

of wolves in their respective counties as they may deem necessary, not exceeding three dollars for each wolf or wolf's whelp, to be allowed in the manner hereinafter provided.

Persons applying to go before justice.

SEC. 2. Every person intending to apply for such bounty shall take every wolf or wolf's whelp, killed by him, or the scalp thereof, with the ears entire thereon, to one of the justices of the peace of the county in which such wolf or whelp shall have been taken, who shall thereupon decide upon such application.

To make oath where wolf was taken.

SEC. 3. The person claiming such bounty, shall then and there be sworn by such justice, and state on oath the time [when] and place, [where] (as near as he can,) every wolf or wolf's whelp, for which a bounty is claimed by him, was taken and killed; he shall also submit to such other examination, on oath, concerning the taking and killing such wolf or whelp, as the justice may require; and the statements made by him, on such examination, shall be reduced to writing in the form of an affidavit, which shall be sworn to and subscribed by the person making it, and certified by the said justice; and any person swearing falsely in the premises shall be subject to all the pains and penalties of perjury.

False swearing declared perjury.

Justice to issue certificate of facts, etc.

SEC. 4. If it shall appear to the justice upon such examination, that the wolf or whelp was taken and killed within the county for which he is a justice, by the person applying for the bounty, and that the mother of such whelp was not taken before she brought forth the same, he shall cut off and burn the ears and scalp of such wolf or whelp, and deliver to the person applying, a certificate of all the facts touching the examination, annexing thereto the original affidavit, made and subscribed by such person; and every justice who shall issue any such certificates, shall regularly number all the certificates issued by him, during each year, and shall mark such number and year on each certificate.

Certificate delivered to clerk of co. com.

SEC. 5. The certificate with the affidavit so taken, shall within one month after the date thereof, be delivered to the Clerk of the Board of County Commissioners of the county wherein the same was made, and he shall lay the same before the Board of County Commissioners of which he is Clerk, at their next meeting. If the Board shall be satisfied that such certificate and affidavit are just and correct, they shall award to the person to whom such certificate shall have been given, the bounty above specified, and shall cause the certificate and affidavit to be filed with the Clerk; and the person to whom such bounty shall be awarded, shall be entitled to receive the same from the Treasurer of said county.

To be filed with clerk.

Treasurer to pay bounty.

CHAP. LXII—An Act concerning the tenure of real property, the persons capable of holding and conveying, and the manner of transmitting the title thereto.

- 1st. Tenure of real property.
- 2d. Persons capable of holding and conveying real estate.
- 3d. Of conveying estates by deed.
- 4th. Manner of devising land and directing the descent of intestate estates.
- 5th. Sale of mortgaged premises by advertisement.
- 6th. Of the partition of land.
- 7th. Miscellaneous provisions.

Tenure of real property.

Estates tail abolished.

SEC. 1. All estates tail shall be and are hereby abolished; and in all cases where any person or persons now is or are seized in

fee tail of any lands, tenements or hereditaments, such person or persons shall be deemed to be seized of an allodial estate.

SEC. 2. In all cases where any person or persons would, if this act had not been passed, at any time hereafter become seized in fee tail, of any lands, tenements or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person or persons, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to be seized thereof as an allodium.

Persons seized in fee tail to hold allodial estate.

SEC. 3. Where lands, tenements or hereditaments heretofore have been devised, granted, or otherwise conveyed by a tenant in tail, and person or persons to whom such devise, grant or other conveyance hath been made, his, her, or their heirs or assigns, hath or have from the time such devise took effect, or from the time such grant or other conveyance was made, to the day of passing this act, been in the uninterrupted possession of such lands, tenements or hereditaments, and claiming and holding the same under or by virtue of such devise, grant, or other conveyance, then such devise grant or other conveyance, shall be deemed as good, legal and effectual, to all intents and purposes, as if such tenant in tail had, at the time of making such devise, grant or other conveyance, been seized of such lands, tenements or hereditaments allodially, any law to the contrary hereof notwithstanding.

Conveyance by tenant in tail, to convey allodial estate in certain cases.

SEC. 4. No estate in joint tenancy in lands, tenements, or hereditaments, shall be held or claimed by or under any grant, devise or conveyance whatever, hereafter to be made, other than to executors or trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, unless otherwise expressly declared as aforesaid, shall be deemed to be in tenancy in common; any law custom or usage to the contrary notwithstanding.

No estate in joint tenancy, except, etc.

Persons capable of holding and conveying real estate.

SEC. 5. Any person lawfully seized of any lands, tenements or hereditaments, within this Territory, in his or her own rights, in fee simple, or for the life or lives of any other person or persons of the age of twenty-one years or upwards, and of sane mind, shall have power to give, dispose of, and devise the same, as well by last will and testament in writing, as otherwise, by any act executed in his or her life-time, to and among his or her children, or others, as he or she shall think fit.

How and by whom lands conveyed.

SEC. 6. It shall and may be lawful for any alien or aliens to purchase lands, tenements and hereditaments within this Territory, and to have and to hold the same to himself, herself or themselves, to his, her or their heirs and assigns forever, as fully to all intents and purposes as any natural born citizen of the United States can, may or does; and it shall and may be lawful for all aliens to mortgage and to take mortgages in his, her, or their own names, of land or lands, tenements and hereditaments, in the same manner as natural born citizens of the United States.

Aliens may purchase and hold real estate.

SEC. 7. The title of any person or persons to any lands, tenements and hereditaments within this Territory, heretofore conveyed, shall not be questioned or impeached by reason of the alienage

Title not questioned for alienage.

of any person or persons from or through whom such title may have been derived.

Who can hold
land and acquire
title by descent,
etc.

SEC. 8. All persons authorized by this act to purchase and hold land in this Territory, may also take and acquire by devise or descent: *Provided, That nothing in this act shall be construed to confer on any alien any other right or privilege appertaining to citizens of the United States, except those of taking, holding and disposing of real estate within this Territory.*

Of conveying estates by deeds.

What to be deem-
ed valid deed.

