THE

REVISED STATUTES,

OF THE

TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE

LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

1851

AMENDMENTS

TO

THE REVISED STATUTES,

OF THE

TERRITORY OF MINNESOTA,

PASSED AT THE THIRD SESSION OF THE LEGISLATIVE ASSEMBLY, COMMENCING JANUARY 6, 1852.

PRINTED AND PUBLISHED PURSUANT TO LAW.

ST. PAUL:
OWENS & MOORE, PRINTERS,
MINNESOTIAN OFFICE.
.....
1852.

AMENDMENTS.

An Act to Amend the Revised Statutes.

Be it enacted by the Legislative Assembly of the Territory of Minnesota: That the revised statutes, passed at the last preceding session of the legislative assembly of said territory, be, and the same are hereby amended as follows:

Revised statutes are hereby amended.

§ 1. Subdivision one of section one of chapter two, on page 32 of said statutes as printed, is hereby amended so as to read as follows:

1. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning; and all clerical and typographical errors, omissions and defects, shall be disregarded when the intent and meaning are obvious.

Construction of words and phrases.

Clerical errors, &c., to be disregarded.

COURTS.

§ 2. Section three of article one and chapter sixty-nine, page 285, is amended so as to read as follows:

Sec. 3. Any session of the supreme court shall be continued from day to day, until the business before the court shall be disposed of, unless otherwise ordered by the court; but the court may be adjourned from time to time, for the hearing or decision of any matters or questions, or transaction of other business, as convenience or necessity may require.

Session of supreme court to be continued.

May be adjourned.

§ 3. Section six of the same chapter and article, page 286, is amended so as to read as follows:

Sec. 6. The supreme court shall be vested with full power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters aforesaid, and for the exercise of its jurisdiction, as the supreme judicial tribunal of the territory; and may by order from time to time make and prescribe such general rules of practice, both at law and in equity, and regulations for the said supreme court and the government of the several district courts, not inconsistent with the provisions of this act, as it may deem proper.

Authority and power of supreme court.

May make and prescribe rules of practice.

§ 4. Section nine of the same article chapter and page, is amended so as to read as follows:

Sec. 9. If any two judges of the supreme court shall not attend on the first or any other day of the term, the clerk shall enter such fact on record, and the judge present shall adjourn the court to the next day, and so on from day to day for six days, if neither of the absent judges appear; at the end of which period, all matters pending in said court shall stand continued until the next regular or special term of said court.

Absence of judges of supreme court to be entered by clerk on record.

§ 5. Section three of article two of said chapter, page 287, is amended so as to read as follows:

District court to have original jurisdiction.

SEC. 3. The district courts of this territory shall have original jurisdiction in equity, as hereinafter prescribed; and original jurisdiction in all civil actions within their respective districts, when the sum in controversy shall exceed one hundred dollars; and in all civil actions of which a justice of the peace has not jurisdiction, whatever may be the amount in controversy; and appellate jurisdiction from courts of probate and justices of the peace, as hereinafter provided; and the said courts, respectively, shall have power and authority to hear and determine all cases of crimes and misdemeanors, of whatever kind, which shall have been committed in any county or place within their respective districts, or as otherwise provided by statute, and the judges of said courts shall be conservators of the peace.

Power and authority of district courts.

§ 6. Section eleven of the said article and chapter, page 288, is amended so as to read as follows:

Process, &c., of court not to abate by reason of vacancy, &c., of office of judge.

SEC. 11. No process, proceeding, or writ, civil or criminal, before any of the said courts, shall abate or be discontinued by reason of any vacancy in the office, or change of any judge of said courts, but shall be proceeded in in like manner, by his successor, or the judge who shall be assigned, as if the said vacancy or change had not occurred.

§ 7. Section twenty-seven of said article and chapter, page 289, is amended so as to read as follows:

Writ or process of court to be sealed, &c.

When returnable.

SEC. 27. In all cases where by the statutes of this territory, any writ or process is required to be issued out of any of the courts of record, the same shall be sealed with the seal of the court, dated on the day on which it issued, signed by the clerk, and made returnable on the first day of the term succeeding its date, when no other time is fixed by law, or allowed by the rules or practice of the court, for the return thereof.

§ 8. Section thirty of said article and chapter, page 289, is amended so as to read as follows:

Judges of district court may adjourn the same.

May appoint special term.

May direct grand or petit jurors to be drawn.

Application of provisions of these statutes.

SEC. 30. The judge of any of the district courts is hereby authorized to adjourn the same from time to time during any term thereof; to hold adjourned terms of said court, at any time he may deem proper, or appoint special terms in any county of his district, for the trial of civil and criminal cases and issues of law, or any or either of them, giving thirty days previous notice thereof, by advertisement, to be published four successive weeks in a newspaper printed in the said county, if there be one, and if not, in the nearest paper published in the territory, and also by posting a notice thereof on the door of the place for holding the court, in the county in which said term is to be held; and may in his discretion direct grand and petit jurors to be drawn and summoned for any adjourned or special term in the manner prescribed by law; and no grand or petit juror shall be drawn or summoned to attend any such adjourned or special term of the court except by order of the judge thereof. The provisions of the statutes requiring jurors to be drawn for every term of the district court, shall only apply to the regular terms.

§ 9. Section seven of article three of said chapter, page 291, is amended to read as follows:

Proceedings in probate court.

SEC. 7. There are no pleadings in the probate courts of this territory. The proceedings are those prescribed by statute. The granting of letters of administration and testamentary may be known as the appointment of administrators or executors; the proceedings in these courts are upon the application of a party, verbal or written, and when verbal, entered in the minutes of the court, and when written they are

to be filed. The powers of a judge of probate except as otherwise provided by law, are exercised by means of:

Power of judge of probate.

1. A citation to a party.

2. An affidavit, deposition, examination, or statement under oath of a party or witness, or other legal and competent evidence.

3. A subpœna to a witness, or attachment to compel his attendance, or commitment for refusal to testify.

4. Orders, judgments and decrees.

5. An execution, warrant, or other process to enforce them.

§ 10. Subdivision four of section forty-three of said article and chapter, page 296, is amended so as to read as follows:

4. An order or judgment by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or such allowance or direction refused, when the amount in controversy exceeds fifteen dollars.

Appeal, when allowed.

§ 11. Section four of article four of said chapter, page 299, is amended by adding at the end thereof the following words: "and not inconsistent with the provisions of this article."

Construction.

§ 12. Section thirty-nine of said article and chapter, page 303, is hereby amended so as to read as follows:

SEC. 39. Every adjournment after the first, shall be for such reasonable time as will enable the party to procure such absent testimony or witness, as may be necessary and material, which the party applying for the adjournment shall not have been able to procure by the use of proper diligence; and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Time of adjournment.

§ 13. Section fifty-seven of said article and chapter, page 306, is amended so as to read as follows:

SEC. 57. If either party shall fail to appear within one hour after the time specified for the return of the process, or after the hour of adjournment, the justice shall dismiss the suit, or proceed to hear the proof of the party present, and render judgment thereon accordingly, as the case may require.

Party failing to appeal suit, to be dismissed.

§ 14. The first clause of section sixty-seven of said article and chapter, page 308, is amended so as to read as follows:

SEC. 67. The execution upon a judgment by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time to be calculated from the date of the judgment:

Execution, how stayed.

§ 15. Section ninety-two of said article and chapter, page 311, is amended so as to read as follows:

SEC. 92. If the plaintiff fails to establish his right to the property, the defendant shall recover such damages, as under the circumstances he shows himself entitled to; and in addition thereto may have judgment for the return of the property, or the value thereof, if the same has been taken out of his possession, or delivered to the plaintiff.

Plaintiff failing to establish his right.

§ 16. Section one hundred and twenty of said article and chapter, page 315, is amended by adding at the end thereof these words: "and may award costs to the successful party, not exceeding fifteen dollars exclusive of charges and disbursements."

Costs may be awarded to the successful party.

§ 17. Section one hundred and twenty-two of said article and chapter, page 315, is amended so as to read as follows:

SEC. 122. No justice of the peace shall be required to make return to any writ of certiorari, unless all the costs of the suit to which said return relates, as the same are entered on his docket, are paid, and also one dollar for the justice's return, at the time of the service of said writ upon him as aforesaid.

Costs to be paid justice before return made.

§ 18. Section one hundred and twenty-six of said article and chapter, page 316, is amended so as to read as follows:

Justice to file transcript of entries.

SEC. 126. On or before the first day of the term of the district court next after the appeal shall have been allowed, the 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; and upon the filing of his return, the district court shall become possessed of the cause, and shall proceed therein in the same manner as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

Proceedings on filing justice's return.

CIVIL ACTIONS.

§ 19. Section twenty-seven of chapter seventy, page 333, is amended so as to read as follows:

Action to be prosecuted in name of party in interest.

SEC. 27. Every action must be prosecuted in the name of the real party in interest, except as hereinafter provided; but this section shall not be construed to authorize the assignment of a thing in action not arising out of contract.

§ 20. Section thirty of said chapter, page 333, is amended so as to read as follows:

Husband to be joined with married woman in actions.

SEC. 30. When a married woman is a party, her husband must be joined with her, except that when the action concerns her separate property, she may sue alone; and when the action is between herself and her husband, she may sue or be sued alone. But when her husband shall not be joined with her, she shall prosecute or defend by her next friend or guardian except in actions between herself and husband.

§ 21. Section thirty-seven of said chapter, page 333, is amended so as to read as follows:

Action not to abate by death, &c.

SEC. 37. An action does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest, if the cause of action survive or continue. In case of the death, marriage or other disability of a party, the court on motion may allow the action to be continued by his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made, to be added or substituted as a party to the action.

In case of transfer, action how continued.

§ 22. Subdivision one of section forty-six of said chapter, page 334, is amended so as to read as follows:

Notice to be contained in summons.

