

SEC. 15. That all taxes which have been duly assessed in the county of St. Croix under its original organization, shall be collected by the proper officer, and paid into the treasury of said county, and after discharging all the debts which may exist against said county at the time of the taking effect of this act, the remainder shall be divided among the several counties in proportion to the amount of property assessed.

All taxes collected in the county of St. Croix to go to pay debts, and the remainder divided, &c.

SEC. 16. That the seat of justice of the county of Washington shall be at Stillwater; the seat of justice of the county of Ramsey shall be at St. Paul; and the seat of justice of the county of Benton shall be within one quarter of a mile of a point on the east side of the Mississippi river, directly opposite the mouth of Sauk river.

Certain seats of justice fixed, &c.

SEC. 17. That the county of Ramsey is hereby declared to be the first judicial district; the county of Washington is hereby declared to be the second judicial district, and the county of Benton is hereby declared to be the third judicial district.

Judicial districts established, &c.

SEC. 18. That the Hon. Aaron Goodrich is hereby assigned as the judge of the first judicial district; the Hon. David Cooper as judge of the second judicial district, and the Hon. B. B. Meeker as judge of the third judicial district.

Judges of court assigned certain districts.

SEC. 19. That the counties of Itasca and Wabashaw are hereby attached to the county of Washington for judicial purposes; that the counties of Dakotah, Wahnahta and Mahkahto are hereby attached to the county of Ramsey for judicial purposes; and the county of Pembina is hereby attached to the county of Benton for judicial purposes.

Certain counties attached for judicial purposes.

SEC. 20. That the counties of Itasca, Wabashaw, Dakotah, Wahnahta Mahkahto, and Pembina shall each be entitled to any number of justices of the peace not exceeding six, and to the same number of constables, which said justices and constables shall receive their appointment from the Governor; and their term of office shall be two years unless sooner removed by the Governor.

Certain counties entitled to certain justices of the peace and constables to be appointed by the Governor.

SEC. 21. That the justices and constables appointed for said counties shall be conservators of the peace, and shall each give a bond to the Territory, to be approved by the Secretary, in the sum of five hundred dollars, for the faithful performance of their duties, upon which bond they may at any time be sued for the benefit of any aggrieved by reason of the willful omission of duty or misconduct of such officers.

Duties of justices and constables, to give bonds, &c.

SEC. 22. This act shall take effect from and after its passage and publication in the several newspapers of the Territory as provided for by law.

When act took effect.

APPROVED the twenty-seventh day of October, one thousand eight hundred and forty-nine.

CHAP. VI.—An Act concerning Justices of the Peace, and the action of forcible entry and detainer.

Nov. 1, 1849.

ARTICLE I.

OF THE ELECTION AND QUALIFICATION OF JUSTICES OF THE PEACE.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, There shall be elected by the qualified voters of each precinct in each of the organized counties of this Territory, two justices of the peace, whose term of office shall continue two years, and who shall be residents of the precinct for which they may be elected.

Two justices elected, term of office and residence.

Who may be elected.

Oath of office filed in the clerk's office, bond in \$500 with two sureties to be approved and filed, conditioned for faithful discharge of duties, &c., justice and sureties may be sued. Copy of bond, legal evidence, &c.

To whom judges of election make return of those elected. Clerk to give certificate of election, &c.

Jurisdiction of justices, and where office kept.

If office becomes vacant, docket, books, &c., to be handed over to nearest justice, who shall proceed as though no vacancy had occurred.

When county divided, justice continues in office until, &c.

Sec. 2. No person shall be elected to the office of justice of the peace, who is not a citizen of the United States, and who shall not have resided in the Territory at least six months next before his election.

Sec. 3. Every justice of the peace elected in either of the counties of this Territory, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation in writing to support the constitution of the United States, and the laws of this Territory, and faithfully to discharge and perform all the duties of his said office according to the best of his abilities and understanding, which oath or affirmation shall be filed in the office of the clerk of the district court of the county in which such justice of the peace may reside, and shall execute to the treasurer of the same county a bond with two sufficient sureties to be approved by the treasurer of the said county, and filed in the office of the said clerk of the district court in the penal sum of five hundred dollars, conditioned that he will pay over, on demand, all moneys received by him in virtue of his office, to the person or persons entitled to the same; and the said justice and his sureties shall be liable in said bond to each and every person for whom such justice shall collect money and refuse to pay the same; and it shall be competent for any person, to whom such justice and his sureties may have become liable, so as aforesaid, to sue such justice and his sureties, or any one of them, in an action for money had and received; and on proof that the said justice has neglected or refused to pay any such sum of money by him collected as aforesaid, then and in every such case judgment shall be given against the parties defendant in such suit for the money so collected, together with interest and costs according to the condition of such bond: *Provided*, Always, that a copy of such bond under the official certificate of the clerk with whom the same is filed and recorded, shall be legal evidence of the contents and execution thereof in all courts.

Sec. 4. The judges of election in the several precincts shall make a return to the clerk of the board of county commissioners of the several persons who may be elected justices of the peace in pursuance of the provisions of this act, and the said clerk shall issue to the persons so elected, certificates of such election, under the seal of said board, which shall be sufficient evidence of such election for all purposes whatever.

Sec. 5. The jurisdiction of justices of the peace elected in pursuance of the provisions of this act shall be co-extensive with the limits of the county in which they shall be elected, and no other or greater, whether said county be attached to any other county, or whether any other county be attached to it: *Provided*, That every justice elected under the provisions of this act shall keep his office in the precinct for which he may be elected, and not elsewhere.

Sec. 6. If any justice of the peace die, resign, or remove out of the town or precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, papers, and documents appertaining to his office or relating to any suit, matter, or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the same county, who may thereupon proceed to hear, try, and determine such matter, suit, or controversy, or issue execution thereon in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced, to have done.

Sec. 7. When a county shall be divided, any justice of the peace of the original county, whose place of residence may be embraced within the limits of the new county, shall continue to discharge the

duties of justice of the peace in said county until his successor shall be elected and qualified.

ARTICLE II.

POWERS AND JURISDICTION OF JUSTICES.

Sec. 1. Justices of the peace shall have power and jurisdiction throughout their respective counties as follows :

1. Jointly and severally to cause to be kept all laws made for the preservation of the peace.

2. To cause to come before them or any of them persons who shall break the peace and commit them to jail or bail them, as the case may require.

3. To arrest and cause to come before them persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior and to keep the peace.

Sec. 2. If such persons refuse or neglect to give security, they shall be committed until they find the same, or until discharged by due course of law.

Sec. 3. Every recognizance so taken for the keeping of the peace or for good behavior, or for both, and every such commitment shall be certified to the next district court of the county.

Sec. 4. In the following cases, and no others, a justice of the peace may punish, for contempt, persons guilty of the following acts :

1. Disorderly, contemptuous, and insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceedings or impair the respect due to his authority.

2. Any breach of the peace, noise, or other disturbance tending to interrupt the official proceedings of such justice.

3. Resistance or disobedience of any lawful order or process made or issued by him.

Sec. 5. Punishments for contempts in the foregoing cases may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail, not exceeding three days at the discretion of the justice ; but no person shall be committed to jail for the non-payment of such fine.

Sec. 6. No person shall be punished for contempt before a justice of the peace, until an opportunity shall be given him to be heard in his defence, and for that purpose the justice may issue his warrant to bring the offender before him.

Sec. 7. Upon conviction of any person for contempt, the justice shall make up a record of proceedings on such conviction, stating the particular circumstances of the offence and the judgment rendered thereon.

Sec. 8. The warrant of commitment for any contempt shall set forth the particular circumstances of the offence, or it shall be void.

Sec. 9. Justices of the peace are empowered to grant subpoenas for witnesses in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions.

Sec. 10. Every justice of the peace shall have jurisdiction co-extensive with the county for which he is elected, of all actions of debt covenant and assumpsit, and all other actions founded on contract, of trespass and trespass on the case for injuries to persons or to real or personal property, wherein the debt or balance due or damages claimed shall not exceed one hundred dollars, inclusive of interest ; all actions of replevin, when the thing demanded or claimed does not ex-

Jurisdiction.

To keep the laws.

To commit or let to bail.

To require certain persons to give security for good behavior and keep the peace.

To commit until discharged legally.

Recognizance taken, and commitment made shall be certified, etc.

May punish for contempt.

What shall constitute a contempt of the justice's court.

Punishment for contempt.

To issue warrant for contempt.

To make a record, etc.

The warrant, etc.

To issue subpoenas in all cases.

Jurisdiction co-extensive with the county and to amount of \$100, and to take cognizance of judgments to \$100.

ceed one hundred dollars; and to take and enter judgment on the confession of a defendant where the amount of a judgment confessed does not exceed one hundred dollars.

A justice not to entertain suits against executor or administrator, or for slander, malicious prosecution, or false imprisonment.

SEC. 11. No justice of the peace shall have cognizance: *First*, Against an executor or administrator for any debt or demand due from the testator or intestate; *Second*, Of any action of slander, malicious prosecution, or false imprisonment; *Third*, Nor where the title to lands or tenements shall come in question,

ARTICLE III.

COMMENCEMENT OF SUITS, SERVICE AND RETURN OF PROCESS.

SEC. 1. Every justice of the peace shall keep a docket in which he shall enter:

Title of causes.

1. The title of all causes commenced before him.

The time and nature of process.

2. The time when the first process was issued against the defendant and the particular nature thereof.

Time of appearance of parties.

3. The time when the parties appeared before him either without or upon return of process.

The demand and set off.

4. A brief statement of the nature of the plaintiff's demand and the amount claimed, and if any set off was pleaded a similar statement of the set off and the amount estimated.

Adjournments.

5. Every adjournment stating at whose request and for what time.

The time of trial by jury or otherwise.

6. The time when the trial was had, stating whether the same was by jury or by the justice.

The verdict and when.

7. The verdict of the jury and when rendered.

Execution---to whom issued---debt cost and fees.

8. The time of issuing execution and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately.

An appeal.

9. The fact of an appeal having been made and allowed, and when made and allowed.

Satisfaction.

10. Satisfaction of judgment when made.

11. And such other entries as may be material.

Suits instituted, how and when the defendant is not known, how and shall not be abated---accordment.

SEC. 2. Suits may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process; also when the name of the defendant is not known to the plaintiff, a suit may be commenced against him by a fictitious name, and it shall not be abated for that cause but may be amended on such terms as the justice shall think reasonable.

Security for costs and on failure to dismiss suit.

SEC. 3. Any justice of the peace in this Territory may in all actions hereafter instituted, either before or after the process shall issue at his discretion, require of the plaintiff in such action to give security for the costs, and the person giving such security shall sign a memorandum in writing to that effect, which such justice shall keep as a part of the record in the case, and if the plaintiff refuse to give such security, the justice shall dismiss the suit.

Process in the name of U. S. and directed to the sheriff or constable.