SEC. 9. All deeds or other conveyances of any lands, tenements or hereditaments, lying in this Territory, signed, sealed and delivered by the parties granting the same, having good and lawful right and authority thereunto, and signed by two or more witnesses, and acknowledged by such grantor or grantors, or proved and recorded as hereinafter provided, shall be good and valid to pass the same lands, tenements or hereditaments, to the grantee or grantees, without any other act or ceremony in law whatever.

Deeds, etc. to be
acknowledged and
recorded.

SEC. 10. All such deeds or other conveyances of or concerning any lands, tenements or hereditaments lying within this Territory, or whereby the same may be in anywise affected in law or equity shall be acknowledged by the party or parties executing the same, or proved by one or more of the subscribing witnesses thereto, before one of the judges or commissioners of the supreme court, a notary public or a justice of the peace of any county within this Territory and a certificate of such acknowledgment or proof being endorsed thereon, and signed by the person before whom the same was taken, such deed or conveyance shall be recorded in the office of register of deeds, for the county where such lands, tenements or hereditaments respectively are situated, lying and being; and every such deed or conveyance that shall at any time after the publication hereof be made and executed, and which shall not be acknowledged, proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, for valuable consideration, without notice, unless such deed or conveyance be recorded as aforesaid, before the recording of the deed or conveyance under which such subsequent purchaser or mortgagee may claim.

When adjudged
fraudulent.

Deed of feme
covert to bar claim
to dower.

SEC. 11. Where any feme covert shall join with her husband in any deed or conveyance, of or relating to any lands or real estate, situated within this Territory, or where she alone, without joining with her husband, shall execute a release of dower, she shall be barred of and from all claim of dower, and all other right and title therein, in like manner as if she were sole; and the acknowledgment or proof of such deed, conveyance or writing, may be the same as if she were sole, and shall entitle such deed, conveyance or writing to be recorded as aforesaid.

Deed of sheriff
to be good.

SEC. 12. All deeds or conveyances by a commissioner, sheriff, or other officer, for lands sold by virtue of any decree or judgment of any court, or by virtue of any power of sale contained in any mortgage, shall be good and effectual for passing such title to the lands so sold, as the person may have in whose name they may be sold, and as such commissioner, sheriff, or other officer may be authorized to convey.

SEC. 13. Every deed, conveyance or other writing, of or con-

cerning any lands or real estate within this Territory, which by virtue of this act shall be entitled to be recorded, shall be recorded in the order of the time when the same shall be delivered to any register for that purpose, and shall be considered as recorded from the time it was so delivered; and the said register shall make an entry in the margin of the record thereof, of the day, month and year, and the time of the day when the same is recorded, and endorse and sign a certificate on such deed, conveyance or writing, of the particular time when, and the book and page in which the same is so recorded; and every deed conveyance or writing, so acknowledged or proved, whether the same be recorded or not, or the record or a transcript of the record, certified by the register in whose office the same may be recorded, under his hand, may be read in evidence in any court in this Territory, without farther proof thereof.

Deeds to be recorded in order of time, etc.

When received as evidence.

SEC. 14. All deeds and conveyances of lands, tenements or hereditaments, situate, lying and being within this Territory, which shall hereafter be made and executed in any other Territory, State or country, whereby such lands, tenements or hereditaments shall be conveyed in whole or in part, or otherwise affected or incumbered in law, shall be acknowledged or proved, and certified according to and in conformity with the laws and usages of the Territory, State, or country, in which such deeds or conveyances were acknowledged and proved; and all such deeds and conveyances are hereby declared effectual and valid in law to all intents and purposes, as though the same acknowledgments had been taken, or proof of execution made within this Territory, and in pursuance of the laws thereof; and such deeds and conveyances so acknowledged or proved as aforesaid, may be admitted to be, and shall be recorded in the respective counties in which such lands, tenements or hereditaments, do or may lie.

Deeds made out of Territory how to be acknowledged.

SEC. 15. All deeds and conveyances of lands, tenements and hereditaments, situate, lying and being within this Territory, which have been acknowledged or proved in any other Territory, State or country, according to and in compliance with the laws and usages of such Territory, State or country, and which deeds or conveyances have been recorded in this Territory, are hereby confirmed and declared effectual and valid in law to all intents and purposes, as though the said deeds or conveyances so acknowledged or proved and recorded, had, prior to being recorded, been acknowledged or proved within this Territory.

Deeds so acknowledged to be valid.

SEC. 16. All mortgages of any lands or tenements situated in this Territory, and the power of sale, if any therein mentioned or contained, shall be recorded at length in proper books kept for that purpose by the register of deeds of the county where such lands or tenements are situated.

Mortgages to be recorded.

SEC. 17. In case of several mortgages of the same premises, or any part thereof, the mortgage or mortgages which shall be first recorded as aforesaid, shall have preference in all courts of law and equity, according to the time of registry of such mortgages, respectively: *Provided*, The mortgage or mortgages so preferred (*to*) be made bona fide, and upon good and valuable consideration: *And further*, That no mortgage, nor any deed, conveyance or writing in the nature of a mortgage, shall defeat or prejudice the title or interest of any bona fide purchaser of any lands or tenements, unless the same shall have been duly recorded as aforesaid.

Mortgage first recorded to have preference, if bona fide.

Conveyance when considered a mortgage.

SEC. 18. Every deed conveying real estate, which by any other instrument in writing shall appear to have been intended as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage, and deemed and adjudged to be liable to be recorded, as other mortgages are by virtue of this act; and the person or persons for whose benefit such deed shall be made, shall not have the privilege of foreclosure by advertisement, unless every instrument and writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also therewith recorded, in substance, as in case of mortgage.

To be recorded.

What mortgages to be preferred to judgments.

SEC. 19. Whenever any lands are sold and conveyed, and a mortgage is given at the same time by the purchaser, to secure the payment of the purchase money, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

Certificate of discharge to bar entry of mortgage.

