

CHAPTER 1. shall be obtained of the district court, or a judge thereof, within the district or county where the action is triable; and leave shall only be granted on a production of a copy of the bond, and an affidavit showing the delinquency, and if the delinquency be such as that if established on the trial, it would entitle the party applying to recover in the action, leave shall be granted.

SEC. 4. A judgment in favor of a party for one delinquency, shall not preclude the same or another party from an action on the same security for another delinquency.

SEC. 5. If it appear in an action against a surety in an official security, that he has already been obliged, by reason of prior recoveries against him on the same, to pay amounts which, in the aggregate, are equal to the extent of his undertaking, or that by reason of the insolvency of his principal he will be obliged to pay to that extent on judgments already recovered against the surety, the recovery against a surety shall in all such cases, be limited by the amount of his undertaking, except as otherwise provided by law.

SEC. 6. Upon the execution issued on a judgment recovered upon the official security of a public officer against him and a surety, there shall be indorsed a direction to the officer to whom the execution shall be delivered, to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

SEC. 7. If there be several judgments on which executions are at the same time in the sheriff's hands against a public officer and his sureties, amounting in the aggregate to a sum greater than that for which the sureties are liable, the court shall on their application, limit the amount to be collected from them to the amount of their respective liabilities, and may cause the same to be applied on the judgments or executions in proportion to their amounts.

SEC. 8. Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or those who by special provision of law are authorized to recover them; and whether prosecuted by public officers or private persons, shall be governed by the same rules as other civil actions, except as otherwise specified in this chapter.

SEC. 9. When an action shall be brought for a penalty, which is limited by law not to exceed a certain amount, the action may be brought for that amount, and upon the trial, the amount recovered shall be determined in proportion to the offence.

SEC. 10. A recovery of a judgment for a penalty or forfeiture by collusion between the parties, with intent to save the defendant from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the prosecutor, shall not prevent the recovery of the same by another person.

SEC. 11. Fines and forfeitures not specially granted or appropriated by law, shall be paid into the territorial treasury; and whenever by the provision of law any property, real or personal, shall be forfeited to the territory, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in the district court of any county where such property may be.

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Recovery against surety limited.

Officers primarily liable

Securities how and when apportioned.

Actions for fines and forfeitures.

When the penalty is limited.

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CHAPTER II.

ACTIONS BY AND AGAINST CERTAIN PUBLIC OFFICERS, AND PUBLIC BODIES.

- SEC. 1.** Who may sue in official capacity.
 2. In what cases official persons may sue.
 3. When special department of corporation sues.
 4 & 5. How actions may be brought.
 6 & 7. When judgment against county to be presented to commissioners, and how satisfied.
 8. Payment of judgment by county treasurer.
 9. Execution not to issue, except on leave.
 10. Act when to take effect.

SEC. 1. The following officers may prosecute actions in their official capacity:

1. The board of county commissioners of a county;
2. The directors of a school district;
3. Any organized department of a municipal corporation, having a board of officers in charge of a particular branch of public service, and specially authorized by statute to prosecute. In such action the plaintiffs may be designated by their official name, or the action may be brought in the name of the body in whose behalf the action is brought.

SEC. 2. Every such action shall be either:

1. On a contract made with such officers in their official capacity; or
2. To enforce a liability or a duty enjoined by law in favor of such officers, or the body represented by them; or
3. To recover a penalty or forfeiture given to such officers or body; or
4. To recover damages for an injury to their official rights or property.

SEC. 3. When an organized department of a municipal corporation is authorized by statute to sue, it shall, for purposes of the action, be deemed the real party in interest, though the corporation, of which it is the department, be the party to be ultimately benefited by the action, or responsible for any costs incurred therein.

SEC. 4. An action may be brought against the officers, mentioned in section one, in their official capacity, or against the body they represent, either upon a contract made by such officers in their official capacity, and within the scope of their authority; or for an injury to the rights of the plaintiff, arising from some act or omission of such officers, or of the body represented by them.

SEC. 5. The actions authorized by this chapter, may be brought by or against the officers mentioned in section one, upon a cause of action which accrued during the term of their predecessors, as well as during their own term of office, and when brought may be continued by, or against their successors in office, whose names may for that purpose be substituted in the action.

Who may prosecute in official capacity.

For what actions.

When special department sues.

Action how brought.