1. In an action arising on obligation for the payment of money only, that he will take judgment for a sum specified therein, if the defendant fail to answer the complaint; in other actions for the recovery of money only, that he will, upon such failure, have his damages assessed by a jury, or the amount he is entitled to recover, ascertained by the court, or under its direction, and take judgment for the amount so assessed or ascertained.

§ 23. Section forty-seven of said chapter, page 335, is amended so as to read as follows:

Copy of complaint to be served or filed.

SEC. 47. A copy of the complaint must be served upon the defendant with the summons, unless the complaint itself be filed in the office of the clerk of the court, in which case the service of the copy may be omitted; but the summons in such case, must notify the defendant that the complaint has been filed with the clerk of the court: and if the defendant appear within ten days after service of the summons, the plaintiff must serve a copy of the complaint on the defendant or his attorney, within three days after notice of such appearance, and the defendant shall have at least ten days thereafter to answer the same; and no

After appearance, defendant may demand copy of complaint.

judgment shall be entered against him for want of an answer in such case till the expiration of that time.

§ 24. Section fifty-eight of said chapter, page 336, is amended so as to read as follows:

SEC. 58. The only pleadings allowed on the part of the plaintiff are: Pleadings on the part of plaintiff.

1. The complaint:
2. The reply or demurrer.

And on the part of the defendant: Pleadings on the part of defendant.

1. Demurrer:
2. The answer.

§ 25. Section seventy of said chapter, page 338, is amended so as to read as follows:

SEC. 70. Sham answers and defences and frivolous demurrers may be stricken out, or judgment rendered notwithstanding the same, on motion, as for want of an answer. Sham answers, &c. to be stricken out.

§ 26. Section seventy-one of said chapter, page 338, is amended so as to read as follows:

SEC. 71. When the answer contains new matter set up as a defence, or counter claim, or both, the plaintiff may, within twenty days, reply to such new matter, denying each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language without repetition, and in such a manner as to enable a person of common understanding to know what is intended, any new matter not inconsistent with the complaint, constituting a defence to the counter claim, or other new matter in the answer; or he may demur to the same, stating in his demurrer the grounds thereof; and the plaintiff may demur to one or more of several defences or counter claims, and reply to the residue. Reply to counter claim, &c., what to contain. Plaintiff may demur.

If the answer contain a statement of new matter constituting a defence or counter claim, and the plaintiff fail to reply or demur thereto within the time allowed by law, the defendant may move on a notice of not less than eight days, for such judgment as he may be entitled to upon such statement, and the court may thereupon order a reference or assessment of damages by a jury in its discretion. Plaintiff failing to reply or demur, cause may be referred or damages assessed.

If a reply of the plaintiff to any defence or counter claim set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof. Defendant may demur for insufficiency.

§ 27. Section seventy-six of said chapter, page 339, is amended so as to read as follows:

SEC. 76. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion, and when a pleading is double, or does not conform to the statute, or when the allegations of a pleading are so indefinite or uncertain, that the precise nature of the charge or defence, is not apparent, the court may strike it out on motion, or require it to be amended. Irrelevant or redundant matter may be stricken out.

§ 28. Section eighty-nine of said chapter, page 340, is amended so as to read as follows:

SEC. 89. Any pleading may be once amended by the party of course, without costs, and without prejudice to the proceedings already had, at any time before the period for answering it expires; or if it do not delay the trial, it may be so amended at any time within twenty days after service of the answer or demurrer to such pleading; in such case a copy of the amended pleading must be served on the adverse party, who shall have twenty days to answer the same. After the decision of a demurrer, either at a term or in vacation, the court may, in its discretion, if it appear that the demurrer was interposed in good faith, allow the party demurring, to withdraw the same, and plead over, or if the demurrer is sustained, may allow the pleading demurred to, to Pleadings may be amended. Party demurring may be allowed to withdraw the same.

be amended, or withdrawn, and a new pleading substituted, on such terms as may be just.

Section one hundred and thirty-six of chapter seventy, page 346, of the revised statutes is hereby amended so as to read as follows:

Warrant may issue against the defendant; when.

SEC. 136. The warrant may be issued whenever it shall appear by affidavit that a cause of action exists against such defendant, specifying the amount of the claim, and the ground thereof; and that the defendant is either a foreign corporation, or not a resident of this territory, or has departed therefrom with intent to defraud or delay his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent, or that he has assigned, secreted, or disposed, or is about to assign, secrete or dispose of his property with intent to delay or defraud his creditors, or that the plaintiff's debt was fraudulently contracted, or for any other good and sufficient reason, he will be in danger of losing the same unless an attachment issue.

Attachment not affected by this chapter.

Nothing in this act contained shall in any wise affect or invalidate any attachment already issued, or any proceedings had, or to be had thereupon or thereunder or in relation thereto.

§ 29. Subdivision two of section one hundred and sixty-two, of said chapter, page 349, is amended so as to read as follows:

Suit may be withdrawn after notice.

2. By either party with the written consent of the other; or by the court upon the application of either party, after notice to the other, and sufficient cause shown at any time before the trial.

§ 30. Subdivision three of the same section, is amended so as to read as follows:

Plaintiff failing to establish his claim, its effect.

3. By the court, where, upon the trial and before the final submission of the case, the plaintiff abandons it, or fails to substantiate or establish his claim, or cause of action, or right to recover.

§ 31. Subdivision one of section one hundred and sixty-five of said chapter, page 350, is amended so as to read as follows:

Plaintiff may file proof of service of summons.

1. In an action arising on obligation for the payment of money only, the plaintiff may file with the clerk proof of the personal service of the summons, and that no answer has been received within twenty days after the service of the summons, or if further time is allowed, then that none has been received within such further time; the clerk must, thereupon, enter judgment for the amount mentioned in the summons against the defendant, or against one or more of several defendants, in the cases provided for in this chapter. In other actions for the recovery of money only, on filing the like proof, the plaintiff may have an order entered of course by the clerk, that a writ of inquiry of damages issue, and on the return of the sheriff's inquest, judgment may be entered for the amount assessed without further application to the court; or he may apply to the court to have his damages assessed, or the amount he is entitled to recover, ascertained in any other manner, and for judgment.

Clerk to enter judgment.

Plaintiff may have an order entered by the clerk and a writ of inquiry to issue.

§ 32. Section two, of chapter seventy-one, page 352, is amended so as to read as follows:

An issue of law arises upon a demurrer, &c.

SEC. 2. An issue of law arises upon a demurrer to the complaint, answer or reply.

§ 33. Subdivision two of section three of said chapter, page 352, is amended so as to read as follows:

2. Upon new matter in the answer controverted by the reply: or

§ 34. Subdivision three of the same section, is amended so as to read as follows:

Issues of law and fact may arise upon different parts of the pleadings.

3. Upon new matter in the reply except when an issue of law is joined thereon; issues both of law and of fact may arise upon different and distinct parts of the pleadings, or of the same pleading in the same action.

§ 35. Section thirty-nine of said chapter, page 356, is amended so as to read as follows:

SEC. 39. Upon receiving a verdict, an entry must be made in the minutes of the court, specifying the time and place of trial, the names of the jurors and witnesses, the verdict, and either the judgment to be rendered thereon, or when the court is in doubt what judgment ought to be given, it may order that the case be reserved for argument or further consideration; or the judge trying the cause, may in his discretion and upon such terms as shall be just, stay the entry of judgment and further proceedings until the hearing and final decision of a motion for a new trial, or in arrest of judgment, or for judgment notwithstanding the verdict, or to set aside the verdict, or a dismissal of the action, on the ground of surprise or irregularity, or on a case or bill of exceptions.

Upon receiving a verdict, an entry must be made in the minutes of the court.

Court may stay the entry of judgment.

§ 36. Subdivision one of section forty-three of said chapter, page 357, is amended so as to read as follows:

1. Applications for judgment in all actions other than than those arising on contract for the payment of money only, when a summons has been personally served upon the defendant, and no answer has been made to the complaint, after the time for answering the same has expired. The said court in vacation may, upon any such application, whenever it shall be proper so to do, take an account, or hear proof, and render judgment thereon, or may order a reference as herein provided; and when the action is for the recovery of money only, or of specific, real or personal property, with damages for withholding thereof, the court may hear and determine the same in vacation, and assess the damages itself, or order a reference for that purpose, or assesment by a jury.

Application for judgment, where made.

Court may in vacation hear proof and render judgment.

§ 37. Subdivision four of said section, page 357, is amended so as to read as follows:

4. All applications for judgment upon special verdicts, and all questions reserved for argument or further consideration, all motions for new trials, and all issues and questions of law pending in the said court, may also be heard and determined in vacation, as well as in term.

Applications for judgments and motions may be made to the court in vacation.

§ 38. Section forty-four of said chapter, page 357, is amended so as to read as follows:

SEC. 44. Whenever application is made to the judge of any of the said district courts in vacation, for the hearing and determination of any of the cases mentioned in the preceding section, the judge shall appoint a day in which he will hear and determine the same; and any of said judges may appoint special terms for the hearing of such cases from time to time.

Court may appoint a day for hearing applications.

§ 39. Section seventy-one of said chapter, page 360, is amended so as to read as follows:

SEC. 71. Judgments upon an issue of law, or of fact, or upon confession, or upon failure to answer, except where the clerk is otherwise authorized to enter the same, must in the first instance, be entered upon the direction of a single judge, or referees' report upon the whole issue.

Judgments to be entered under the direction of a single judge.

§ 40. Section eighty-eight of said chapter, pages 362 and 363, is amended so as to read as follows:

SEC. 88. If the action be one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court, after the return of an execution against his property, unsatisfied in whole or in part. An execution against the person may likewise be issued, after such return in the cases mentioned in section ninety-five of chap-

When execution may issue against person of judgment debtor.

ter seventy, where the defendant has been previously arrested in the action, and the order for his arrest has not been vacated; or upon an order of arrest obtained in the same manner as for a provisional arrest.

§ 41. Section ninety-nine, of chapter seventy-one, page 364, is amended so as to read as follows:

Costs of appraising homestead to be included in sheriff's bill of costs.

