Parties may appear in person, or by attorney.  
 24. Appointment of next friend for infant plaintiffs; his liability for costs.  
 25. Guardians, for infant defendants; when and how appointed.  
 26. Parties entitled to one hour, after time mentioned for appearance.

Docket.  
 4 Const. 885.  
 Entries  
 therein.

SEC. 7. Every justice of the peace shall keep a docket, in which he shall enter:

1. The titles of all actions commenced before him;
2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand;
3. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts;
4. The time when the parties, or either of them appear, or their non-appearance if default be made;
5. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated;
6. Every adjournment, stating at whose request, and for what time;
7. The demand of a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial, and return of the jury;
8. The names of the jury, who appear and are sworn; the names of all witnesses sworn; and at whose request;
9. The verdict of the jury, and when received; if the jury disagree, and are discharged, the fact of such disagreement and discharge;
10. The judgment of the court, and the time when rendered;
11. The time of issuing execution, and the name of the officer, to whom delivered, and an account of the debt, and costs, and the fees due to each person separately;
12. The fact of an appeal having been made and allowed, and the time when;
13. Satisfaction of the judgment, or any money paid thereon, and the time when;
14. And such other entries as may be material.

Actions how  
 commenced.

SEC. 8. Actions may be instituted before a justice of the peace, either by the voluntary appearance, and agreement of the parties, or by the usual process.

Security for  
 costs, when  
 required.

SEC. 9. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs, before the commencement of the action; and whenever an action has been commenced by any person, whether a resident of the county or not, the justice may in his discretion, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order, the justice shall dismiss the action.

Process to be  
 in the name

SEC. 10. All processes issued by justices of the peace shall run in

TITLE 2.  
of United  
States.

Summons,  
 first process.

the name of the United States, be dated the day it issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff, or any constable of the proper county.

SEC. 11. In all cases not otherwise specially provided for, the first process shall be a summons, directed to the sheriff or constable, and commanding him to summon the defendant to appear before such justice, at a time and place to be named in the summons, not less than six, nor more than twenty days from the date thereof, to answer the complaint of the plaintiff.

Summons,  
 when and  
 how to be  
 served, &c.  
 10 Wen. 422.

SEC. 12. The summons shall be served at least five days before the time of appearance therein mentioned, by delivering a copy thereof as follows:

1. If the action be against a corporation, to the president, or other head of the corporation, secretary, cashier or managing agent thereof;
2. If against a person judicially declared of an unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian, and to the defendant personally;
3. In all other cases to the defendant personally, or if he be not found to 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. 13. Every constable or sheriff serving any process, shall return thereon in writing, the time and manner of service, and shall sign his name to such return.

How return-  
 ed. 17 Wen.  
 518.

SEC. 14. A justice of the peace shall issue a warrant of arrest, as hereinafter prescribed, in the following cases:

Warrant of  
 arrest when  
 issued.

1. In an action for the recovery of damages on a cause of action, not arising out of contract, when the defendant is not a resident of the territory, or is about to remove therefrom; or when the action is for a wilful injury to person or to property, the defendant knowing the property to belong to another;

2. In an action for the recovery of money, or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors;

3. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer, or officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in a professional employment;

4. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff or constable, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof;

5. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought;

## TITLE 2.

6. When the defendant has removed or disposed of his property, or a part thereof, or is about to do so, with intent to defraud his creditors;

But no female shall be arrested in any action, except for a wilful injury to person or property.

Warrant,  
when to issue.

SEC. 15. The warrant of arrest shall be issued when it shall appear to the justice, by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, supported by the additional affidavit of some disinterested person, and that the case is one of those mentioned in the last section. The affidavit shall be either positive, or upon information and belief; and when upon information and belief, they shall state the facts upon which the information and belief are founded.

Undertaking  
of plaintiff  
before issue  
of warrant.

SEC. 16. Before issuing the warrant of arrest, the justice shall require a written undertaking on the part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

How served.

SEC. 17. The warrant shall be served by arresting the defendant, and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof, be absent, or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action for such defendant, or is near of kin to the plaintiff, stating there in the degree, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

Notice of arrest,  
to the plaintiff.

SEC. 18. The officer making the arrest shall immediately give notice thereof to the plaintiff, his agent or attorney, and indorse on the warrant, the time of the arrest, and the time of serving notice on the plaintiff.

Custody of  
defendant in  
warrant. 10  
Wen. 515.

SEC. 19. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time, the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

Adjournment,  
when granted  
to defendant.

SEC. 20. If the defendant on his appearance demand an adjournment, the same shall be granted, on condition, that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action; and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment, which he may recover in the action. On filing such undertaking, the justice shall order the defendant to be discharged from custody.

Justice may  
empower a

SEC. 21. Every justice issuing any process authorized by this chapter, upon being satisfied that such process will not be executed,

for want of an officer, to be had in time to execute the same, may empower any suitable person, not being a party to the action, to execute the same, by an indorsement on the process to the following effect:

"At the request and risk of the plaintiff, (or defendant, as the case may be,) I authorize A. B. to execute and return this writ."

S. F.,

*Justice of the Peace.*

And the person so empowered shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Fees and authority  
of such person.

SEC. 22. If any officer without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer for every such offence, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action founded upon this statute.

Officers failing  
to execute process.

SEC. 23. Parties, in justices' courts may prosecute, or defend in person, and by attorney, and any person may act as attorney in justices' courts, except that the constable or sheriff by whom the summons or jury process was served, cannot appear or act on the trial in behalf of either party. The authority of a person to act as attorney for another may be oral or written; but unless admitted by the adverse party, must be proven by the oath of the attorney, or otherwise.

How parties  
may appear.

SEC. 24. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend, in such action, and who shall be responsible for the costs therein.

Next friend  
for infant  
plaintiff.

SEC. 25. After the service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defence of the action; and if the defendant shall not appear on the return day of the process, or if he neglect, or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice, and such guardian for the defendant shall not be liable for any costs in the action.

Guardians  
for infant defendants.

SEC. 26. The parties shall be entitled to one hour, in which to make their appearance, after the time mentioned in the summons for appearance; but shall not be required to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case, he may postpone the time of appearance, until the close of such trial.

Justice to  
wait one  
hour. 4 De-  
mo, 180, 182.

TITLE 2.  
citizen to ex-  
ecute pro-  
cess.

## TITLE 3.

## TITLE III.

*Of Pleadings and Adjournments.*

- SEC. 27. Pleadings when to take place.  
 28. Pleadings in justice's court enumerated and defined.  
 29. Pleadings when to be in writing, when oral.  
 30. Oral pleadings to be entered in docket.  
 31. Pleadings how construed in certain cases.  
 32. Written instrument how pleaded.  
 33. Pleadings must be verified.  
 34. Statements in pleadings, not denied, when to be deemed true.  
 35. Defective pleadings, how objected to.  
 36. Variance between proof and pleadings, when to be disregarded.  
 37. Amendments to pleadings, when allowed.  
 38. To entitle the plaintiff to set-off, he must allege the same in answer.  
 39. Adjournments, when and how allowed.  
 40. A motion for adjournment on account of absence of witnesses must be made on affidavit.  
 41. Terms that may be imposed for granting adjournment.

Pleadings when to take place.

SEC. 27. The pleadings in justices' courts shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall for good cause shown, allow a longer time, than the time of appearance.

Pleadings enumerated and defined.