TITLE 1. SEC. 6. If judgment for the recovery of money be rendered against a county, or the board of commissioners of a county, on account of the liability of such county, and the judgment be not satisfied, or proceedings thereon stayed by appeal or otherwise, before the next regular meeting of the board of commissioners of the county, a certified copy of the docket of the judgment may be presented to the board of commissioners at such, or at any subsequent regular meeting.

How satisfied. SEC. 7. The board of commissioners shall thereupon cause the amount due on the judgment, with interest from the time of the recovery, to be added to the tax of the county for whose liability the same was recovered, and the same shall be collected as other contingent charges of the county.

Payment of judgment by county treasurer. SEC. 8. The treasurer of a county against which, or against whose officers a judgment has been recovered for a liability of the county, the execution of which has not been stayed upon appeal, shall upon demand and delivery to him of a certified copy of the docket of the judgment, pay the amount due thereon, if there be sufficient money of the county in his hands not otherwise specifically appropriated. If he fail to do so, he shall be personally liable for the amount, unless the collection thereof be afterwards stayed upon appeal.

Leave to issue execution. SEC. 9. Execution shall not be issued on a judgment rendered against a county or its officers, without leave of the court; nor shall leave be granted until the court is satisfied that payment has been demanded of the proper county officers, as provided in the last two sections, and that the board of commissioners have wrongfully omitted to include the amount in the tax list, as provided in section seven; when execution is issued, the property of the county only is liable thereon.

SEC. 10. This act shall take effect and be in force, from and after the first day of May next.

Passed, Jan. 7th, 1854.

AN ACT CONCERNING THE LIENS OF MECHANICS, LABORERS AND OTHER PERSONS.

CHAPTER I.

MECHANICS AND LABORERS' LIENS.

TITLE I. *Lien on Buildings.*

TITLE II. *Liens on Personal Property.*

TITLE I.

Lien on Buildings.

- SEC. 1. Lien on buildings.
- 2. Notice of lien to be filed.
- 3. How long such lien exists.
- 4. Complaint what to contain.
- 5. Summons how served.

- SEC. 6. Proceedings to enforce lien.
- 7. Mechanics' liens, when preferred to other liens.
- 8. Lien against buildings, when to extend to lot.
- 9. Several may join: claims how stated.
- 10. Satisfaction of lien must be entered.
- 11. Notice of sub-contractor's claim.
- 12. Claim recovered by sub-contractor may be set off against contractor's demand.

TITLE 1. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person who shall hereafter by virtue of any contract with the owner of any building, or with the agent of such owner, perform any labor upon, or furnish any materials, engine or machinery for the construction or repairing of such building, shall, upon filing the notice prescribed in the next section, have a lien upon such building, and the lot of ground upon which the same is situated, for such labor done; or materials, engine or machinery furnished, when the amount shall exceed twenty dollars.

Notice of lien to be filed. SEC. 2. Any person wishing to avail himself of the provisions of this chapter, whether his claim be due or not, shall file in the recorder's office of the county in which such building is situated, at any time within three months after the completion of such building or repairs, a notice of his intention to hold a lien upon such building for the amount due, or to become due, specifically setting forth such amount, and containing a description of the building upon which the labor was performed, or for which the materials, engine or machinery were furnished; which notice shall be recorded by the recorder in a book to be kept for that purpose.

How long lien exists. SEC. 3. Such lien shall cease to exist at the expiration of one year after the completion of the building or repairs, unless before that time an action to enforce the same shall have been commenced in the district court of the county in which the premises are situated, by the person having such lien against the owner with whom or with whose agent the contract was made, unless such claim be not due at the expiration of one year after such completion, in which case the action shall be commenced within three months after the same shall have become due.

SEC. 4. The complaint of the plaintiff shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the recorder, the time when the building was completed, if it be completed, with a description of the premises, and any other material facts, and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the lien.

Summons how served. SEC. 5. The summons shall be served as in other cases, or instead of service by publication, it may be made by delivering a copy thereof to the person in possession of the premises. If the defendant shall have sold or disposed of the premises before the service of the summons, the court shall direct notice of the proceedings to be served on the purchaser or his agent for the premises, who may thereupon, if he desire it, be made a party defendant in the action.

SEC. 6. The proceedings in an action to enforce such lien, shall be the same as in other actions, except as otherwise provided in this chapter; and if judgment be rendered for the plaintiff, he may

TITLE 1. have an execution issued thereon to sell the premises, and thereupon the sheriff shall proceed as upon other executions for the sale of real property; and the owner or any lien creditor shall have the same rights of redemption after a sale.