SEC. 99. The costs and expenses of appraising and selling off every homestead, or of appraising the same if not sold, as herein provided, shall be charged and included in the sheriff's bill of costs upon the execution or other process, under which the proceedings are had.

§ 42. The second proviso of section one hundred and five, of said chapter, page 365, is amended so as to read as follows:

In case of separation of husband and wife, wife not authorized to remove any property.

Provided, further, that in the case of a separation or divorce between such husband and wife, by an adjudication of a court, or by act of the legislature, such married woman shall in no case be authorized to remove any such property from the premises of her husband without his consent, except by order of the court, or in pursuance of such act.

§ 43. Section one hundred and eight of said chapter, page 366, is amended so as to read as follows:

Sheriff how execute writ against property of judgment debtor.

SEC. 108. The sheriff must execute the writ against the property of the judgment debtor, by levying on the property, collecting the things in action, or selling the same as prescribed by statute in cases of attachment, selling the other property, and paying to the plaintiff the proceeds, or so much thereof as will satisfy the execution.

§ 44. Subdivision two, of section one hundred and thirteen of said chapter, page 367, is amended so as to read as follows:

Who are termed redemptioners.

2. A creditor having a lien by judgment or mortgage, of the property sold, or on some share or part thereof subsequent to that on which the property was sold. The persons mentioned in this and the preceding subdivisions other than the judgment debtor, are in this chapter termed redemptioners.

§ 45. Section four, of chapter seventy-two, page 371, is amended so as to read as follows:

Costs when allowed and how.

SEC. 4. Costs are allowed of course, to the defendant upon a judgment in in his favor, in an action for the recovery of money only, or where the plaintiff recovers less than fifty dollars in such action; and also upon a judgment in his favor in the other actions mentioned in section two.

§ 46. Section sixteen of said chapter, page 372, is amended so as to read as follows:

Certain proceedings deemed an issue of law.

SEC. 16. When the decision of a court of inferior jurisdiction in a special proceeding, is brought before the supreme court or a district court for review, such proceeding is for purposes of costs, to be deemed an action at issue on a question of law, from the time the same is brought into the supreme court or district court, and costs thereon may be awarded and collected in such manner as the court may direct, according the nature of the case.

§ 47. Section twenty of said chapter, page 373, is amended so as to read as follows:

Attorneys when responsible for costs.

SEC. 20. The attorney of a foreign corporation, against whom costs are awarded to a defendant, is responsible to such defendant therefor, to an amount not exceeding two hundred dollars; and the attorney neglecting to pay the same, after due proceedings against him, may be removed by the court; but he may relieve himself from responsibility at any time before judgment, by filing an undertaking for the payment to the defendant, of the costs and charges, executed by a sufficient surety.

§ 48. Section twenty-three of said chapter, page 373, is amended so as to read as follows:

SEC. 23. For actions and proceedings upon writs of mandamus, the supreme court or a district court may, in its discretion, award or refuse costs to any party therein, and upon refusing an alternative or peremptory mandamus, the court may award costs to be paid by the party applying for such mandamus. Court may award costs in proceedings on writs of mandamus.

§ 49. Section twenty-five of said chapter, page 373, is amended so as to read as follows:

SEC. 25. In all civil actions tried before a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and shall not recover in the district court, a greater sum for debt or damages than he recovered by the first judgment, the defendant shall be entitled to costs; if the defendant appeal, and the amount of the plaintiff's recovery before the justice be reduced one half or more in the district court, the defendant shall be entitled to costs; in all other cases of appeal from the judgment of a justice of the peace in such actions, the successful party shall be entitled to costs. Defendant entitled to costs on appeal.

§ 50. The last clause of section twenty-nine of chapter seventy-three, page 385, is amended so as to read as follows:

If after a decree, one dollar; *Provided*, That the costs in each case shall not exceed twenty dollars, exclusive of charges and disbursements. Proviso.

§ 51. Section twenty-two of chapter eighty-one, page 416, is amended so as to read as follows:

SEC. 22. Writs of error in civil and criminal cases, may issue, of course, out of the supreme court of this territory, in vacation as well as in term, and shall be returnable to the same court; but no writ of error shall be issued after the expiration of one year from the time of the rendition of the judgment to which it refers. Writs of error may issue out of supreme court.

§ 52. Section twenty-six of said chapter, page 416, is amended so as to read as follows:

SEC. 26. The party prevailing on a writ of error, shall in all cases be entitled to his costs against the adverse party; and if the judgment is affirmed, the court may, in its discretion, award double costs to the defendant. In writ of error prevailing party entitled to costs.

§ 53. Section six of chapter eighty-two, page 418, is amended so as to read as follows:

SEC. 6. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply, and the issue may be tried and judgment and costs may be given, in the same manner as in an action, and enforced by execution, or the application of property charged to the payment of the judgment, may, if necessary, be compelled by attachment. Party issuing summons may demur or reply to answer.

§ 54. Section eight of said chapter, page 418, is amended so as to read as follows:

SEC. 8. The defendant may at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, to the effect therein specified, with costs. If the plaintiff accept the offer, and give notice thereof, within ten days, he may file the summons, complaint and offer, with an affidavit of notice of acceptance, and the clerk must thereupon enter judgment accordingly; if the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's cost from the time of the offer. Defendant may serve offer to compromise. Plaintiff may file affidavit of acceptance.

§ 55. Section sixteen of said chapter, page 419 is amended so as to read as follows:

SEC. 16. Motions must be made within the district in which the action is triable. Orders made out of court without notice, may be made by any judge of the court in which the action is brought, in any Motions, where made.

part of the territory; no order to stay proceedings for a longer time than twenty days, can be granted by a judge of the court, except upon previous notice to the adverse party.

SEC. 56. Section twenty-five of said chapter, page 420, is amended so as to read as follows:

In service by paper to be deposited in post office.

SEC. 25. In case of service by mail, the paper must be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid; and in such case the time of service must be double that required in case of personal service.

§ 57. Section twenty-six of said chapter, page 420, is amended so as to read as follows:

What constitutes an appearance of party.

SEC. 26. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance; after appearance, a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notices or papers in the ordinary proceedings in an action, need not be made upon him, unless he be imprisoned for want of bail.

§ 58. Section twenty-nine of said chapter, page 420, is amended so as to read as follows:

What constitutes a valid notice.

SEC. 29. A notice or other paper is valid and effectual, though the title of the action in which it is made be omitted, or it be defective either in respect to the court or parties, if it intelligently refer to such action or proceeding; and in furtherance of justice, upon proper terms, any other defect or error, in any notice or other paper, or proceeding may be amended by the court, and any mischance, omission or defect, relieved within one year thereafter; and the court may enlarge or extend the time for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice or paper filed or served, or may, on such terms as shall be just, permit the same to be done or supplied after the time therefor has expired, except that the time for bringing a writ of error or appeal in a civil action, shall in no case be enlarged, or a party be permitted to bring such writ of error or appeal after the time therefor has expired.

§ 59. Section thirty-five of said chapter, page 421, is amended so as to read as follows:

Actions for determining adverse claim how brought.

SEC. 35. An action may be brought by one person against another, for the purpose of determining an adverse claim, which the latter makes against the former, for money or property upon an alleged obligation; and also against two or more persons for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as surety.

Proceedings where different person makes demand of defendant for same money, &c.

A defendant against whom an action is pending upon a contract or obligation, or for money, or specific, real or personal property, may at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes a demand against him for the same money, debt or property, upon due notice to such person, and the adverse party apply to the court for an order to substitute such person in his place, and discharge the defendant from liability to either party, on his depositing in court the amount of the debt or money, or delivering the property or its value, to such person as the court may direct; and the court may thereupon make the order, and thereafter the action shall proceed between the plaintiff and person so substituted; and the court may compel them to interplead.

§ 60. Section thirty-six of said chapter, page 421, is amended so as to read as follows:

Who subject to the jurisdiction of courts of this territory.

SEC. 36. No natural person is subject to the jurisdiction of a court of this territory, unless he appear in the court, or be found within the territory, or served with process therein, or be a resident thereof, or have

property therein, and then only to the extent of such property, except in cases where it is otherwise expressly provided by statute.

§ 61. Section forty-eight of said chapter, page 422, is amended so as to read as follows:

Complaint must be answered within twenty days.

SEC. 48. In all actions in the district court, the defendant is required to answer the plaintiff's complaint in twenty days after a summons has been legally served on him, except as herein otherwise provided; and if such answer is not made and served within twenty days of the service of the summons, or such further time as may be allowed according to law, the plaintiff may proceed to take judgment against the defendant, according to the provisions of the statute in such case provided. But a defendant who has appeared, may without answering demand in writing an assessment of damages, or of the amount which the plaintiff is entitled to recover, and thereupon such assessment shall be had, or any such amount ascertained, in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained.

Defendant may demand assessment of damages.

§ 62. The following new section shall be added at the end of said chapter eighty-two, on page 422:

Provisions of the revised statutes to apply to actions commenced before Sept. 1, 1851.

SEC. 49. The provisions of the revised statutes, so far as the same may be applicable, shall apply to suits and proceedings pending at the time of their taking effect, on the first day of September, 1851, according to the subject matter, and without regard to the form of such suits and proceedings; but all judicial acts or proceedings had, or commenced prior to that time, though not in conformity to said statutes, shall not be invalidated thereby; and the subsequent proceedings therein, or in relation thereto, necessary to continue or render the same, or any part thereof effectual, or obtain the benefit of the same, may be had, taken or prosecuted in such manner or form as may be necessary, not contrary to the laws previously in force, notwithstanding such proceedings may not be in compliance with the provisions of said statutes, where the same cannot, without difficulty, be conformed to such provisions.

SPECIAL PROCEEDINGS.

§ 63. Section seventeen of chapter eighty-three, page 425, is amended so as to read as follows:

District courts of the territory to have jurisdiction in cases of mandamus.

