AN ACT
TO RE-APPORTION THE MEMBERS OF THE COUNCIL AND HOUSE OF REPRESENTATIVES.

SEC. 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That the council shall hereafter consist of nine members, who shall be apportioned among the different counties as follows:—One to the county of Jackson; one to the counties of Coos, Douglas, and Umpqua, jointly; one to the counties of Lane and Benton, jointly; one to the county of Linn; one to the county of Marion; one to the counties of Clackamas and Wasco, jointly; one to the counties of Washington and Columbia, jointly; one to the counties of Clatsop and Yamhill, jointly; and one to the counties of Polk and Tillamook, jointly.

SEC. 2. The house of representatives shall hereafter consist of thirty members, to be apportioned among the different counties as follows:—Four to the county of Jackson; one to the county of Douglas; one to the county of Coos; one to the county of Umpqua; two to the county of Lane; two to the county of Benton; three to the county of Linn; three to the county of Marion; three to the county of Clackamas; one to the county of Wasco; three to the county of Washington; one to the county of Columbia; one to the county of Clatsop; two to the county of Yamhill; one to the county of Polk; and one to the counties of Polk and Tillamook, jointly.

Passed, January 31st, 1854.
CHAPTER I.

AN ACT RELATING TO ELECTIONS, AND THE MODE OF SUPPLYING VACANCIES IN OFFICE.

TITLE I. Of the Qualification of Voters.

TITLE II. Of General Elections.

TITLE III. Of Canvass by the Judges.

TITLE IV. Of the Canvass by the Clerk of the Board of County Commissioners.

TITLE V. Of the Manner of Contesting the Elections of County, Town, District and Precinct Officers.

TITLE I.

Of the Qualification of Voters.

SEC. 1. Persons entitled to vote.
1. Persons not entitled to vote.

SEC. 2. No person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election. Nor shall any officer or soldier of the United States army or navy, unless they were residents of the territory at the time of their enlistment, nor shall they have resided six months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election.

SEC. 3. The time of holding elections, and of officers to be elected.

SEC. 4. It shall be the duty of the county commissioners at their regular session in April preceding the general election, to appoint three capable and discreet persons possessing the qualifications of electors to act as judges of the election at each election precinct, and said commissioners shall also set off and establish election precincts or districts when it may be necessary; and the clerk of the said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of the said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff within twenty days after the receipt of the said notices, to serve the same upon each of the said judges of the election. If in any precinct, any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election.

SEC. 5. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held at their respective precincts, until other judges shall be appointed as hereinbefore directed; and the said clerks of each election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall set off and establish any election precincts which may occur in the office of judges of election, at any election precinct within their respective counties.

SEC. 6. The clerks of the several boards of county commissioners shall, at least forty days before any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be as nearly as circumstances will admit, as follows:

Notice is hereby given, that on the first Monday, the ___ day of June next, at the house of ___, in the town, district, or precinct of ___, in the county of ___, an election will be held for territorial, county, town, or district officers, (naming the officers to be filled, as the case may be,) which election will be held at nine o'clock in the morning, and will continue until six o'clock in

Title: ACT RELATING TO ELECTIONS, AND THE MODE OF SUPPLYING VACANCIES IN OFFICE.
ACT RELATING TO ELECTIONS.

TITLE 2.

the afternoon of the same day. Dated this day of A. D., (as the case may be.)

(Signed,) A. B. Clerk of the Board of County Commissioners.

Notice to be posted by sheriff.

Sec. 7. The sheriff aforesaid, to whom such notices shall be delivered, as aforesaid, shall put up in three of the most public places in each town, or precinct, the notices referring to such town or precinct, at least twenty days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and in cases where towns and precincts may not be set off by law as election precincts, said notices shall be posted as follows:—one at the house where the election is authorised to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

Oath of judges and clerks.

Sec. 8. Previous to votes being taken, the judges and clerks of the elections shall severally take an oath in the following form; to wit, I, A.B., do solemnly swear (or affirm, as the case may be,) that I will perform the duties of judge of the election, (or clerk, as the case may be,) according to law and the best of my ability; that I will sturdily endeavor to prevent fraud, deceit, and abuse, in conducting the same.

Ob., has administered.

Sec. 9. In case there shall be no judge, or justice of the peace, present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerk of the election, and the person administering the oath shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Opening and closing polls.

Sec. 10. At all elections to be held under this chapter, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; Provided, that the judges of election, if they deem it necessary, for the purpose of receiving the votes of all the electors wishing to vote, may postpone the closing of the polls until seven o'clock, p.m.; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour; but the board may in their discretion adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made; and if the judges shall adjourn the polls, they shall immediately put the ticket in the box, without inspecting the names thereof, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number, in the poll book.

Sec. 11. It shall be the duty of the clerks of the several boards of county commissioners to furnish one of the judges of every election precinct in the county with two poll books, at least five days before the time of holding any election.

Elector, how to deliver ballot.

Sec. 12. Every elector shall in full view, deliver to one of the judges of the election, a single ballot, or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be in tend to fill; said ballot may be open or folded, as the voter may choose.

Sec. 13. The judge, to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce, with an audible voice, the names of the electors; and if no objection be made to him, and the judges be satisfied that the elector is legally entitled to vote, he shall immediately put the ticket in the box, without inspecting the names thereof, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number, in the poll book.

Sec. 14. It shall be lawful for any elector to vote for delegate to Congress, at any place of holding an election within this territory; for members of the council and house of representatives, at any place of holding an election in the district in which he may reside; for county officers, at every place of holding an election in the county in which he resides; for township officers, at every place of holding an election in the county in which he resides; for any other office, at any place where an election is held; and the judges shall immediately put the ticket in the box, without inspecting the names thereof, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number, in the poll book.

Sec. 15. If any person offering to vote shall be challenged, as Challenge.