SEC. 28. The pleadings in justices' courts shall be:

1. The complaint of the plaintiff, which shall state in a plain and direct manner, the facts constituting the cause of action;
2. The answer of the defendant, which may contain a denial of the complaint or any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defence;
3. When the answer sets up a set-off, by way of defence, the reply of the plaintiff.

When to be in writing.

SEC. 29. The pleadings shall be in writing, when the action is for one of the following causes:

1. For the foreclosure of any mortgage, or the enforcement of any lien on personal property;
2. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements or other possessions;
3. To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

Oral pleadings how entered.

SEC. 30. When the pleadings are oral, the substance of them shall be entered by the justice, in his docket; when in writing they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

How construed in certain cases.

SEC. 31. A statement in an answer or reply, that the party has not sufficient knowledge, or information, in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

Written instrument, how pleaded.

SEC. 32. When the cause of action or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set-off. The court may, at the time of pleading re-

quire that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if it be not so exhibited, may prohibit its being afterwards given in evidence.

TITLE 3.  
To be exhibited to party.

SEC. 33. Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true; the verification shall be oral, or in writing, in conformity with the pleading verified.

Verification of pleadings.

SEC. 34. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

Pleadings not denied, to be deemed true.

SEC. 35. Either party may object to a pleading by his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Defective pleadings may be objected to.

SEC. 36. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Variance when disregarded. Denio 419.

SEC. 37. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omissions in the allegations or denials, necessary to support the action or defence, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

Amending pleadings. Denio 189 do. 579; Barb. 552.

SEC. 38. To entitle a defendant to any set-off he may have against the plaintiff, he must allege the same in his answer, and the statute, regulating set-offs in the district court, shall in all respects, be applicable to a set-off in a justice's court, if the amount claimed to be set-off be within the jurisdiction of a justice of the peace, and judgment may, in like manner, be rendered by the justice, in favor of the defendant, for the balance found due from the plaintiff.

Defendant must allege set-off in answer.

SEC. 39. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, adjourn the case for any time not exceeding sixty days. If the adjournment be on account of absence of testimony, it shall be for such reasonable time, as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Adjournments, when and how allowed.

SEC. 40. An adjournment, on account of the absence of testi-

Ib. For absence of wit-

**TITLE 4.**  
ness can  
only be ob-  
tained on  
affidavit.

Terms which  
may be im-  
posed for  
granting ad-  
journment.

mony, shall only be allowed upon affidavit, showing the materiality of the testimony expected to be obtained, and that due diligence has been used to procure it. The justice may also require the party applying to state upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

SEC. 41. The party applying for the adjournment, shall, also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the justice, which shall be done accordingly; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness were produced.

#### TITLE IV.

##### *Of Witnesses and Depositions.*

SEC. 42. Justice may subpoena witness if within twenty miles.

43. Subpoena how served.

44. Attachment when to issue against witnesses.

45. Attachment to be directed to sheriff; and how executed.

46. Liability of witnesses not appearing.

47. One party may examine his adversary.

48. Testimony of party may be rebutted.

49. Effect of party's refusing to testify.

50. Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him.

51. When depositions may be taken.

52. Depositions how taken; service of notice.

53. When depositions may be read in evidence.

Justices may  
subpoena  
witnesses  
within 20  
miles.  
Subpoena,  
how served.

SEC. 42. A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness, in a justice's court, if such witness be within twenty miles of the place of trial.

SEC. 43. A subpoena may be served by any white person, above the age of eighteen years, by reading it to the witness, or by delivering to him a copy thereof, if he require it, or by leaving a copy at his usual place of abode.

Attachment,  
when to is-  
sue.

SEC. 44. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpoenaed to appear before him in an action, shall have failed without a just cause to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness—*Provided*, that no attachment shall issue against a witness, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena.

How execu-  
ted.

SEC. 45. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers, for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause,

Fees thereon

to the satisfaction of the justice, for his omission to attend, in which case, the party requiring such attachment shall pay all such costs.

SEC. 46. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his non-appearance—*Provided*, that such witness had the fees allowed for mileage and one day's attendance, paid or tendered to him in advance.

SEC. 47. A party to an action may be examined as a witness at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken.

SEC. 48. The examination of a party, thus taken, may be rebutted by adverse testimony.

SEC. 49. If a party refuse to attend and testify at the trial, or give his deposition before trial when required, his complaint, answer, or reply may be stricken out, and judgment taken against him.

SEC. 50. A party, examined by an adverse party, may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

SEC. 51. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

SEC. 52. The notice shall be served, and the deposition taken, certified and returned, according to the law regulating the taking of depositions, to be read in the district court.

SEC. 53. The justice shall allow every deposition taken, certified, and returned, according to law, to be read on the trial of the cause, in which it is taken, in all cases, where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is so offered:

1. Is dead, or resides more than twenty miles from the place of trial; or

2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity; or

3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party, offering the deposition.

#### TITLE V.

##### *Title to Lands.*

SEC. 54. Proceedings of justice when title of land comes in question.

SEC. 54. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands

**TITLE 5.**

Liability for  
damages; 11  
Wen. 637.

Party may  
examine ad-  
versary. 3  
Sanf. 718; 3  
Coms. 439.

Testimony of  
party may be  
rebutted.

Effect of re-  
fusal.

Testimony  
by a party  
not respon-  
sive to the  
inquiries,  
may be re-  
butted by  
the oath of  
the party  
calling him.  
2 Sanf. 399.

When depo-  
sitions may  
be taken.

How taken.

When may  
be read.

Proceedings  
when title  
of land

**TITLE 6.** is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceedings in the cause, and shall certify, and return to the district court of the county a transcript of all the entries made in his docket, relating to the case, together with all the process, and other papers relating to the action, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the costs shall abide the event of the suit.

## TITLE VI.

### *Trial by Jury.*

SEC. 55. When either party may demand trial by jury.

56. Number of jurors.

57. Venire to be issued, to whom directed, its contents.

58. Venire, how to be executed.

59. Challenge to jurors, how taken.

60. Challenge for cause; on what ground; challenge how tried.

61. Justice to administer oath, &c., to jury; its form.

62. Jury to sit together, proof, &c., how delivered.

63. Verdict when to be returned; how entered, &c.

64. Jury to be discharged if they cannot agree; new venire when.

65. Penalty if juror do not appear.

**TITLE 7.** **SEC. 55.** Before the justice shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice, that the cause be tried by a jury.

**SEC. 56.** The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six to try the cause, in which case the jury shall consist of such number not exceeding six, as the parties may agree upon.

**SEC. 57.** The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the district court of the same county, who shall be nowise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause, between the parties therein named.

**SEC. 58.** The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person, whom he has reason to believe is biassed, or prejudiced for or against either of the parties; he shall summon the jurors personally, and shall make a list of the persons, which he shall certify, and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place.

**SEC. 59.** Either party may challenge the jurors, but when there are several parties on either side they shall join in a challenge, before it can be made. The challenges shall be to individual jurors,

and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges.

**SEC. 60.** Challenges for cause may be taken on any ground, that would be a good cause of challenge on the trial of an action in the district court. Challenges for cause shall be tried by the justice.

**SEC. 61.** When the jury is selected, the justice shall administer to them the following oath or affirmation:

"You, and each of you, do solemnly swear (or affirm) that you will well and truly try the matter of difference between A. B., plaintiff, and C. D., defendant, and a true verdict give, according to law and the evidence given to you in court, so help you God."