SEC. 17. The several district courts of this territory, shall have original jurisdiction in cases of mandamus, except in cases where such writ is directed to one of the judges of the said district court in his official capacity; and the said courts shall proceed upon all such cases, in the same manner as in a civil action, except as hereinafter otherwise provided.

§ 64. Section eighteen of said chapter, page 425, is amended so as to read as follows:

Writs of prohibition to be issued out of supreme court.

SEC. 18. Writs of prohibition shall only be issued out of the supreme court, and such writs shall be applied for upon affidavits, by motion to the court, or a judge thereof in vacation, in the same manner as writs of mandamus; and if the cause shown, shall appear to the court or judge to be sufficient, a writ shall be thereupon issued, which shall command the court and party, or officer to whom it shall be directed, to desist and refrain from any further proceedings in the suit or matter specified therein, until the next term of said supreme court, or the further order of the court thereon; and to show cause at the next term of said court, or some day to be named in the same term at the option of the court, if issued in term time, why they should not be absolutely restrained from any further proceeding in such suit or matter.

§ 65. Section nineteen of said chapter, page 425, is amended so as to read as follows:

Writ to be served upon the court or party.

SEC. 19. Such writ shall be served upon the court and party or officer to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall in like manner be made thereto by such court or officer, which may be enforced by attachment.

§ 66. Section twenty-two of said chapter, page 425, is amended so as to read as follows:

Court to render judgment after hearing proofs of parties.

SEC. 22. The court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, restraining the said court and party, or officer, from proceeding in such suit or matter, do issue, or a writ of consultation authorizing the court and party, or officer, to proceed in the suit or matter in question; and may make and enforce such order in relation to costs and charges, and the amount thereof, as may be deemed just.

§ 67. Subdivision one of section thirty-three of said chapter, page 427, is amended so as to read as follows:

Return of officer.

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

§ 68. Section sixty-six of said chapter, page 431, is amended so as to read as follows:

Writs of habeas corpus, how served

SEC. 66. Writs of habeas corpus can only be served by an elector of some county within this territory; and the service thereof shall not be deemed complete so as to require the bringing up of the prisoner before the officer issuing the same, unless the party serving the same, shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also give bond to the sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money; and if not, then in such sum as the officer granting the writ shall direct, not exceeding one thousand dollars, conditioned that such person shall pay the charges of carrying back such prisoner, if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is to be taken; but if such fees be not paid, or such security not tendered, the officer to whom the writ is directed, shall make return thereto in the manner required by section thirty-three of this chapter, and thereupon the officer or court granting the writ, may order the prisoner to be brought up notwithstanding, or proceed as if he were before him.

§ 69. The following new section is added at the end of chapter eighty-five, page 437:

Costs of foreclosing mortage.

SEC. 20. The party foreclosing a mortgage by advertisement, shall be entitled to ten dollars costs, besides fees of officers and disbursements, out of the proceeds of sale.

§ 70. Section two of chapter eighty-seven, page 440, is amended so as to read as follows:

Justices' of the peace have jurisdiction in cases of forcible entry and detainer.

SEC. 2. Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who may make unlawful or forcible entry into lands, tenements or other possessions, and detain the same, as against those who having lawful and peaceful entry into lands, tenements or other possessions, unlawfully and forcibly detain the same; and if it be found upon such inquiry, that an unlawful or forcible entry hath been made, and that said lands, tenements or other possessions are unlawfully detained by force and strong hand, or that the same, af-

ter a lawful entry, are so held or detained unlawfully, then such justice shall cause the party complaining to have restitution thereof.

§ 71. Section twelve of said chapter, page 441, is amended so as to read as follows:

Persons holding over to be tried by justice of the peace.

SEC. 12. When any person shall hold over any lands, tenements or other possessions, after a sale thereof on an execution against such person and expiration of the time for redemption, or after a sale thereof under a mortgage upon foreclosure by advertisement, or after the termination of the time for which they are demised or let to him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement under which he or she holds, or after any rent shall have become due, according to the terms of such lease or agreement, and shall remain unpaid for the space of three days; in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent or attorney, shall make demand in writing of such tenant or person holding over, that he or she shall deliver possession of the premises held as aforesaid, and if such tenant or person holding over, shall refuse, or neglect for the space of three days, after such demand, to quit the possession of such lands or tenements, or to pay the rent therefor, so due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the county, the justice shall proceed to hear, try and determine the same, in the same manner as in other cases hereinbefore provided for: *Provided*, That in all cases mentioned in this section, the justice shall impose no fine upon such tenants or persons holding over.

Proviso.

§ 72. Section thirteen of said chapter, page 442, is amended so as to read as follows:

Limitation of preceding section.

SEC. 13. 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 after the sale thereof, as aforesaid; or to any person who continues in possession three years quietly and peaceably by disseizin, anything contained in this chapter to the contrary notwithstanding.

§ 73. Section twenty-one of said chapter, page 442, is amended so as to read as follows:

Amendments may be allowed by court.

SEC. 21. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court shall appear just, in the same cases and manner, and to the same extent as in civil actions.

§ 74. Section two of chapter ninety-one, page 451, is amended so as to read as follows:

Garnishee may be summoned in actions in district court.

SEC. 2. In actions pending in the district court, the garnishee may be summoned in the same manner as defendants are summoned in that court; the summons must require the garnishee to appear before the court or judge, at a time and place mentioned in the summons, not less than twenty days from the service thereof, and answer touching his indebtedness to the defendant in the action. On the appearance of the garnishee before the court or judge, he may be examined, or a reference may be ordered to take and return the examination of the garnishee, who may be compelled to attend before the referee from time to time, for that purpose.

§ 75. Section seven of said chapter, page 452, is amended so as to read as follows:

On appearance of garnishee, he may be examined.

SEC. 7. On the appearance of such garnishee before the justice, court, judge, or referee, or on some day to which the proceedings may be adjourned, the plaintiff may proceed to examine the garnishee, on oath or otherwise, as the plaintiff may elect, touching the matter alleged

in the affidavit, and the justice, judge, or referee shall take minutes of such examination, and file the same with the other papers in the cause.

§ 76. Subdivision eleven of section one of chapter ninety-two, page 454, is amended so as to read as follows:

Penalty for juror not attending court, or improperly conversing with parties.

11. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

§ 77. Section three of said chapter, page 455, is amended so as to read as follows:

Contempt of court may be summarily punished.

SEC. 3. When a contempt is committed in the immediate presence of the court, or officer, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against, is thereby guilty of a contempt, and that he be punished as therein described. Such punishment, however, cannot exceed that prescribed by section twelve; where the contempt is not committed in the immediate view and presence of the court, an affidavit or other proof, must be presented to the court or officer, of the facts constituting the contempt.

§ 78. Section four of said chapter, page 455, is amended so as to read as follows:

Court may issue warrant of arrest to any person charged to answer, &c.

SEC. 4. In cases other than those mentioned in the last section, the court or officer, may either issue a warrant of arrest, to bring the person charged, to answer, or without a previous arrest may, upon notice, or upon an order to show cause, which may be served by a sheriff or other officer, in the same manner as a summons in an action, grant a warrant of commitment, impose a fine, or both, not exceeding the punishment prescribed by section twelve, and make such order thereupon, as the case may require.

§ 79. Section six of chapter ninety-three, page 457, is amended so as to read as follows:

Application for admission to practice to be made to the supreme court.

SEC. 6. No person can be admitted to practise as an attorney and counsellor, except on application to the supreme court in term, and when admitted to practise in the supreme court, the attorney and counsellor so admitted, may practise in any of the courts of this territory; but a judge of a district court, may grant a temporary license to a person having the requisite qualifications of learning and ability, being of full age, and good moral character, to practise as such, which shall continue in force until the end of the next term of the supreme court thereafter, and no longer.

§ 80. Subdivision one of section ten of said chapter, page 458, is amended so as to read as follows:

Stipulations between attorneys must be in writing.

1. To bind his client in any of the proceedings, in an action, or special proceeding by his agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings, in an action or special proceeding, unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney.

COURTS OF EQUITY.

§ 81. Section one of chapter ninety-four, page 462, is amended so as to read as follows:

The several district courts of the terri-

SEC. 1. The several district courts of this territory, as courts of

equity, possessing the usual powers and authority of such courts, shall have original jurisdiction in all matters in chancery, in which a plain, adequate, and complete remedy cannot be had at law.

tory are courts of equity.

§ 82. Section two of said chapter, page 462, is amended so as to read as follows:

SEC. 2. The term civil action, whenever it is used in the statute, is not intended to include suits in chancery.

§ 83. Section three of said chapter, page 462, is amended so as to read as follows:

SEC. 3. The court shall dismiss every suit in chancery concerning property, when the matter in dispute, exclusive of costs and charges, does not exceed the value of fifty dollars, with costs in favor of the defendant.

Court may dismiss suits in chancery.

§ 84. Section four of said chapter, page 462, is amended so as to read as follows:

SEC. 4. The stated terms of the courts of chancery, shall be the same as those of the courts sitting as courts of law jurisdiction, and each of said courts shall have power to appoint as many special terms as they may deem proper; and said courts shall have power to hear and determine any suit or matter pending therein, or any application to or motion pending before the same, and make any order, in vacation, with the like effect as if the same were done at a stated or special term.

Stated terms of court of chancery.

§ 85. Section five of said chapter, page 462, is amended so as to read as follows:

SEC. 5. All applications to the chancery side of said court, except motions, shall be by bill or petition, stating the nature and ground of the complainant's claim, and shall be filed in the office of the clerk of such court.

Application to courts of chancery must be by bill or petition.