SEC. 4. All processes issued by justices of the peace shall run "In the name of the United States," be dated on the day it issued, and shall be signed by the justice granting the same, and be directed to the sheriff or any constable of the proper county.

First process summons---to appear in six or 20 days---served six days before appearance by reading a copy if requested---if not found, a copy at residence of the defendant.

SEC. 5. In all cases not otherwise specially provided for, the first process shall be by summons, commanding the officer to summons the defendant to appear before such justice at the time and place to be expressed in such summons, not less than six nor more than twenty days from the date thereof, to answer to the plaintiff in the plea in the same summons to be contained, which summons shall be served at least six days before the time of appearance therein mentioned, by reading the same to the defendant and delivering a copy thereof to

him, (if requested by such defendant) if such defendant shall be found, and if not found, by leaving a copy thereof at his or her last usual place of abode.

Sec. 6. Every constable or sheriff serving any process authorized by this act, shall return thereon in writing the time and manner of service, and shall sign his name to such return.

Sec. 7. A justice of the peace shall issue a warrant in every case where he is satisfied from the affidavit of the person demanding the same, or from any other person that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is a non-resident of the county or is about to remove from the county with an intent not to return thereto.

Sec. 8. A warrant shall command the sheriff or constable to take the body of the defendant and bring him forthwith before such justice, to answer the plaintiff in a plea in the same warrant to be mentioned, and shall further require the sheriff or constable, after he shall have arrested the defendant, to notify the plaintiff of such arrest.

Sec. 9. A warrant shall be served by arresting the defendant and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made to appear to the justice by the affidavit of the defendant, that said justice is a material witness for the defendant in the case, or is near of kin to the plaintiff in suit, stating therein the degree, the officer shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause and proceed therein as if the warrant had been issued by himself.

Sec. 10. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer until the justice shall direct his release; but in no case shall the defendant be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

Sec. 11. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same by an endorsement on the process to the following effect:

"At the request and risk of the plaintiff, I authorize A. B. to execute and return this writ
 E. F., justice of the peace;"
 and the person so empowered shall thereupon possess all the [authority] of a constable in relation to the execution of such process, and shall be subject to the same obligations and shall receive the same fees for his services.

Sec. 12. If any officer without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make false return, such officer for every such offence, shall pay to the party injured ten dollars and all damages such party may have sustained by reason thereof, to be recovered by an action of debt, founded upon this statute.

ARTICLE IV.

OF THE APPEARANCES AND PLEADINGS OF PARTIES AND OF ADJOURNMENTS.

Sec. 1. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit either by agent or in person.

Sec. 2. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed. Whenever re-

Process—time and manner of service.

Warrant to issue upon affidavit against a non-resident or persons about to remove, etc.

Warrant—command of—after arrest—officer to notify plif. thereof.

Officer, duty in service of warrant—to take deft. before justice issuing same or for certain causes shall take before another, the nearest justice.

The deft. in custody on warrant until released by justice—but not longer than 12 hours—unless, etc.

Justice may authorize a suitable person to serve process, and how and when and duties and obligations of such person.

Officer failing to execute and return process or making false return—to pay \$10 and damages to party injured.

The plif. may conduct his suit except he be a minor.

A minor may institute suit by his next friend who is liable for costs.

Def't may defend by himself or ag't.

After service of process against a minor, suit not to be prosecuted until guardian appointed—justice to appoint guardian—minor not appearing, a guardian appointed—guardian not liable for costs.

Ag't may appear by written or verbal authority and how such authority shewn when justice requires proof.

At the time specified for trial one hour shall be given to parties if necessary.

Each party to plead and file bill of particulars—first appearance either party may adjourn the case one week and for good cause 90 days. No witness fees chargeable on the return day of process, nor fees of officer in service of subpoena.

On the trial of a case if the title to lands come in question—the case shall be certified to the district court as if upon an appeal.

Adjournments—at the cost of the applicant, unless, &c.

Adjournment of a case commenced by warrant—def't discharged.

requested, the justice shall appoint some suitable person who shall consent thereto in writing, to be named by such plaintiff to act as his next friend in such suit, who shall be responsible for the costs therein.

SEC. 3. Every defendant in a suit may appear and defend the same, either in person or by agent, except persons under twenty-one years of age.

SEC. 4. After the service and return of process against an infant defendant, the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed.

Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may at the request of the plaintiff appoint any discreet person as such guardian; and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit.

SEC. 5. A party authorized to appear by agent may appoint any person to act as such agent, and the authority of the agent may be either written or verbal, and shall in all cases when the justice requires proof, be proven either by the agent himself or by other competent testimony, unless admitted by the opposite party.

SEC. 6. Upon the return of a summons duly served, the justice shall wait one hour after the time specified in such suit for the appearance of the parties unless they sooner appear.

SEC. 7. Upon the return of any process, each party shall put in his pleadings and give a bill of particulars of his demands if required by the justice or opposite party; the justice shall then upon the application of either party without requiring cause to be shewn adjourn the case for such time as may be required not exceeding one week; but if sufficient cause be shewn on oath by either party, the justice shall grant an adjournment for a longer time than one week, not exceeding however ninety days. No costs shall be taxed for the travel or attendance of any witness in a cause on the return day of the original process issued therein, nor for the service of any subpoena issued therein returnable on that day, nor for travel in serving the same, unless an actual trial shall be had in the cause on such return day.

SEC. 8. If it appear on the trial of any cause before a justice from the evidence of either party that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court of the county, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit in the same manner and within the same time as upon an appeal, and thereupon the district court shall proceed in the cause to final judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

SEC. 9. Every adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, and shall be at the cost of the party applying therefore, unless otherwise ordered by the justice.

SEC. 10. If a cause commenced by warrant be adjourned by the consent of both parties or on the application of the plaintiff, the defendant shall be discharged from custody.

SEC. 11. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment

in custody of the officer, unless he shall [enter] into recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit and execution be issued against his person, he will render himself up on such execution before the return day thereof; that he or his security will pay the judgment so recovered.

Adjournment at the instance of def't --- to continue in custody or be recognized.

Sec. 12. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any recognizance upon a subsequent adjournment, unless such recognizance be required by the justice or the bail of the defendant in such prior recognizance.

Recognizance on prior adjournment sufficient for subsequent, unless, &c.

Sec. 13. In any suit brought upon such recognizance the plaintiff shall not be entitled to recover, unless he show an execution or a duly certified copy thereof upon the judgment obtained in the suit in which such adjournment was had, duly issued within six days after the time when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found.

Recognizance suit on --- not to recover unless execution issued in six days and party not found.

ARTICLE V.

OF SET OFFS.

Sec. 1. In the following cases and under the following circumstances a defendant may set off demands which he has against the plaintiff :

1. It must be a demand arising upon judgment or upon a contract express or implied, whether such contract be written or unwritten, sealed or without seal, and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of condition, only shall be set off.

Set off by def't. may on judgt or contract, &c.

2. It must be due to him in his own right either as being the original creditor or payee or as being the assignee and owner of the demand.

In his own right.

3. It must be for real estate sold, or for personal property sold, or for money paid, or services done; or if it be not such a demand the amount must be liquidated, or be capable of being liquidated by calculation.

For real or personal property money advanced or services done --- a liquidated sum.

4. It must have existed at the time of commencement of the suit and must then have belonged to the defendant.

At the commencement of suit must have existed and belonged to def't.

5. It can only be allowed in actions founded upon demands which could themselves be the subject of set off according to law.

In what kind of actions allowed.

6. If there be several defendants the demands set off must be due to all of them jointly.

Jointly due to all the defendants.

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of a plaintiff who has no real interest in the contract upon which the suit is founded, in which case no set off of a demand against the plaintiff shall be allowed unless as hereinafter specified.

It must be a demand against the pl't unless, &c.

8. If the action be founded upon a contract other than a negotiable promissory note or bill of exchange, which has been assigned by the plaintiff a demand against such plaintiff or any assignee of such contract at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demands be such as might have been set off against such plaintiff or assignee while the contract belonged to him.

In actions other than notes or bills of exchange, may be set off, if such set off would have been good against original debtor if held by def't in good faith and without notice etc.

Sec. 2. If the action be upon a negotiable promissory note or bill of exchange which has been assigned to the plaintiff after it became

On a note or bill of exchange assigned after due--set off may be allowed him set off, as against the original holder of said note or bill.

In a suit in the name of a person having no interest--all set offs are allowed, which could be, if the suit were in the name of the person entitled to the benefits thereof.

Set off must be plead or notice given.

Set off--notice and plea of the general issue to be filed--nil debit to debt on jud'gt and covenant a plea of denial, etc.

Set off equal to pl'f's demand--jud'gt that pl'f take nothing--if lose jud'gt for balance for pl'f.

If balance due to def't, he shall have jud'gt therefor--but no such jud'gt shall be rendered if etc.

Service of subpoena.

Witnesses may be attached for not obeying command of subpoena, on a showing--mileage and one day's fees must be tendered or paid in advance.

Attachment, how executed; fees of officer by whom paid, etc.

Witness failing to appear, liable in damages to the party, if he had fees and mileage advanced.

Depositions of witnesses taken, by whom, in what suit and upon notice, etc.

due, a set off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due if the demand be such as might have been set off against the assignor while the note or bill belonged to him.

Sec. 3. If the plaintiff be a trustee for any other or if the suit be in the name of a plaintiff who has no real estate, (*interest*) in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt if the same might have been set off in an action brought by those beneficially interested.

Sec. 4. To entitle a defendant to a set off, he must plead or give notice of the same.

Sec. 5. Such notice must be given together with the plea of the general issue in those actions in which such issue may be pleaded or with the plea of *nil debit* to an action of debt on judgment or in the action of covenant with a plea denying the execution of the instrument on which the plaintiff may have declared.

Sec. 6. If the amount of the set off duly established be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action, if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Sec. 7. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

ARTICLE VI.

OF WITNESSES AND DEPOSITIONS.

Sec. 1. A subpoena may be served by any person by reading it to the witness or by delivering a copy thereof to him.

Sec. 2. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpoenaed to appear before him in a suit shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness; *Provided, however,* That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

Sec. 3. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party requiring such attachment shall pay all costs of such attachment.

Sec. 4. Every person subpoenaed as aforesaid and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed for damages which such party may have sustained by his non-appearance: *Provided,* that said witness had one day's attendance and his mileage tendered or paid him in advance.

Sec. 5. Either party, in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein to be

taken by any judge or justice of the peace of any county in this Territory where the said witness may be.

Sec. 6. The depositions shall be taken, certified, and returned according to the law of the Territory concerning depositions.

Sec. 7. The justice shall allow every deposition taken, certified, and returned according to the provisions of this act to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness, whose deposition is offered: *First*, is dead, or resides out of the county; or *Second*, is unable or cannot easily attend before the justice on account of sickness, age, or other bodily infirmity; *Third*, has gone out of the county without consent or collusion of the party offering the deposition.