**SEC. 62.** After the jury are sworn, they shall sit together, and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

**SEC. 63.** When the jury have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

**SEC. 64.** Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce.

**SEC. 65.** Every person, who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

## TITLE VII.

### *Of Judgment.*

**SEC. 66.** When action may be dismissed without prejudice.

67. When defendant may be non-suited.

68. When justice may proceed without jury.

69. Judgment when to be rendered.

70. Defendant may serve offer to compromise, and proceedings thereon.

71. Proceedings when prevailing party is entitled to costs.

**SEC. 66.** Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter;

3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

**SEC. 67.** When the defendant fails to appear and answer at the time specified, in the summons, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a copy of the complaint, judgment shall be given without further evidence, for the sum specified in the summons;

## TITLE 8.

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only, as shall appear by the evidence to be just; but in no case exceeding the amount specified in the summons.

When justice may proceed without jury.

SEC. 68. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

Judgment when to be rendered.  
19 Wen. 372;  
6 Hill, 89; 3  
Denio 71; 3  
Barb. 594.

SEC. 69. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be immediately entered after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

Defendant may serve offer to compromise, proceedings thereon.

SEC. 70. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action, a sum greater than the offer, such plaintiff shall not recover any costs, that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to effect the recovery otherwise than as to costs, as above provided.

Proceedings when prevailing party entitled to costs.

SEC. 71. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the judgment, or in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, he shall enter up judgment in favor of the defendant, for the amount of such costs.

## TITLE VIII.

*Stay of Execution and Filing Transcripts.*

SEC. 72. When and how long execution on judgment by justice may be stayed.

73. Undertaking in such case necessary.

74. Requisites and form of undertaking.

75. On expiration of stay, judgment to issue; and against principal and bail.

76. Bail, entitled to judgment against principal on motion.

77. Judgment, after execution, stayed as on appeal.

78. Filing transcript of judgment.

79. Transcript when filed a lien on real estate.

Stay of execution.

SEC. 72. The execution upon a judgment, by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time, to be calculated from the date of the judgments:

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month;

2. If it be for more than twenty-five dollars, two months.

Undertaking in such case.

SEC. 73. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after the rendering of the judgment, enter into an undertaking before the justice, to the adverse party, in a sum, sufficient to secure the payment of

the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

SEC. 74. Such undertaking shall be signed by the person entering into the same, and may be in the following form:

## TITLE 8.

Form of undertaking, &c.

Whereas A. B. has obtained a judgment before J. P., one of the justices of the peace, in and for \_\_\_\_\_ county, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, against C. D., for \_\_\_\_\_ dollars: Now therefore I, E. F., acknowledge myself bound to A. B., in the sum of \_\_\_\_\_ dollars; this undertaking to be void, if such judgment shall be paid at the expiration of \_\_\_\_\_ month, after the time it was rendered.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_. E. F.

SEC. 75. If at the expiration of such stay the judgment be not paid, the execution shall issue against both the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property, belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received.

On expiration of stay, judgment to issue.

SEC. 76. After the return of such execution, the bail shall be entitled on application to the justice, to have the judgment, or so much thereof as may have been collected from him, in satisfaction of the execution, transferred to his use, and he may collect the same from the defendant, by execution, together with interest at the rate of twelve per cent. per annum.

Bail, when and how to be demitted.

SEC. 77. If a judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with the like effect, as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody.

Judgment after execution stayed as on appeal.

SEC. 78. Every justice on demand of any person, in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment, and the clerk of the district court of the county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the judgments of the district court, and shall note therein, the time of filing such transcript.

Filing transcript of judgment.

SEC. 79. Every such judgment, from the time of filing the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the district court of the same county; shall be equally under control of the district court, and shall be carried into execution in the same manner, and with like effect, as the judgments of such district court; but no execution shall be issued thereon out of the district court, until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

Transcript when a lien on real estate.

## TITLE 9, 10.

## TITLE IX.

*Setting off Judgment.*

SEC. 80. When judgments of justice's court, may be set off against similar judgments.

81. Transcript of judgment when to be produced;

82. Proceeding by justice after allowance or disallowance.

When judgments may be set off.

SEC. 80. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice, before whom the judgment against which the set-off is proposed, may be.

Transcript of, when to be produced.

SEC. 81. If the judgment, proposed as a set-off was rendered before another justice, the party proposing such set-off, shall produce, before the justice, a transcript of such judgment, upon which there is a certificate of the justice, before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained, for the purpose of being set off against the judgment to which it is offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed unless such transcript be returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

Proceedings after allowance, or disallowance of such set-off.

SEC. 82. If any justice shall set off one judgment against another, he shall make an entry thereof, in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment, rendered by another justice, to be set off, he shall file such transcript among the papers relating to the judgment, in which it is allowed in set-off; if he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

## TITLE X.

*Of Executions and Proceedings thereon.*

SEC. 83. Execution, when and how issued.

84. Execution, when to be issued by succeeding justice.

85. Execution, how issued on transcript of justice in other counties.

86. Execution, to whom directed, when returnable.

87. Duty of justice before issuing execution.

88. Execution, how renewed.

89. Notice of sale, how to be given, and what to contain.

90. Sale of goods and return of execution.

91. Officer making sale, not to purchase any property.

92. When warrant may issue, after return unsatisfied.

93. Garnishees may be summoned when no property found.

94. When execution may issue against plaintiff, after return unsatisfied against defendant.

95. Jury when summoned to try the right of property.

96. Claimant may withdraw claim before jury retire; consequence of withdrawal.

97. Claimant may pursue any other legal remedy not specified in this chapter.

Execution when and how issued.

SEC. 83. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinafter prescribed, but after the lapse of

five years from the date of the judgment, no execution shall issue, except by leave of the justice, before whom such judgment may be, upon reasonable notice to the defendant.

SEC. 84. When any judgment shall have been rendered by any justice of the peace, and the same shall not be satisfied, during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered, shall issue execution upon such unsatisfied judgment, in the same manner, and with like effect, as if he himself had rendered the judgment.

1b. By succeeding justice.

SEC. 85. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs, as in other cases.

Execution on transcript in other counties.

SEC. 86. The execution shall be directed (except when it is otherwise specially provided) to the sheriff or any constable of the county, where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and shall be against the goods and chattels of the person against whom the same is issued.

Execution to whom directed; when returnable.

SEC. 87. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same.

Duty of Justice before issuing.

SEC. 88. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issued the same, or the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him and dated when the same shall be made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force, in all respects, for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

How renewed. 13 Wen. 146; 2 Hill, 331; 7 Barb. 72.

SEC. 89. The officer, after taking goods and chattels into his custody, by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place, when and where, they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Notice of sale. 2 Cow. 421.

SEC. 90. At the time and place so appointed, if the goods and chattels be present, for the inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Sale, return of execution, &c. 7 Wen. 236.

## TITLE 11.

Certain officers not to purchase. When warrant may issue after return unsatisfied.

SEC. 91. No officer shall directly or indirectly purchase any goods or chattels, at any sale, made by him upon execution; and every such purchase shall be absolutely void.

SEC. 92. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued, after the return of an execution, against his property, unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant, and not discharged according to law.

When garnishee may be summoned.

SEC. 93. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon, in writing, as garnishees, such persons as may be named to him by the plaintiff, or his agent, to appear before the justice, on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and the like proceedings shall be had thereon before the justice, to final judgment and execution, as in proceedings by attachment.

Execution against plaintiff for costs, &c., after return unsatisfied.

SEC. 94. Any justice of the peace may issue an execution against the plaintiff to collect fees and costs, for which such plaintiff may be liable, after an execution has been first issued against the defendant, and returned "no property found."