§ 86. Section fourteen of said chapter, page 463, is amended so as to read as follows:

SEC. 14. In case a bill shall be filed against any defendant, and a subpœna or process to appear issue thereupon, and it shall be made to appear by affidavit or otherwise, to the satisfaction of the judge, that such defendant is out of the territory, or cannot, upon due inquiry, be found therein, or that he conceals himself within this territory to avoid the service of such subpœna or process, every such defendant shall be deemed and taken to be an absent defendant; and thereupon the judge may, by order, direct such absent defendant to appear, plead, answer or demur to the complainant's bill or petition, at a certain day therein to be named, not less than three nor more than six months from the date of such order, which order shall be personally served on such defendant by a delivery of a copy thereof to him, twenty days before the expiration of the time prescribed for him to appear, plead, answer or demur, or be published in one or more of the newspapers printed in this territory, for six weeks successively, next after the date thereof at least once in each week; and said order shall also be published and served in any other manner that the judge may see proper in said order to direct; and in case such absent defendant shall not appear, plead, answer or demur within the time limited, or within some further time to be allowed by the judge, if he shall think proper, and on proof of personal service, or of the publication of such order or orders as aforesaid, and of the performance of the directions contained in said order or orders, to the satisfaction of the judge, the judge may order that the complainant's bill be taken as confessed against such absent defendant, so failing to plead, answer, or demur, or the court may proceed as directed in the thirteenth section of this chapter.

In case of absent defendant, summons to be published as court directs.

§ 87. Section twenty-four of said chapter, page 464, is amended so as to read as follows:

Amendments to be made with or without costs as equity dictates.

SEC. 24. All proper amendments shall be made with or without costs, and on such equitable terms as the court may direct; and the court shall have the same power to allow amendments, or the correction of mistakes, supply omissions or defects, extend the time within which an act may be done, and relieve a party from a judgment, decree, order, or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect, and to allow any proceeding to be conformed to the provisions of the statute, as in civil actions.

§ 88. Section twenty-five of said chapter, page 464, is amended so as to read as follows:

When cause in court of chancery is deemed at issue.

SEC. 25. Every cause in a court of chancery, shall be deemed to be at issue, on filing a replication, or the expiration of the time therefor, if none be filed, nor further time allowed; and it shall not be necessary to issue a subpœna, or enter a rule to rejoin.

§ 89. Section twenty-seven of said chapter, page 464, is amended so as to read as follows:

Court may summon jury to assess damages or order reference.

SEC. 27. If there be an issue of fact which shall render the introduction of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered of record, and may be used on the hearing of the cause. In other cases, the court may order a reference to take and report the proofs, and evidence in the cause, or take them in open court, in term time or in vacation.

§ 90. Section thirty-four of said chapter, page 466, is amended so as to read as follows:

Receiver, how appointed, and when.

SEC. 34. No receiver shall be appointed in any cause commenced or pending in chancery, until after notice is given to the adverse party, if he appear or answer, nor until after answer filed, if he appear, unless he is in default for not answering.

§ 91. Section forty-two of said chapter, page 466, is amended so as to read as follows:

Writ of injunction, when to issue.

SEC. 42. No writ of injunction shall issue in any case, but upon bill or petition filed, or motion after filing the same, and an affidavit of the truth of the grounds of the application, either by the party applying for the injunction, or some competent witness or other proof.

§ 92. Section forty-three of said chapter, page 467, is amended so as to read as follows:

Writs of injunction may be granted in vacation.

SEC. 43. Writs of injunction may be granted by the court, or a judge in vacation, and the court shall proceed thereon, according to the course of the proceedings in courts of equity.

Evidence.

EVIDENCE.

§ 93. Section fifty-one of chapter ninety-five, page 478, is amended so as to read as follows:

Who may be witnesses.

SEC. 51. All persons without exception, otherwise than as specified in the next two sections, having the power and faculty to perceive, and of making known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons, who have an interest in the event of an action, are excluded, nor those who have been convicted of a crime, nor persons on account of their religious opinions or belief; although in every case the credibility of the witness may be drawn in question. But no defendant in a criminal action or proceeding, shall be a competent witness therein for himself.

Defendent in criminal action not to be witness.

MISCELLANEOUS.

§ 94. Section seventy-five of said chapter, page 481, is amended so as to read as follows:

SEC. 75. But to entitle a party to a recovery, on a negotiable promissory note or bill of exchange which has been lost, he shall execute a bond to the adverse party, in a penalty at least double the amount of such note or bill, with two sureties to be approved by the court, in which the recovery shall be had, or the clerk thereof, in case no trial has been had, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other persons on account of such note or bill, and against all costs and expenses by reason of such claim.

Party may recover in bill, &c., lost; how.

Must give security.

§ 95. Section seventy-nine of said chapter, page 482, is amended so as to read as follows:

SEC. 79. Any entries made in a book by a person authorized to make the same, he being dead, may be received as evidence, in a case proper for the admission of such book as evidence, on proof that the same are in his hand writing, and in a book kept for such entries, without further verification.

Entries in books may be received as evidence.

§ 96. Section ninety of said chapter, page 483, is amended so as to read as follows:

SEC. 90. Whenever any oath or affidavit is, or may be required or authorized by law, or in any judicial proceeding, (except oaths to jurors and witnesses in the trial of a cause, and such other oaths as are required by law to be taken before particular officers,) the same may be taken before any judge, judge of probate, clerk of any court of record, notary public, or justice of the peace; and when certified by any such officer to have been taken before him, may be read and used in any court of law or equity, of record or not of record, within this territory, and before any officer, judicial, executive or administrative.

Before whom oaths may be taken.

§ 97. Section ninety-five of said chapter, page 484, is amended so as to read as follows:

SEC. 95. In all cases in which an oath or affidavit is required, or authorized by law, or in any judicial proceeding, or by the rules or practice of any court of law or equity, the same may be taken in any of the usual forms, and every person swearing, affirming, or declaring, in any such form, shall be deemed to have been lawfully sworn, and to be gulity of perjury for so corruptly or wilfully and falsely swearing, affirming or declaring in any such form.

Form in which oath may be taken.

§ 98. Section twenty-one of chapter ninety-six, page 487, is amended so as to read as follows:

SEC. 21. The arbitrators shall hear and receive the testimony of either party, under oath; and shall have power to administer all necessary oaths to parties or witnesses appearing before them. Nothing in this chapter contained, shall preclude the submission and arbitrament of controversies according to the common law. And in all cases, arbitrators may be sworn, and thereupon shall have power to administer oaths to parties and witnesses, on any hearing or examination before them, of the matter submitted, and any such party or witness swearing wilfully or corruptly false, on any such hearing or examination, shall be deemed guilty of perjury.

Arbitrators to hear and receive testimony.

May swear witnesses.

§ 99. Section eight of chapter ninety-seven, page 489, is amended so as to read as follows:

SEC. 8. In all cases under the provisions of this chapter, whenever a judgment shall be rendered in favor of the plaintiff, such judgment shall be for damages, including interest from the time of filing such complaint and costs of suit, as follows: When judgment is rendered upon failure to answer, two dollars; in all other cases the costs shall be the same, and recoverable or not, as in other actions. If judgment be rendered in favor of the defendant, he shall recover costs as in other actions.

Judgment what to include.

§ 100. Section two of chapter ninety-eight, page 490, is amended so as to read as follows:

Division of crimes and public offences.

SEC. 2. Crimes and public offences are divided into:

1. Felonies; and

2. Misdemeanors:

How modified.

Crimes and public offences, and criminal proceedings, are modified as prescribed in these statutes.

§ 101. Section six of chapter one hundred, page 493, is amended so as to read as follows:

Homicide when excusable.

SEC. 6. Such homicide is excusable when committed by accident or misfortune in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with ordinary caution, and without any unlawful intent.

§ 102. Section twelve of said chapter, page 493, is amended so as to read as follows:

Manslaughter, how defined.

SEC. 12. The killing of a human being by another, in a heat of passion, upon sudden provocation, or in sudden combat, intentionally, but without premeditation, shall be deemed manslaughter in the second degree.

§ 103. Section thirteen of said chapter, page 493, is amended so as to read as follows:

Manslaughter in the second degree, how defined.

SEC. 13. Every person who shall unnecessarily kill another, except by accident or misfortune, and except in cases mentioned in subdivision two of section five of this chapter, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

§ 104. Section fourteen of said chapter, page 493, is amended so as to read as follows:

Manslaughter in the second degree defined.

SEC. 14 The killing of a human being by another in the heat of passion, without a design to effect death, but with a dangerous weapon, or in a cruel or unusual manner, shall be deemed manslaughter in the second degree.

§ 105. Section fifteen of said chapter, page 493, is amended so as to read as follows:

Manslaughter in the third degree defined.

SEC. 15. The involuntary killing of a human being, by the act, procurement, or culpable negligence of another, while such other person is engaged in the commission of a trespass or other injury to private rights or property, or engaged in an attempt to commit such injury, or while engaged in an unlawful act, which killing would not be manslaughter in the first or second degree, according to the provisions of the preceding sections of this chapter, shall he deemed manslaughter in the third degree.

§ 106. Section twenty of said chapter, page 494, is amended so as to read as follows:

Manslaughter in the fourth degree defined.

SEC. 20. The involuntary killing of a human being by another, with any weapon not dangerous, or by any means neither cruel nor unusual, in the heat of passion, shall be deemed manslaughter in the fourth degree.

§ 107. Section thirty of said chapter, page 495, is hereby repealed.

§ 108. Section forty-two of said chapter, page 496, which is erroneously numbered thirty-two as printed, is amended so as to read as follows:

False imprisonment how punished.

SEC. 42. Every person who, without lawful authority, and wilfully or maliciously, and with a wrongful intent, shall forcibly or secretly confine or imprison any other person in this territory against his will,

or shall forcibly carry or send such person out of the territory against his will, or forcibly seize and confine, or inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this territory, against his will, or to cause such person to be sent out of this territory, against his will, or to be sold as a slave, or in any way held to service against his will; and every person who shall sell, or in any manner transfer for any term, the service or labor of any negro, mulatto or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this territory, to any state, place or country, shall be punished by imprisonment in the territorial prison, not more than five years, nor less than one year, or by fine not exceeding one thousand dollars, nor less than five hundred dollars.

Kidnapping; how punished.