Depositions taken, certified, and returned, etc.

Depositions taken to be read on trial of the cause in which the same is taken where it might be heard verbally, not read unless witness is dead, out of the county, without collusion, sickness, age, or other infirmity prevents his attendance.

ARTICLE VII.

OF TRIAL BY JURY.

Sec. 1. If either party shall fail to appear within one (hour) year after the time specified for the return of the process, or after [the] hour of adjournment, the justice shall proceed to hear the proofs of the party present and render judgment thereon accordingly.

If party do not appear in one hour, &c.

Sec. 2. In every action to be brought by virtue of this act, it shall be lawful for either of the parties to the suit, or to the attorney of either of them, after issue joined, before the court shall proceed to inquire into the merits of the cause, to demand of said court that said action be tried by a jury of six jurors, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand the justice shall direct the sheriff or any constable of the county who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear or affirm (as the case may be) that you will perform the duties required of you according to the best of your abilities, without partiality to either party." The person so sworn shall write down the names of eighteen persons being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately six names, and in case of the absence of either party, or his refusal to strike out, the justice shall strike out of the said list six names, and shall thereupon issue a *venire facias* requiring the officer to summons the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors for the trial of the cause to be named in said *venire facias*: *Provided*, that if any of said jurors shall not attend at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talismen to supply the deficiency. The jurors so selected shall take the following oath or affirmation: "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between plaintiff, and defendant, and true verdict give according to law and the evidence given to you in court, so help you God;" and after having been sworn, they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence. And to each witness on any trial the justice shall administer the following oath (or affirmation), to wit: "You do swear, in the

Either party may demand a jury, six jurors, fees paid and taxed in judgment, sheriff or constable to select jury, oath, each party to strike from eighteen names, justice to issue venire facias, juror not attending or objections to, talismen called, oath of jury, duty, witness' oath of, verdict of jury, oath of person taking charge of jury, judgment and execution.

presence of Almighty God (or affirm) that the evidence you shall give in this matter of difference between , plaintiff, and , defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God;" and after hearing the proofs and allegations, the jury shall be kept together in some convenient place, until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed to whom the said justice shall administer the following oath, to-wit: "You do swear, in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest together, in some private convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereinafter directed.

Jury discharged when, new venire when unless, etc.

Sec. 3. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out any reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.

Jury fined, etc.

Sec. 4. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

ARTICLE VIII.

OF JUDGMENT AND FILING TRANSCRIPTS THEREOF, AND OF THE STAY OF EXECUTIONS.

Sec. 1. No confession shall be taken, or judgment rendered thereon, unless the following requisites be complied with:

Judgments by confession and otherwise when.

1. The defendant must personally appear before the justice, or
2. The confession must be in writing, signed by the defendant, attested by two witnesses, and filed with the justice.

Judgments mutual may be set off, how.

Sec. 2. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed, on which there is no existing execution, one judgment on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed may be.

Judgments not rendered by the same justices set off, what necessary.

Sec. 3. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being set off against the judgment to which it was offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justice's certificate therein that it has not been allowed in set-off.

Docket entry of set-off, execution for balance, transcript and what justice shall do.

Sec. 4. If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off.

If a justice shall allow a transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the pa-

pers relating to the judgment in which it is allowed in set-off; if he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

Sec. 5. If previous to joining issue in any cause the defendant, his agent, or attorney, shall make affidavit that the justice, before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to a trial thereof; or if it shall be proven that the justice is near of kin to the plaintiff, then and in such case the said justice shall transfer said suit, and all other papers appertaining to the same, to some other justice of the same county who may thereupon proceed to hear, try, and determine the same, in the same manner as it would have been lawful for the justice before whom the said suit was commenced, to have done: *Provided*, that no cause or trial shall be removed from a justice more than once, and no cause or proceeding shall be so removed, unless the application thereof be made on the return day of the process, and before any proceedings had on the part of the defendant.

Sec. 6. In cases where a plaintiff shall be non-suited or withdraw his action, or where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and shall enter the same in his docket. In all other cases he shall render judgment and enter the same in his docket within three days after the cause shall have been submitted to him for his decision.

Sec. 7. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the dates of the judgment.

1. If the judgment be for a sum not exceeding ten dollars, exclusive of costs, one month.

2. If it be for any sum above ten dollars, and not exceeding thirty dollars, two months.

3. If it be for any sum above thirty dollars, and not exceeding fifty dollars, three months.

4. If it be for any sum above fifty dollars, and not exceeding seventy-five dollars, four months.

5. If it be for a sum above seventy-five dollars, exclusive of costs, six months; but if all the parties to the judgment agree upon any other time, the stay shall be for the time so agreed upon.

Sec. 8. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a recognizance before the justice to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

Sec. 9. Such recognizance must be signed by the person entering the same, and may be in the following form:

"I, _____, acknowledge myself indebted to _____ in the sum of _____ dollars, to be void upon this condition: Whereas _____ obtained a judgment before _____, a justice of the peace of _____, on the _____ day of _____, 18____, against _____, Now, of such judgment shall be paid at the expiration of _____ months from the [time] it was rendered, this recognizance shall be void."

Sec. 10. If, at the expiration of such stay, the judgment be not paid, the execution shall issue against both principal and bail: if the principal do not satisfy the execution, and the officer cannot find suf-

If justice, a witness, or near of kin shall transfer cause to another, not moved but once and application when made.

Judgments of nonsuit, action withdrawn, confession, verdict, defendant in custody, duty of justice and in all other cases to have three days to make docket entry and give judgment.

Stay of execution, how, the amount and time thereof parties may agree as to the time in certain cases, to entitle a party to stay must enter into recognizance within five days, etc., form of recognizance.

Execution after stay out, against principal and bail, duty of officer.

ficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

Bail on motion to have judgment no motion entertained after three months, etc.

SEC. 11. After the return of such execution the bail shall be entitled, on motion, to a judgment before a justice for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent. per annum; and such return of the officer upon motion shall be evidence of the facts therein stated. No motion shall be made after three months from the return of the execution.

Judgment stayed after execution as on appeal, and if defendant committed to be discharged.

SEC. 12. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution in the same manner and with like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant has been committed, shall order him to be discharged from custody.

Judgment for more than \$20, Justice to give transcript and clerk of district court to file same, etc.

SEC. 13. Every justice, on demand of any person in whose favor he shall have rendered judgment for more than twenty dollars exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the district court of the said county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office and forthwith enter such judgment in the docket of the district court judgments and decrees, and shall note therein the time of filing such transcript.

Transcript filed, shall be a lien on the real estate of defendant as if obtained in the district court, justice shall first have issued execution.

SEC. 14. Every such judgment from the time of such filing of the transcript thereof shall have the same lien on the real estate of the defendant in the county as a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried into execution in the same manner and with the like effects as the judgments of such district courts; but no execution shall be issued thereon out of the district court until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

ARTICLE IX.

OF EXECUTIONS AND PROCEEDINGS THEREON.

SEC. 1. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed at any time on demand.

SEC. 2. In the following cases execution may be issued by the justice against the person of the debtor and in no other.

Executions, in what cases issued and upon what showing.

1. Where the debt is founded on contract and the creditor shall prove, to the satisfaction of the justice, that the debtor has property sufficient to satisfy the judgment, over and above that which is by law exempt from being taken on execution, which cannot be come at to be levied upon, and the debtor shall refuse to assign or deliver the same to the creditor, or so much thereof as shall be necessary [to satisfy] the judgment, and

2. When the action in which judgment is rendered is founded in tort.

Execution command of exemption, from what goods, money made in thirty days, if no goods made person imprisoned and command of writ, etc.

SEC. 3. The execution shall command the officer to levy the debt or damages, together with the interest thereon, and the costs, upon the goods and chattels of the person against whom the execution shall be granted (his arms and accoutrements excepted, and also such other articles as are exempt by law from execution) and to pay the money within thirty days from the date, to the justice who issued the execution, to render to the party who recovered the same: and if the

execution be issued against a male person in case where imprisonment is authorized by law, it shall command the sheriff or constable that if no goods or chattels can be found, or not sufficient to satisfy such execution, then to take the body of the person against whom the execution shall be issued, and convey him to the common jail of the county, there to remain until such execution shall be satisfied and paid, or he be otherwise discharged according to law.

Sec. 4. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt or damages and costs separately, and the officer receiving such execution shall endorse thereon the time of the reception of the same.

Sec. 5. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed, from time to time by the justice issuing the same by an endorsement thereon to that effect, signed by him and dated when the same shall be made; if any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects, for thirty days and no longer. An entry of such renewal shall be made in the (*docket*) district of the justice.

Sec. 6. The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements put up at three public places in the township or precinct where the property is to be sold, of the time and place when and where the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Sec. 7. At the time so appointed the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall, in all cases, return the execution, and have the money before the justice at the time of making such return.

Sec. 8. No officer shall, directly or indirectly, purchase any goods and chattels at any sale made by him upon execution, but every such sale shall be absolutely void.

Sec. 9. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer shall, upon the demand of the plaintiff, summons in writing, as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceedings shall be had therein before the justice to final judgment and execution, as in suits instituted by attachment in justice's court.

Sec. 10. The officer who shall hold any execution shall receive all money tendered to him in payment thereof, and shall endorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

Duty of justice in issuing execution, and the officer to whom delivered.

Execution renewed by endorsement and how.

Officer to advertise goods taken in three places in precinct, of time and place of sale, ten days notice.

To sell to best bidder, return of execution.

Officer not to buy goods, if so sale void.

Garnishees, when no property, duty officer, etc.

Officers duty holding execution, to receive and endorse money and give receipt therefor.

ARTICLE X.

REGULATING THE ACTION OF REPLEVIN.

Sec. 1. Whenever any goods and chattels are wrongfully taken or wrongfully detained, (the value of which shall not exceed one hundred dollars) an action of replevin may be brought by the person having a right to the immediate possession, for the recovery thereof and of the damages sustained, by reason of the unjust caption or detention as is hereafter specified.

Sec. 2. Actions of replevin to be tried before a justice of the

Replevin, goods to the value of \$100 may be recovered with damages.

The writ returnable as a summons.

peace, shall in all cases be commenced by writ, which shall be made returnable in the same manner as a summons. -

Affidavit what to contain, writ issuing without to be quashed at the cost of the plaintiff, etc.

Sec. 3. No writ of replevin shall be issued unless the plaintiff, his agent, or attorney, shall file an affidavit with the justice stating that said goods and chattels are wrongfully detained by the defendant, and stating the value thereof, and that he has good right to the possession thereof, and that said goods and chattels were not taken by writ of replevin, attachment, or in execution issued on any judgment against him, her, or them, nor for the payment of any tax, fine, or amercement, assessed against him, her, or them; and every writ of replevin issued without such affidavit shall be quashed at the cost of the plaintiff, and such plaintiff shall, moreover, be liable in damages to the parties aggrieved.