SEC. 20. When any mortgage so recorded shall be redeemed or discharged, and a certificate thereof, signed by the mortgagee, or mortgagees, his or their personal representatives or assigns, in the presence of two or more witnesses, and proved or acknowledged in the same manner as the execution of such mortgage is above directed to be proved and acknowledged, and such proof or acknowledgment also certified in like manner, be produced to the register of deeds of the county in which the same is recorded, the said register shall record the same in the said book of record of mortgages, which record shall be deemed and taken to be an absolute bar to the first entry of such mortgage or mortgages.

Manner of devising lands, and directing the descent of intestate estates.

Devises, etc., how executed.

SEC. 21. All devises and bequests of any lands or tenements, shall be in writing, and signed by the party so devising the same, or by some person in his presence and by his express direction, and shall be attested and subscribed in the presence of the said devisor by three or more credible witnesses, or else shall be void and of no effect.

How wills, etc., may be revoked.

SEC. 22. No will of land, tenement or hereditament, or any clause thereof, shall be revokable, otherwise than by some other will, codicil or other writing, executed in the presence of three witnesses, declaring the same, or by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence and by his direction and consent.

Nuncupative wills, how made.

SEC. 23. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more, next before the making of such will, except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

SEC. 24. After six months shall have passed after speaking any

pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken. Nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator be fully expired. Nor shall any nuncupative will be at any time approved and allowed, unless process shall first have issued to call in the widow and other person or persons principally interested, if resident within the Territory, to the end that they may contest the same, if they please.

It. how proved.

Sec. 25. If any person has attested or shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate, other than and except charges on lands, tenements or hereditaments, for the payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly void; and such person shall be admitted as a witness to the execution of such will or codicil, such devise, legacy, estate, interest, gift or appointment notwithstanding.

Legacy to witness of will, etc., void.

Sec. 26. In case by any will or codicil already made or hereafter to be made, any lands, tenements or hereditaments are, or shall be charged with any debt or debts, or any creditor whose debt is so charged, hath attested or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Creditor may witness will.

Sec. 27. If any person hath attested or shall attest the execution of any will or codicil, to whom any legacy or bequest is or shall be thereby given, and such person, before he or she shall give his or her testimony concerning the execution of such will or codicil shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest upon tender thereof, such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such legacy or bequest: *Provided always*, That the credit of such witnesses as aforesaid, shall be subject to the consideration of the court or jury before whom such witness or witnesses may be examined, or his or her testimony or attestation made use of in like manner, to all intents and purposes, as the credit of other witnesses in all other causes, ought to be considered of and determined.

Legatee, witness in certain cases.

Sec. 28. In case any legatee, as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil, which shall hereafter be made, shall have died in the lifetime of the testator, or before he or she shall have received or released the legacy or bequest on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil within the intent of this act, notwithstanding such legacy or bequest.

In case of death of legatee who is witness.

Sec. 29. No person to whom any beneficial interest, estate, gift or appointment shall be given or made, which is declared null and void by this act, or who shall have refused to receive any such legacy or bequest on tender made, and who shall have been examined as a witness concerning the execution of such will or codicil,

Legatee not to take by will in certain cases.

shall, after he or she shall have been so examined, demand or receive any profit or benefit of or from any such estate, interest, gift or appointment so given or made to him or her, in and by any such will or codicil; or demand, receive or accept from any person or persons whatsoever, any such legacy or bequest, or any compensation or satisfaction for the same, in any manner whatever.

Effect of filing copy of will in probate court, etc.

SEC. 30. When the copy of any will which has been proved and allowed in any probate court in any of the United States, or in any foreign state or kingdom, shall be directed to be filed and recorded in any probate court in this territory, pursuant to this act, the filing and recording thereof shall be of the same force and effect as the filing and recording of an original will, proved and allowed in the same court of probate; and the said judge may thereupon proceed to take bonds of the executor, or grant administration of the said testator's estate lying in this territory, with the will annexed, and settle said estate in the same way and manner as by law he may or can upon the estates of testators, whose wills have been duly proved before him.

When share of legates taken to pay testator's debts etc.

SEC. 31. When any testator, in and by his last will and testament, hath given, or shall give, any chattels or real estate to any person or persons, and the same shall be taken in an execution for the payment of the testator's debts, or shall be sold therefor, as the law provides in such case, all the other legatees, devisees and heirs, shall refund their average or proportionable part of such loss to such person or persons from whom the bequest shall be so taken away, and he or they shall and may maintain a suit or action at law to compel such contribution.

Widow may waive provision and claim dower.

SEC. 32. The widow, in all cases, may waive the provision made for her in the will of her deceased husband, (when she shall not have been endowed before marriage,) and claim her dower, and have the same assigned her in the same manner as though her husband had died intestate, in which case she shall receive no benefit from such provision, unless it shall appear by the will plainly the testator's intention to be in addition to her dower.

When real estate chargeable with debts.

SEC. 33. The real estate of the testator or intestate shall stand chargeable with all the debts of the deceased over and above what the personal estate shall be sufficient to pay: and if, after distribution, partition, or assignment of dower, any debts appear, every one to whom any portion has been allotted, shall refund in equitable proportion.

Minor children to have share of estate in certain cases.

SEC. 34. Any child or children, being minors at the time of the testator's decease, or their legal representatives, in case of their death, not having a legacy given him, her or them in the will of their father or mother, shall have a proportion of the estate of their parents assigned unto him, her or them, as though such parent had died intestate: *Provided*, such child, children or grand-children have not had an equal proportion of the deceased's estate bestowed on him her or them in the deceased's lifetime.

When lineal descendants to take ancestors devise.

SEC. 35. When any child, grand-child, or other relation, having a devise of real or personal estate, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estates, real or personal, in the same way and manner such devisee would have done in case he had survived the testator, any law usage or custom to the contrary notwithstanding.

Estate not devised, how distributed.

SEC. 36. All such estate, real or personal, that is not devised or bequeathed in the last will and testament of any person, hereaf-

ter to be proved, shall be distributed in the same manner as if it were an intestate estate, and the executor or administrator shall administer on it as such.