Jury when summoned to try right of property.

SEC. 95. If any property levied on be claimed by any person other than the defendant in the execution, the sheriff or constable shall summon from his county six persons, qualified as jurors between the parties to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury, and the witnesses of the parties, shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy, unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, or constable, and the witnesses, shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him; otherwise, by the plaintiff. On the trial, the defendant and the claimant may be examined as witnesses by the plaintiff.

Fees.

Withdrawal of claim.

SEC. 96. If at any time before the jury retire, the claimant withdraws his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Claimant may pursue any other legal remedy.

SEC. 97. Nothing contained in the last two sections shall be so construed as to prevent the claimant of property, levied on by execution, from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

## TITLE XI.

## Of Replevin.

SEC. 98. When plaintiff may claim delivery of property.

99. Affidavit to be made by plaintiff; its contents.

100. Justice to indorse affidavit of plaintiff to sheriff, &c.

101. Upon receipt of affidavit and undertaking, sheriff to replevin, &c.

102. Exception to sureties, and proceedings thereon, or on failure to except.

## TITLE 11.

SEC. 103. Defendant when entitled to re-delivery.

104. Justification of defendant's sureties.

105. Property how taken if concealed in building or enclosure.

106. Property replevined, how kept.

107. Claim of property by third person, and proceedings thereon.

108. Return of order and affidavit.

SEC. 98. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

When claim for delivery may be made.

SEC. 99. When a delivery is claimed, an affidavit shall be made by the plaintiff or by some person in his behalf, showing:

Affidavit of plaintiff.

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief;

4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution, or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure; and

5. The actual value of the property.

SEC. 100. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff, or any constable of the county to take the same from the defendant and deliver it to the plaintiff, upon receiving a proper undertaking.

Justice to indorse affidavit to sheriff.

SEC. 101. Upon the receipt of the affidavit and order, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect, that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum, as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant, or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual place of abode of either, within the county, with some person of suitable age and discretion, or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant, at the post office nearest to him.

Officer when to replevin.

SEC. 102. The defendant may, within two days after the service of a copy of the affidavit, order and undertaking, give notice to the officer, that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to

Exception to sureties and proceedings thereon, or on failure to except.

**TITLE II.** them is either waived as above provided, or until they justify, or new sureties be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next session.

**Defendant when entitled to re-delivery.** SEC. 103. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect, that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him, of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

**Justification of defendant's sureties.** SEC. 104. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties, until they justify, or until the justification is completed or expressly waived, and may retain the property until that time, but if they, or others in their place fail to justify at the time appointed, he shall deliver the property to the plaintiff.

**Property, how taken if concealed in building or enclosure.** SEC. 105. If the property, or any part thereof be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

**Property, how kept.** SEC. 106. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

**Claim of property by third persons.** SEC. 107. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer, before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim, by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

**Return of order and affidavit.** SEC. 108. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days, after taking the property mentioned therein.

## TITLE XII.

### Of Attachments.

- SEC. 109.** When plaintiff may have personal property of defendant attached.
110. When writ of attachment may issue.
111. Security may be required by officer before executing writ.
112. Writ, to whom directed, and what to require.
113. Interests in corporation and other property liable to attachment.
114. Officer how to execute writ.
115. Debtors, &c., of defendant when liable to plaintiff.
116. When debts, &c., may be collected; perishable property to be sold.
117. When officer may leave property attached with claimant.
118. Action on undertaking against principal, a defence that the property did not belong to defendant.
119. Sheriff may summon a jury when the property attached is claimed by third persons.
120. Certificate of defendant's interest in corporation, when to be furnished to officer.
121. Person refusing to give certificate may be examined on oath.
122. Plaintiff may exhibit interrogatories to garnishee.
123. Garnishee to answer interrogatories under oath.
124. Judgment against garnishee not final, till final judgment against defendant.
125. Plaintiff may except to garnishee's answer; amendment to answer.
126. Plaintiff may deny garnishee's answer; trial of issue; when answer deemed true.
127. Judgment against garnishee when answer is not excepted to or denied.
128. How garnishee, before final judgment, may discharge himself.
129. Examination of defendant or claimant.
130. Costs in actions between plaintiff and garnishee.
131. Judgment against defendant, how satisfied.
132. Proceedings, when execution is unsatisfied after sale; or balance due defendant.
133. Proceedings in case defendant recover judgment.
134. When defendant may move to discharge attachment.
135. When plaintiff may oppose such motion by affidavit.
136. Plaintiff, how and when to give notice of attachment by publication.
137. Form of notice.
138. Last publication, when to be made.
139. If defendant do not appear, execution not to issue, unless bond is given.
140. Certain earnings of defendant exempt from execution.
141. Public officers not liable as garnishees.
142. Writ of attachment, when returned; sheriff, &c., to indorse his proceedings thereon.

**SEC. 109.** In an action for the recovery of money, the plaintiff, at the time of issuing the summons, or at any time before judgment, may have the personal property of the defendant attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

**SEC. 110.** A writ of attachment shall be issued by the justice before whom the action is brought, whenever the plaintiff, his agent, or attorney, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim, over and above all legal set-offs, and the nature thereof, and that as the affiant verily believes the defendant is either:

1. A foreign corporation;
2. That he is not a resident of this territory, or has departed therefrom, with the intent to delay or defraud his creditors, or to avoid the service of a summons;
3. That he has assigned, secreted, or disposed of, or is about to

When attachment may issue.

Re. 18 Wen. 611; 4 Hill 601.

**TITLE 12.** assign, secrete, or dispose of his property, or any part thereof, with the intent to delay or defraud his creditors; or,  
4. That the debt was fraudulently contracted.

Officer may require security.

**SEC. 111.** A copy of the affidavit, required by the last section, shall be attached to the writ, upon issuing the same. Before executing such writ, the sheriff or constable, to whom it is directed, shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than fifty dollars, nor exceeding the amount claimed by the plaintiff, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ to whom directed and what to require.

**SEC. 112.** The writ shall be directed to the sheriff, or any constable of the county in which such writ shall have been issued, and shall require him to attach, and safely keep all the personal property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as stated in the affidavit, together with costs and expenses.

Interest in corporations and other property liable to attachment.

**SEC. 113.** The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, all debts due such defendant, and all other personal property of such defendant, not exempt from execution, may be attached, and if judgment be recovered against him, be sold or collected to satisfy the judgment or execution.

Execution of writ.

**SEC. 114.** The sheriff or constable, to whom the writ is directed and delivered, shall execute the same without delay, as follows:

1. Personal property, capable of manual delivery to such officer, shall be attached by taking it into his custody;

2. Stock or shares, or interest in stock or shares of any corporation or company, shall be attached, by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ and affidavit, and a notice that the stock or interest of the defendant is attached, in pursuance of such writ;

3. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ and affidavits, and a notice that the debts owing by him to the defendant, or the credits, and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Liability of debtors, &c., of defendant.

**SEC. 115.** All persons, having in their possession or under their control any credits, or other personal property, belonging to the defendant, at the time of service upon them of a copy of the writ, affidavit and notice, as provided in the first section, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff or constable, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Collection of debts; sale

**SEC. 116.** Debts and credits attached, may be collected by the

sheriff or constable, if the same can be done without suit, and the receipt of such officer shall be a sufficient discharge for the amount paid. Such officer shall sell any perishable property, which may be attached, in the same manner in which property is sold on execution. Money collected, and the proceeds of such sale, shall be retained by the officer to answer any judgment that may be recovered in the action.