Writ command of, may break open house, stable, out-house, or other building to execute writ, shall make demand.

Sec. 4. The writ of replevin shall command the officer to whom it is directed to cause to be replevied to the plaintiff the same goods and chattels named in such affidavit, and to summon the person who is charged with detaining them to appear before the justice on the return day of said writ to answer the plaintiff for the unjust detention of the same; and it shall be lawful for the officer to break open any house, stable, or out-house, or other building in which such property is concealed, to replevy the same, having first demanded deliverance thereof at the house or other building or place where the same is concealed.

Officer to take bond with security, etc., goods valued, officer to swear the person valuing same, condition of bond, which bond the officer shall return with writ, what done when bond not given in twenty-four hours, officer to notify, if officer do not take bond or insufficient he shall be liable.

Sec. 5. Every officer, before he makes deliverance to the plaintiff of any goods or chattels taken by virtue of any writ of replevin, shall take of the plaintiff, his agent or attorney, in the name and for the benefit of the defendant, a bond with sufficient security in double the value of the goods and chattels replevied, (which value shall be ascertained upon the oath of one or more credible disinterested persons, whom the officer shall swear truly to assess the value thereof,) conditioned that the plaintiff or plaintiffs will prosecute the suit with effect, and without delay make return of the property, if the return thereof be adjudged, and pay all costs and damages which shall be awarded against the plaintiff, and keep harmless the officer in the execution of the writ, which bond the officer shall return with the writ; and if the plaintiff, his agent or attorney in the suit, shall neglect or refuse to cause such bond to be executed, as aforesaid, within twenty-four hours after having been notified by the officer of the taking of such goods and chattels, by virtue of such writ, the officer shall return such goods or chattels to the defendant; and if any officer shall deliver any property taken by writ of replevin to the plaintiff without taking such security, or shall take insufficient security, he shall be liable in damages to the defendant.

Writ returned, suit subject to certain rules, plaintiff discontinued, suffer non-suit or otherwise fail, justice when required shall empanel and swear a jury, duty of jury, judgment.

Sec. 6. On the return of any writ of replevin the suit shall be subject to the same usages, rules, and regulations as in other cases; and if the plaintiff discontinue, become non-suited, or if he should otherwise fail to prosecute his suit to final judgment, then and in each of those cases it shall be lawful, and it is hereby made the duty of the justice, when required by the defendant, to empanel and swear a jury to inquire and assess the value of the goods and chattels replevied, together with adequate damages for the caption and detention thereof; or if, on trial of the issue joined, the jury shall find for the defendant, then the value of such goods and chattels, together with adequate damages, shall be assessed by such jury, and the justice shall thereupon render judgment in favor of the defendant for the value and damages so found by the jury in either of the foregoing cases; but if the jury shall find that the defendant did unlawfully detain such goods and chattels, and that they were the property of the plaintiff, they shall assess adequate damages for such detention.

SEC. 7. The defendant shall not institute a suit on the bond given by the plaintiff, as provided in the foregoing section of this act, until he shall have sent (*sued*) out an execution, and it shall be ascertained by the return of such execution that the plaintiff has not in the county personal or real property whereon to levy and make the amount of such judgment, penalty, and costs.

SEC. 8. In all cases where property shall be taken in execution or by attachment, which shall be exempted therefrom by law, it shall be competent for the owner thereof, his agent or attorney, to make and file an affidavit stating that such property is so exempted by law, and thereupon take out and prosecute a writ of replevin in the same manner provided by law in other cases.

SEC. 9. The defendant may plead that he is not guilty of the charge alleged against him, and his plea shall put in issue not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof.

ARTICLE XI.

OF ATTACHMENTS.

SEC. 1. An attachment against the property of any debtor may be issued on the application of any creditor in the manner hereinafter prescribed whenever it shall appear to the satisfaction of the justice :

1. That the debtor has departed or is about to depart from the county, so as to hinder or delay his creditors.

2. That the defendant is about to remove from the county any of his property with intent to defraud his creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete any of his property with the like intent.

3. That the debtor is not a resident of the Territory.

SEC. 2. Before any attachment shall issue in any case, the plaintiff shall, by his own affidavit or that of some other person or persons, prove, to the satisfaction of the justice, the facts and circumstances to entitle him to the same under the provisions of this act, in which affidavit shall be specified as near as may be the sum in which the debtor is indebted over and above all just discounts and off-sets to the plaintiff, and that the said indebtedness arose out of, or is founded on, contract expressed or implied: *Provided always*, before any such attachment shall issue, the justice shall take from such plaintiff a bond to the defendant, with at least one sufficient surety in the sum of two hundred dollars, conditioned to pay the defendant all damages and costs he may sustain by reason thereof if no judgment shall be recovered against such defendant.

SEC. 3. Every such attachment shall state the amount of the debt sworn to in the affidavit, and shall command the sheriff or any constable of the county in which the justice resides, to attach so much of the goods and chattels of the debtor as will be sufficient to satisfy such debt, and safely keep the same in order to satisfy any judgment that may be recovered on such attachment, and to make return of his proceedings thereon to the justice who issued the same at a time therein specified, not less than six nor more than fifteen days from the date thereof.

SEC. 4. The officer to whom such attachment shall be directed and delivered, shall execute the same as an ordinary summons, and shall attach, take into his possession, and safely keep such part of the goods and chattels of the defendant as shall not be exempt from execution, as shall be sufficient to satisfy the demand of the plaintiff.

He shall immediately make an inventory of the property seized, and

Execution issued, suit may be instituted on bond of plaintiff after return thereof "no goods."

Replevin may issue when property executed or attached is exempt by law, to file affidavit, etc.

Plea of defendant "not guilty" and what it puts in issue.

Attachment when the debtor is absent or about to abscond or to remove his property, or has assigned, secreted, or is about to do so with intent to defraud or that the debtor is a non-resident.

Affidavit, what it shall contain, a bond in \$200, etc.

Writ and command to officer, return of not less six nor more than fifteen days, etc.

Officer, how he shall execute the writ.

shall serve the said attachment and inventory upon the defendant therein named, if he shall be found, by leaving a copy of the said writ and inventory with him.

But if the said defendant shall not be found, then the officer serving the said writ shall leave a copy of the writ of attachment and inventory certified by him at the last place of residence of the defendant; but if the defendant have no place of residence in the county where the goods and chattels are attached, such copy and inventory shall be left with the person in whose possession the said goods and chattels shall be found.

Goods attached not removed if bond be given, if goods not forthcoming as required - execution against surety.

SEC. 5. No goods attached by any officer under the provisions of this act shall be removed by him if a bond be given and delivered to such officer by any person with sufficient surety to be approved by such officer in a penalty double the sum stated in the attachment to have been sworn to by the plaintiff, conditioned that such goods and chattels shall be produced to satisfy any execution that may be issued upon any judgment which shall be obtained by the plaintiff upon such attachment, and in case the property is not produced as conditioned in the bonds, execution shall issue against the property of the surety.

When goods in the possession of another attached, may retain by bond to officer.

SEC. 6. When property of the defendant, found in the hands or possession of any other person, then the defendant shall be attached, such person may retain the possession thereof by giving bond and security to the satisfaction of the officer executing the writ in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

Attachment issued, served, returned, and proceedings thereon.

SEC. 7. If such attachment was issued in one of the cases provided for by this act, and shall be returned personally served upon the defendant, the justice shall proceed to hear and determine the cause in the same manner as upon a summons returned personally served.

Defendant not served, his goods attached, does not appear, duty of justice in causing publication, what notice to require and contain.

SEC. 8. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket, requiring the plaintiff to give notice to the defendant by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him and his property attached to satisfy the demand of the plaintiff, and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty, nor more than ninety days from the date thereof, judgment will be rendered against him and his property sold to pay the debt.

Notice fifteen days may be proved and how.

SEC. 9. Such notice shall be set up or published at least fifteen days before the expiration of the time at which the party is required to appear, and the setting up or publication thereof, may be proved by the affidavit of the plaintiff in such suit, or any other person, or by return of the officer made upon a copy of the notice so set up by him.

Judgment by default may be entered, how, when, and effect of.

SEC. 10. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, judgment by default may be entered which may be proceeded on to final judgment in like manner as in ordinary actions.

Attachment may be dissolved how and when.

SEC. 11. Attachments may be dissolved on motion made in behalf of the defendant, at any time before final judgment, if the defendant shall appear and plead to the action, and give bond to the plaintiff with good and sufficient surety, to be approved by the justice, in double the amount of property, effects, and credits attached, condi-

tioned that such property, effects, and credits shall be forthcoming, and abide the judgment which shall be rendered in the case.

Sec. 12. When an attachment shall be dissolved, all proceedings touching the property and effects attached, and the garnishees summoned, shall be vacated, and the suit proceed as if it had been commenced by summons only.

Attachment dissolved, effect of and proceedings.

Sec. 13. When any plaintiff or other credible person shall make oath or affirmation that he has good reason to believe, and does verily believe, that any person is indebted to, or hath property (describing the same as nearly as may be) in his possession belonging to the defendant in attachment, and if the said officer, making service of such writ of attachment, cannot come at the property of the defendant in attachment in the hands and possession of such person, the said officer shall summon such garnishee by leaving with him, or at his usual place of residence, a copy of such writ of attachment and a copy of the affidavit, together with a written notice to such garnishee to appear before the said justice within five days, who shall give attendance accordingly and make answer, under oath or affirmation, to all questions that shall be put to him touching the property and credits of the defendant, in his hands and possession, or within his knowledge; and from the day of such service, such garnishee shall stand accountable to the plaintiff in attachment to the amount of the moneys, property, and credits in his hands, or due from him to the said defendant in attachment.

Garnishee within and how made; to answer under oath—how made liable.

Sec. 14. That the suit instituted against such garnishee shall be continued without trial or decision, until the action against such defendant in attachment shall be determined, and if in such action nothing shall be found due from the defendant to the plaintiff, then the garnishee shall recover costs against the plaintiff; or if in such suit so instituted against the garnishee, the plaintiff shall be non-sued, his suit is discontinued, or judgment be had against him, the said garnishee shall recover costs; and if the plaintiff shall recover judgment against the defendant in such attachment, and the garnishee shall deliver up to the officer before judgment is had against him all the goods, chattels, and other property of such defendant in his possession, and shall also pay over to the said justice all moneys due from him to said defendant, then the costs which shall have accrued on such suit against the garnishee shall be paid out of the proceeds of the property attached and belonging to the defendant; but if the garnishee shall not appear, or if appearing shall refuse truly to confess the matters alleged, and the plaintiff on trial shall recover judgment, the said garnishee shall pay costs.

Garnishee—suit to be continued until, etc. may recover costs—what he may do, and the effect of that, that he fails to do.