Mechanics' liens when preferred to other liens.

SEC. 7. The liens created in pursuance of the provisions of this chapter, shall have precedence over all other liens, after the commencement of the building, and if upon a sale of the premises by execution, the proceeds be insufficient to pay all such liens, the court shall order them to be paid in proportion to the amount respectively due to each, and any other property of the defendant not exempt from execution, may be sold to satisfy such execution.

Ib., when to extend to lot.

SEC. 8. The liens against any building shall also extend to the lot of ground upon which such building is erected, not exceeding one-half of an acre in extent, if the land shall have been, at the time of erecting such building, the property of the person who shall have caused the same to be erected. The metes and bounds of such lot may be determined by the parties, or if they cannot agree upon the same, the court at any time after the rendition of judgment, may appoint one or more referees to determine such boundaries.

Several persons may join; claims how stated.

SEC. 9. All, or any number of persons having liens on the same building, pursuant to the provisions of this chapter, may join in one action, but their claims shall be stated distinctly, as in a separate action, and the judgment shall show the amounts to which they are respectively entitled.

Satisfaction of lien must be entered.

SEC. 10. Whenever any person having a lien, by virtue of the provisions of this chapter, shall have received satisfaction for his claim and the costs of his proceedings thereon, he shall, upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded, and upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect.

Notice of sub-contractor's claim.

SEC. 11. Any sub-contractor, journeyman, or laborer employed in the construction or repairing of any building, or in furnishing any materials or machinery for the same, may give the owner thereof notice in writing, particularly setting forth the amount of his claim, and the service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same, and the owner of the building shall be liable for such claim if indebted to the employer to the amount; if not, then for the amount due from him to said employer at the time such notice was served, which claim or amount may be recovered by an action against the owner, if brought within one year after the completion of the building, or the repairs.

Claim of sub-contractors may be set off against contractor's demand.

SEC. 12. Whenever any sub-contractor, journeymen, or laborer shall recover any such claim from the owner of the building, the same may be set off by such owner, in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

TITLE II.

CHAPTER 2.

Liens on personal property.

- SEC. 13. Lien of laborer.
 14. Lien of common carrier, grazier, herdsman, &c.
 15. Sale, &c., satisfaction of lien.
 16. Foregoing provisions not to interfere with special agreements.

SEC. 13. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid.

Lien of laborer.

SEC. 14. Any person who is a common carrier, or who shall at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another; and any person who shall safely keep or store any personal property at the request of the owner or lawful possessor thereof; and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property, for his just and reasonable charges for the labor, care, and attention he has bestowed, and the food he has furnished, and he may retain the possession of such property until such charges be paid.

Lien of common carrier, grazier, herdsman.

SEC. 15. If such just and reasonable charges be not paid within three months after the care, attention and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction, the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in some newspaper published in the county, if there be one, or if there be no such paper, then by posting up notice of such sale in three of the most public places in the city or township for three weeks before the time of such sale; and the proceeds of such sale shall be applied, first to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Sale and satisfaction of lien.

SEC. 16. The provisions of the last three sections shall not interfere with any special agreement of the parties.

Lien may be waived by agreement.

CHAPTER II.

OF PROCEEDINGS TO ENFORCE LIENS ON BOATS AND VESSELS.

- SEC. 1. Liens on boats and vessels.
 2. As to the priority of liens.
 3. Action may be against owner, &c., or vessel.
 4. Complaint to be filed and its requisites.

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- SEC. 5. Warrant of seizure, when to be issued.
- 6. Proceedings on return of warrant.
- 7. As to who may answer complaint.
- 8. Judgment, how rendered.
- 9. Undertaking and discharge of vessel.
- 10. Deposit in lieu of undertaking.
- 11. Order of sale, what to require.
- 12. Judgment on undertaking.
- 13. Bill of sale by whom executed.
- 14. Action against vessel by other parties after sale.
- 15. Proceeds of sale how distributed.
- 16. Order of sale when modified.
- 17. Jurisdiction of justice of the peace.
- 18. Proceedings by justice.
- 19. Warrant of justice when returnable.
- 20. Justice may grant continuance.
- 21. Fees of officers.
- 22. Appeal from justice's court.
- 23. Time for commencing actions.
- 24. Act when to take effect.

Liens on boats and vessels.