**TITLE 12.** of perishable property.

**SEC. 117.** The sheriff or constable may deliver any of the property attached to the defendant, or to any other person claiming it, and in whose possession it was attached, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, in double the value of the property, engaging to re-deliver it, or pay the value thereof, to the sheriff or constable to whom execution upon a judgment, obtained by the plaintiff in that action, may be issued.

When officer may leave property attached with claimant.

**SEC. 118.** If an action be brought upon such undertaking, against the principal or his sureties, it shall be a defence, that the property for which the undertaking was given, did not, at the execution of the writ of attachment, belong to the defendant, against whom it was issued.

Action on undertaking when a defence.

**SEC. 119.** If any personal property attached be claimed by a third person, as his property, the sheriff or constable may summon a jury to try the validity of such claim, and the same proceedings shall be had thereon, with the like effect, as in case of a seizure upon execution.

Sheriff may summon jury, when property is claimed by third persons.

**SEC. 120.** When the sheriff or constable, with a writ of attachment against the defendant, shall apply to any person, mentioned in the second or third sub-divisions of section one hundred and fourteen, for the purpose of attaching the personal property mentioned therein, such person shall furnish him with a certificate, designating the number of shares of the defendant in the stock of the corporation or company, with any dividend or incumbrance thereon, or the amount and description of the property or credits held by such corporation, company, or person, for the defendant, or the debt owing to the defendant. Such certificate shall be verified by the oath of the person giving the same, which oath may be administered by the officer having the writ of attachment, or by any other officer authorized to administer oaths.

Certificate of defendant's interest in corporation.

**SEC. 121.** If such person refuse to give the certificate required in the last section, or if his certificate be unsatisfactory to the plaintiff, he may be required by an order of the justice, who issued the writ of attachment, to appear before such justice at the time therein stated, not less than three days thereafter, and be examined on oath concerning the same.

Person refusing certificate, &c.

**SEC. 122.** At any time after the making of such order, the plaintiff may exhibit written allegations and interrogatories, touching the property, stock, or credits of the defendant in the possession of, or held by such person or corporation as garnishee, or debts owing by him or it, and such garnishee shall be required to make full, direct, and true answers to the same on oath.

Interrogatories to garnishee.

**SEC. 123.** On the day when the garnishee shall be required to attend before the justice, he shall exhibit on oath, his answer to the allegations and interrogatories of the plaintiff, unless for cause

Garnishee to answer.

**TITLE 12.** shown a further time shall be allowed; in default of such answer, the plaintiff may take judgment by default against him, or the justice may punish him as for a contempt.

**Judgment against garnishee.** SEC. 124. Such judgment by default may be proceeded on to final judgment, in like manner as in actions against defendants, but no final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant, and in no case for a greater amount than that sworn to by the plaintiff, with interest and costs.

**Excepting to garnishee's answer** SEC. 125. The plaintiff may except to the answer of the garnishee for insufficiency, and if the same shall be adjudged insufficient, the justice may allow the garnishee to amend his answer, in such time and on such terms as may be just, or the plaintiff may take judgment by default, or move the justice to attach the body of the garnishee, to compel a sufficient answer.

**Denial of answer; issue.** SEC. 126. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. If the answer be not excepted to or denied in such time, as the justice may deem proper, it shall be taken to be true and sufficient.

**Judgment when answer is not excepted to or denied.** SEC. 127. If by the answer not excepted to or denied, or if upon trial it shall appear that the garnishee is possessed of property and effects of the defendant, or is indebted to the defendant, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee, for the proper amount in money, and in such case the justice may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

**Garnishee may discharge himself.** SEC. 128. Whenever any property, effects, money, or debts, belonging or owing to the defendant, shall be confessed or found by the justice, or jury, to be in the possession of the garnishee, he may at any time before final judgment, discharge himself by delivering the same to the sheriff or constable.

**Defendant, &c., may be examined.** SEC. 129. The defendant or claimant may be required to attend before the justice, or jury, for the purpose of giving any necessary information respecting the property attached, and may thereupon be examined on oath concerning the same.

**Costs of plaintiff and garnishee.** SEC. 130. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

**Judgment how satisfied.** SEC. 131. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff or constable shall satisfy the same out of the property attached, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property, sold by him, or of any debts or credits, collected by him, or so much as may be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property as may be necessary to satisfy the balance, if enough for that purpose remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or company, the sheriff, or constable, shall execute to the purchaser a cer-

**TITLE 12.** tificate of the sale, and the purchaser shall thereupon have all the rights and privileges in respect thereto, which were had by the defendant. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

**If execution is unsatisfied.** SEC. 132. If, after selling all the property attached by him remaining in his hands, and applying the proceeds to the payment of the judgment and costs, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment and all the costs of the proceedings shall have been paid, the sheriff, or constable, upon reasonable demand, shall deliver over to the defendant, the residue of the attached property, or the proceeds thereof.

**Judgment for defendant, &c.** SEC. 133. If the defendant recover judgment against the plaintiff in any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff or constable, and all the property attached, remaining in the hands of the sheriff or constable, shall be delivered to the defendant or his agent, and the order of attachment shall be discharged.

**Motion to discharge attachment.** SEC. 134. The defendant may also at any time before the time for answering expires, apply on motion to the justice to discharge the attachment, on the ground that the writ was improperly issued.

**Counter-motion by plaintiff, &c.** SEC. 135. If the motion be made upon affidavit on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other evidence, in addition to those, on which the writ of attachment was issued. If upon such application, it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

**Service of notice by publication.** SEC. 136. Whenever the defendant shall not be a resident of the territory, or shall have departed therefrom with the intent to delay or defraud his creditors, or to avoid the service of process, and he cannot be summoned, and the property of such defendant shall have been attached, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant by publication, for four weeks successively in a newspaper printed in the county, or if there be none such, then in some newspaper to be designated by the justice, that a writ of attachment has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place, to be mentioned in said notice, not less than forty-five, nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debts.

SEC. 137. The notice may be in the following form:

Territory of Oregon, }  
County of } ss.

In Justice's Court.

To

You are hereby notified that a writ of attachment has been issued against you, and your property attached to satisfy the demand of , amounting to ; now unless you shall appear before J. P., a justice of the peace in and for said county, at his office, on the day of , 18 , judg-

Form of notice.

**TITLE 18.** ment will be rendered against you, and your property sold to pay the debt.

Dated this            day of            , A. D., 18    .

*Plaintiff.*

Last publi-  
cation.

SEC. 138. The last publication shall be at least two weeks before the expiration of the time, at which the defendant is required to appear.

Proceedings  
if defendant  
do not ap-  
pear.

SEC. 139. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, the plaintiff may proceed thereon to final judgment, as in actions commenced by summons; but no execution shall be issued on such judgment against the defendant, nor debts attached be paid to the plaintiff, until such plaintiff, or some person in his behalf, shall enter into a written undertaking, with one or more sufficient sureties, to be approved by the justice, in double the amount of the judgment, to the effect that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt and damages, adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof, as may be found not justly due to him in a review of the case.

When cer-  
tain earn-  
ings of de-  
fendant ex-  
empt.

SEC. 140. The earnings of the defendant for personal services, at any time within sixty days next preceding the judgment against the garnishee, shall not be included in such judgment, nor be liable to attachment, when it shall be made to appear by the affidavit of the defendant or otherwise, that such earnings are necessary for the use of a family, supported wholly or partly by his labor.