Sec. 15. That if the plaintiff will make oath or affirmation before the justice issuing said attachment, that he is in fear said garnishee will abscond before judgment can be had, and that he verily believes said garnishee hath moneys, goods, chattels or effects in his possession, or is indebted to the said defendant, it shall be lawful for said justice to issue a warrant against such garnishee, or other person holding property of the said defendant, who shall enter into recognizance with one good and sufficient security, to pay any sum and costs that may be awarded against him in said suit as garnishee, and on failure to enter into such recognizance, he shall be committed.

Warrant against garnishee when it may issue and may be recognized or committed.

Sec. 16. That upon return of said writ of attachment, if the plaintiff or plaintiffs shall make sufficient proof of the debt due him or them, and also of the goods, chattels, rights, credits, moneys and effects, in the hands of the garnishee, the said justice shall, at the time provided by this act, give judgment therein for the said plaintiff or plaintiffs, as the case may be, and award execution thereon, either against the ef-

Attachment returned---if pl'ff makes proof of debt---justice to give jud'gt against garnishee and award execution against def't or garnishee---a m't not to exceed jurisdiction of justice---if pl'ff fails--effect of and judgment.

Garnishee failing to appear---attachment may issue and command of.

Garnishee failing to answer---jud'gt and execution against the def't and the garnishee jointly---def't's goods first exhausted.

fects of the defendant or against the garnishee, as the case may require; *Provided*, The amount proved by any one creditor does not exceed the sum recognizable before a justice of the peace in other cases; *Provided, also*, That if the plaintiff shall fail in proving a demand against the defendant, or in proving the goods, chattels, rights, credits, moneys and effects in the hands of the garnishee, he shall pay the costs, and if need be the said justice shall give judgment against such plaintiff and issue execution for the same.

SEC. 17. If any person summoned as a garnishee, as provided in this article, shall fail to appear before the said justice at the time specified in the summons served upon him, the said justice may upon the application of the plaintiff, his agent or attorney, forthwith issue an attachment, directed to the proper officer, commanding him forthwith to bring the body of the said garnishee before him, to make answer as required by this article.

SEC. 18. If a garnishee, when before a justice, shall refuse to make full answers to all such questions touching the matter in controversy, as may be put to him by said justice, the justice shall render judgment against the said garnishee in favor of the plaintiff in the attachment suit, for the full amount which may be proven on the trial of the suit to be due from the defendant to the said plaintiff, and execution may issue against the defendant in the suit and the said garnishee jointly, but no greater amount shall be collected from the said garnishee than may be necessary to satisfy the demands of the plaintiff, and costs of suit, after having first advertised and sold all the property of the said defendant, attached by virtue of the said writ of attachment and applied the same to the satisfaction of the judgment of the plaintiff.

ARTICLE XII.

PROCEEDINGS AGAINST GARNISHEES.

SEC. 1. That in any action commenced before a justice of the peace, founded upon contract express or implied, or upon judgment or decree, or after the rendition of said judgment in any case, if the plaintiff, his agent or attorney, shall make and file with such justice an affidavit stating that he has good reason to believe, and does believe, that any person (naming him) has property, money or effects in his hands, or under his control, belonging to the defendant in such suit, judgment or decree, or that such person is indebted to such defendant, the justice shall issue a summons against said person, requiring him to appear before such justice at a time and place mentioned in said summons, not less than six nor more than twelve days from the date thereof, and answer under oath all questions put to him touching his indebtedness to such defendant, and the property, money and effects of the defendant in his possession, within his knowledge or under his control; which summons shall be served and returned in the same manner as a summons issued against a defendant in other cases. The garnishee shall be entitled to the same fees as he would be if he were subpoenaed as a witness in such case.

SEC. 2. The person summoned as a garnishee, from the time of the service of such summons, shall be deemed liable to the plaintiff in such suit to the amount of the property, money and effects in his hands or possession, or under his control, or due from him to the defendant in such suit; *Provided*, That when the defendant is a householder having a family, nothing herein contained shall be applicable to any indebtedness of such garnishee to the defendant for the personal labor of such defendant, or his family, for any amount not exceeding the sum of twenty-five dollars.

Garnishee proceedings against---if on jud'gt or otherwise the plaintiff shall make affidavit---what proceedings shall be had---appearance within six or 12 days and answer on oath---service and return of writ---fees of garnishee.

Garnishee when liable---proviso when def't is a householder having a family---exemption of \$25.00.

SEC. 3. If such garnishee neglect or refuse to appear at the time and place mentioned in such summons and answer as aforesaid, the justice shall continue the cause to some other day; and without further showing than the officer's return, that the summon had been personally served upon the garnishee and his fees paid or tendered, issue a warrant to bring such garnishee before him.

Garnishee not appearing cause continued upon the officer's return --warrant issued.

SEC. 4. Such warrant shall command the officer forthwith to take the body of such garnishee and bring him before such justice, and shall contain a further command that such officer shall, after he shall have arrested the garnishee, notify the plaintiff of such arrest; and such warrant shall be served and returned in the same manner as warrants issued in other cases.

Warrant command of...service and return thereof.

SEC. 5. The personal service of a summons upon such garnishee, shall be deemed the commencement of suit in the name of the plaintiff against such garnishee, which may be entered on the docket as suits in other cases.

Writ, what shall be a service of and commencement of suit.

SEC. 6. On the application of such garnishee before such justice, or on some other day to which the same may be adjourned, the plaintiff may proceed to examine the garnishee on oath or otherwise, as the plaintiff may elect touching the matters alleged in the affidavit, and the justice shall take minutes of such examination, and file the same with the other papers in the cause.

Garnishee on application...may be examined on oath or otherwise--duty of justice.

SEC. 7. Upon closing the examination, if a suit be pending and undetermined, between the plaintiff and defendant, the cause shall be continued, but it shall not be necessary to adjourn the same to any day certain.

Continuance not to any certain day.

SEC. 8. After the final determination of the suit against the defendant in the case mentioned in the preceding section, the justice shall at the request of the plaintiff, his agent or attorney, issue a summons against the garnishee, commanding him to appear before the justice to show cause why a judgment should not be rendered against him.

Jud'gt against def't, garnishee to be summoned to shew cause.

SEC. 9. Such summons shall be made returnable not less than three nor more than ten days from the date thereof, and shall be served at least two days before the time of appearance mentioned therein.

Summons--service and return of, when and how.

SEC. 10. In all cases where a judgment has been rendered against the defendant, and also after a final determination of the suit, pending against the defendant, as mentioned in section seven of this act, and the garnishee has been duly summoned to appear and show cause, the plaintiff may declare against the garnishee for the property, moneys and effects above mentioned, in trover; or if the garnishee be indebted to the defendant for moneys had and received, or if the garnishee shall have property, money and effects of the defendant in his possession, and shall also be indebted to the defendant, the plaintiff may declare in trover and add thereto a count for moneys had and received, and may give the special matter in evidence; and the garnishee may plead thereto, and issue may be formed and tried, as if the defendant had brought suit against the garnishee for the matters set forth in such declaration; and either party shall be entitled to an appeal or in other process as in other cases.

Jud'gt against def't--pl'ff may declare against garnishee in trover and for money had and rec'd...issue made up--may appeal or otherwise.

SEC. 11. If the plaintiff fail to recover judgment against the defendant in the cases mentioned in section seven of this act, or if the defendant pay the judgment rendered in such cases, or stay the execution thereon within the time and in the manner prescribed by law, it shall in either case be deemed a discontinuance of all proceedings against the garnishee.

Discontinuance, when and how effected.

SEC. 12. If judgment be rendered against the garnishee, the justice may issue execution thereon as in other cases.

Execution when.

Jud'gt stayed.

Sec. 13. Judgments against garnishees may be stayed in the same manner and with like effect as in other cases.

Garnishee may deliver over all property, etc.--effect of--costs paid

Sec. 14. If the garnishee shall, on demand, deliver to the officer having such execution, all the property, money and effects in his possession or under his control, belonging to the defendant, and pay all moneys found to be due from him to the defendant at the time the suit was commenced against him, or so much of the money, property or effects, as may be necessary to satisfy such execution, then the costs which may have accrued against such garnishee shall be paid out of the property, moneys and effects so paid over or delivered to such officers.

Officer, what to endorse on execution--shall be payment to the def't.

Sec. 15. The officer having such execution shall endorse all moneys received from such garnishee, and a description of all property or effects delivered to him by the garnishee; and such delivery or payment shall be deemed a delivery or payment to the defendant in such suit.

Execution return of and entry on docket--what evidence.

Sec. 16. Upon the return of such execution so endorsed, the same shall be entered on the docket of the justice as fully as such return upon such execution, and such entry, or a transcript thereof, shall be *prima facie* evidence of the facts therein stated.

Officer, duty of when garnishee delivers property to sell--if notes, bills, etc., shall return the same--pl'ff may sue and collect--set off between original parties.

Sec. 17. Whenever the garnishee shall pay or deliver to the officer having such execution, any property which may be sold on an execution by existing laws, the officer shall proceed to levy upon and sell the same at public auction, or vendue, as in other cases; and if the garnishee shall deliver to the officer any notes, bills, bonds or other choses in action; the officer shall return the same to the justice, to be retained in his hands for the use of the plaintiff, and the plaintiff may sue and collect the same, or so much thereof as may be necessary to pay the judgment against the defendant and costs, the balance, if any, shall be returned to the garnishee or the defendant.—All bills, bonds, notes, accounts and other choses in action secured or delivered under the provisions of this section, shall be taken subject to all liens, set offs, rights, liabilities and equities, existing between the original parties thereto.

Bank notes how disposed of.

Sec. 18. If the garnishee pay to the officer having such execution any bank note or bill, the same shall be paid over to the plaintiff at the par value thereof, if he will accept the same; if not, it shall be sold in the same manner as other personal property.

Jud'gt against garnishee effect of.

Sec. 19. Judgments rendered against a garnishee under the provisions of this act, shall have the same force and effect as they would have under existing laws if such defendant had been named as plaintiff therein.

Suit pending--def't cannot maintain action against garnishee.

Sec. 20. No suit shall be maintained or recovery had by such defendant against the garnishee for the amount of money sworn, proved, or admitted to be due from such garnishee to the defendant, or for property or the value thereof, money or effects in the hands of such garnishee as aforesaid, while such proceeding is pending.

Def't may recover against garnishee--other property or thing not garnisheed.

Sec. 21. The preceding section shall not be so construed as to prevent such defendant from prosecuting for and recovering of such garnishee any other or future sum of money due from such garnishee, or the possession or value of any other property or effects in the hands of such garnishee belonging to such defendant.

Bills of exchange and notes not due.

Sec. 22. Bills of exchange and promissory notes not due, in the hands of the garnishee at the time of the service of the summons, shall be deemed "effects" under the provisions of this act.

Sec. 23. If it shall appear upon any examination or trial had under the provisions of this act, that any sum or sums of money is or are owing and payable from the garnishee to the defendant at some

future time or times, it shall be the duty of such court, after such examination or the rendition of the verdict (if a trial by jury is had) and after the trial (if the cause is tried by the court) to note the time or times when the sum or sums of money mentioned in this section shall become due and payable, and shall thereupon continue the cause until after the time or times so noted.