Sec. 16. If any person so offering such vote shall take such Vote when oath, his vote shall be received, unless it shall be proven by evidence satisfactory to a majority of the judges that he does not possess the qualification of an elector, in which case a majority of the judges are authorized to reject such vote; and if any person shall take such oath, knowing it to be false, he shall be deemed guilty of willful and corrupt perjury; and shall, on conviction, suffer such punishment as now is or hereafter shall be prescribed by law for persons guilty of perjury. And if any person shall present at election who is not a qualified voter, he shall forfeit an pay for the use of the county in which such election shall take place, a sum not exceeding fifty, nor less than twenty-five dollars, to be sued for and recovered in the name of the county commissioners by a civil action, before any justice of the peace in such county.

Sec. 17. There shall be provided and kept by the judges of ballot box.
each election precinct, (at the expense of the county,) a suitable ballot-box, with a lock and key.

Sec. 18. There shall be an opening through the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Sec. 19. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Sec. 20. The ballot-box shall then be opened, and the poll lists placed therein; and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

Sec. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the care of the box, shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition deliver it to the board of judges at the next opening of the polls, when the key shall be broken, the box opened, the poll lists taken out, and the box again locked.

Sec. 22. It shall be the duty of each judge of the election to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

Sec. 23. For the preservation of order, the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct a disorderly or riotous manner at the polls, and shall insist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county for any time not exceeding six days, or until the fine shall be paid; and the constables, sheriffs, deputy sheriffs, and jailors, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no constable, sheriff or deputy be present, the judges may appoint a special constable, or constables to execute their orders.

TITLE III. OF THE CANVASS BY THE JUDGES.

Sec. 24. The canvass shall be open to the public.

Sec. 25. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out, and destroy therefrom so many ballots unopened, as shall be equal to such excess.

Sec. 26. The ballots and poll lists agreeing, or being made to agree, the board shall proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made as nearly as circumstances will admit, in the following form:

At an election held at the house of A. B. in the town, district, or precinct of -- in the county of --, and territory of Oregon, on the day of --, A.D. --, the following named persons received the number of votes annexed to their respective names, for the following described offices; to wit:

A. B. had -- votes for delegate to Congress;
C. D. had -- votes for member of the legislative council;
E. F. had -- votes for member of the house of representatives;

and in like manner, for any other person voted for.

Certified to us, G. H., J. K., M. L., judges of election.

Attest A. B., C. D., clerks of election.

Sec. 27. The judges of election shall then cause the poll books of the poll books under covers, directed to the clerk of the board of county commissioners in the county in which such election was held; and the books thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll book together with the ballot-box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said poll book shall be subject to the manner of opening of any elector, at any time thereafter, who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.
of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected, a certificate of his election as hereinbefore provided.

Sec. 32. The clerk of the board of county commissioners, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of the territory at the seat of government, and it shall be the duty of the secretary of the territory, with the marshal of the territory or his deputy, in presence of the governor, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for delegate to Congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal, and the highest number of votes, the governor shall, by proclamation, order a new election.

Sec. 33. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory within thirty days after the election, the said secretary shall forthwith send a messenger to the board of commissioners of such county, whose duty it shall be to perform the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of the said county, the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county.

Sec. 34. Any person who shall receive a certificate of his election as a member of the council, or house of representatives of the legislative assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office, and when any vacancy shall happen in the office of member of the council, or house of representatives, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county, and in counties of the same rank or representative district, the clerk of the board of county commissioners, at a time appointed by the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

Sec. 35. When two or more counties are united in one council or representative district, the clerk of the board of county commissioners of the county last established, shall, in the sixth month after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and in conjunction with him, shall canvass the votes according to law, and
the certificate of election shall be signed by both clerks, and be delivered to the proper persons, at the office of the clerk of the senior county.

Sec. 39. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, three dollars per diem, and to the person carrying the poll books from the place of election to the clerk's office, the sum of twenty cents per mile, for going and returning, to be paid out of the county treasury.

Sec. 40. If any judge, or clerk of election, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county, a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action, in the name of the county election commissioners of the proper county.

Sec. 41. The term of office of all officers elected, shall begin to run from the time of their election, unless some other express provision is made by law.

Sec. 42. In all elections, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected.

Sec. 43. In counting votes the judges of election shall disregard any misspelling, or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended.

TITLE V.
Of the Manner of Contesting the Election of County, Town, District, and Precinct Officers.

Sec. 44. Notice to be given.
Sec. 45. Service and return of notice; trial &c.
Sec. 46. When the contest is between claims of township, &c.; officers.
Sec. 47. Official notice served in the same manner as a summons, issued out of the district court, ten days before any hearing upon such contest as herein provided shall take place, and shall state the time and place that such hearing shall be had; upon the return of said notice served to the clerk of the district court of such county, he shall thereupon enter the same upon his issue docket as deems expedient, and the same shall be heard in its order by the court; and provided that if the case cannot be determined by the district court, in term time, within one month after the termination of such election, the judge of the district court may hear and determine the same at chambers, as soon thereafter as may be practicable, and shall make all necessary orders for the trial of the case.

Sec. 48. In case of contest between any persons claiming to be elected to any township or precinct office, said notice shall be served in manner aforesaid, and shall be returned to the judge of probate of the county.

Sec. 49. Upon the return of said notice to the said judge of probate, and on the day and at the place therein named, the said judge of probate shall hear and determine such contest, and make all necessary orders for the trial of the cause, and carrying his judgment into effect.

Sec. 50. Provided that this section shall not apply to township or precinct officers.

Sec. 51. In case of contest between any persons claiming to be elected to any township or precinct office, said notice shall be served in manner aforesaid, and shall be returned to the judge of probate of the county.

Sec. 52. Upon the return of said notice to the said judge of probate, and on the day and at the place therein named, the said judge of probate shall hear and determine such contest, and make all necessary orders for the trial of the cause, and carrying his judgment into effect.