§ 109. Section five of chapter one hundred and one, page 500, is amended so as to read as follows:

SEC. 5. Every person who shall wilfully and maliciously burn, in the night time or day time, any banking house, warehouse, store, manufactory, mill, barn, stable, shop, out house, or other building whatever of another, other than is mentioned in the third section of this chapter, or any bridge, lock, dam or flume, shall be punished by imprisonment in the territorial prison, not more than eight years, nor less than four years; and every person who shall make an unsuccessful attempt to commit either of the offences mentioned in this or the preceding sections of this chapter, shall be punished by imprisonment in the territorial prison for a term not exceeding five years, nor less than one year.

Wilful and malicious burning building; how punished.

§ 110. Section twelve of said chapter, page 501, is amended so as to read as follows:

SEC. 12. Every person who shall enter in the night time, without breaking, or shall break and enter in the day time, any dwelling house, or any out house thereto adjoining, and occupied therewith, or any office, shop, or warehouse, or any ship, steamboat, or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or other felony, shall be punished by imprisonment in the territorial prison, not more than four years, nor less than six months; and every person who shall make an unsuccessful attempt to commit either of the offences specified in this or the preceding six sections of this chapter, shall be punished by imprisonment in the territorial prison, for a term not exceeding two years, nor less than six months.

Burglary, how punished.

§ 111. Section sixteen of said chapter, page 501, is amended so as to read as follows:

SEC. 16. Every justice of the peace shall have jurisdiction concurrently with the district court, of all the larcenies mentioned in the fifteenth section of this chapter, when the money or other property stolen, shall not be alleged to exceed the value of twenty dollars; and of all other larcenies whatever, and all embezzlements, when the money or other property stolen or embezzled, shall not be alleged to exceed the value of fifteen dollars; in all which cases, the punishment shall be by fine not exceeding fifty dollars, or by imprisonment in a county jail not exceeding three months, or by both such fine and imprisonment, saving to every person who shall be convicted before a justice, the right to appeal as in other cases.

Justice of the peace to have concurrent jurisdiction of larcenies.

§ 112. Section twenty of said chapter, page 502, is amended so as to read as follows:

SEC. 20. The officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall use reasonable diligence to secure the property alleged to be stolen, and after seizure, shall be answerable for the same; and he shall annex a schedule thereof to

Officer arresting person and after seizure of property, is answerable for the same.

his return of the warrant, and upon conviction of the offender, the stolen property shall be restored to the owner.

§ 113. Section twenty-six of said chapter, page 503, is amended so as to read as follows:

Persons converting to their own use public moneys; how punished.

SEC. 26. If any person having in his possession any money belonging to this territory, or any county, town, city, or other municipal corporation, or school district, or in which this territory, or any county, town, city, village or other municipal corporation, or school district, has any interest, or if any collector or treasurer of any town or county, or incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the territory, or any other person holding any office under any law of this territory, or any officer of an incorporated company, who now is by virtue of his office, or shall hereafter be intrusted with the collection, safe keeping, receipt, transfer or disbursement of any tax, revenue, fine, or other money, shall convert to his own use, in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money intrusted to him as aforesaid, or shall improperly neglect or refuse to pay over the same, or any part thereof, according to the provisions of law, he shall be deemed and adjudged to be guilty embezzlement.

§ 114. Section twenty-nine of said chapter, page 503, is amended so as to read as follows:

Constructive embezzlement.

SEC. 29. The refusal of any officer to pay any demand in specie, where the sum so demanded was actually received by such officer, in good faith, in checks, drafts, certificates of deposite, or currency which may have depreciated in value, provided payment be tendered in the checks, drafts, certificates of deposit, or currency received by such officer, or to pay any sum demanded of him, when there is reasonable doubt as to his duty or authority to pay the same, on such demand, or where such refusal is not with a wrongful intent, shall not be construed to be an embezzlement, according to the intent and meaning of the twenty-sixth and twenty-seventh sections of this chapter.

§ 115. Section twenty of chapter one hundred and three, pages 512 and 513, is amended so as to read as follows:

Persons compounding offences; how punished.

SEC. 20. If any person shall take any money or gratuity, or reward, or an engagement therefor, upon any agreement or understanding, express or implied, to compound or conceal the commission of any offence, or not to prosecute therefor, or not give evidence thereof, he shall, where such offence was punishable with death, be punished by imprisonment in the territorial prison, not more than three years; and where the offence was punishable in any other manner, he shall be punished by imprisonment in the territorial prison, not exceeding one year, or in the county jail not more than six months, or by fine not exceeding one hundred dollars.

§ 116. Section four of chapter one hundred and seven, page 519, is amended so as to read as follows:

Persons guilty of lascivious conduct, how punished.

SEC. 4. If any man and woman, not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness or lascivious behavior, every such person shall be punished by fine not exceeding three hundred dollars, or by imprisonment in a county jail not exceeding three months.

§ 117. Section fourteen of said chapter, page 520, is amended so as to read as follows:

Penalty for disturbing public worship.

SEC. 14. Every person who on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people, met for worship, within the place of such meeting or out of it, shall be punished by fine not exceeding twenty dollars, nor less than five dollars, or imprisonment in the county jail not exceeding thirty days.

§ 118. Section three of chapter one hundred and eight, page 521, is amended so as to read as follows:

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or sell any drug or medicine knowing it to be adulterated, or offer the same for sale, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding three hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed by order of the court.

Penalty for adulterating drugs and medicines.

§ 119. Section three of chapter one hundred and nine, page 522, is amended so as to read as follows:

SEC. 3. Any person guilty of the offence in the preceding section, may be indicted, tried and punished in the same court and in the same county where the principal felon might be indicted and tried, although the offence of counselling, hireing, abetting, or procuring the commission of such felony, may have been committed elsewhere, either within or without the limits of this territory.

Persons, where tried.

§ 120. Section four of said chapter, page 522, is amended so as to read as follows:

SEC. 4. Every person not standing in the relation of husband or wife, parent or child, by consanguinity or affinity to the offender, who after the commission of any felony, shall harbor, conceal, maintain or assist any principal felon or accessory before the fact, or shall give such offender any other aid, knowing that he has committed a felony, or has been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars, or both.

Accessory after the fact, how punished.

§ 121. Section twelve of said chapter, page 523, is amended so as to read as follows:

SEC. 12. All fines and forfeitures imposed as a punishment for any offence, or for the violation or neglect of any duty imposed by statute, may be prosecuted for and recovered by indictment in the district court; or when the amount or value thereof does not exceed one hundred dollars, the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction thereof concurrently with the district court, except in cases of felony; and in all cases of the imposition of a fine pursuant to statute, as punishment for any offence, the offender may be committed till the same is paid, or he is otherwise discharged according to law.

Fines for violation of duty, where prosecuted.

May be prosecuted before justice of the peace.

§ 122. Chapter one hundred and nine is amended by adding at the end thereof, page 523, the following new sections:

SEC. 15. Where any duty is or shall be enjoined by law, upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, and every misbehavior in office where no special provision shall have been made for the punishment of such delinquency or malfeasance, shall be a misdemeanor punishable by fine and imprisonment.

Constructive misdemeanor.

SEC. 16. Every person who shall attempt to commit an offence prohibited by law, and in such attempt shall do any act towards the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:

Punishment for attempt to commit an offence, prohibited by law.

1. If the offence attempted to be committed, be such as is punishable by death of the offender, the person convicted of such attempt shall be punished by imprisonment in the territorial prison not exceeding ten years.

Where imprisoned.

Term of imprisonment.

2. If the offence so attempted, be punishable by imprisonment in the territorial prison for four years or more, or by imprisonment in a county jail, the person convicted of such attempt shall be punished by imprisonment in the territorial prison, or in a county jail, as the case may be, for a term not exceeding one half the longest term of imprisonment prescribed, upon a conviction for the offence so attempted.

May be imprisoned in county jail.

3. If the offence so attempted, be punishable by imprisonment in a territorial prison for any term less than four years, the person convicted of such attempt shall be punished by imprisonment in a county jail, not more than one year.

May be fined; when.

4. If the offence so attempted be punishable by fine, the offender convicted of such attempt, shall be liable to a fine not exceeding one half of the largest amount which may be imposed upon a conviction for the offence so attempted.

May be punished by both fine and imprisonment.

5. If the offence so attempted, be punishable by imprisonment and by fine, the offender convicted of such attempt, may be punished by both imprisonment and fine not exceeding one half of the longest time of imprisonment, and one half of the greatest fine, which may be imposed upon a conviction for the offence so attempted.

Penalty for second offence.

SEC. 17. If any person convicted of any offence punishable by fine or imprisonment, or both, shall be discharged on payment of such fine, or expiration of such imprisonment, or both; or on being pardoned, and shall subsequently be convicted of a like offence; or if the first offence were a felony, shall subsequently be convicted of any other felony, such person may for such second or subsequent offence, on conviction, be punished by fine or imprisonment, or both, not exceeding double the amount, or extent of that which might have been inflicted or imposed for the first offence according to law.

The term "felonious" defined.

"Infamous crime" defined.

"Personal property" defined.

"Property" defined.

"Person" defined.

SEC. 18. The term "felonious" in any statute, means "criminal;" the term "feloniously" means "criminally." The term "infamous crime" in any statute, includes every offence punishable with death or imprisonment in the territorial prison. The term "personal property" when used in any part of this act relating to crimes and punishments, or criminal proceedings, includes goods, chattels, effects, moneys, evidences of rights in action, and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, transferred, increased, defeated, discharged or diminished; and the term "property," when so used, includes personal property as thus defined, and also every estate, interest and right in lands, tenements and hereditaments. The term "person" as used in this act, to designate the party whose rights or property may be the subject of any offence, shall be construed to include the United States, this territory, or any county, town, state, government, or country which may lawfully own any property within this territory, and all public and private corporations, as well as individuals.

§ 123. Section twenty-two of chapter one hundred and thirteen, page 531, is amended so as to read as follows:

May break open outer or inner door; when.