17 J. R. 54; 1 Wen. 557; 6 do. 510; 20 do. 177, 181; 5 Hill 35; 3 Comst. 433.

Priority of liens.

Action, against owner, &c., or vessel.

Complaint, its requisites

Warrant of seizure.

SEC. 1. Every boat or vessel used in navigating the waters of this territory, shall be liable and subject to a lien :

- 1. For wages due to persons employed, for work done or services rendered on board of such boat or vessel ;
- 2. For all debts contracted by the master, owner, agent or consignee thereof, on account of labor done or materials furnished by mechanics, tradesmen or others in the building, repairing, fitting out, furnishing or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof ;
- 3. For all sums due for wharfage, anchorage or towage of such boats or vessels within this territory ;
- 4. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel, on which such contract is to be performed, and for damages or injuries done to persons or property by such boat or vessel.

SEC. 2. The classes of claims above specified, shall have priority according to the order in which they are above enumerated, and the liens under this act shall have precedence of all other liens and claims against such boat or vessel.

SEC. 3. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of the boat or vessel, may at his option commence an action against such boat or vessel by name.

SEC. 4. Any person wishing to commence an action against a boat or vessel, shall file his complaint against such boat or vessel by name, with the clerk of the district court of the county in which such boat or vessel may lie or be. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued, and shall be verified by the plaintiff or some creditable person for him.

SEC. 5. Whenever such complaint shall be filed, the clerk shall issue a warrant thereon, commanding the sheriff to seize the boat or vessel mentioned in the complaint, with her tackle, apparel and

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furniture, and retain the same until discharged from such custody by due course of law.

SEC. 6. Upon the return of any warrant issued as prescribed in the last section, proceeding shall be had in the district court against the boat or vessel seized, in the same manner as if the action had been commenced against the person on whose account the demand accrued.

SEC. 7. The master, owner, agent or consignee of the boat or vessel may appear on behalf of such boat or vessel, and answer the complaint.

SEC. 8. If in any action commenced under the provisions of this chapter, the master, owner, agent or consignee shall not appear and answer the complaint, the plaintiff may proceed to take judgment in the same manner and under the same restrictions, as in a civil action against a natural person ; if an issue of fact be joined, the same proceedings shall be had as in other actions.

SEC. 9. If the master, owner, agent or consignee shall before final judgment in any action, commenced in pursuance of the provisions of this chapter, enter into an undertaking in favor of the plaintiff, with sufficient security to be approved by the judge or clerk of the court in which the action is pending, conditioned to satisfy the amount which shall be adjudged to be due and owing to the plaintiff, on the determination of the action, together with all costs accruing, such boat or vessel with its tackle, apparel and furniture shall be discharged from further detention by the sheriff.

SEC. 10. Such master, owner, agent or consignee may in lieu of the undertaking specified in the last section, deposit in court such an amount of money as the judge or clerk shall direct, being sufficient to pay the demand of the plaintiff and the costs of suit, which are likely to accrue in such action. If judgment be for the defendant, such deposit shall be returned to the person making the same, or if a balance remain after satisfying any judgment in favor of the plaintiff and costs of suits, such balance shall be so returned.

SEC. 11. If judgment be rendered against any boat or vessel in favor of the plaintiff, the court shall make an order directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel and furniture to satisfy the judgment and costs which may have accrued in the cause, which order shall be executed and returned in the same manner as other executions.

SEC. 12. If an undertaking with surety shall have been given according to the ninth section of this chapter, and judgment shall have been rendered in favor of the plaintiff, a judgment shall also be rendered upon the undertaking, and execution shall be issued for the amount of judgment and costs in favor of the plaintiff, against the principal and security in such undertaking.

SEC. 13. When any boat or vessel shall be sold in pursuance of the provisions of this chapter, the officer making the sale shall execute to the purchaser a bill of sale therefor, and such boat or vessel shall in the hands of the purchaser and his assigns, be free and discharged from all previous liens and claims under this chapter.

SEC. 14. Any other person having or claiming a lien against any boat or vessel in pursuance of the provisions of this chapter, may

Proceedings on return of warrant.

Who may answer complaint.

Judgment.

Undertaking and discharge of vessel.

Deposit in lieu of undertaking.

Order for sale.

Judgment on undertaking

Bill of sale how executed.