Sec. 37. When a man and his wife shall be seized of lands, tenements or hereditaments in her right and fee, and issue shall be born alive of her body, that may inherit, or might have inherited the same, and such wife shall die, the husband shall have and hold such estate during his natural life, as tenant by the courtesy.

Tenant by courtesy.

Sec. 38. When any person shall die seized of lands, tenements or hereditaments not by him devised, the same shall descend in equal shares to and among his children and such as legally represent them, (if any of them be dead) and in every case where children shall inherit by representation, it shall be in equal shares; and where there are no children of the intestate, the inheritance shall descend equally to the next of kin in equal degree, and those who represent them, computing by the rules of the civil law. No person to be considered a legal representative of collaterals beyond the degree of brother's and sister's children; and for want of heirs the estate shall accrue to the territory.

Estates not devised, how to descend and be distributed.

Sec. 39. When any of the children of the intestate die before his arrival at the age of twenty-one years, and unmarried, such deceased child's share shall descend equally among the surviving brothers and sisters, and such as legally represent them; but if such deceased child die after having arrived at the age of twenty-one years, unmarried and intestate, in the lifetime of the mother, every brother and sister shall inherit equally with the mother. Persons born of parents not united in matrimony according to law, shall inherit on the part of the mother, and on the part of the father, if the parents afterwards intermarry.

Estates not devised, how to descend and be distributed.

Sec. 40. Whenever any child shall happen to be born after the death of the father without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father in like manner as if the father had died intestate, and the same shall be assigned to him or her accordingly; and in every such case, the judge of probate shall issue his warrant as in cases of intestate estates, to assign to such posthumous child a share in his or her father's estate equal to what he would have inherited if his or her father had died intestate, and the same shall be taken in proportion from the devisees and legatees who own the estate by virtue of such will.

Posthumous child to inherit.

Sale of mortgaged premises by advertisement.

Sec. 41. All mortgages executed by any person, accompanied by, or containing a power of sale, may be foreclosed by advertisement in the manner prescribed by this act: *Provided*, That some default in the condition of such mortgage shall have occurred, by which the power of sale became operative: *And provided further*, That no suit shall have been commenced for the recovery of the money, or any part thereof, secured by such mortgage, or if commenced shall have been discontinued, or the execution returned unsatisfied, in whole or in part.

Mortgages containing power of sale, how foreclosed.

Sec. 42. Whenever any person shall be desirous of foreclosing by advertisement, any mortgage, notice shall be given, in which shall be stated the names of the mortgagor and mortgagee, the date of the mortgage, and when recorded, the amount claimed to be due

1b.

thereon at the date of said notice, and a description of the premises, as contained in the mortgage.

Notice of sale,
how given.

SEC. 43. Such notice shall be published for twelve successive weeks in a newspaper published in the county in which the premises or some part thereof are situated, and if there be no such paper in the county, then in a newspaper printed at the seat of government, and by fixing a copy thereof on the outward door of the courthouse, if there be one in the county; but such sale may be postponed from time to time by giving notice in like manner of such postponement.

Sale to be at
auction, etc.

SEC. 44. The sale shall be at public auction, in the day time, in the county where the mortgaged premises, or some part thereof is situated, by the person appointed for the purpose in such mortgage deed, or the sheriff, under sheriff or any deputy sheriff, of the proper county; and if the premises consist of different lots, farms or tracts of land, they may be sold separately and entire, but no more of them shall be sold than shall be necessary to satisfy the amount due on such mortgage, with interest and costs of such sale, allowed by law.

Officer making
sale to give certifi-
cate, etc.

SEC. 45. Whenever any lands and tenements shall be sold by virtue of a power of sale contained in any mortgage, it shall be the duty of the officer or other person making the sale, to give to the purchaser or purchasers, a certificate in writing under seal, setting forth a description of the premises sold, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed for the same, unless they shall be redeemed as provided in this act; and such officer shall within ten days from the time of sale, file in the office where the mortgage is recorded, a duplicate of such certificate, signed by him, and such duplicate certificate, or a copy certified by the register, shall be taken, and deemed evidence of the facts therein contained.

What to con-
tain, and where
filed.

How mortgagor
may redeem.

SEC. 46. It shall be lawful for the mortgagor, his heirs, executors, administrators or assigns, whose lands or tenements shall be sold in conformity to the provisions of this act, within two years from and after such sale, to redeem such lands or tenements by paying to the purchaser or purchasers, his or their executors, administrators or assigns, or to the proper sheriff, under sheriff or deputy sheriff, the sum of money which may have been paid by such purchaser or purchasers, together with interest on such purchase money, at the rate of ten per centum per annum, from the time of such sale; and such payment being made as aforesaid, the said sale and the certificate granted thereon as aforesaid, shall be null and void, any thing in this act to the contrary notwithstanding: and the bail of the said sheriff shall be responsible for the faithful payment to the purchaser aforesaid, of all moneys received by him or any of his deputies, aforesaid: *Provided*, That in every case the mortgagor may retain full possession in trust for the mortgagee, or purchaser, of all premises mortgaged by him, until the title shall absolutely vest in the purchaser of such mortgaged premises, according to the provisions of this act.

To retain pos-
session until, etc.

Premises not re-
deemed, sheriff to
give deed.

SEC. 47. If such mortgaged premises, so sold as aforesaid, shall not be redeemed as aforesaid, it shall be the duty of the officer or other person who shall have sold the same, or his executors or administrators, or some person appointed by the district court for that purpose, to complete such sale, by executing a deed of the premises so sold, to the purchaser or purchasers.

Sec. 48. In every case where the sale of mortgaged premises, in virtue of a special power for that purpose, contained in the mortgage, shall hereafter take place, an affidavit stating the publishing of the advertisement of sale in a newspaper, made by the printer of the newspaper, or other competent person; and also an affidavit, stating the fixing up a copy of the advertisement upon the outward door of the court house, and made by the person who fixed the same upon said door; and also an affidavit stating the circumstances respecting the sale of the mortgaged premises, and made by the person acting as auctioneer at the sale, and certified and recorded, or the record of either of the said affidavits, shall be received in every court of law or equity in this territory, prima facie evidence of the facts in such affidavit set forth.