This chapter shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by statute.

CHAPTER II.
Of Resignations, Vacancies, Removals, and Supplying Vacancies.

TITLE I. Of Resignations.

Sec. 1. Resignations shall be made as follows:
1. By the treasurer of the territory, auditor of the territory, and by all officers elected by the legislature, to the governor.
2. By all officers who hold their offices by election, to the officer...
or officers respectively authorized by law to order a special election to fill such offices respectively;
3. By all other officers holding their offices by appointment, to the body, board, or officer that appointed them.

TITLE II.

Of Vacancies.

Sec. 2. Office when vacant.
3. When the governor shall declare an office vacant.

Vacancies.

Sec. 2. Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:
1. The death of the incumbent;
2. His resignation;
3. His removal;
4. His ceasing to be an inhabitant of the district, county, town, or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;
5. His conviction of any infamous crime, or of any offence involving a violation of his oath;
6. His refusal or neglect to take his oath of office, or to renew his official bond, or to deposit such oath or bond within the time prescribed by law;
7. The decision of a competent tribunal declaring void his election or appointment.

Sec. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

TITLE III.

Of Supplying Vacancies.

Sec. 4. When, and what vacant offices governor may fill by appointment.
6. Officers appointed; how to qualify; their term of office.
7. This act, when to take effect.

Sec. 5. When at any time there shall be in either of the offices of judge of probate, county clerk, sheriff, coroner, or any county or precinct office, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of either of said offices.

Sec. 6. Every such person so appointed, in pursuance of either of the two last preceding sections, shall before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place he shall be appointed; and he shall continue to exercise and perform the powers and duties of the office to which he shall be appointed, until such vacancy shall be regularly supplied as provided by law.

Sec. 7. This act shall take effect, and be in force from and after its passage.

Passed, January 11th, 1854:

An Act to provide for holding the Supreme and District Courts.

Sec. 2. Counties composing first, second, and third judicial districts; residence of associate judges.

Sec. 3. Time and place of holding district court.

Sec. 4. Trial of criminal offences in district court.

Sec. 5. What causes, &c., judge of district court at chambers may hear and determine.

Sec. 6. When judges may exchange districts.

Sec. 7. County of Daimlock and Yamhill, Coos and Umpqua attached for judicial purposes.

This act when to take effect.

SECTION 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That a supreme court shall be held in Portland on the second Monday of June, and in Salem on the second Monday of December in each year.

Sec. 2. The counties of Marion, Linn, Lane, Benton, and Polk, shall compose the first judicial district, and George H. Williams, chief justice, is assigned to reside therein.

The counties of Clatsop, Washington, Clackamas and Yamhill, shall compose the second judicial district, and Cyrus Oney, one of the associate justices, is assigned to reside therein.

The counties of Umpqua, Douglas, and Jackson, shall compose the third judicial district, and Obadiah B. McFadden, one of the associate justices, is assigned to reside therein.

Sec. 3. District courts shall be held in the several counties, on the following Mondays, to wit: in Clatsop, the fourth in February and August; in Clackamas, the first in March and September; in Yamhill, the third in March and September; in Washington, the fourth in April and September; in Lane, the first in May and October; in Benton, the second in May and October; in Linn, the third in May and October; in Polk, the fourth in May and October; in Marion, the first in April and November; in Douglas, the third in May and November; in Umpqua, the fourth in May and November; in Jackson, the first in February, May, August, and November.

Sec. 4. When any person shall be detained in prison or custody charged with a criminal offence, the judge of the district, and in case of vacancy, absence, or other inability, then any other judge may appoint and hold a district court for the indictment and trial of such prisoner, at which term all persons have received from the judge ten days notice of the time of holding such court for their trial, and any other business may be done by consent of parties.

Sec. 5. The judges at chambers may hear and decide all causes and matters at law, and in equity, arising or pending in their respective districts, which do not require the intervention of a jury, taking care that the parties have due notice of the time and place of hearing; and at the request of both parties, may hold jury trials, and tax the expense as costs of suit.
Sen. 3. The judges may exchange districts, and hold courts for each other at pleasure, and when a vacancy shall happen, or a judge shall be sick, absent, or otherwise unable to serve, it shall be the duty of the other judges to supply his place, so far as the same can be done without omitting any regular court in their own districts.

Sec. 4. The county of Tillamook shall be attached to the county of Yamhill for judicial purposes, and the county of Coos shall be attached to Umpqua for judicial purposes.

Sec. 5. This act to take effect on and after the passage.
TITLE II.

Of the Place of Trial; Actions at Law.

Sec. 14. Certain actions to be tried where the subject or some part is situated.
1. Actions according to defendant's residence.
2. When the county in which the action is pending shall be a county in which the subject of the action, or some part thereof is situated.
3. Whenever the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant, the action shall be tried in the county where the subject of the action is situated.
4. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same county as the defendant.
5. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
6. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
7. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant, and the subject of the action is in the same state as the defendant.
8. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant, and the subject of the action is in the same state as the defendant.
9. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant, and the subject of the action is in the same state as the defendant.
10. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant, and the subject of the action is in the same state as the defendant.

Sec. 15. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the

like power of the court to change the place of trial in the cases provided by statute:
1. For the recovery of a penalty or forfeiture imposed by statute.
2. For the recovery of a penalty or forfeiture imposed by statute.
3. Against a public officer or person specially appointed to execute or cause to be executed, the act done by him in process of his office.
4. Against a public officer or person specially appointed to execute or cause to be executed, the act done by him in process of his office.

Sec. 16. In all other cases, the action shall be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant, and the subject of the action is in the same state as the defendant.

Sec. 17. A change of venue, or the place of trial, may be had on the application of either of the parties in the following cases:
1. When the county in which the action is pending shall be a county in which the subject of the action is situated.
2. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
3. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
4. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
5. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
6. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
7. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
8. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
9. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
10. When the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.