Trial----If garnishee shall owe debt at a future day---cause continued until and duty of justice.

Sec. 24. After the said sum or sums of money become due and payable, as mentioned in the preceding section, the justice or court shall at the request of the plaintiff, issue a summons against the garnishee, as mentioned in section eight of this act, returnable in the same time, and the same proceedings shall be had thereon and with the like effect, as if the said sum or sums of money had been due and payable at the time of the service of the summons.

Summons, issue of when against garnishee---duty of justice and proceedings thereon.

Sec. 25. Corporations may be proceeded against as garnishees, in the same manner and with like effect as individuals, under the provisions of this act, and the rules of law regulating proceedings against corporations.

Corporations may be garnisheed and how.

ARTICLE XIII.

CONCERNING APPEALS.

Sec. 1. Any person aggrieved by any judgment rendered by a justice of the peace under this act, when the judgment shall exceed fifteen dollars, may appeal by himself or agent to the district court of the county where the same was rendered; *Provided, however,* That when the claims of either party, as proved in the cause at the trial shall exceed one hundred dollars, or the claims of both parties, as proved on the trial shall exceed two hundred dollars, then either party may appeal from such judgment, although the recovery before the justice be less than fifteen dollars; in which case the fact of such sum or sums having been proven on the trial shall be set forth and certified by the justice in his return. *Provided,* This law shall not interfere with any actions in cases of forcible entry and detainer; *And provided further,* That no appeal shall be allowed in any case unless the following requisites are complied with ten days after judgment rendered, viz:

Appeals for any amount over fifteen dollars--- provided an appeal may be taken when the sum is less than fifteen dollars---duty of justice---forcible entry and detainer not interfered with

1st. An affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

Appeals requisites of---affidavit.

2nd. A recognizance entered into by the party appealing, his agent or attorney, to the adverse party in a sum sufficient to secure such judgment and costs of appeal, must be entered into with one or more sureties, to be approved by the justice.

Recognizance by the appellant, with security to be approved---duty of justice---effect of appeal.

Sec. 2. Upon an appeal being made, according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if in the meantime execution shall have been issued, the justice shall give to the applicant a certificate that such appeal has been allowed.

Sec. 3. On such certificate being presented to the officer holding the execution, he shall forthwith release the body and property of the defendant that may have been taken on execution; and if the applicant shall have been committed to jail, the jailor upon the service of the like certificate on him, shall release the appellant from imprisonment.

Executions stayed by appeal.

Sec. 4. On or before the first day of the [the first day of the] term of the district court next after the appeal shall have been allowed, the

Appeal when and by whom filed in office of the clerk with proceedings.

Issue before the justice, shall be tried in court--except, etc.

Appeal, filing of on second day of the term of court--parties not to change positions--if not entered by appellant--appellee may enter and when and effect of.

Attachment may issue against justice to return proceedings in an appeal.

Attachment to compel justice to allow an appeal and return same.

Attachment to amend return of justice.

Appeal dismissed how and when.

Appeals ten days before court--to be tried unless, etc.

Judgt how and where rendered against appellant and security.

Execution first against principal and then security and duty of officer.

Execution returned--on motion the security may have judgt--motion must be made in one year--officer may be evidence,

justice shall file in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit and filed with the justice.

SEC. 5. The issue before the justice shall be tried before the court above, without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the court.

SEC. 6. The person or persons appealing shall cause an entry of the appeal to be made by the clerk of the court, on or before the second day of the term, unless otherwise ordered by the court; and the plaintiff in the court below shall be the plaintiff in the court above: *Provided*, That if the appellant shall fail or neglect to enter the appeal as aforesaid, the appellee may have the same entered at any time during that or some succeeding term, and the judgment of the court below shall be entered against the appellant for the same, with interest and twelve per centum damages, and the costs of both courts.

SEC. 7. Upon an appeal being made and allowed, the district court may, by rule and attachment, compel a return by the justice of the proceedings in the suit and of the papers required to be by him returned.

SEC. 8. If a justice fail to allow an appeal in a cause when the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may by rule and attachment compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

SEC. 9. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment, compel him to amend the same.

SEC. 10. No appeal allowed by a justice shall be dismissed on account of there being no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter before the district court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

SEC. 11. All appeals allowed ten days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term unless continued for cause.

SEC. 12. In all cases of appeals from a justice's court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his securities, in the recognizance for the appeal.

SEC. 13. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of said principal to satisfy the same, such execution shall be enforced against the securities; and the officer shall specify on his return by whom the money was paid, and the term thereof.

SEC. 14. After the return of an execution, satisfied in whole or in part, out of the property of the security, such security shall be entitled to a judgment on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum, from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

ARTICLE XIV.

CERTIORARI.

SEC. 1. In all cases rendered before a justice of the peace, either party thinking himself aggrieved by such judgment, may remove the same to the district court of the same county by writ of certiorari, at any time within twenty days from the rendition of such judgment.

Certiorari—either party may remove a case from justice to court by writ of within 20 days.

SEC. 2. The party applying for such certiorari, shall make or cause to be made, an affidavit setting forth the substance of the testimony and proceedings before the justice, and the grounds upon which an allegation of error is founded.

Affidavit to make an application for—what to contain.

SEC. 3. Such affidavit shall within twenty days after the rendition of such judgment, be presented to one of the judges of the supreme court of this Territory, or to the judge of probate of the county in which such judgment was rendered, and if such judge shall be satisfied that any error affecting the merits of the controversy has been committed by the justice or jury in the proceedings, verdict or judgment, he shall allow the certiorari, by endorsing his allowance thereon.

Certiorari to be allowed by one of the judges of the Territory or probate judge and for what errors.

SEC. 4. The party obtaining such certiorari shall execute to the opposite party a bond with one or more sufficient sureties, to be approved by the justice who rendered the judgment, or the judge who allowed the certiorari, in a penalty double the amount of the judgment rendered by the justice; conditioned that if such judgment be affirmed, such party will pay the same, together with such costs as may be awarded against him in such affirmance.

A bond—approved by the justice or judge.

SEC. 5. The affidavit and bond so given shall be filed with the clerk of the district court for the county, who shall thereupon issue a writ of certiorari commanding the justice rendering such judgment to make return as to all the facts contained in such affidavit.

Affidavit and bond to be filed with the clerk—certiorari and command of.

SEC. 6. The certiorari so allowed, together with a copy of the affidavit shall be served on the justice by whom the judgment was rendered within ten days from the allowance of the certiorari.

Writ, service of on justice within ten days.

SEC. 7. Upon the service of a writ of certiorari upon the justice as aforesaid, all further proceedings at law in such case shall cease, and if execution shall have been issued on such judgment upon which certiorari is allowed, the justice shall immediately recall the same.

Writ service of, to stay proceedings.

SEC. 8. The justice, before the return day of such certiorari, or within ten days after the service of the same upon him, shall make return thereto in writing, and file the same with the clerk of the district court, in which return he shall fully and truly answer to all the facts set forth in the affidavit on which the certiorari was allowed.

Justice, duty of to make return thereof to clerk, and what it shall contain.

SEC. 9. The district court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

Court to compel justice to make or amend return by rule, attachment, or mandamus.

SEC. 10. When such certiorari and return shall be so filed with the clerk, the cause may be brought on to argument at any time thereafter on the notice of either party.

Trial by notice of either party.

SEC. 11. The judge of such district court shall proceed and give judgment in the cause as the right of the matter may appear, without regarding technical omissions, imperfections, or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and may issue execution as upon other judgments rendered by him.

Judgment, to affirm or reverse the judgment of justice.

SEC. 12. If a judgment rendered before a justice of the peace be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount so collected with interest from the time of collection.

Judgment, reversal of, restitution, etc.

ARTICLE XV.

CRIMINAL JURISDICTION OF JUSTICES OF THE PEACE.

Criminal jurisdiction.

SEC. 1. Every justice of the peace shall have jurisdiction in criminal cases throughout the county in which he was elected and where he shall reside.

Conservator of the peace.

2. And he shall be a conservator of the peace therein.

Justice, duty of, on view or complaint.

3. And he is authorized and required on view or complaint made on oath or affirmation, to cause any person charged with the commission of a crime or a breach of the law, to be arrested and brought before himself or some other justice of the peace of the same county, except as hereinafter excepted:

Commit, discharge, or recognize, etc.

4. It shall be the duty of the justice before whom such person shall be brought to inquire into the complaint, and every such person either to commit to the jail of the county, or discharge, or recognize to be and appear before the district court of the county in which such justice resides, on the first day of the next term thereof, as the case may require.

Witnesses recognized to appear, etc.

5. It shall be the duty of every such justice to recognize the witness or witnesses by him examined in behalf of the United States, and whose testimony he may consider necessary in the further prosecution of the charge, to be and appear before the district court, on the first day of the term thereof next to be holden in and for the county where such recognizance was taken.

Assault and battery or affray, proceedings therein.

SEC. 2. In all cases of assault and battery, or an affray, the same proceedings shall be had as in other criminal cases, and the justice, whenever a person shall be brought before him, charged with the commission of either of the crimes mentioned in this section, shall, upon hearing such charge, either discharge, commit, or recognize the prisoner as the case may require.

Peace warrant, oath and proceedings.

SEC. 3. Whenever any person or persons shall make complaint, on oath or affirmation, before a justice of the peace, stating, amongst other things, that the person making such complaint has just cause to fear, and does fear, that another will beat, wound, or kill him or her, or his or her ward, child, or children, or will commit some other act of personal violence upon him, her, or them, or will maliciously destroy or injure his or her property, it shall be the duty of the justice to whom complaint was made as aforesaid, to issue a warrant directed to the proper officer, commanding forthwith to arrest the person complained of, and him or her to take before such justice, or any justice of the peace of the county, to answer such complaint; and upon the return of such warrant with the person accused in custody, it shall be the duty of the justice to whom it is returned to examine into the truth of such complaint.

Recognized in \$500 or \$50, to keep the peace for six months, default committed.

SEC. 4. And if upon such examination he shall be of opinion that there was just cause therefor, he shall order the person complained of to enter into a recognizance with good sufficient security in a sum not exceeding five hundred dollars, nor less than fifty dollars, conditioned that he or she shall keep the peace and be of good behavior generally, and especially towards the person complaining, for the period of six months thereafter, and in default of such recognizance and surety as aforesaid, the justice shall commit the person or persons complained of to the jail of the county, there to remain until discharged by due course of law.

SEC. 5. It shall be the duty of every justice of the peace, in criminal cases, to keep a docket of his proceedings, as in civil cases; and when the party accused shall be recognized or committed for want of

such recognizance, he shall transmit or deliver a transcript of such proceedings to the clerk of the court or the prosecuting attorney of the county, without unnecessary delay, and after the commencement of the next term of the district court next thereafter to be holden.