Notice of sale, how proved.

Sec. 49. The person making either of the said affidavits, shall make the same before a person authorized to take acknowledgments of deeds in the county in which the mortgaged premises shall be; and such officer is hereby required to take the same affidavit and to subscribe his name to the certificate underneath the same, purporting that the person making the affidavit had appeared before him and made oath or affirmation to the same.

Affidavit, before whom made, etc.

Sec. 50. In case application shall be made to the register of deeds of any county where the mortgaged premises shall be, to record either of the said affidavits, certified and subscribed as aforesaid, then, and in such case, the said register is hereby required to record in his book of mortgages, the said affidavit at full length, together with the certificate annexed to the same.

Register to record affidavit.

Sec. 51. A record of the affidavit aforesaid, and of the deed executed on the sale of the premises, shall be sufficient to pass the title thereto, and the said conveyance shall be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage; but no title accruing prior to the execution of such mortgage, shall be affected thereby.

Record of affidavit to pass title, etc.

Sec. 52. Any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption of the mortgaged premises, that the mortgagor might have had, or of satisfying the prior mortgage, and shall by such satisfaction acquire all the benefits to which such prior mortgage was or might have been entitled.

Subsequent mortgagee may redeem.

Sec. 53. If on the sale of the mortgaged premises there are other sums due on the same mortgage, or other subsequent mortgages, the surplus arising on such sale shall be retained by the officer or other person conducting such sale, for the satisfaction of such subsequent mortgage money; and if no default shall have happened in the payment of the money secured by such mortgage; or if the same shall have become due, and shall have remained in the hands of such officer uncalled for, for the space of two months after such sale, in either case the same shall be invested by such officer or other person at legal interest, to satisfy any such amount as may thereafter fall due, or to be paid over whenever the same shall be demanded by such mortgagee; but no interest shall be allowed on any mortgage money after the same shall fall due as aforesaid: *Provided*, Sufficient moneys are in the hands of the officer or other person to satisfy the same.

Surplus on sale, how disposed of.

Sec. 54. The mortgagee may be a purchaser at any mortgage

Mortgagee may purchase at sale.

sale made in virtue of a power of sale contained in the mortgage, and his title shall not, on that account, be impeached or defeated, either at law or equity: *Provided*, The sale was in every other respect conducted in good faith, and the affidavit of the publication and affixing notice of sale, and of the circumstances of such sale shall be evidence of the sale, and of the foreclosure of the equity of redemption, as specified in the forty-eighth section, without any conveyance or certificate from the officer, in the same manner and with like effect as if such conveyance had been made.

Of the partition of lands.

Petition for partition of lands, made to district court.

SEC. 55. Where any lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common, or coparcenary, it shall be lawful for one or more of the parties interested therein, to present a petition to the district court of the county in which the premises are situate, describing in such petition such lands, tenements or hereditaments, and setting forth the rights and titles of all the said parties therein; or in case any one or more of such parties, or the share or quantity of interest of any one or more parties are unknown to the petitioner, setting forth the same in such petition, accompanied by an affidavit, that such petitioner is ignorant of the names, rights or titles of such person or persons as the case may be, and by the said petition praying the court to whom the same shall be directed, that the same premises may be divided, by commissioners to be appointed by the said court, according to the respective rights of the parties therein, and in pursuance of the directions of this act.

Notice and copy of petition when to be served.

SEC. 56. A copy of such petition shall be served forty days at least, previous to the term at which the same shall be presented, on all the parties concerned in such lands, tenements or hereditaments, who shall not join in the said petition, or on the guardians of such as are minors, together with a notice subscribed by the petitioner and directed to each of the said parties, or their guardians as aforesaid, that an application will be made to the said court on some certain day in term, to be specified therein, or as soon thereafter as counsel can be heard, for the appointment of such commissioners as aforementioned: *Provided*, That if either of the parties to whom such notice shall be directed, shall reside out of this Territory, or cannot be found therein, or in case either of the parties interested in the premises shall be unknown to the petitioner, (to be made to appear in either case by affidavit,) then and in every such case, instead of a service of a copy of such petition and notice as aforesaid, on such absent or unknown party or parties, it shall be sufficient for the petitioner to cause a copy of such petition and notice to be previously published, for the space of three months once in every week, in one of the public newspapers printed in the county in which the premises are situate, if any newspaper shall be published in said county, and in case there be no newspaper published in said county, it shall be sufficient that it be published in a newspaper printed at the seat of government, which publication shall be deemed a sufficient notice to such parties, though the names of some or all of them shall not have been mentioned therein; but nothing in this proviso shall prevent the personal service of a copy of the said petition and notice, on any

Notice when parties reside out of Territory.

party out of this Territory, but such service shall be deemed sufficient as to the parties upon whom the same shall have been made, without any publication thereof as aforesaid.