Sec. 18. An application for a change of venue may be made, either to the court in term time or to a judge thereof in vacation, and the change shall be made to the most convenient county in which there shall be no exception of the character of those above enumerated. But neither party shall be entitled to more than one change of venue, except for causes not in existence when the first change may have been taken.

Sec. 19. If the change of venue be ordered by the judge in vacation, he shall immediately transmit to the clerk of the court where the cause is pending, the affidavit if any, and the order for the change, who shall file the same in his office.

Sec. 20. In such cases, as well as where the order shall be made in open court, the clerk shall forthwith transmit to the clerk of the proper court, a transcript of the record and proceedings in such cause with the original papers filed therein, having first made out and filed in his own office authenticated copies of all such original papers.

Sec. 21. The costs of such change of venue shall be paid by the applicant therefor, and not taxed as a part of the costs of the case, and the clerk may require payment of such costs before the transcript and papers shall be transmitted as aforesaid.

Sec. 22. If such transcript of the record and proceedings be not when order

SEC.

Of the Place of Trial; Actions at Law.

Sec. 14. Certain actions to be tried where the subject or some part is situated.
1. Actions according to defendant's residence.
2. When the county in which the action is pending shall be a county in which the subject of the action, or some part thereof is situated.
3. Whenever the subject of the action is in the same state as the defendant, and the subject of the action is in the same county as the defendant.
4. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
5. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
6. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
7. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
8. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
9. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.
10. When the action is to be tried in the county where the subject of the action is situated, and the subject of the action is in the same state as the defendant.

Sec. 15. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the
transmitted to the clerk of the proper court within twenty days after the order for the change of venue shall be filed, (unless a longer time may be allowed by the judge,) such order may be annulled by the court, or judge who made the same, and in such case no other change of venue shall be allowed to such applicant.

Sec. 25. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed, and the same proceedings had as though it had originated in that court.

Of the Manner of Commencing Actions at Law.

Sec. 24. Actions how commenced.

1. In an action arising on contract for the recovery of money or property within the territory, or the cause of action arose therein; if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded.

2. When the defendant being a resident of this territory, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or shall keep himself concealed therein with like intent;

3. When the defendant is not a resident of the territory but has property therein, and the action arises on contract, and the court has jurisdiction of the subject of the action;

4. When the action is for divorce in the cases prescribed by law.

Sec. 31. The order shall direct the publication to be made in a newspaper published in the county where the action is brought, and if there be no newspaper published in the county, then in a
CIVIL ACTIONS.

TITLE II.

1. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is ordered, or his representatives may in like manner, upon good cause shown, be allowed to defend after judgment, and within one year after the rendition of such judgment on such terms as may be just, and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct.

2. Whenever it shall appear by the return of the sheriff, his deputy, or the person appointed to serve a summons, that he has not served it upon the defendants as prescribed in the twenty-ninth section, the clerk shall, at the request of the plaintiff, issue another summons, and so on until service be had; or the plaintiff may proceed by publication in the manner before stated, at his election.

3. When the action is against two or more defendants, and the summons is served on one or more, but not all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise directs; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest against the persons of the defendants served; or

2. If the action be against the defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

4. Proof of service of the summons and complaint shall be as follows:

1. If served by the sheriff or his deputy, the certificate of such sheriff or deputy; or

2. If by any other person, his affidavit thereof; or

3. In case of publication, the affidavit of the printer or his foreman or his principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons and complaint in the post office, if the same shall have been deposited; or

newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks; or in case the defendant be absent from, or residing out of this territory, not less than once a week for three months. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is not known to the party making the application. When publication is ordered, personal service of a copy of the summons and complaint out of the territory, shall be equivalent to publication and deposit in the post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed in the order for publication.

Defendant's rights in such cases.

Defendant's rights in such cases.

CIVIL ACTIONS.

TITLE IV.

Of the Pleadings in Actions of Law.

Sec. 37. All the forms of pleading heretofore existing in actions at law, inconsistent with the provisions of this act, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of the pleadings is to be determined, shall be those prescribed by statute.

Sec. 38. The only pleadings on the part of the plaintiff shall be:
1. The complaint;
2. The demurrer; or
3. The reply.
And on part of the defendant:
1. The demurrer; or
2. The answer.

The Complaint.

Sec. 39. The first pleading on the part of the plaintiff shall be:
1. First pleading to be complaint.
2. Complaint what to contain.

Sec. 40. The complaint shall contain:
1. First pleading to be complaint.
2. Complaint what to contain.
3. The title of the cause, specifying the name of the court, and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.
4. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.
5. A demand of the relief which the plaintiff claims. If the recovery of money, or damages be demanded, the amount thereof shall be stated.

The Demurrer.

Sec. 41. When defendant may demur.
1. The defendant may demur to the complaint within the
2. When defendant may demur.
3. The defendant may demur to the complaint within the
4. The written admission of the defendant. In case of service, otherwise than by publication, the certificate, affidavit or admission must state the time and place of service.

Sec. 42. From the time of the service of the summons and complaint in an action at law, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.
CIVIL ACTIONS.

TITLE VII.

The Answer.

Sec. 50. Answer, what to contain.

1. A specific denial of each material allegation of the complaint controverted by the defendant, according to his knowledge, information or belief, or of any knowledge or information thereof sufficient to form a belief.

2. A plain and concise statement of any new matter constituting a defense or set-off without unnecessary repetition.

Sec. 51. The defendant may set forth by answer as many defenses as he may have. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished.

Sec. 52. The defendant may demur to one or more of several causes of actions stated in the complaint, and answer the residue.