Action against vessel by other

CHAPTER 2. at any time after the sale upon execution, and before payment over of any surplus in the hands of the sheriff, commence an act against such boat by name as if the same had not been sold, and serve notice thereof upon the former master, owner, agent or consignee. While such action is pending, the sheriff shall not pay over any surplus that may be in his hands to such master, owner, agent or consignee.

Proceeds of sale how distributed. SEC. 15. In the distribution of the proceeds of sale, claims of a prior class shall be paid entire before any payment shall be made upon claims of a subsequent class; and when the money to be applied to any class shall be insufficient to pay all the claims of that class, it shall be apportioned rateably among the claims of such class.

Order of sale when modified. SEC. 16. If it shall appear to the court in which the action is pending, or the judge thereof, that the liens against such boat or vessel, can be satisfied by a sale of the tackle, apparel and furniture, or a part thereof, or a fractional share in such boat or vessel, such court or judge may modify the order of sale accordingly. If in pursuance of such order, a sale be made of a fractional share in such boat or vessel, the purchaser shall hold such share jointly with the other owners.

Jurisdictions of justices. SEC. 17. Justices of the peace within their respective counties, shall have cognizance of all cases arising under this chapter, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

Proceeding by justice. SEC. 18. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justice's courts, and as near as may be to the provisions of this chapter, as they apply in the district court.

Return of warrant. SEC. 19. Each warrant issued by a justice of the peace under this chapter, shall be returnable forthwith; and upon the return of such warrant, it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

Justice may grant continuance. SEC. 20. Upon good and sufficient cause shown by the master, owner, agent or consignee of any boat or vessel seized under the provisions of this chapter, the justice of the peace may grant a continuance of the cause, but no such continuance shall be granted to the plaintiff.

Fees of officers. SEC. 21. Sheriffs, constables, and other officers, shall receive the same fees and compensation for their services under this chapter, as are allowed to them in proceedings by attachment.

Appeal. SEC. 22. In all cases arising under this chapter, before justices of the peace, the plaintiff or the master, owner, agent, or consignee, may appeal to the district court, but if the plaintiff appeal, the constable or other officer shall not detain the boat or vessel in his custody, after the payment of such judgments as shall be rendered in favor of the plaintiff, by the justice of the peace.

Limitation of action. SEC. 23. All actions against a boat or vessel, under the provisions of this chapter, shall be commenced within one year after the cause of action shall have accrued.

When to take effect. SEC. 24. This act shall take effect and be in force from and after the first day of May next.

Passed, Dec. 22d, 1853.

AN ACT TO REGULATE ARBITRATIONS.

CHAPTER 1.

CHAPTER I.

ARBITRATIONS.

- SEC. 1. Controversies that may be submitted.
 2. When submission not to be made.
 3. Submission how made.
 4. Agreement to submit, what to contain.
 5. Submission not to be revoked.
 6. Arbitrators to appoint a time of hearing.
 7. Oath of arbitrators.
 8. Time of making award.
 9. Award to be in writing.
 10. Award to be delivered to clerk,
 11. Cognizance thereof by court.
 12. Award may be accepted, rejected or re-committed.
 13. Grounds for vacating award.
 14. Grounds for correcting award.
 15. Award when to be returned to court.
 16. Judgment costs.
 17. Record of judgment, what to contain.
 18. Effects of judgment.
 19. Arbitrators may award costs in certain cases.
 20. Courts may enforce judgment.
 21. Power of arbitrators.
 22. This act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That all controversies which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this chapter. Controversies that may be submitted.

SEC. 2. No such submission shall be made respecting the claim of any person to any estate in fee or for life to any real estate, but any claim to an interest for a term of years, or for one year or less in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration; but nothing in this chapter contained, shall preclude the submission and arbitrament of controversies according to the common law. When submission not to be made.

SEC. 3. The parties may appear in person or by their lawful agents, or attorneys, before any justice of the peace or clerk of the district court, and there sign and acknowledge an agreement in substance as follows: Submission how made,

"Know all men that A. B., of _____, and C. D., of _____, have agreed to submit the demand, a statement whereof is hereto annexed, (and all other demands between them, as the case may be,) to the determination of _____, and _____; the award of whom, or the greater number of whom being made and reported within _____ days from this date, to the district court for the county of _____, shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing, the other parties may proceed in his absence.

Dated this _____ day of _____, A. D. 185 . A. B.
 C. D."

CHAPTER 1. And the justice or clerk shall subjoin to the said agreement his certificate, in substance as follows:—

Territory of Oregon, }
County of } ss.