Officer not  
liable as  
garnishee.

SEC. 141. No territorial or county treasurer, sheriff, constable or other public officer shall be liable to answer as garnishee, for moneys in his possession, or under his control, as such public officer, belonging to or claimed by any defendant.

Return  
writ.

SEC. 142. When the writ of attachment shall be fully executed or discharged, the sheriff or constable shall return the same, with his proceedings thereon, to the justice before whom the action was brought.

### TITLE XIII.

#### *Forcible Entry and Detainer.*

SEC. 143. No person to make forcible entry into lands, &c.

144. Possession, when and how to be given.

145. Complaint of person entitled to possession, what to contain.

146. Summons of justice, to be directed to sheriff, and what to contain.

147. Summons, how to be served.

148. Venire to sheriff; return of venire.

149. When justice may direct constable to summon other jurors.

150. Plaintiff, when non-suited.

151. Proceedings, on adjournment, by justice, when defendant fails to appear.

152. Defendant's answer, what to contain; answer to be filed.

153. Number of jurors, mode of trial, &c.

154. Verdict for plaintiff and subsequent proceedings.

155. Verdict to be in writing; its form.

156. Verdict of not guilty, proceedings for costs, &c., against plaintiff.

157. When justice may grant a new trial.

158. Merits of title, not to be inquired into.

159. Possession for three years, when a plea in bar.

160. When possession of premises may be recovered.

SEC. 161. Justice may hear and determine without jury, unless when jury de- **TITLE 18.**  
manded.

162. Abatement of action on payment of rent.

163. Adjournments granted by justice as in other cases.

164. Judgment before justice, no bar to another action.

SEC. 143. No person shall make entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases he shall not enter with force, but only in a peaceable manner.

Entry how to  
be made.

SEC. 144. When any forcibly entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof in the manner hereinafter provided.

Possession  
how given.

SEC. 145. The person entitled to the possession of the premises may make complaint in writing, and on oath to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

Complaint.

SEC. 146. Upon receiving such a complaint, the justice shall issue a summons directed to the sheriff, or any constable of the county, commanding him to summon the person or persons, against whom such complaint shall have been made, to appear before the justice on a day in such summons named.

Summons.

SEC. 147. The summons shall be served by the officer, as in other cases, and at the same time a copy of the complaint, shall, in like manner, be served on the defendant; the officer shall in his return state the time and manner of such service.

How served.

SEC. 148. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed, for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial, and the officer shall indorse thereon the list of jurors summoned.

Venire.

SEC. 149. If a sufficient number of jurors do not attend, or attending are set aside, by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number by summoning other jurors.

Vacancy in  
jury, how  
filled.

SEC. 150. If the plaintiff fail to attend at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

Plaintiff  
when non-  
suited.

SEC. 151. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed *ex parte*, or adjourn the cause at his discretion, but he shall not adjourn for a longer time than ten days, nor to any other place, than that named in the summons for the hearing of the cause.

Proceedings  
when de-  
fendant fails  
to appear.

SEC. 152. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth all matters in excuse, justification, or avoidance of the allegations in the complaint.

Defendant  
to file an-  
swer, &c.

**TITLE 13.**  
**SEC. 153.** The jury shall consist of six persons, unless the parties agree on a less number, and when duly empannelled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff, to support the same by proof, but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered, and detains the same.

**Verdict for plaintiff.**  
**SEC. 154.** If the jury on the trial find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff, or constable, to cause the plaintiff to be repossessed of the premises, to which shall be added a clause commanding the officer to levy the costs, off the goods and chattels of the defendant.

**Verdict to be in writing.**  
**SEC. 155.** The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

**Its form.**  
 "We the jury find the defendant guilty (or if in favor of the defendant, 'not guilty') of said forcible entry and detainer in manner and form as the plaintiff in his complaint hath alleged," or the jury may find the defendant guilty as to part and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so, they shall state it specially in their verdict.

**Verdict of "not guilty."**  
**SEC. 156.** When the jury find a verdict of "not guilty" generally for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

**New trial.**  
**SEC. 157.** In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown on affidavit therefor, which shall be within ten days after granting the same; but not more than one new trial shall be granted to either party.

**Merits of title not to be mooted.**  
**SEC. 158.** The estate or merits of the title shall in no wise be inquired into, on any complaint for a forcible entry and detainer.

**Possession for three years, a plea in bar.**  
**SEC. 159.** Three years quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant, in bar of the plaintiff's demand of possession, unless his estate therein be ended.

**When possession may be recovered.**  
**SEC. 160.** The person, entitled to any premises, may recover possession thereof in the manner hereinbefore provided in the following cases:

1. When any person shall hold over any lands, or tenements, after the time for which they are demised, or let to him, or to the person under whom he holds, or contrary to the conditions, or covenants of any lease or agreement under which he holds;

2. When any rent shall have become due, or any such lease or agreement, and the tenant or person in possession shall have neglected or refused for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or pay the rent so due;

**TITLE 14.**  
**3.** When any person shall continue in possession of any premises, sold by virtue of any mortgage or execution, after the expiration of the time, limited by law, for the redemption of such premises;

**4.** When any tenant at will or by sufferance shall hold over after the determination of his estate by a notice to quit, as provided by law.

**SEC. 161.** When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons, but the justice shall, at the time of trial, proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

**SEC. 162.** When the action shall be brought to recover the possession of premises demised, or let, for the reason that the tenant, or person in possession, has refused or neglected to pay the rent due; it shall be lawful for the defendant, at any time before judgment, to pay to the justice for the plaintiff, the rent then in arrear, with interest, and the costs of the action, and thereupon no writ of restitution shall be awarded.

**SEC. 163.** The justice shall have the same power to adjourn in actions for forcible entry and detainer as in other cases.

**SEC. 164.** Neither the judgment, nor anything contained in this chapter, shall bar or prevent the party injured, from bringing an action to recover the possession of the premises, or to recover damages, for the trespass or injury committed, against the aggressor or party offending.

## TITLE XIV.

### Action to recover Possession of a Mining Claim.

**SEC. 165.** Complaint, how made and what to contain.

166. Proceedings upon filing complaint.

167. Custom, &c., of the diggings, evidence when not in conflict with law.

**SEC. 165.** Any person, claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county, in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

**SEC. 166.** Upon filing such complaint, the same proceedings shall be had before the justice, as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may in like manner be issued to place the plaintiff in possession of such mining claim.

**SEC. 167.** In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations, established and in force at the bar, or diggings embracing such claim;

TITLE 16. and such customs, usages, or regulations, when not in conflict with the laws of the United States, or of this territory, shall govern the decision of the action.

## TITLE XV.

### *Of Proceedings for Contempts before Justices of the Peace.*

- SEC. 168. When justice may punish for contempt.  
 169. Contempt how punished.  
 170. No person to be punished for contempt without a hearing.  
 171. Offender, if present may be arraigned.  
 172. Warrant for contempt; its form.  
 173. Conviction to be entered in docket.  
 174. Warrant of commitment when to issue.

When just-  
ices may  
punish for  
contempt. SEC. 168. In the following cases, and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous, and insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceeding, which tends to interrupt such proceedings, or impair the respect due to his authority;

2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;

3. Persons guilty of resistance, or disobedience to any lawful order, or process, made or issued by him.

Contempt,  
how punish-  
ed. SEC. 169. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail, not exceeding two days, at the discretion of the justice, unless otherwise provided by the statute.