Sec. 53. Shame and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.
payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney, in which case the affidavit may also be made by such agent or attorney. If the party pleading shall not be within the county in which the action is brought, such pleading may be verified by the party, his agent or attorney, or by any person having a knowledge of the facts, and when the affidavit shall be made by any other person than the party, he shall set forth in it his knowledge, or the grounds of his belief on the subject, and the reason why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof, and when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegations might subject the party to prosecution for felony. And no pleading shall be used in a criminal prosecution against the party, as proof of a fact admitted or alleged in such pleading.

Sect. 55. It shall not be necessary for a party to set forth in a pleading, a copy of the instrument of writing, or the items of an account therein alleged, but unless he file a verified copy thereof with the pleading, and serve the same on the adverse party, he shall within ten days after a demand thereof in scatting, deliver to the adverse party, a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true; or be excluded from giving evidence thereof. The court, or a judge thereof, may order a further account when the one delivered is defective, and the court may in all cases order a bill of particulars of the claim of either party to be furnished.

Sect. 56. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties.

Sect. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Sect. 58. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Sect. 59. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish on the trial the facts showing such performance. In an action or defence founded upon an instrument for the payment of money only, it shall be sufficient for the party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specific sum which he claims.

Sect. 60. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Sect. 61. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter, out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the pleading shall be required to establish on trial that it was so published or spoken.

Sect. 62. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Sect. 63. In an action to recover the possession of property, dispossessed, doing damage, an answer that the defendant or person by whose command or act the possession was lost, was lawfully possessed of the real property upon which the distress was made, and that the property dispossessed was at the time during which the damage accrued, shall be good, without setting forth the title to such real property.

Sect. 64. The plaintiff may unite several causes of action in the same complaint when they all arise out of

1. Contract, express or implied; or,
2. Injuries, with or without force, to the person; or,
3. Injuries, with or without force, to property; or,
4. Injuries to character; or,
5. Claims to recover real property, with or without damages for withholding thereof; or,
6. Claims to recover personal property, with or without damage for the withholding thereof; or,
7. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action so united, must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated.

Sect. 65. Every material allegation of the complaint, not specifically controverted by the answer, and every material allegation of the new matter in the answer, not specifically controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in a reply shall not in any respect conclude the defendant, who may on the trial counteract it by proofs, either in direct denial or by way of avoidance.

Sect. 66. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.
Mistakes in Pleadings and Amendments.

SEC. 67. Material variances, how provided for.

68. Immaterial variances, how provided for.

69. What to be deemed a material variance.

70. Amendments of course.

71. When a party may plead over, after decision on demurrer.

72. Amendments by the court.

73. Amendments after demurrer.

74. Showing a party by a fictitious name, when allowed.

75. No error or defect to be regarded unless it affects substantial rights.

76. Supplemental complaint, answer or reply.

SEC. 68. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his prejudice, in maintaining his action or defence upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

SEC. 69. When, however, the allegation of the cause of action or defence to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the two last sections, but a failure of proof.

SEC. 70. Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in such case, a copy of the amended pleading shall be served on the adverse party.

SEC. 71. After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may in its discretion allow the party to plead over upon such terms as may be proper. If the demurrer be sustained, either party may amend any pleading demurred to, upon such terms as may be just, and he shall serve a copy of the same as amended, on the adverse party, within such time as may be prescribed by the court.

SEC. 72. The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding, by adding, striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved.

SEC. 73. The court may likewise, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by this act, or by an order enjoining such time; and may also, in its discretion, and upon such
is for a willful 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 officers 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 office, or 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, 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 collecting 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.

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

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

Order for arrest. Sec. 79. An order for the arrest of the defendant shall be obtained from a judge of any district court in this territory.

How obtained. Sec. 80. The order may be obtained when it shall appear to the judge, by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-eight, which affidavit shall be supported by the additional affidavit of some other disinterested person, that the case is one of those mentioned in section seventy-eight. The affidavits shall be either positive, or upon information or belief, they shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavits shall be filed with the clerk of the court in which the action is brought.

Security by plaintiff. Sec. 81. Before making the order the judge shall require a written undertaking on the part of the plaintiff with or without 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. If the undertaking be executed by the plaintiff without sureties, he shall annex thereto an affidavit that he is a resident and householder, or freedman, and within the territory, and worth double the sum specified in the undertaking, over all his debts and liabilities.

Order when made. Sec. 82. The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

Arrest of defendant. Sec. 83. The affidavit and order of arrest shall be delivered to the sheriff, who upon arresting the defendant shall deliver to him a copy thereof.

Sec. 84. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

Sec. 85. The defendant at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest as provided in this act.

Sec. 86. The defendant may give bail, by causing a written undertaking to be executed in favor of the plaintiff by two or more sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the fourth subdivision of section seventy-eight, an undertaking to the same effect as that provided by section one hundred and twelve.

Sec. 87. At any time before a failure to comply with the undertaking, the bail may surrender the defendant in his own show cause, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon upon an order of arrest, and shall by a certificate in writing acknowledge the surrender.

2. Upon the production of a copy of the undertaking and sheriff's certificate, a judge of the district court may upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used in said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in the fourth subdivision of section seventy-eight, so as to discharge the bail from an undertaking given to the effect provided by section one hundred and twelve.

Sec. 88. For the purpose of surrendering the defendant, the bail may, at any time and place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower the sheriff or any other person of suitable age and discretion to do so.

Sec. 89. In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

Sec. 90. The bail may be exonerated either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

Sec. 91. Within the time limited for that purpose, the sheriff shall proceed to arrest, under-
shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a certified copy of the undertaking of the bail; or if the defendant be arrested, and bail not given, he shall file a certified copy of the order of arrest, with his return endorsed thereon.

The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Sec. 92. Within ten days after the receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the places of residence of the latter) before a judge of the district court, or the clerk of the court in which the action is pending, at a specified time and place, the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking in the form prescribed in section eighty-six.