Personally appeared before me, the above-named A. B. and C. D., (or personally appeared the above-named A. B., and the said C. D., by his attorney, as the case may be,) and acknowledged the above instrument by them signed, to be their free act.

Dated this _____ day of _____ 185 .
J. P., Justice of the Peace.

Agreement what to contain.

SEC. 4. If any specific demand be submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement of submission, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other, or the submission may be varied in this respect, in any other manner, according to the agreement of the parties.

Submission not to be revoked.

SEC. 5. Neither party shall have power to revoke a submission, made as herein provided, without the consent of the other; and if either of them shall neglect to appear before the arbitrators, after due notice, the arbitrators may, nevertheless, proceed to hear and determine the cause upon the evidence, produced by the other party, as provided in the agreement of submission.

Time, &c., of hearing. 1 Barb. 325; 3 Barb. 275.

SEC. 6. The arbitrators thus selected shall appoint a time and place for the hearing, and shall adjourn the same from time to time, as may be necessary; and on the application of either party, and for good cause, they may postpone such hearing to a time, not extending beyond the day fixed in such submission, for rendering their award.

Oath of arbitrators. 1 Denio, 440.

SEC. 7. Before proceeding to hear any testimony, the arbitrators shall be sworn by any officer, authorized to administer oaths, faithfully and fairly to hear and examine the matters in controversy, and to make a just award according to law and evidence, to the best of their understanding.

Time of making award.

SEC. 8. The time, within which the award shall be made and reported, may be varied according to the agreement of the parties; and no award made after the time so agreed upon, shall have any legal effect or operation, unless made upon a re-commitment of the award by the court to which it is reported.

Award to be in writing.

SEC. 9. To entitle any award to be enforced according to the provisions of this chapter, it must be in writing, and subscribed by the arbitrators making the same.

To be delivered to clerk.

SEC. 10. The award shall be delivered by one of the arbitrators to the clerk of the district court, designated in the agreement of submission, or shall be inclosed and sealed by them and transmitted to the clerk, and shall remain sealed, until opened by such clerk.

CHAPTER 1. SEC. 11. The court to which the award is returned, shall have Cognizance thereof by court. shall be had thereon, as if it had been made by referees, appointed by a rule of the same court.

SEC. 12. The award may be rejected by the court for any legal Award may be accepted, rejected or recommitted and sufficient reason, or it may be re-committed to the same arbitrators, for a re-hearing by them; and when an award is accepted and confirmed by the court, judgment shall be rendered thereon, in the same manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly.

SEC. 13. Any party complaining of such award may move the Grounds of vacating award. court, designated in such submission, to vacate the same upon either of the following grounds:—

1. That such award was procured by corruption, fraud, or other undue means; 10 Wen. 589; 17 do. 410.
2. That there was evident partiality or corruption in the arbitrators or either of them; 4 Denio 194; 4 Com. 568.
3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or other misbehavior by which the rights of such party shall have been prejudiced;
4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final, and definite award on the subject matter submitted was not made; 1 Barb. Ch. 173; 4 Denio 249; 1 Barb. 325; 3 do. 56; 7 do. 431.
5. That the award was contrary to law and evidence.

SEC. 14. Any party to such submission may also move the court, designated therein, to modify or correct such award in the following cases:—

1. When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in such award; 10 Wen. 589.
2. Where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision upon the matters submitted; 1 Barb. 325; 4 do. 250; 1 do. 431.
3. Where the award shall be imperfect in some matter of form not affecting the merits of the controversy, and where if it had been a verdict, such defect could have been amended or disregarded by the court, according to the provisions of law.

SEC. 15. The award may be returned at any term or session of the court, that shall be held within the time limited in the submission; and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner, as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceeded to act upon the award.

SEC. 16. Upon such award being confirmed or modified, the court Judgment. shall render judgment in favor of the party, to whom any sum of money or damages shall have been awarded, that he recover the same, and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order. The costs of proceedings shall be taxed as Costs how taxed.

CHAPTER 1. in suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make a suitable allowance.

Record of judgment. SEC. 17. A record of such judgment shall be made, commencing with a memorandum reciting the submission, then stating the hearing before the arbitrators, their award, the proceedings of the court thereupon, in modifying or confirming such award, and the judgment of the court for the recovery of the debt or damages awarded, or other act to be done, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

Effects of judgment; execution. SEC. 18. Such record shall be filed and docketed as records of judgments in other cases; shall have the same force and effect in all respects; be subject to all the provisions of law in relation to judgments in actions, and may in like manner be moved and reversed by writ of error or appeal, and execution shall issue thereupon.