SEC. 22. To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door, or window of a dwelling house.

§ 124. Section seventeen of chapter one hundred and fourteen, page 533, is amended so as to read as follows:

Persons charged with an offence punishable with death, not to be admitted to bail.

SEC. 17. Persons charged with an offence punishable with death, shall not be admitted to bail, when the proof is evident or the presumption great; nor any person charged with an offence punishable with death, or imprisonment in the territorial prison for a term exceeding seven years, be admitted to bail by a justice of the peace; in all other cases, bail may be taken in such sum as in the opinion of the judge or

magistrate will secure the appearance of the person charged with the offence, at the court where such person is to be tried.

§ 125. Section thirteen of chapter one hundred and fifteen, page 537, is amended so as to read as follows:

SEC. 13. A person held to answer a charge for a public offence, may challenge the panel of the grand jury, or any individual grand juror, before they retire, after being sworn and charged by the court.

Persons held to answer charges for public offences, may challenge the panel.

§ 126. Subdivision two of section thirty-five, erroneously numbered twenty-five, of chapter one hundred and sixteen, page 539, is amended so as to read as follows:

2. By legal documentary or written evidence.

Legal and documentary evidence.

§ 127. Section thirty-six of said chapter, page 539, is amended so as to read as follows:

SEC. 36. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of heresay, or secondary evidence, except when such evidence would be admissable on the trial of the accused, for the offence charged.

Grand jury to receive none but legal evidence, &c.

§ 128. Section fifty-two of chapter one hundred and seventeen, page 541, is amended so as to read as follows:

SEC. 52. No grand juror, district attorney, clerk, judge, or other officer, can disclose the fact of a presentment having been made, or indictment found, for a felony or other crime, until the defendant has been arrested, but this prohibition does not extend to a disclosure by the issuing, or in the execution of a warrant to arrest the defendant.

Grand juror, &c. not to disclose the fact of a presentment.

§ 129. Section seventy-one of chapter one hundred and nineteen, page 547, is amended so as to read follows:

SEC. 71. When by law an offence comprises different degrees, an indictment may contain counts for the different degrees, of the same offence, or for any of such degrees. The same indictment may contain counts for murder, and also for manslaughter or different degrees of manslaughter. Where the offence may be committed by the use of different means, the indictment may allege the means or offence in the alternative. Where it is doubtful to what class an offence belongs, the indictment may contain several counts describing it as of different classes or kinds.

Indictment may contain different counts.

§ 130. Chapter one hundred and nineteen is further amended by adding at the end thereof, page 548, the following new sections:

SEC. 88. Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court, within three years after the commission of the offence; but the time during which the defendant shall not have been an inhabitant of, or usually resident within this territory, shall not constitute any part of the said limitation of three years.

Indictment for murder may be found after death, &c.

SEC. 89. When any offence shall have been committed within this territory, on board of any vessel navigating any river or lake, an indictment for the same may be found in any county through which or any part of which such vessel shall be navigated during, or in the course of the same voyage or trip, or in the county where such voyage or trip shall terminate; and such indictment may be tried, and a conviction thereon had, in any such county, in the same manner, and with the like effect, as in the county where the offence was committed.

Indictment may be found; when.

§ 131. Subdivision two, of section one hundred and eighteen, of chapter one hundred and twenty-two, page 552, is amended so as to read as follows:

2. That it does not substantially conform to the requirements of sections sixty-five, sixty-six, sixty-seven, sixty-eight and sixty-nine, of chapter one hundred and nineteen, as the same are qualified by sec-

Conformity of indictment.

tion seventy-six of the same chapter, or was not found within the time prescribed by section eighty-eight.

§ 132. Subdivision three of said section one hundred and eighteen, of chapter one hundred and twenty-two, page 552, is amended so as to read as follows:

More than one offence may be charged in one indictment; when.

3. That more than one offence is charged in the indictment, except in cases where it is allowed by statute.

§ 133. Section one hundred and twenty-two of said chapter, page 552, is amended so as to read as follows:

Effect of allowance of demurrer.

SEC. 122. If the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offence, unless the court allow an amendment where the defendant will not be unjustly prejudiced thereby, or being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

§ 134. Section one hundred and twenty-three of said chapter, page 552, is amended so as to read as follows:

Defendant if in custody must be discharged; when.

SEC. 123. If the court do not allow an amendment, or direct the case to be re-submitted, the defendant if in custody must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him.

§ 135. Section one hundred and twenty-five of said chapter, page 552, is amended so as to read as follows:

Effect of disallowance of demurrer.

SEC. 125. If the demurrer be disallowed or the indictment amended, the court must permit the defendant at his election to plead, which he must do forthwith, or at such time as the court may allow. If he do not plead, judgment must be pronounced against him.

§ 136. Section one hundred and thirty-three, of chapter one hundred and twenty-three, page 554, is amended so as to read as follows:

Matters of fact tending to establish a defence may be given in evidence, &c.

SEC. 133. All matters of fact tending to establish a defence, other than that specified in the third subdivision of section one hundred and twenty-seven, may be given in evidence under the plea of not guilty.

§ 137. Section one hundred and sixty-eight of chapter one hundred and twenty-eight, page 559, is amended so as to read as follows:

Defendant must be discharged; when.

SEC. 168. If when the indictment is called for trial, the prosecuting attorney be not ready, and the defendant appear and be ready for trial, the court must order the indictment to be discharged, unless being of opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

§ 138. Section two hundred and twenty-one of chapter one hundred and twenty-nine, page 564, is amended so as to read as follows:

Person accused may recognise to the United States.

SEC. 221. Any person not being accused of an offence punishable with death or imprisonment in the territorial prison for a term exceeding three years, who shall file exceptions or for whose benefit a report shall be made by the judge, and proceedings stayed, as is provided in the two preceding sections, may recognise to the United States in such sum as the judge shall order, with sufficient sureties for his personal appearance at the supreme court of the then next term thereof, and to enter and prosecute his exceptions with effect and abide the sentence thereon, and in the meantime keep the peace and be of good behavior; and the judge may in his discretion allow any person so to recognise charged with an offence not punishable with death.

§ 139. Section two hundred and fifty-four of chapter one hundred and thirty-two, page 569, is amended so as to read as follows:

Jury after trial may find person accused guilty degree infe-

SEC. 254. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guility of the degree

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

rior to one charged in indictment.

§ 140. Section two hundred and sixty-four, of said chapter, page 570, is amended so as to read as follows:

Sec. 264. Bail must, when requested by either party, or ordered by the court, judge, or magistrate, justify by affidavit before the court, judge, or magistrate, as the case may be.

Bail when requested by either party must justify.

§ 141. The following new sections are added at the end of said chapter one hundred and thirty-two, page 571.

Sec. 278. A copy of the minutes of any conviction and judgment, duly certified by the clerk in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence in all courts and places of such conviction and judgment, without the production of the judgment roll.

Copy of minutes when duly certified, to be evidence.

Sec. 279. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the district court of the district in which the trial was had or indictment found, with an express direction therein, that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And upon such direction being given, during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail as in cases of appeal.

Writ of error to stay execution; when.

Sec. 280. No assignment of errors or joinder in error, shall be necessary upon any writ of error issued in a criminal case; but the court shall proceed on the return thereto and render judgment upon the record before them. If the court shall affirm the judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If it shall reverse the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require. If a new trial be ordered, the same shall be had in the court, in which the indictment was first tried.

Assignment of errors, &c., necessary; when.

Sec. 281. If a defendant in any indictment shall have been let to bail, after verdict or trial, and shall neglect to appear before any court or officer, at any time or place at which he is bound to appear, and submit to the jurisdiction of the proper court, or officer, the court or officer before which he shall have been bound to appear, may cause such defendant to be arrested in the same manner as upon the finding of an indictment, and may forfeit his recognizance and direct the same to be prosecuted.

Defendant may be arrested after indictment, &c.

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

Effect of above sections.

§ 143. This act shall take effect on the first day of May next after its passage.

J. D. LUDDEN,
Speaker of the House of Representatives.

WM. HENRY FORBES,
President of the Council.

Approved, March sixth, one thousand eight hundred and fifty-two.

ALEX. RAMSEY.

CHAPTER 2.

An Act to Amend the Revised Statutes.

Be it enacted by the Legislative Assembly of the Territory of Minnesota: That the revised statutes, passed at the last preceding session of the legislative assembly of said territory, be, and the same are hereby amended as follows:

§ 1. Section two of chapter three on page 36, of said statutes as printed, is hereby amended so as to read as follows:

Members of H. of H. exempt from arrest.

Sec. 2. No member of the Council or House of Representatives while going to, returning from, or in actual attendance upon the duties of his office, shall be liable to arrest upon civil process.

§ 2. Article four of chapter four, page 42, is amended by adding at the end thereof the following new section:

Salary of superintendent of common schools.

Sec. 3. The said superintendent of common schools shall receive an annual salary of one hundred dollars, payable semi-annually out of the treasury of the territory.

§ 3. Section one of article four, chapter four, on page 43, is amended so as to read as follows:

Governor to appoint notaries' public.

Sec. 1. The governor shall appoint, in each of the counties in this territory, one or more notaries public, who shall be considered as territorial officers, and shall hold their offices for the term of two years, unless sooner removed by the governor, and who shall have power to act by virtue of their office throughout the territory.

§ 4. Section two of article six of chapter four, on page 43, is amended so as to read as follows:

Notaries' public to take an oath, &c.

Sec. 2. Each and every notary public, before he enters on the duties of his office, shall take an oath to support the constitution of the United States, and for the faithful discharge of the duties of his said office; and shall give a bond to the governor, with sufficient surety, in the penal sum of five hundred dollars, conditioned for the discharge of the duties of his office. *Provided,* That the commission of all notaries public who were appointed previous to the first day of September, A. D. 1851, shall expire on the first day of May, A. D. 1852.

§ 5. Section thirty-one, chapter five, page 50, is amended so as to read as follows:

Duties of judges of election.