Sec. 93. The qualifications of bail shall be as follows:

1. Each of them shall be a resident of the territory; but no counsellor or attorney at law, sheriff, clerk of the district court, or other officer of such court, shall be permitted to become bail in any action.

2. Each of them shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced as provided in this act, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or clerk of the court on justification may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Sec. 94. For the purpose of justification, each of the bail shall attend before the judge or clerk of the court, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Sec. 95. If the judge or clerk find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is brought; and the sheriff shall thereupon be exonerated from liability.

Sec. 96. The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. If the amount of the bail be reduced as provided in this act, the defendant may deposit such amount instead of giving bail. In either case the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Sec. 97. The sheriff shall immediately after the deposit pay the same into court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

Sec. 98. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section eighty-six, at any time before judgment, and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such bail to the defendant.

Sec. 99. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

Sec. 100. If, after being arrested, the defendant escape or be rescued, the sheriff shall be liable as bail; but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Sec. 101. If a judgment be recovered against the defendant, and the execution thereof be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Sec. 102. The bail taken upon the arrest, shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for any damages which he may sustain by reason of such omission.

Sec. 103. The fees which shall be allowed to the sheriff for the food and maintenance of any defendant arrested under the provisions of this act, shall be at the rate of one dollar and twenty-five cents per day for every day that the defendant shall remain in custody; and the plaintiff shall be liable in the first instance for such fees, and if required by the sheriff, shall pay the same weekly in advance; and such fees so paid shall be added to the costs taxed or accruing in the case, and be collected as other costs.

Sec. 104. If the plaintiff shall neglect to pay the fees mentioned in the last preceding section for three days after a demand of payment, the sheriff may discharge the defendant out of custody.

Sec. 105. A defendant arrested may, at any time before the justification of bail, apply to the judge who made the order, or to the judge in whose court the action is pending, upon reasonable notice to the plaintiff, vacate the order of arrest, or reduce the amount of bail. If the application be made upon affidavits of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

Sec. 106. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.
TITLE XII.

Provisional Remedy for the Claim and Delivery of Personal Property.

Sec. 107. Delivery of personal property, when it may be claimed.

108. Affidavit and its requisites.

109. Return of the sheriff, to take and deliver the property.

110. Security on part of the plaintiff and justification.

111. Exception to sureties and proceedings thereon, or in default to except.

112. Defendant when entitled to re-delivery.

113. Justification of defendant’s sureties.

114. Qualification and justification of sureties.

115. Property, how taken when concealed in building or inclosure.

116. Property, how kept.

117. Claim of property by third person.

118. Notice of affidavit, when and where to be filed.

Sec. 107. 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.

Sec. 108. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

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. That the 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. 109. The plaintiff may thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county, where the property claimed may be, to take the same from the defendant, and deliver it to the plaintiff.

Sec. 110. Upon the receipt of the affidavit and notice, with a written warrant, executing by two or more sufficient sureties, approved by the sheriff, 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 shall forthwith take the property described in the affidavit, if the property 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, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken, or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office, directed to the defendant at the post office nearest to him.
CIVIL ACTIONS.

TITLE XIII.

Provisional Remedy by Attachment.

Sec. 118. When plaintiff may have property attached.

Sec. 119. When plaintiff may have property attached.

Sec. 120. A writ of attachment shall be issued by the clerk of the court in which 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 plaintiff verily believes, the defendant is either,

1. A foreign corporation; or

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; or

3. That he has assigned, secreted, or disposed of, or is about to 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.

Sec. 121. The affidavit required by the last section shall be attached to the writ upon issuing the same. Before executing such writ, the sheriff 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 two hundred 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.

Sec. 122. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or if there be no such property, in a sum not less than two hundred 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.

Sec. 123. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereof, all debts due such defendant, and all other property, real or personal, in this territory, 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 and execution.

Sec. 124. The sheriff to whom the writ is directed and delivered, shall execute the same without delay, as follows:

1. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the writ and affidavit executed by the sheriff.

2. Personal property capable of manual delivery to the sheriff, shall be attached by taking it into his custody.

3. 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.

4. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person

When plaintiff may have defendant's property attached.

Title XIII.

Provisional Remedy by Attachment.

Sec. 118. The sheriff shall file the notice and affidavit, with his clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or, if the clerk reside in another county, shall mail or forward the same within that time.

Notice and affidavit, when and where to be filed.

When plaintiff may have property attached.
owing such debts, or having in his possession or under his control such credits, or other personal property, a copy of the writ and affidavit, and a notice that the debts owing by him to the defendant, or the credits and other personal property held by him in possession or under his control belonging to the defendant, are attached in pursuance of such writ.

The sheriff shall note on the writ the day, month and year when the attachment was made, and shall make a full inventory of the property attached, and return the same, together with the undertaking of the plaintiff, with the writ of attachment.

Sec. 125. If real estate be attached by virtue of any writ of attachment, the sheriff shall make a certified copy of said writ and of his return thereon, and deliver it within ten days from the time of making such attachment, to the recorder of the county in which such real estate is situated, who shall file and record the same in a book to be kept for that purpose in the recorder’s office. When so filed within ten days, the same shall be and continue a lien from the time of making the attachment, otherwise it shall be and continue a lien from the time it is filed, on all real estate mentioned or described in the return of the sheriff in such county, until the same shall be discharged; and when the said lien shall be discharged by the order of the court in which the action is pending, or by satisfaction of the judgment rendered in the suit, it shall be the duty of the recorder, when requested, to record the satisfaction piece, or transcript of the record of such order, in a book to be kept for recording such liens, and he shall enter on the margin of the page or pages where the said writ and return are so recorded, a minute of such discharge or satisfaction.

Sec. 126. All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ, affidavit and notice, as provided in section one hundred and twenty-four, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff, 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.