Arbitrators may award costs. SEC. 19. If there be no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators, if it shall appear to them unreasonable.

Enforcing judgment. SEC. 20. Where by such judgment any party shall be required to perform any act, other than the payment of money, the court rendering such judgment shall enforce the same by rule; and the party, refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court.

Power of arbitrators. SEC. 21. The arbitrators shall hear and receive the testimony of either party under oath; and shall have full power to administer all necessary oaths to parties, or witnesses appearing before them; and any such party or witnesses swearing wilfully and corruptly false, on any such hearing or examination, shall be deemed guilty of perjury.

SEC. 22. This act shall take effect and be in force from and after the first day of May next.

Passed January, 18th, 1854.

AN ACT RELATING TO THE WRIT OF HABEAS CORPUS AND PROCEEDINGS THEREON.

CHAPTER I.

OF HABEAS CORPUS.

- SEC. 1. Who may prosecute *habeas corpus*.
 2. Application for writ how and to whom made.
 3. Proof required when application made in another county.
 4. Petition for writ, what to state.
 5. When writ to be granted; and without delay.
 6. Form of writ of *habeas corpus*.
 7. When writ sufficient.
 8. Penalty on officers for refusing writs.
 9. Return to writ, its contents; when to be sworn to.

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10. Body of prisoner to be brought up on *habeas corpus*.
11. Proceedings on disobedience of writ.
12. Proceedings against sheriff for neglect.
13. Prisoner to be produced before judge.
14. Officer executing attachment may call power of the county.
15. Proceedings on return of writ.
16. Prisoner when to be discharged.
17. When to be remanded.
18. Prisoner on civil process when to be discharged.
19. Legality of certain commitments not to be inquired into.
20. Proceedings in irregular criminal commitments.
21. Proceedings when prisoner is not discharged or bailed.
22. Custody of prisoner between judgment and return thereon.
23. Notice when to be given.
24. Notice to prosecuting attorney.
25. Return may be controverted.
26. Proceeding in case of sickness of prisoner.
27. Obedience to writ and order how enforced.
28. Officer not liable to action for obeying writ.
29. Persons once discharged cannot be re-imprisoned.
30. Penalty for re-committing person discharged.
31. Penalty for concealing prisoner, &c., after writ allowed.
32. When warrant may issue to take person illegally confined.
33. When to take person confining him.
34. Warrant how executed, proceedings thereon.
35. Proceedings against person detaining prisoner.
36. Penalty for refusing copy of process to prisoner.
37. *Habeas corpus* how to be made returnable.
38. Allowance to be indorsed; how signed.
39. *Habeas corpus* how served; when fees and bond required.
40. Mode of serving writ of *habeas corpus*.
41. How served when person conceals himself, &c.
42. When and how fees allowed to persons not officers.
43. Time allowed for making return to writ.
44. This act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint if it shall prove to be unlawful. Who may prosecute a writ of *habeas corpus*.

SEC. 2. Application for such writ shall be made by petition, signed by the party for whose relief it is intended, or by some person in his behalf, to any judge of the supreme or district court being within the county where the prisoner is detained, or if there be no judge within such county, or if he be absent, or for any cause be incapable of acting, or having refused to grant such writ, then to any other judge of the supreme or district court most convenient to the place where such prisoner is detained. Application for writ. Hill 405.

SEC. 3. Whenever application for any such writ shall be made to such judge, not being within the county where the prisoner is detained, he shall require proof by the oath of the applicant or other sufficient evidence, that there is no judge in such county authorized to grant the writ; or if there be one, that he has refused to grant it; or for some cause to be specially set forth, is incapable of acting; and if such proof be not produced, the application shall be denied. If, in another county proof required.

SEC. 4. The petition shall state in substance:

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming Petition for writ and what to state

CHAPTER 1. all the parties, if their names be known, or describing them if they be not;

2. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the applicant;

3. If the confinement or restraint be by virtue of any warrant, order or process, a copy thereof shall be annexed, or it shall be averred that by reason of the prisoner being removed or concealed before the application, a demand of such copy could not be made; or that such demand was made, and the legal fees therefor tendered to the officer or person, having such prisoner in his custody and that such copy was refused;

4. If the imprisonment be alleged to be illegal, the petition shall also state in what the alleged illegality consists;

5. It shall be verified by the oath of the applicant, or some other competent person.

When writ to be granted.