Docket of justice
---transcript and
proceedings in
criminal cases.

Sec. 6. Any justice of the peace before whom any examination may be pending under the provisions of this article, may continue the same from day to day, on good cause shown, not exceeding in all four days; and in the meantime the person complained of shall remain in custody of the officer, unless he enters into a recognizance with sufficient surety to appear on the adjourned day and answer the charge which has been made against him.

Continuance not
over four days,
criminal in custo-
dy or recognized.

Sec. 7. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property are or is concealed in any dwelling house, out-house, garden, yard, or other place or places, to issue a warrant under his hand and seal, commanding every such dwelling house, or place to be searched in the daytime; and if any of the goods described in any such warrant, be found therein, then that the said goods be seized and brought before the judge or justice issuing such warrant; if, upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by such judge or justice of the peace that the goods so brought before him have been stolen, it shall be the duty of such judge or justice either to keep possession of, or to deliver or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. But in case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods, so seized, have not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

Search warrant,
judge or justice
may issue, oath,
warrant, command
of, witnesses, duty
of officer on exam-
ination, etc.

ARTICLE XVI.

GENERAL PROVISIONS CONCERNING JUSTICES OF THE PEACE.

Sec. 1. All process issued by any justice of the peace shall be signed by him, and may be under seal or without seal.

Process.

Sec. 2. Every summons or other process issued by a justice of the peace, shall be entirely filled up, and shall have no blank either in date or otherwise, at the time of its delivery to an officer to be executed. Every such process which shall be issued and delivered to an officer to be executed contrary to the foregoing provision, shall be void.

Process, requi-
sites of, voidables.

Sec. 3. When, from any cause, a vacancy shall occur in the office of justice of the peace, in any of the organized counties of this Territory, the clerk of the board of county commissioners, upon being notified that any such vacancy exists, may issue a notice to the electors of the precinct where such vacancy exists, stating in such notice that a vacancy has occurred in the said office, and that an election will be held in said precinct to fill the said vacancy, which notice shall be given in the same manner and under the same regulations that other notices of elections are required by law to be given.

Vacancy in of-
fice of justice, duty
of the clerk of
board of commis-
sioners to give no-
tice of election.

Sec. 4. Whenever one or more justices of the peace shall be elected in any precinct of this Territory to supply a vacancy or vacancies at the time existing, such justice or justices may take the oath and file their official bond, and forthwith enter upon the duties of their office.

Election of just-
ice, oath and bond.

Justice elected,
duty of, etc.

SEC. 5. All persons elected justices of the peace in this Territory shall enter upon the duties of their respective offices on the first day of January next succeeding their election, unless otherwise provided for in this act.

Justice, if member of House or Council, may exercise discretion, etc.

SEC. 6. No justice of the peace, being a member of the Council or House of Representatives, shall be obliged to take cognizance of any action, or to entertain any proceedings under the provisions of this act, but he may act therein or not at his discretion.

Justice office vacant, books or papers to be handed over to nearest justice.

SEC. 7. In case any justice of the peace shall die, or his office shall in anywise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand and receive such books and papers from the person having the same in his possession.

Books and papers withheld, complaint made to district judge, duty of, to grant an order to show cause, etc.

SEC. 8. If any books or papers required to be delivered to the nearest justice by the preceding section be withheld, or if any justice shall refuse or neglect to deliver over to his successor any books or papers, in either case the person entitled to receive the said books or papers may make complaint to the district judge of [the] United States district court of the proper county; and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or papers are withheld, he may grant an order directing the person so refusing to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

District judge, duty of, may commit for withholding books and papers.

SEC. 9. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances; and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had shall, by warrant, commit the person so withholding to the jail of the proper county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

Justice may forfeit his office by refusing to pay over money collected.

SEC. 10. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof such justice shall forfeit his office.

Certiorari or appeal, service of on justice out of office, effect the same as if in office.

SEC. 11. Whenever a certiorari or appeal shall be duly brought and served upon a justice, after he shall have gone out of office, upon a judgment rendered by him whilst in office, such person shall make return to such certiorari or appeal in like manner and with like [effect] as if such certiorari or appeal had been served whilst he was in office.

Courts shall be public.

SEC. 12. The courts of justices of the peace shall be public, and every person may freely attend the same.

Justice not to have a law partner appear in his court.

SEC. 13. No justice of the peace shall have a law partner appear as attorney in any cause before such justice.

ARTICLE XVII.

OF FORCIBLE ENTRY AND DETAINER.

Forcible entry and detainer, two justices and a jury may try and cause restitution of the land detained.

SEC. 1. Any two justices of the peace shall have authority to inquire, by jury, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements and detain the same, as against those who have a lawful or peaceable entry into lands and tenements, and who, by force, hold the same; and if it be found, upon such inquiry, that an unlawful and forcible entry hath been made, and that the said lands and tenements are held and detained by force, or that the same, after a

lawful entry, are held unlawfully and with force, then such justices shall cause the party complaining to have restitution therefor.

SEC. 2. That when complaint shall be made in writing to any two justices of the peace of an unlawful and forcible entry into any lands or tenements, and detained as aforesaid, or if any unlawful or forcible detainer of the same after a peaceable entry, particularly describing the premises so entered upon or detained, they shall make out their venire under their hands, directed to the sheriff or any constable of the county, commanding him to cause to come before them six persons possessing the qualifications of jurors, to inquire into the forcible entry and detainer (or forcible detainer only as the case may be) as aforesaid.

Complaint in writing, describing the premises, venire to the sheriff or constable for a jury of six men to inquire.

SEC. 3. That when forcible detainer only shall be alleged in the complaint, it shall be the duty of the complainant to notify the defendant at least ten days prior to issuing the writ, to leave the premises, which notice shall be served by leaving a copy thereof with the defendant, or at his usual place of abode when he cannot be found.

Forcible detainer, complainant to notify defendant ten days before writ, to leave the premises, served by copy.

SEC. 4. That when the complainant shall specify both forcible entry and detainer, it shall be the duty of the jury, if they find a verdict of guilty, to designate in such verdict whether they find the defendant guilty of forcible entry and detainer, or forcible detainer alone; and if the latter only, they shall also find whether the requisite notice has been given, and if such notice shall not have been given, the complainant shall not recover costs.

Jury, duty of in forcible entry and detainer, verdict and kind of.

SEC. 5. That it shall be the duty of the justices, at the time they issue their venire, to issue their summons to the party complained against, which summons shall state the cause of complaint, and the time and place of trial. The summons shall be served upon the party complained against in the same manner as other summons are required by this act to be served; and if, after the service of such summons, the party does not appear to defend, the court shall proceed to the inquiry in the same manner as if he were present; and when the jury shall appear they shall be empaneled to inquire into the entry or forcible detainer complained of, and the justices shall lay before the jury the complaint in the cause, and shall administer an oath or affirmation to the jurors to well and truly try whether the complaint of _____, now laid before them, is true according to the evidence.

Justices, venire and summons issued, service of and effect of if defendant does not appear, jury, justice duty of, oath of jurors.

SEC. 6. That if the jury shall find no part of the said complaint true, they shall return a verdict of not guilty; and thereupon it shall be the duty of the court to render up judgment against the complainant in the cause, with costs, and issue execution against the said complainant, returnable in the same manner as other executions in justices' courts. And if the jury shall find the said complaint true, they shall return a verdict of guilty, or they shall return a special verdict of guilty, or they shall return a special verdict of such facts as they do find true; and the justices shall render up judgment for the complainant to have restitution of the premises and costs, and shall, immediately after the expiration of ten days from the time of entering up said judgment of restitution, issue their writ of restitution accordingly.

Jury finding of, judgment by court, execution, restitution in ten days writ of.

SEC. 7. That if, by accident or challenge for cause, there should not be a full jury, the sheriff or other officer, as the case may be, shall fill the pannel with talismen as in other cases.

Talismen may be called when and how.

SEC. 8. And if the jury summoned and empaneled cannot agree upon their verdict, the justices before whom the trial is pending may discharge the same, and issue a new venire returnable forthwith for the purpose of empanneling a new jury.

Jury not agreeing, new venire.

SEC. 9. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to him or her, or the person under whom him, or her holds possession, or contrary to the condition or covenants of the lease or arrangement (*agreement*) under which he or she holds, or after any rents shall have become due according to the terms of such lease or agreement, and shall remain unpaid for the space of ten days, in all such cases, if the lessor, his heirs, executors, administrators, agent, or attorney shall make demand in writing of such tenant, that he or she deliver up possession of the premises held as aforesaid, and if such tenant shall neglect or refuse, for the space of ten days after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof so due and unpaid as aforesaid, upon complaint thereof to any two justices of the peace of the proper county, the justices shall proceed to hear, try, and determine the same in the same manner as in cases of forcible entry and detainer, and issue a writ of restitution accordingly.

Holding over after ten days to make demand in writing, complaint, two justices may hear, try, and determine the case as in forcible entry and detainer and issue writ of restitution.

SEC. 10. The preceding section shall not extend to any person who has, or shall have continued, in possession three years after the termination of the time for which the premises were demised or let to him or her, or those under whom he or she claims, or to any person who continues in possession three years quietly and peaceably by disseizin, anything therein to the contrary notwithstanding.

Holding over for three years after expiration of lease, the action of forcible entry and detainer not to apply.

SEC. 11. If either party shall feel aggrieved by the verdict of the jury or the decision of the justices, or by the judgment of court rendered upon such verdict, he may, within sixty days after judgment shall be rendered, remove the said proceedings and judgment before the district court for the county wherein the said trial shall be had, by writ of certiorari.

Certiorari within sixty days may be taken out to remove case to district court.

SEC. 12. The proceedings under the provisions of the preceding section shall be the same as is provided in this act for removing causes by certiorari to the district court.

Certiorari, proceedings therein.

SEC. 13. If a writ of restitution shall have been issued by the justices previous to the service of any writ of certiorari, the same shall not thereby be suspended unless the party procuring such writ of certiorari shall also in like manner give security that he will pay all damage or injury which shall be done to the lands and tenements in controversy by the party procuring such writ, or that the lands and tenements shall be in the same or as good a condition on the final determination of such suit on the writ of certiorari as the same shall be at the time of the service of such writ, in which case the justices shall give to the party procuring such certiorari a certificate of the service thereof, the service of which upon the opposite party, or upon the officer executing the writ of restitution, shall stay all proceedings on such writ of restitution, and shall prevent the party in whose favor a writ of restitution may have been granted, and all persons claiming under him, from further holding or interfering with the lands or tenements in controversy until the decision of the district court on the said certiorari.

Restitution before certiorari, proceedings not suspended unless, etc., justices to give certificate of service, effect of, proceedings stayed on writ of restitution until the decision of the district court on said certiorari.

SEC. 14. The district court to which any writ of certiorari shall be returned, shall proceed to hear and determine the same as the very right of the case shall appear, without regarding technicalities or imperfections in the said return, and shall give judgment and award execution accordingly.