Sec. 127. When the sheriff, with a writ of attachment against the defendant, shall apply to any person mentioned in the third and fourth subdivisions of section one hundred and twenty-four, for the purpose of attaching the 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.

If such person refuse to do so, or if his certificate or statement be unsatisfactory to the plaintiff, he may be required by an order of the court in which the action is brought, or a judge thereof, to appear before such court or judge, and be examined on oath concerning the same, as hereinafter prescribed in this chapter; and disobedience to the order may be punished as a contempt.

Sec. 128. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which property is sold on execution. The proceeds thereof, and other property attached, shall be retained by him to answer any judgment that may be recovered in the action, unless it be delivered over as prescribed in the next section, or unless sooner subjected to execution upon another judgment, recovered previously to the issuing of the writ of attachment. Debts and credits attached may be collected by the sheriff, if the same can be done without suit, and his receipt shall be a sufficient discharge for the amount paid.

Sec. 129. The sheriff may deliver any of the property attached to the defendant, or to any other person claiming it and in whose possession it was given, upon the giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to re-deliver it, or pay the value thereof to the sheriff, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Sec. 130. If an action be brought upon such undertaking on account of the principal or his sureties, it shall be a defence that the property for which the undertaking was given, did not at the time of the writ of attachment belong to the defendant. When sheriff may deliver property attached to defendant.

Sec. 131. If any personal property attached, be claimed by a third person as his property, the sheriff 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 seizure upon execution.

Sec. 132. Whenever the sheriff with a writ of attachment against the defendant, shall apply to any person mentioned in section one hundred and twenty-four, for the purpose of attaching the personal property therein mentioned, and such person shall deny that he has any personal property of the defendant, or shall refuse to give the certificate required in section one hundred and twenty-seven, or if such certificate be unsatisfactory to the plaintiff, he may be required by an order of the court in which the action is brought, or a judge thereof, to attend before such court, or judge, at a time therein stated, not less than ten days thereafter, and be examined on oath concerning the same.

Sec. 133. At any time after the allowance of such order, and before such person shall be required to attend, the plaintiff may exhibit written allegations and interrogatories touching the personal property, stock or credits of the defendant, in the possession of or held by such person as garnishee, or debts owing to the defendant by him, and such garnishee shall be required to make full, direct and true answers to the same on oath.

Sec. 134. On the day when the garnishee shall be required to attend before the court or judge, he shall exhibit on oath his answers to the allegations and interrogatories of the plaintiff, unless for good cause shown a further time shall be allowed; in default of such answer, the plaintiff may take judgment by default against him, or the court may, at any time upon motion compel him to answer by attachment of his body.

Sec. 135. 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 judgment against the defendant.
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.

Sec. 139. The plaintiff may except to the answer of any garnishee for insufficiency, and if the same shall be adjudged insufficient, the court or judge may allow the garnishee to amend his answer, in such time and on such terms as shall be just, or the plaintiff may take judgment by default, or move the court or judge to attach the body of the garnishee to compel a sufficient answer.

Sec. 140. 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 court or judge may deem proper, it shall be taken to be true and sufficient.

Sec. 141. If by the answer not excepted to, nor denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the value of such property or effects, or if the debt, being ascertained, judgment may be rendered against the garnishee for the proper amount in money, and in such case the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

Sec. 142. Whenever any property, effects, money or debts, belonging or owing to the defendant, shall be confessed or found by the court, judge 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.

Sec. 143. Debts not yet due to the defendant may be attached, but no execution shall be granted against the garnishee for such debts until they shall become due.

Sec. 144. 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.

Sec. 145. The defendant or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting the property attached, and may be thereupon examined on oath concerning the same.

Sec. 146. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff shall satisfy the same out of the property attached by him, 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 shall 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, real or personal, 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 shall execute to the purchaser a certificate of the sale, and the purchaser a certificate 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

Sec. 147. Upon such application, the defendant shall deliver to the court or judge an undertaking executed by at least two sureties, approved by the court or judge, that he will, on demand, pay to the plaintiff the amount of the judgment, with interest and costs, and that the property attached shall be discharged.

Sec. 148. The defendant may also, at any time before the time for answering expires, apply on motion to the court or judge to discharge the attachment, on the ground that the writ was improperly issued.

Sec. 149. If the motion be made upon affidavits 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 was attachment issued. If upon such application it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

Sec. 150. When the writ of attachment shall be fully executed or discharged, the sheriff shall return the same, with his proceedings thereon, to the court in which the action was brought.
CHAPTER II.

OF THE TRIAL AND JUDGMENT IN ACTIONS AT LAW, ISSUES AND THE MODE OF TRIAL.

TITLE I. Of Issues.

TITLE II. Trial by Jury.

Sec. 1. The different kinds of issues.

1. Issue of law.
2. Issue of fact.

Sec. 2. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Sec. 3. Issues of fact arise.

1. Upon a material allegation in the complaint, controverted by the answer; or
2. Upon new matter or a set-off controverted by the reply; or
3. Upon new matter in the reply.

Sec. 4. Issues, both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried, unless the court otherwise direct.

Sec. 5. An issue of law shall be tried by the court, unless referred upon consent as provided by statute. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered as provided by statute.

Sec. 6. A motion to postpone a trial on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and what diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party 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.

TITLE III. Of the Verdict.

Sec. 1. Jurors how chosen.

Sec. 2. Challenges how made.

Sec. 3. Challenge for cause, for what taken.

Sec. 4. Challenges for cause, to be tried by court.

Sec. 5. Oath or affirmation to be administered to jurors.

Sec. 6. After whom to be returned to the box.

Sec. 7. Power of court over jurors.

Sec. 8. When juror is taken sick, court how to proceed.

Sec. 9. When juror retires after charge of an officer; duties of officer having charge of jury.

Sec. 10. Papers which the jury may refer to.

Sec. 11. Jury may return to court for information.