SEC. 57. On presenting such petition, and proof being made by affidavit, to the satisfaction of said court, that copies of such petition and notice have been duly served or published as aforesaid, the said court shall by rule order the parties interested in the premises who are known, to appear and answer the said petition within the usual time allowed for pleading in said court, and shall also by rule, order such of the parties as are unknown, or whose share or interest is unknown, to appear and show titles to the proportions which they may claim of the premises, set forth in the said petition, and to answer the said petition within the like time allowed for pleading as aforesaid; and such parties as are known, or any of them, may within such time, or within such further time as the court may allow for the purpose, appear and answer the said petition, and such of the parties as were unknown at the time of presenting the petition, may within the time aforesaid allowed, appear and show title as aforesaid, and answer and plead to the said petition, as to a declaration; and thereafter the proceedings shall in all respects be conformable to this act, as if all the parties had been originally named in such petition, and such further pleadings may be thereupon had between the parties respectively, according to the rules and practice of said court, as in other actions or suits depending therein, until an issue or issues in law or in fact be joined between the said parties respectively, or some of them, and such of the parties as shall answer the said petition, may plead thereto, non tenent in simul, and give any special matter in evidence under the said plea, which might otherwise be pleaded, giving notice with the said plea, of the several matters so intended to be given in evidence; and all such issues shall be tried, and the like proceedings for the trial thereof shall be had as in other actions in the said court; and the said court shall have power to award new trials as in other cases; and after the final determination of all such issues, the said court shall ascertain and determine the respective rights of the parties in such lands, tenements or hereditaments, and give judgment that partition thereof be made according thereto or between such of them as shall have any right therein; and if it shall not appear to the court after the trial of any issues, or after judgment by default, confession or otherwise, against such of the parties as are known, what part or interest any parties whether known or unknown to the said court, and who shall not have appeared or pleaded in the said cause, have in the premises, then it shall be lawful for the court to give judgment, that partition be made so far as the rights or interests of the parties who are known, have been ascertained; and the residue of the said premises shall remain, for the parties so unknown, subject to be divided between them upon application to the said court, or otherwise, according to this act, or by consent of such parties at any future time; and after judgment as aforesaid, either on verdict, fault, confession, or otherwise, the court shall by rule appoint three reputable freeholders, commissioners to make the said partition, quality and quantity considered, according to [the] respective rights and interests of the parties, to be adjudged as aforesaid; and in case there shall be any owners, who or whose interest shall be unknown, the court shall designate and describe the part or portion to remain for such own-

Parties to appear and answer petition, etc.

What may be pleaded.

Court to give judgment.

To appoint commissioners.

Partition not to preclude claims.

Commissioners to be sworn and oath recorded.

To make partition and return.

Court may set aside return.

Court may order commissioners to sell in certain cases.

ers: *Provided*, That such partition shall not preclude any person not named therein, and who shall claim any right or title to the premises in question, from controverting the right or interest of the parties between whom such partition shall have been made.

SEC. 58. The commissioners to be appointed as aforesaid, shall, before they proceed to make such partition, be severally sworn or affirmed, (as the case may be,) before an officer, honestly and impartially to execute the trusts reposed in them as commissioners for making partition of the lands, tenements or hereditaments, as directed by the said court, which oath or affirmation shall be taken and subscribed by the said commissioners, and filed in the office of the clerk of the said court, at or before the time of making the return by them of such partition as hereinafter mentioned; and the said commissioners, or any two of them, shall forthwith proceed to make partition according to the judgment of the court, and a return thereof being made in writing by them, or any two of them, under their hands and seals, to the said court, and specifying therein the manner of executing their said trust, and describing the land divided and the shares allotted, as shall be directed by the judgment of the court; and the same being proved or acknowledged before any judge or justice of the said court, or before some officer authorized to take the proof and acknowledgment of deeds and conveyances by law, and such return being confirmed, judgment shall thereupon be given, that such partition be firm and effectual forever; and such judgment shall be binding and conclusive on all parties named therein, and their legal representatives, and also on all such parties interested as are not known, to whom notice shall have been given by publication as aforesaid, and their legal representatives, except as is declared in the preceding section: *Provided*, That it shall be lawful for the court, on good cause shown, to set aside the return of the said commissioners, and to appoint, as often as may be necessary, new commissioners, who shall in all things proceed as the other commissioners are herein directed to proceed, and the judgment thereupon to be given shall be of like effect, as if judgment had been rendered upon the first return.

SEC. 59. If it shall appear by the return of the said commissioners, or any of them, to the said court, that the lands, tenements or hereditaments in question, are so circumstanced that a partition thereof cannot be made without great prejudice to the owners of the same, then it shall be lawful for the court to order the said commissioners to sell the premises in question, at public auction, to the highest bidder or bidders, after giving such public notice of the time and place of such sale as the said court may deem reasonable, and shall direct; and the said commissioners, or any two of them, having reported their proceedings in writing under their hands to the said court, and the court approving thereof, shall give judgment that the sale be valid and effectual in law, and shall, by rule, direct the said commissioners, or any two of them, to execute good and sufficient conveyances in law, to purchaser or purchasers, which conveyances shall be a bar, both at law and in equity, against all the owners named in the said proceedings, and against such as are not named, and who have had notice given them by publication in the public papers, in the manner directed by this act, and all others claiming by, from or under them.

SEC. 60. When all the parties interested in any proceedings under this act, shall have been known and named therein, the costs

and charges attending such proceeding shall be paid by the petitioners presenting the same; and the said court on every final judgment to be rendered as aforesaid, for partition of such lands, tenements or hereditaments, upon a sale thereof, or for the partition of part, and upon a sale of the residue thereof, shall also adjudge each of the parties concerned therein, other than the said petitioners, to pay to the said petitioners a proportion of the said costs, according to their respective rights therein, which costs shall be taxed as in other cases, for the like or similar services, and may be levied by execution against the person, goods, chattels, lands and tenements of the respective parties who shall be adjudged to pay the same, as in other cases where the costs are to be recovered; and in case of any such sale, the court may order the same to be paid or retained out of the moneys arising from such sale, and due to the parties who ought to pay the same; but where any one or more of the parties interested shall have been unknown, and not named in the same, the court shall adjudge such of the parties as are known and named, to pay to the petitioner their proportions of the costs respectively, according to their respective rights therein, to be taxed, recovered and paid in manner aforesaid directed; and as to such of the parties as are not known or named, judgment shall be rendered that the residue of the costs which shall not have been adjudged against the owners who are named in manner aforesaid, shall be levied and collected (if no sale has been made) out of the proportion of the premises remaining undivided for such unknown parties, and for which residue, execution may issue against such proportion of the premises, and the same may be seized in execution, and so much thereof as shall be necessary to pay [the] aforesaid residue of the said costs, together with the sheriff's fees and other charges thereon, may be sold and conveyed on such execution in like manner as if the same had been a writ of fieri facias issuing out of the same court, in a personal action against the owner or owners of such premises; and such sale and conveyance shall be equally valid and effectual, as if the owner or owners of the said premises so sold, had been known and named in the said proceedings, and the execution issued thereon aforesaid.