District court, duty of on certiorari, judgment and execution.

SEC. 15. That all acts of the late Territory of Wisconsin relating to the proceedings in justices' courts, and the powers and duties of justices of the peace, are hereby repealed.

Repealing section.

ARTICLE XVIII.

CONCERNING COSTS AND FEES OF JUSTICES OF THE PEACE, WITNESSES,
AND CONSTABLES.

SEC. 1. That justices of the peace shall be allowed to receive the following fees :

Concerning costs and fees of justices, witnesses, and constables.

For a summons, warrant, or subpoena, - - - - -	\$0 25
For a venire, - - - - -	0 25
Swearing a jury, - - - - -	0 25
For taking recognizance of bail, - - - - -	0 25
For committing to jail, - - - - -	0 25
For entering judgment, - - - - -	0 25
For administering oath, - - - - -	0 15
For certifying the same when taken out of court, - - - - -	0 15
For a writ of attachment, execution, or replevin, - - - - -	0 25
For every adjournment, - - - - -	0 15
For a certified copy of proceedings on appeal, certiorari, or otherwise, to district court, - - - - -	1 00
For entering rule of reference, or a copy thereof, each, - - - - -	0 15
For swearing witnesses in a cause, for each witness, - - - - -	0 05
For entering a discontinuance or satisfaction, - - - - -	0 25
Taking and certifying the acknowledgment to every deed for each grantor therein named, - - - - -	0 25
For every bond or other written security directed by law to be taken by a justice of the peace, - - - - -	0 25
Copy of proceedings in any case when demanded, per folio, - - - - -	0 15
Taking an examination, deposition, or confession, per folio, - - - - -	0 15
For filing every paper required to be filed with him, except written declarations, pleas, or other written pleadings, or any process issued by him in any cause, - - - - -	0 05
Marrying and making certificate thereof, - - - - -	1 00
and such other sum as the party making application shall pay.	

CONSTABLE'S FEES.

SEC. 2. That constables shall be entitled to receive the following fees :

Serving a warrant or other process, - - - - -	\$0 25
For a copy of every summons delivered on request of or left at place of abode of defendant, - - - - -	0 15
For serving execution on body or goods, - - - - -	0 25
For serving a subpoena or summons on each person therein named, - - - - -	0 15
For commitment to prison, - - - - -	0 25
For summoning a jury, - - - - -	0 50
For all money collected on execution five per cent. to be added to the amount of execution.	

MILEAGE.

When any constable has any process to serve, or duty to perform, and has to travel, he shall be allowed five cents per mile going and returning from the place of service to the place of return, and where two or more witnesses are named in a subpoena, mileage shall be computed from the most distant place of service to the place of return, unless such persons reside in opposite or different directions from such place of return.

ARTICLE XIX.

OF THE FORMS OF WRITS OF PROCESS.

Forms of writs. SEC. 1. The following or other equivalent forms shall be used by justices of the peace in proceedings to be had under this act, to wit :

A WARRANT.

A warrant. Minnesota Territory, county, ss.
To the Sheriff or any Constable of said county :
In the name of the United States, you are hereby commanded to take the body of , if to be found within your county, and bring forthwith before the undersigned, one of the justices of the peace in and for said county, at , to answer to , a plea of , and you are hereby commanded to give due notice thereof to the said plaintiff, and have you then and there this writ.
Given under my hand this day of , 18 .
Justice of the Peace.

A SUMMONS.

Summons. Territory of Minnesota, county of
To the Sheriff or any Constable of the said county :
In the name of the United States, you are hereby commanded to summon , if he shall be found in your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the day of , 18 , at o'clock in the noon, at , in said county, to answer to in a plea of , and have you then and there this writ.
Given under my hand this day of , 18 .
Justice of the Peace.

SUBPENA.

Subpena. Minnesota Territory, county, ss.
In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, at , on the day of , at o'clock, in the noon of said day, to give evidence in a certain cause then and there to be tried between , plaintiff, and , defendant, on the part of the
Given under my hand this day of , 18 .
Justice of the Peace.

A VENIRE FOR A JURY.

Venire for jury. Minnesota Territory, county, ss.
To the Sheriff or any Constable of said county :
In the name of the United States, you are hereby commanded to summon to be and appear before the undersigned, one of the justices of the peace, in and for said county, on the day of , at o'clock in the noon of said day, in the town of , to make a jury for the trial of an action of between plaintiff and defendant and have you then there this writ.
Given under my hand this day of , 18 .
Justice of the Peace.

A WRIT OF ATTACHMENT.

Minnesota Territory, county, ss.
 To the Sheriff or any Constable of said county :
 In the name of the United States, you are hereby commanded to attach the goods and chattels, moneys, effects and credits, of or so much thereof as shall be sufficient to satisfy the sum of with interest and costs of suit, in whosesoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and also to summon the said if to be found, to be and appear before me at my office, in the town of , on the day of , 18 , to answer unto plaintiff; and also, that you summon as garnishee all such persons found in your county, as may be directed by the plaintiff or his agent to appear before the said justice, at the time and place aforesaid, to answer such interrogatories as the justice may propound, and have you then there this writ.
 Given under my hand the day of in the year , Justice of the Peace.

Attachment writ of.

AN EXECUTION.

Minnesota Territory, county, ss.
 To the Sheriff or any Constable of said county :
 Whereas judgment against for the sum of lawful money of the United States and for costs of suit, was recovered the day of before me, at the suit of . These are therefore, in the name of the United States, to command you to levy distress on the goods and chattels of the said . (excepting such as the law exempts) and make sale thereof, according to law in such case made and provided, to the amount of the said sums, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said for said and costs. Hereof fail not under the penalty of the law.
 (Given under my hand the day of in the year , Justice of the Peace.

Execution writ of,

AN EXECUTION AGAINST GOODS OR THE BODY.

Minnesota Territory, county, ss.
 To the Sheriff or any Constable of said county :
 Whereas judgment against for the sum of , lawful money of the United States, and for costs of suit, was recovered the day of before me, at the suit of . These are therefore in the name of the United States, to command you to levy distress on the goods and chattels of the said (excepting such as the law exempts) and make sale thereof according to law, in such cases made and provided, to the amount of said sums, together with twenty-five cents for this execution, and the same to return to me within thirty days to be rendered to the said for said and costs; (and in case where imprisonment is allowed by law the following shall be added) and for want of such

Execution against the goods and body

goods and chattels whercon to levy, take the body of the said
 and convey and deliver unto the
 keeper of the common prison of said county, who is hereby com-
 manded to receive and keep the said in safe custody
 in said prison, until the aforesaid sum and all legal expenses be paid
 and satisfied, or until he be discharged therefrom by due course of
 law. Hereof fail not under the penalty of the law.

Given under my hand the day of
 in the year , Justice of the Peace.

WRIT OF REPLEVIN.

Territory of Minnesota, }
 county of , ss. }

To the Sheriff or any Constable of said county :

Replevin writ of.

Whereas, A. B. complains that C. D. has taken and does unjust-
 ly detain (or does unjustly detain as the case may be, particularly
 describing the goods and chattels to be replevied and the value
 thereof) thereof, in the name of the United States you are commanded
 (that you cause the same goods and chattels to be replevied) without
 delay; and if the said A. B. shall give security as required by law, that
 you cause the said goods and chattels to be delivered to the said A. B.
 and also that you summons the said C. D. to be and appear before
 me, one of the justices of the peace in and for said county, on the
 day of , A. D. 18 , at o'clock
 in the noon, at in the said county, to answer the
 complaint of

Given under my hand this day of , A. D.
 18 , Justice of the Peace.

SUMMONS IN ACTION OF FORCIBLE ENTRY AND DETAINER.

Territory of Minnesota, county of , ss.
 To the Sheriff or any Constable of the county aforesaid :

Summons in for-
 cible entry and
 detainer.

Whereas of hath exhibited unto
 , justices of the peace in and for the county afore-
 said, a complaint against of for that
 the said on the day of at
 with force and arms and with a strong hand, (here
 insert the substance of the complaint with legal certainty).

Therefore, in the name of the United States of America, you are
 hereby commanded to summon the said , if to be
 found in the said county, to appear before us at on
 day of at of the o'clock
 in the noon, then and there to make answer to and defend
 against the complaint aforesaid, and further be dealt with according
 to law; but if the said is not to be found within
 the said county, you are required to leave a true and attested copy of
 this summons at the usual place of abode of the said
 six days at least before the said return day hereof, and make due re-
 turn to us of this summons with your doings thereon.

Dated at this day of in the
 year one thousand eight hundred and

} Justices.

WRIT OF RESTITUTION.

Territory of Minnesota, county of _____, ss.
To the Sheriff or any Constable of the county aforesaid:

Whereas, _____ of _____ at a court of enquiry of a forcible entry and detainer, held at _____ in the county aforesaid, on the _____ day of _____, one thousand eight hundred and _____, before _____, justices of the peace in and for the county aforesaid, by the consideration of the court, recovered judgment against _____ of _____ to have restitution of (here describe the premises as in the complaint). Therefore, in the name of the United States of America, you are hereby commanded, that taking with you the force of the county, if necessary, you cause the said _____ to be immediately removed from the aforesaid premises, and the said _____ to have peaceable restitution of the same; you are also hereby commanded that of the goods and chattels of the said _____ within the said county, you cause to be levied, and the same being disposed of according to law, to be paid to the said _____, the sum of _____ being the costs taxed against the said _____ for the said _____ at the court aforesaid, together with this writ make due return within thirty days from the date hereof, according to law.

Restitution writ of.

Dated at _____ the _____ day of _____ one thousand eight hundred and _____

} Justices.

VERDICT IN CASE OF FORCIBLE ENTRY AND DETAINER.

At a court of enquiry held at _____, on the _____ day of _____, one thousand eight hundred and _____, before _____, justices of the peace in and for the county of _____, of _____ complaint against _____ respondent; the jury find that the facts alleged in the said complaint are true, that the said _____ is guilty thereof and the said _____ ought to have restitution of the premises therein described without delay, (or in case the jury do not find the allegations of complainant proved then) the jury find that the facts alleged in the said complaint are not proved and that the said _____ is not guilty thereof.

Form of verdict in forcible entry and detainer.

} Foreman.
} Justices.

APPROVED the first day of November, one thousand eight hundred and forty-nine.

CHAP. VII.—An Act to establish and maintain Common Schools.

Nov. 1, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That a fund shall be provided in the manner hereinafter specified for the education of all the children and youth of the Territory.

A fund provided.

SEC. 2. It shall be the duty of the county commissioners to lay an annual tax of one fourth of one per cent. on the ad valorem amount of the assessment roll made by the county assessors for the same year, and to include the same in their warrants to the collector; and the said collector shall proceed to collect the said tax in the same manner the county revenue is collected, and the said money so col-

Tax to be levied annually, duty of commissioners, collector's duty—money to be appropriated to school teachers in proportion to the number of scholars in each district.