No person to  
be punished  
without a  
hearing. SEC. 170. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defence; and for that purpose, the justice may issue his warrant to bring the offender before him.

Arraign-  
ment. SEC. 171. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner, as if a warrant had been previously issued, and the offender arrested thereon.

Form of war-  
rant. SEC. 172. The warrant for contempt may be in the following form:

*Territory of Oregon,* } ss:  
*County of*

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt, alleged to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.  
 J. P., *Justice of the Peace.*

Conviction  
to be entered  
in docket. SEC. 173. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating

the particular circumstances of the offence, and the judgment rendered thereon, and may be in the following form: TITLE 16.

*Territory of Oregon,* } ss:  
*County of*

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, while the undersigned, one of the justices of the peace, of the said county, was engaged in the trial of an action, between C. D., plaintiff, and E. F., defendant, in said county, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly); and whereas the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas the said A. B. did not show cause against the said charge. Be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned, to pay a fine of \_\_\_\_\_ dollars (or be imprisoned, &c.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.  
 J. P., *Justice of the Peace.*

SEC. 174. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice; if he be adjudged to pay a fine, process may be issued to collect the same, and when so collected, it shall forthwith be paid by the justice into the county treasury. Warrant of  
of commit-  
ment.

## TITLE XVI.

### *Certiorari and Proceedings thereon.*

- SEC. 175. Removal of cause to district court by *certiorari*.  
 176. When affidavit for *certiorari* to be filed and what to contain.  
 177. Writ to issue upon filing affidavit and undertaking.  
 178. *Certiorari* not to stay proceedings, unless undertaking be given.  
 179. Service of writ, and certificate of undertaking.  
 180. Copy of affidavit to be served with writ.  
 181. Justice may be compelled to amend return.  
 182. When cause may be brought on to argument.  
 183. Judgment of district court how given.  
 184. Restitution when awarded.

SEC. 175. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment, or order, to the district court as hereinafter provided. *Certiorari.*

SEC. 176. Within twenty days after the rendition of the judgment, or if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such *certiorari*, his agent, or attorney, shall file in the office of the clerk of the district court, for the proper county, an affidavit stating that in his belief there is reasonable cause for granting such *certiorari*, for error in such judgment or proceeding (setting forth the ground of error alleged) and that the application is made in good faith, and not for the purpose of delay; and further shall Affidavit,  
when to be  
filed; what  
to contain.

**TITLE 16.** execute a written undertaking to the adverse party, with one or more sureties, to be approved by the clerk, in a sum not exceeding one hundred dollars, to the effect that he will pay all costs, that may be adjudged against him in the district court.

**Writ when to issue.** SEC. 177. Upon filing the affidavit and executing the undertaking mentioned in the last section, the clerk shall issue a writ of *certiorari*, directed to the justice committing the alleged error, commanding him to make return as to all the facts contained in such affidavit, and of all the proceedings in the case.

**Not to stay proceedings unless undertaking be given.** SEC. 178. The writ of *certiorari* shall not stay the execution of the judgment before the justice, unless the party applying therefor, his agent, or attorney, shall, in lieu of the undertaking mentioned in section one hundred and forty-three, execute a written undertaking to the adverse party, with one or more sufficient sureties to be approved by the clerk, in double the amount of the judgment and costs, rendered before the justice, to the effect that the party applying will prosecute the writ of *certiorari* to final judgment, and abide the order the court may make therein.

**Service of writ, &c.** SEC. 179. The writ of *certiorari* shall be served on the justice within ten days after it has been issued, and if an undertaking be executed in pursuance of the last section and a certificate of the clerk to that effect, be served on the justice, all further proceedings in law in such case shall cease, and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

**Copy of affidavit to be served with writ.** SEC. 180. Upon the service of a writ of *certiorari* to reverse a judgment, it shall be the duty of the party, serving the same, to deliver at the same time to the justice a copy of the affidavit on which the *certiorari* was procured, and the justice shall make a special return as to all the facts contained in such affidavit and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the district court, within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

**Justice may be compelled to amend return.** SEC. 181. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

**Case when brought on.** SEC. 182. When the writ of *certiorari* and return shall be filed with the clerk, the case may be brought on to argument before the district court, or judge thereof at any time thereafter, according to the statutes relating thereto.

**Judgment, how given.** SEC. 183. The district court or judge shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections, or defects, in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

**Restitution, when awarded.** SEC. 184. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue thereon.

## TITLE XVII.

## Of Appeals to the District Court.

## TITLE 17.

- SEC. 185.** Who may appeal.  
**186.** Appeal when and how taken.  
**187.** Appeal or stay of proceedings not allowed unless undertaking be given.  
**188.** Writ of restitution not to issue, unless appellant execute undertaking.  
**189.** Justice to stay proceedings after undertaking is filed.  
**190.** Justice to give certificate of appeal; stay of proceeding on execution.  
**191.** Appellant when to furnish district court with transcript of docket.  
**192.** Issue to be tried without new pleadings.  
**193.** Court may compel justice to give transcript, &c.  
**194.** Appeal when not to be dismissed for defective undertaking.  
**195.** Judgment against appellant, how rendered.

SEC. 185. Any person considering himself aggrieved, by any judgment or decision of a justice of the peace, except judgment by confession, may in person or by his agent, appeal therefrom to the district court of the same county where the judgment was rendered, or the decision made.

SEC. 186. Such appeal shall be taken within twenty days after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party, or his attorney.

SEC. 187. No appeal shall be allowed in any case unless a written undertaking shall be executed on the part of the appellant, by one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, an undertaking, with two or more sureties, in a sum equal to twice the amount of the judgment, to the effect that the appellant will pay the costs and judgment, provided the judgment appealed from be affirmed, or if affirmed only in part, then to the extent in which it may be affirmed.

SEC. 188. If the judgment appealed from direct the delivery of the possession of premises, in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed unless a written undertaking be entered into, on part of the appellant, with two or more sureties, to the effect that during the possession of such premises, or mining claim by the appellant, he will not commit, nor suffer to be committed, any waste, destruction or injury thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the premises, or mining claim, from the time of the appeal until the delivery of possession thereof, and all costs of the appeal. The amount of such undertaking shall be fixed by the justice, before whom the action was tried.

SEC. 189. Upon an appeal being made, and an undertaking filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the mean time, execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed.

SEC. 190. On such certificate being presented to the officer holding the execution, he shall, forthwith, release the property of the defendant, that may have been taken on execution, and if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

Who may appeal. Bill, 412.

How taken.

Undertaking to precede appeal. 5 Barb. 173; 1 Comst. 606; 2 do. 569. *Ib.* Stay of proceedings.

Writ of restitution, when to issue.

Stay of proceedings after filing undertaking.

Certificate of appeal, stay of execution, &c.

## TITLE 18.

Appellant to furnish transcript of docket, &amp;c.

Issue, how tried.

Court may compel justice to give transcript.

When appeal not to be dismissed.

Judgment against appellant.

Qualifications of sureties.

Bail, how to justify.

Allowance, when indorsed on undertaking.

SEC. 191. On or before the first day of the term of the district court, next after the appeal have been taken, the appellant shall furnish the district court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, which shall be certified by such justice to be correct, and upon the filing of such transcript, the district court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

SEC. 192. The issue before the justice shall be tried in the district court, without other or new pleadings, unless otherwise directed by the court.

SEC. 193. Upon an appeal being made and allowed, the district court may by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may by rule and attachment compel him to amend the same.