Sec. 61. Where there shall be any owners interested, who are not known or named in the proceedings under this act, then and in that case, the commissioners, in case of a sale of the premises, shall bring the moneys arising therefrom into court, and after deducting the costs and expenses adjudged according to the several proportions set forth in such judgment, it shall be lawful for the court to direct the moneys adjudged to such unknown owners, to be placed at interest, and secured for their benefit until claimed; and the residue of the moneys brought into court, shall be distributed among the owners that are named, in the proportions adjudged to them respectively: the court may, in its discretion, require of all or any of the said owners, before they shall be permitted to take out of court any moneys arising from any such sale, to give security to the satisfaction of the said court, to refund such money, with interest thereon, in case it shall at any time hereafter appear that they were not entitled thereto: *And further,* When all the parties interested shall have been known and named in the proceedings under this act, the moneys arising from every such sale, shall be ordered by the said court, to be paid by the said commissioners to the said parties, the [their] guardians or legal representatives,

Collection and payment of costs and charges.

Court may order certain moneys put out at interest.

Residue how distributed.

Security required.

Commissioners
to pay parties.

in proportion to their respective rights in the lands, tenements and hereditaments, so sold, deducting from their respective shares the costs and charges which may be ordered to be retained out of the same, as aforesaid; and if any of the said parties shall be absent from this Territory without such legal representative, the proportion of the said moneys due to every such party shall be put out to interest, on sufficient security on real property, by order and under the direction and control of the said court, for the benefit of such party.

Court to appoint
guardians for mi-
nors.

SEC. 62. It shall be lawful for the said court, for any of the purposes intended by this act, and before or after the commencement of any proceeding by virtue thereof, to appoint guardians for such of the parties as may be minors, whether such minors shall reside within or out of this Territory; and the court, on appointing any guardians as aforesaid, shall, for the benefit of such minors, take sufficient security of every such guardian, by bond, conditioned for the faithful discharge of the trust committed to such guardian, and to render just and true account of such guardianship, in all courts and places when thereunto required, which bond or bonds shall be filed in the clerk's office of said court; and the guardians of all minors so to be appointed, shall be, and hereby are, respectively authorized and empowered, in behalf of the respective minors whose guardians they shall be, to do and perform every act respecting the proceedings for the partition of any lands, tenements or hereditaments under this act, or any matter or thing relating thereto, which shall be binding on such minors, and be deemed as valid, to every purpose, as if the same had been done by such minors, after having arrived at full age.

Their powers.

Compensation of
commissioners.

SEC. 63. The commissioners so appointed, shall be allowed such sum for their services and expenses as the said court shall direct, and which shall be paid by the said petitioners, and shall be allowed as part of the costs to be taxed as aforesaid.

Joint tenants,
etc., to have reme-
dy by this act.

SEC. 64. All joint tenants, and tenants in common, who hold jointly or in common, for years, or for life or lives, and all joint tenants, or tenants in common, where one or more of them have estates for years, or for life or lives, with the other who have estates of inheritance or in fee, and each of them, shall have, in every such case, the like remedy for the partition of any lands, tenements or hereditaments so possessed, or held by them in joint tenancy, or tenancy in common, and in all respects subject to the like proceedings and regulations as are provided by this act.

Writ of error
may be brought.

SEC. 65. On all final judgments to be given in any of the said courts, upon any such partition being made, or upon the sale of the whole or part of the premises mentioned in any petition presented by virtue of this act, or upon any such sale of part, and partition of the residue thereof, it shall be lawful for any of the parties to said judgment, to bring a writ or writs of error thereon, within the same time, and under the like restrictions and regulations, as in other cases.

Act not to re-
vive claim barred
by statute.

SEC. 66. Nothing in this act contained shall be construed in any manner to authorize the revival or prosecution of any claim to lands which might otherwise be barred by the statute of limitations, or by the acquiescence of any party having such claim, or to aid the prosecution of any claim that may not be so barred, but every such claim shall be and remain in the same situation as if this act had not passed.

Sec. 67. Whenever partition shall be made in the court aforesaid, sitting as a court of chancery in this Territory, or a sale shall take place by virtue of this act, and either of the parties, plaintiff or defendant to such partition, shall have a freehold estate in the premises, as tenants by courtesy or in dower, or as other tenant for life, whether such life estate be created by act and operation of law, or by devise, grant or otherwise; and the person entitled to the reversion, remainder, or inheritance, after the termination of the particular estate, is unknown or uncertain at the time of presenting the petition under this act, or of commencing proceeding in said court, sitting as a court of chancery, or before partition or sale be made, so that they cannot be made parties thereto, either by reason that the heir at law of the party last seised of the inheritance shall be contingent or uncertain, or that the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be a contingent remainder, then, and in every such case, the partition or sale shall be binding on such person or persons as would have become entitled to such reversion, remainder or inheritance, upon the termination of the particular estate, as fully, absolutely and effectually, as if such person had been known and named in such proceedings: *Provided*, That notice shall have been given or published to such unknown or uncertain tenant in reversion or remainder, or owner of the inheritance, in the manner prescribed in and by this act; and such person shall be entitled to be made a party, and to all and singular the other benefits and privileges of pleading and trial, as is allowed by this act to unknown owners; and it shall be lawful for the court before whom such petition is pending, to admit any person who, by any contingency contained in any devise or grant or otherwise, may thereafter be entitled to any beneficial interest in the premises, to come and defend the same: *And further*, In case a sale be made under this act, the court before whom such proceedings shall be had, shall take order for securing a proportion of moneys, which the person who would have been entitled to the inheritance upon the termination of such particular estate, would justly be entitled to.

When partition or sale binding on persons entitled to reversion.

Court may admit person entitled to interest.

Sec. 68. The interest and estate of every such tenant by courtesy, or in dower, or other tenant for life, who shall be made a party to the proceedings in any such partition, shall pass by a sale of the premises, ordered by virtue of this act, and thereupon such tenant shall be entitled to the interest or income of a just proportion of the purchase money, for life, to be ascertained and adjudged by the said court, and the court shall take order for securing the same to him, her or them, accordingly; and in case of sale or partition under this act, and before judgment therein given, the court shall examine and ascertain the rights, titles and interests of the parties, plaintiffs and defendants to such proceedings, that the purchaser under such sale may be protected in his title acquired thereby.