Sec. 12. Ballots when to be returned to the box.

Sec. 13. Power of court over jurors.

Sec. 14. Oath or affirmation to be administered to jurors.

Sec. 15. After whom to be returned to the box.

Sec. 16. Power of court over jurors.

Sec. 17. When action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the jurors become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders or citizens of the county, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial.

Sec. 18. Either party may challenge the juror, 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 three peremptory challenges.

Sec. 19. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror.
2. Consanguinity or affinity within the third degree to either party.
3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any undertaking or obligation for either party.
4. Having served as a juror, or been a witness on a previous trial between the same parties for the same cause of action.
5. Interest on the part of the juror in the event of the action, or in the main question involved in the action:

6. Interest of the juror in the event of the action, or in the main question involved in the action.
a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may 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 parties or counsel.

TITLE III.

Of the Verdict.

SEC. 18. Verdict is either general, or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

SEC. 19. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding such property.

SEC. 20. In every action for the recovery of money only, or when parties, either general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes.

SEC. 21. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 22. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a set-off for the recovery of money is established beyond the amount of the plaintiff’s claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

SEC. 23. If the verdict be informal, it may be corrected by the jury under the advice of the court, or the jury may be again sent out. When rendered, the verdict shall be entered by the clerk on his minutes.
TITLE IV.

Trial by the Court.

Sec. 24. Trial by jury may be waived.

25. When question of fact is tried by court, decision when and how given.

Sec. 24. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:
1. By failing to appear at the trial;
2. By written consent, in person, or by attorney, filed with the clerk;
3. By oral consent in open court, entered in the minutes.

Sec. 25. Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk within twenty days after the court at which the trial took place. In giving the decision, the facts found, and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

TITLE V.

Trial by Referees.

Sec. 26. All issues referable by consent.

27. When reference may be compulsorily ordered.

28. Number of referees, and how chosen.

29. Qualification of referees chosen by court.

30. Trial by referees, how conducted, report of referees, etc.

All issues referable by consent.

Sec. 27. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:
1. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or
2. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or
3. When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action; or
4. When it is necessary for the information of the court in a special proceeding.

Referees how chosen.

Sec. 28. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action is brought or the proceeding is tried.

Sec. 29. When the appointment of referees is made by the court or judge, each referee shall be:
1. Qualified as a juror as provided by statute;
2. Competent as a juror between the parties.
trials by the court or referees, and in the same manner the provisions respecting trials by the court shall apply to trials by referees.

TITLE IX.

Judgment in General.

SEC. 42. A judgment is the final determination of the rights of the parties in the action.

SEC. 43. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

SEC. 44. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

SEC. 45. An action may be dismissed, or a judgment of non-suit entered in the following cases:

1. By the plaintiff himself, at any time before trial, unless set-off be interposed as a defence. If the defendant shall have been arrested, or his property delivered to, or attached by, the plaintiff, by virtue of a provisional remedy which has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon.

2. By either party, upon the written consent of the other.

3. By the court, when the plaintiff fails to appear, or when the defendant appears and asks for the dismissal.

4. By the court, when the trial is suspended or after the final submission of the case, the plaintiff abandons it.

5. By the court upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient cause for the jury.

SEC. 46. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

TITLE X.

Judgment upon Failure to Answer.

SEC. 47. Judgment when it may be had, on proof of service and complaint.

SEC. 48. Judgment may be had on proof of the service of the summons and complaint, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may be granted, the court shall enter the default of the defendant, and immediately
thereafter enter judgment for the amount mentioned in the summons, including the costs against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-four of the last chapter.

2. In other actions, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court shall in like manner, direct the clerk to enter the default of the defendant, and thereafter the plaintiff may apply at law, or in vacation, or to any other person against contingent liability on the recovery of damages only or of specific real or personal property, with damages for the holding thereof, the court may order the damages to be assessed by a jury, or if to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided.

3. In actions when the service of the summons shall be by publication, the plaintiff may in like manner, apply for judgment, and the court shall thereupon require proof to be made of the demand, mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent, to be examined on oath respecting any payments which have been made to the plaintiff, or to any for his use on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment, the court may, in its discretion, require the plaintiff to cause to be filed, satisfactory evidence to that effect, touching the existence of any property collected or received under the judgment, in case the defendant or his representatives shall be admitted to defend the action, and succeed in the defense.

4. The court may in its discretion, before final judgment, set aside any default upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable.

TITLE XI.
Judgment by Confession.

Sec. 48. Judgment by confession of claim in action.

Sec. 49. Judgment by confession of claim not in action.

Sec. 50. Statement in writing, what to contain.

Sec. 51. Filing statement and entering judgment.

Sec. 52. Executions how issued.

Sec. 53. Parties to a question in difference, which might be the subject of an action at law, may without action agree upon a case, containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceeding in good faith, to determine the rights of the parties; the court to whom the submission is made upon hearing and determine the case, and render judgment upon the same as if an action were pending.

Sec. 54. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial.

Sec. 55. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall in the same manner be subject to appeal.

TITLE XII.
Submitting Controversy without Action.

Sec. 56. Controversy how submitted without action.

Sec. 57. Judgment the same as other cases, but without costs.

Sec. 58. Judgment may be enforced or appealed from as in an action.

Sec. 59. Parties to a question in difference, which might be the subject of an action at law, may without action agree upon a case, containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceeding in good faith, to determine the rights of the parties; the court to whom the submission is made upon hearing and determine the case, and render judgment upon the same as if an action were pending.

Sec. 60. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial.

Sec. 61. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

Sec. 62. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall in the same manner be subject to appeal.

TITLE XIII.
Manner of giving and entering Judgment.

Sec. 63. Judgment in trial by jury, when entered.

Sec. 64. Case reserved for argument, how brought before the court.

Sec. 65. When judgment shall be given for defendant.