SEC. 194. No appeal allowed by a justice shall be dismissed on account of the undertaking being defective, if the appellant will, before the motion is determined, execute and file in the district court, such an undertaking as he should have executed by the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect.

SEC. 195. In all cases of appeal to the district court, if on the trial anew in such court the judgment be against the appellant in whole, or in part, such judgment shall be rendered against him and his sureties in the undertaking for the appeal.

## TITLE XVIII.

*Of Qualifications of Sureties.*

SEC. 196. Qualifications of sureties.

197. Bail, how to justify.

198. Allowance when to be indorsed on undertaking.

SEC. 196. The qualifications of sureties, on the several undertakings required by this chapter, shall be as follows:

1. Each of them shall be a resident, and householder, or freeholder within the county;

2. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

SEC. 197. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner, as the justice in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required.

SEC. 198. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon,

and file the same, and the officer shall thereupon be exonerated from all liability. TITLE 19.

## TITLE XIX.

*Of Criminal Proceedings before Justice of the Peace.*

SEC. 199. Jurisdiction of justice.

200. Justice when to issue warrant.

201. Criminal cases to be entered in separate docket, and how.

202. Proceedings on return of warrant.

203. Accused may give bail.

204. Complaint to be read to accused and he be required to plead.

205. When court to try issue.

206. Proceedings when defendant pleads guilty.

207. When justice to make list of jury; striking of names therefrom.

208. When justice to direct person to strike names from list; issue of venire.

209. Duty of officer to whom venire is directed.

210. Deficiencies in jury, how supplied.

211. New jury, when to be summoned.

212. Either party may challenge for cause.

213. Oath to be administered by justice to jurors.

214. Proceedings of jury after being sworn.

215. Verdict how delivered.

216. Judgment of justice, &amp;c.

217. Discharge of accused, when judgment for costs against complainant.

218. When person convicted may appeal to district court.

219. Judgment, how executed.

220. Jurors and witnesses liable for contempt as in civil cases.

221. Justice to make certificate of conviction.

222. Certificate, when and where to be filed.

223. Certificate and certified copy evidence.

SEC. 199. Justices of the peace shall have power to hold courts, subject to the provisions hereinafter contained, to hear, try, and determine the charges, for offences arising within their respective counties, where such jurisdiction is conferred upon them by any law of this territory. Jurisdiction of justice.

SEC. 200. Upon complaint made to any justice of the peace by any person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant, and if it shall appear that such offence has been committed, such justice shall issue his warrant, reciting the substance of the complaint, and requiring the sheriff, or constable, to whom it is directed, forthwith to arrest the accused, and to bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein to appear and give evidence at the trial. When to issue warrant.

SEC. 201. Every justice of the peace shall keep a separate docket for criminal cases, in which he shall enter the Territory of Oregon as plaintiff, and the accused as defendant, and he shall make all such other entries as are required in civil cases. Criminal cases how entered.

SEC. 202. On the return of warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause. Proceedings on return of warrant.

SEC. 203. From the time of the return of the warrant until the time of the trial, the accused may give bail, with one or more Accused may give bail.

**TITLE 19.** sureties, to be approved by the justice, for his appearance, at the time fixed for the trial; or in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

**Warrant to be read to accused, &c.** SEC. 204. The charge made against the accused as stated in the complaint, shall be distinctly read to him, and he shall be required to plead thereto, which plea the justice shall enter in his docket; if the accused refuse to plead, the justice shall enter the fact, with the plea of not guilty, in behalf of such accused.

**When court to try issue.** SEC. 205. If the plea of the accused be not guilty, and a trial by jury be expressly waived by him, the justice shall proceed to try such issue, and to determine the same, according to the evidence which may be produced against, and in behalf of such accused.

**If defendant pleads guilty.** SEC. 206. If the accused shall plead guilty to such charge, the justice shall thereupon convict him of the offence charged, and render judgment thereon.

**When justice to make jury list.** SEC. 207. After the joining of issue, and before the justice shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, such justice shall make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in the courts of record in this territory, from which list the complainant and accused may strike alternately one name, until each shall have stricken out six names.

**When justice to direct person to strike out jurors.** SEC. 208. In case the complainant or accused shall neglect to strike out such names, the justice shall direct some suitable disinterested person to do so, for either or both of the parties so neglecting; and upon such names being struck out, the justice shall issue a venire directed to the sheriff, or any constable of the county, commanding him to summon the six persons, whose names shall remain upon such list, to appear before such justice, at the time and place to be named therein, to make a jury for the trial of such offence.

**Venire.** SEC. 209. The officer, to whom such venire shall be delivered, shall summon such jury personally and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with the venire, to the justice, within the time specified.

**Deficiencies in jury.** SEC. 210. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present, and disinterested, to summon any of the bystanders, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

**New jury.** SEC. 211. If the officer, to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the justice, a new jury shall be selected and summoned, in the same manner, and the same proceedings shall be had, as herein prescribed, in respect to the first jury, unless the accused shall consent to be tried by the justice, in which case, he shall proceed to the trial of the issue, as if a jury trial had been waived.

SEC. 212. In all trials for criminal offences before a justice of the peace, either party may challenge any juror for cause as in civil cases. **TITLE 19.** Challenge.

SEC. 213. The justice shall administer the following oath or affirmation to the jurors: **Juror's oath.**

You, and each of you, do solemnly swear (or affirm) that you will well and truly try this cause between the Territory of Oregon and the accused, and a true verdict give according to law, and the evidence, unless discharged by the court—So help you God.

SEC. 214. After the jury shall have been sworn, they shall sit together, and hear the proofs, and allegations in the case, which shall be delivered in public, and in the presence of the accused; and after such proof and allegations, the jury shall be kept together in some convenient place until they agree on their verdict, or are discharged by the justice; and the sheriff, or a constable shall be sworn to take charge of the jury, in like manner, as upon trials in justices' courts in civil proceedings. **Jury, how to proceed.**

SEC. 215. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket. **Verdict, 21 Wen. 305; 5 Denio, 98.**

SEC. 216. When the accused shall be tried under the provisions of this chapter, and found guilty, either by the justice or jury, or shall be convicted of the charge made against him on a plea of guilty, the justice shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such imprisonment shall, in no case, exceed the limit fixed by law, for the offence charged. **Judgment.**

SEC. 217. Whenever the accused, tried under the preceding provisions of this chapter, either by the justice or by a jury, shall be acquitted, he shall be immediately discharged, and if the justice, before whom the trial is had, shall certify in his docket that the complaint was wilful and malicious, and without probable cause, he shall enter a judgment against the complainant to pay all the costs, which shall have accrued upon the trial, and unless he enter into an undertaking to this territory, with one or more sureties, to pay such costs in thirty days after the trial, execution shall issue therefor. **Discharge of accused.**

SEC. 218. Whenever the accused, tried under the preceding provisions of this chapter, either by the court or the jury, shall be convicted, he may appeal from the judgment of the justice to the district court of the county—*Provided*, the person so convicted shall, within ten days after the judgment, enter into an undertaking, with one or more sufficient sureties, conditioned to appear before said court, and abide the judgment of the court therein; and the justice from whose judgment an appeal is taken, shall make a return of the proceedings had before him, and shall cause the warrant and return, together with any undertakings, to be filed with the clerk of the district court, on or before the first day of the term of the district court, next after the appeal is taken; and the complainant and witnesses, may also be required to enter into undertakings with or without sureties, in the discretion of the justice, to **Person convicted may appeal.** **Proviso.**

**costs against complainant, &c.**