Interest of tenant by courtesy, etc. to pass by sale.

Proportion paid him.

Sec. 69. The court, sitting as a court of chancery, in cases of partition pending therein, may decree a sale of the premises in such cases as the courts of law are authorized by this act, or where the ends of justice shall require it; and the said court, sitting as a court of chancery, in any case where it shall decree a partition to be made, if the same cannot be made equal between parties, without prejudice to their rights and interests, may decree a compensation to be made by one party to another, for

Court of Chancery may decree sale.

Compensation by parties.

equality of partition, according to the nature and equity of the case.

Sales, etc. under decree of chancery to be effectual.

Sec. 70. All sales and partitions, made under and in virtue of proceedings had in said courts, sitting as courts of chancery, shall be firm and effectual forever; and the final decree of the said court, for or upon the partition or sale of any lands, tenements, hereditaments, or premises whatever, mentioned in any bill or petition presented according to law, and the course and practice of the said court, or for or upon sale of part and partition of the residue thereof, shall be binding and conclusive upon all parties named in the said bill or petition, and their legal representatives; and also on all such parties interested, who or whose interest may be unknown, and their legal representatives, as absolutely and effectually, to all intents and purposes, as if such sales, partitions, and proceedings had been made and taken place under this act, in a court of law, and judgment had been thereupon given in manner as herein aforesaid: *Provided*, That in case any one or more of the parties interested in the premises or the estate, or quantity of interest of any, or either of the owners are unknown to the complainant or petitioner, suitable allegations and charges to that effect shall be inserted in the bill or petition, and an affidavit of the truth of such allegations, made by one of the parties, and annexed to, and filed with the said bill or petition, and an order of the said court, published for three calendar months, once at least in every week, in a newspaper printed in the county in which the premises are situate, [or] in case there be no newspaper printed in said county, then in a newspaper printed at the seat of government, containing therein a sufficient description of the premises whereof partition is sought, and requiring all parties interested in the same to appear and answer the bill or petition, by a day in the said order specified, and the publication of which order shall authorize a decree or order of said court, for taking the said bill or petition *pro confesso*, against all such unknown parties as shall not appear by the day mentioned in the said order, or on such further day as the said court shall appoint; and all such as may appear shall be entitled to be made parties to the suit, and the said bill or petition shall be amended accordingly: *And provided further*, That it shall be lawful for any party to such decree, or any party interested in the premises, though not named in the pleadings, to appeal from the said decree, or from any decree or order of the said court in the case, within the same time, and under the like restrictions and regulations as in other cases.

Proviso.

Party may appeal.

Proceedings not to abate by death.

Sec. 71. If any of the parties in any suit for the partition of lands, now pending, or hereafter to be commenced, shall die, the proceedings in such case shall not be thereby abated, but such suit may be continued, on suggestion of the death of such party as may die, in case the interest may survive, to the survivor or survivors, and in other cases such suit shall and may be revived by or against the heirs or devisees of such deceased party, in such manner, and by such proceedings, as the court in which such suit is or shall be depending, may from time to time direct.

Powers of judges not affected by this act.

Sec. 72. Nothing in this act contained shall be construed to affect the powers of judges of probate, to cause partitions to be made agreeably to such laws as are or may be in force, defining the powers and duties of judges of probate, but partition in such cases shall be made as though this act had not passed.

Miscellaneous provisions.

SEC. 73. All and every person and persons, bodies politic and corporate, being grantees or assignees of any lands, tenements or hereditaments let to lease, or of the reversion thereof, from any person or persons, and the heirs, executors, administrators, successors and assigns, of such grantees or assignees, shall have and enjoy the like advantages against the lessees, their executors, administrators and assigns, by entry for the non-payment for rent, or for doing of waste or other forfeiture; and also may have and enjoy the same advantage, benefit and remedies, by action, for not performing other conditions, covenants and agreements, contained and expressed in their lessees, [leases] demises or grants, against all the said lessees, termors and grantees, their executors, administrators and assigns, as the lessors and grantors, or their heirs or successors, might have had and enjoyed at any time, in like manner as if the reversion of such lands, tenements and hereditaments, had remained and continued in the same lessors or grantors, or in their heirs or successors.

Grantees, etc. of land to have same power as grantors, etc.

SEC. 74. All termors, lessees and grantees of lands, tenements, rents, or other hereditaments, for term of years, or for lives, their executors, administrators and assigns, may have like action, advantage and remedy, against every person and persons, and bodies politic and corporate, their heirs, successors and assigns, who have any gift or grant of the United States, or of any person or persons, of the reversion of the same lands, tenements, rents or hereditaments, so letten, or any part or parcel thereof, for any condition, covenant or agreement, contained or expressed in their grant, lease or leases, as the same grantees, lessees, or any of them, might have had against their grantors and lessors, their heirs, successors and assigns, all benefits and advantages of recoveries in value, by reason of any warranty, in deed or in law, by voucher or otherwise only excepted.

Termors, etc. may have same remedy as grantees etc.

SEC. 75. The receiver's receipt or certificate of purchase of public lands, signed by the receiver, shall be evidence in any court in this territory, that the title to the lands mentioned or described in said receipt or certificate, is in the person or persons named therein, his, her or their heirs or assigns: *Provided always*, That no receipt or certificate from any receiver shall entitle the holder or holders thereof, his, her or their heirs or assigns, to have or maintain any action in law or equity, for any lands held, owned or occupied, by any person or persons, as mineral ground, at the time of said entry, and on which discoveries of lead or copper ore shall have been made.

Receiver's receipt evidence of title in certain cases.

CHAP. LXIV.—An Act to restrain Pedlars and other persons from trading without license.

SEC. 1. That no pedlar, or other trading person, travelling from place to place, shall be permitted to sell, or expose to sale, any goods, wares or merchandize, in any county in this territory, without first having obtained a license from the board of county commissioners of such county authorizing him thereto.

Pedlars required to obtain a license.