Sec. 31. The judges of election shall then enclose and seal one of the poll books, and under cover direct the same to the clerk of the board of county commissioners of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to said clerk of the board of county commissioners, at his office, within twenty days from the close of the polls, and the other poll book, together with the ballot box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed; and the said poll book shall be subject to the inspection of any elector at any time thereafter, who may wish to examine the same. The returns of elections in the unorganized counties shall be made to the register of deeds of the county to which they may be attached for judicial purposes, and said votes shall be canvassed, and certificates of

Returns of elections of unorganized counties; where made.

election issued to the persons elected, in the same manner that is provided in this chapter for canvassing the votes and issuing certificates of election in organized counties.

§ 6. Section two of chapter five, page 45, is amended so as to read as follows:

SEC. 2. No person under guardianship, non-compos mentis, or insane shall be qualified to vote at any election; nor shall any person convicted of treason, felony or bribery, unless restored to civil rights, be permitted to vote at any election; nor shall any officer or soldier of the United States army be permitted to vote at any election, during the term of their enlistment, unless they were residents of the Territory at the time of such enlistment. Who qualified to vote.

§ 7. Subdivision one of section thirteen, article one, of chapter eight, page 59, is amended so as to read as follows:

1. To provide for the erecting and repairing of court houses, jails, and other necessary buildings for the use of the county. Provision for erection of public buildings, &c.

§ 8. Article one of chapter eight, page 61, is amended by adding at the end thereof the following new sections:

SEC. 29. When the claim of any person against a county shall be disallowed in whole or in part by the board of county commissioners, such person may appeal from the decision of such board to the judge of the district court for the same county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the decision appealed from was made, and executing a bond to such county with sufficient sureties, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant by the said judge. *Provided*, That if the clerk of the said board should wish to appeal from the decision of the said board, the notice of such appeal may be served on, and the bond approved by the chairman of the board of commissioners of the county. Who may appeal from decision of board of commissioners. Proviso.

SEC. 30. Upon such appeal being taken, the same may be heard before the judge of the district court, either in vacation or at term, by giving six days notice to the district attorney of the time and place of hearing; and upon such hearing the judge shall hear the proof of the parties and render judgment according to the right of the case, with costs the same as in civil actions. Appeal as above, where heard.

§ 9. Section four, of article three of chapter eight, pages 64 and 65, is amended so as to read as follows:

SEC. 4. It shall be the duty of the county treasurer to receive all moneys due and accruing to the county, to pay and disburse the same on orders drawn by the board of county commissioners of their county, attested under seal by the clerk of said board, and not otherwise; *Provided*, That the first moneys which may be returned by the collector from the duplicate of any year, shall be appropriated to the payment of the amount due the territory for that year from the county, which amount shall be paid to the territorial treasurer on or before the first Monday of February in each year, in gold and silver coin or territorial auditor's warrants. Duties of county treasurer.

§ 10. Article five of chapter eight, on page 70, is amended by adding at the end thereof, the following new section: Salary of district attorney.

SEC. 10. Each district attorney shall receive an annual salary, of not less than one hundred dollars nor more than seven hundred dollars, payable quarterly out of the county treasury. The amount within the above limitations to be determined by the board of county commissioners, at any regular or special session.

§ 11. Section thirty, on pages 100 and 101, is amended so as to read as follows:

Register of deeds of each county to make out certificates.

SEC. 30. The register of deeds of each county, shall, within fifteen days after such apportionment, make out two certificates of the several amounts apportioned, to be assessed upon the taxable property of the county, for territorial, county and school purposes, one of which he shall deliver or cause to be delivered to the county treasurer, and the other with a transcript of the assesment roll aforesaid, shall be delivered to the sheriff of the county to which certificate and assessment roll thus delivered to the sheriff, shall be attached a warrant in the name of the United States, under the hand of the register of deeds and with the seal of the board of county commissioners thereto attached, commanding the said sheriff to collect the taxes charged on such transcript, by demanding payment of the persons charged therein, and making sale of the goods and chattels mentioned in such transcript, if necessary, and that he pay over the moneys collected by him, by virtue of said warrant, return said warrant together with the transcript of the roll aforesaid, and an account of his acts thereon, to the board of commissioners, on or before the first day of February next ensuing the date thereof.

To return warrant to board of county commissioners.

§ 12. Section forty-two, page 102, is amended so as to read as follows:

Sheriff to make out statement of taxes unpaid.

SEC. 42. If any of the taxes mentioned in the tax list annexed to his warrant, either on real or personal estate, shall remain unpaid, and the sheriff shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, distinguishing such by setting down separately between such as are on real and such as are on personal estate, with a full and correct description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and submit the same by the first day of February after the date of the tax list, to the Register of deeds; he shall also include in such statement, a description of any land doubly assessed, and the amount of tax thereon, and the register of deeds shall carefully compare said statement with the tax roll, to ascertain that the same is correct, and the said sheriff shall, on the day last aforesaid, pay over to the treasurer of the county all moneys or other receipts for taxes in his hands, and render an account thereof to the said register of deeds.

To compare statement with tax roll.

COMMON SCHOOLS.

District library to be purchased by tax levied.

§ 13. Subdivision seven of section six, chapter twenty-nine, pages 145, 146, is amended so as to read as follows:

7. To levy an additional tax on the district, not exceeding twenty dollars, in any one year, for the purchase or increase of a district library, globes, maps, and such apparatus as the interest and well being of the school shall require. The library shall consist of such books as the district meeting shall direct. The intention to propose such tax shall be stated in the notice required to call such meeting.

Number of months for keeping school to be designated in notice.

8. To designate the number of months a school shall be kept during the year; and when said district is organized as above provided, it shall be to all intents and purposes a body corporate, capable of sueing and being sued, and fully competent to transact all business appertaining to schools and school houses in their own district, according to the provisions of this chapter.

County commissioners to make an apportionment of school funds.

§ 14. Section eleven of chapter twenty-nine, page 146, is so amended so as to read as follows:

SEC. 11. It shall be the duty of the county commissioners, at their annual meeting of January of each year, to make an apportionment of

the school funds in the county treasury among the several school districts in which a school has been taught for three months the preceding year, in their respective counties, in proportion to the number of persons in the district over the age of four, and under the age of twenty-one years, and certify the amount due to the trustees of each district; which amount shall be subject to the draft of said trustees, in favor of any person to whom such moneys may be due, for services as teacher or teachers of said district.

§ 15. Chapter twenty-nine, page 148, is amended by adding at the end thereof the following new sections:

Trustees may establish a grammar school.

SEC. 18. The trustees of any two or more school districts may, by a concurrent vote, agree to establish a grammar school for the older and more advanced children of such districts.

Teacher to keep a register.

SEC. 19. Every teacher of a common school shall keep a register of all scholars attending school, their ages, names of parents or guardians, the time when such scholar enters and leaves such school, and the branches of study pursued, a copy of which, at the expiration of every three months he shall forward to the superintendent of common schools.

Repeal of acts relating to schools.

SEC. 20. All acts of the legislative assembly of the territory of Minnesota, connecting common schools with chartered institutions of learning are hereby repealed.

§ 16. Section eight of chapter thirty-one, page 151, is amended so so as to read as follows:

Surveyors to receive a per cent. on all lots surveyed.

SEC. 8. The surveyors who shall lay out, survey and plot any town or addition thereto, shall be entitled to receive twenty-five cents for each and every in and out-lot the same may contain, unless otherwise agreed; and the register of the county recording the same, shall receive the sum of ten cents for each and every lot as aforesaid, the said plot and survey to be by him transcribed or copied into a book to be by the county commissioners provided for that purpose.

§ 17. Section seven of chapter thirty-seven, page 160, is amended so as to read as follows:

Certain associations may hold real estate.

SEC. 7. Any association incorporated agreeably to the provisions of this chapter, may take by purchase or gift, and hold within the county in which the certificate of their incorporation is recorded, not exceeding eighty acres of land to be held and occupied exclusively for a cemetery for the burial of the dead, such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees may deem proper; and a map or maps of such surveys shall be filed and recorded in the office of register of deeds of the county in which the lands shall be situated. Such association may also purchase or take by gift and hold personal property to an amount not exceeding one thousand dollars, and may sell the same and apply the proceeds thereof to the purposes mentioned in section thirteen of this chapter, and no other.

May hold personal property.

§ 18. Section three of an act entitled "an act to authorize the establishment and regulation of ferries," appendix to the revised statutes, page 607, is amended so as to read as follows:

Licenses for ferries to be sealed with the seal of the board of commissioners.

SEC. 3. All licenses for ferries granted under the provisions of this act shall be sealed with the seal of the board of commissioners and signed by the president of the board, attested by the register of deeds, and may be granted for any period not exceeding six years.

§ 19. Section eight of chapter seventy-three, page 379, is so amended as to allow the sheriff to charge ten cents per mile, both going to and returning from the place of service.

This act not to invalidate certain

§ 20. Nothing in this act contained shall invalidate any action, suit,

proceedings.

prosecution, process, pleading or proceeding commenced, issue had or taken before or pending when it goes into effect.

When this act shall take effect.

§ 21. This act shall take effect on the first day of May next after its passage.

J. D. LUDDEN,
Speaker of the House of Representatives.

WM. HENRY FORBES,
President of the Council.

APPROVED, March sixth, one thousand eight hundred and fifty-two.
ALEX. RAMSEY.

MINNESOTA TERRITORY,

SECRETARY'S OFFICE,
St. Paul, May 20, 1852.

I, ALEXANDER WILKIN, Secretary of the Territory of Minnesota, do hereby certify, that the foregoing amendments to the Revised Statutes, are true copies of the originals delivered to me by the officers of the Legislative Assembly of said Territory, at the close of the third session thereof; and that the same were enacted at said third session, and remain on file in this office.

L. S. In testimony whereof, I have hereunto set my hand and the great seal of the said Territory, the day and year above written.

ALEXANDER WILKIN.