SEC. 5. Any judge empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it appear from the petition itself, or the documents annexed, that the party can neither be discharged, admitted to bail, nor in any other manner relieved under the provisions of this chapter.

Form of writ.

SEC. 6. Every writ of *habeas corpus* shall be substantially in the following form:

"In the name of the United States:

To the sheriff of, &c., (or to A. B.)

You are hereby commanded to have the body of C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged before E. F., judge of the district court (or supreme court) at, &c. ———, on the ——— day, &c., (or immediately after the receipt of this writ,) to do, and receive what shall then and there be considered concerning the said C. D. And have you then and there this writ.

Witness, &c."

When writs sufficient.

SEC. 7. Such writ of *habeas corpus* shall not be disobeyed for any defect in form. It shall be sufficient:

1. If the person having the custody of the prisoner be designated either by his name of office if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ, shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person;

2. If the person, who is directed to be produced, be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Penalty for refusing writ.

SEC. 8. If any judge authorized by the provisions of this chapter, to grant writs of *habeas corpus*, shall willfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence to the party aggrieved, one thousand dollars.

SEC. 9. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally:

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Return to writ.

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;

2. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

3. If the party be detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the judge, before whom the same is returnable;

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return shall be signed by the person making the same, and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by oath.

To be signed and when to be sworn to.

SEC. 10. The person or officer on whom the *habeas corpus* shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Body of prisoner when to be brought up.

SEC. 11. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the judge before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person and bring him immediately before such judge; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such judge shall be, until he shall make return to such writ, and comply with any order that may be made by the judge in relation to the person for whose relief such writ shall have been issued.

Proceedings on disobedience of writ.

SEC. 12. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff upon being brought up, may be committed to the jail of any county other than his own.

Th. Against a sheriff.

SEC. 13. The judge, by whom any such attachment shall be issued, may also, at the same time, or afterwards, issue a precept to the sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith, before such judge, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, un-

Prisoner to be produced.

CHAPTER 1. til he shall be discharged, bailed, or remanded, as the judge shall direct.

Power of the county. SEC. 14. In the execution of such attachment or precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county as in other cases.

Proceedings on return of writ. Wen. 566. SEC. 15. The judge, before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter, or not.

When prisoner to be discharged. 4 Barb. 31; 6 do. 366. SEC. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the judge shall discharge such party from the custody or restraint under which he is held.

When to be remanded. SEC. 17. It shall be the duty of the judge forthwith to remand such party, if it shall appear that he is legally detained in custody, either:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has conclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

3. For any contempt, specially and plainly charged in the commitment, by some court officer or body having authority to commit for the contempt so charged; and

4. That the time during which such party may be legally detained, has not expired.

When to be discharged in civil cases. SEC. 18. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by an officer, in the course of judicial proceeding before him, authorized by law, such prisoner shall only be discharged in one of the following cases:

1. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person;

2. When, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged;

3. When the process is defective in some matter of substance required by law, rendering such process void;

4. When the process, though in proper form, has been issued in a case not allowed by law;

5. When the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or

6. When the process is not authorised by any judgment or decree of any court, nor by any provision of law.

Restriction on judge. Hill 167. SEC. 19. But no judge, on the return of any habeas corpus issued under this chapter, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in section seventeen.

Irregular criminal commitments. SEC. 20. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, upon the hearing thereof, to be guilty of such an

offence, although the commitment be irregular, the judge, before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable, and good bail be offered, or if not, shall forthwith, remand such party.

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SEC. 21. If the party be not entitled to his discharge, and be not bailed, the judge shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such judge to the custody of such officer or person as by law is entitled thereto.

Remanding prisoner, &c.

SEC. 22. Until judgment be given upon the return, the judge before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such judge shall be, or place him in such care, or under such custody, as his age and other circumstances may require.

Custody of prisoner

SEC. 23. When it appears from the return of any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

Notice to parties. Wen. 231.

SEC. 24. When it shall appear from the return that such party is detained upon any criminal accusation, such judge shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the prosecuting attorney of the county in which such judge shall be, if to be found within the county.

Notice to prosecuting attorney. Paige 605, 611.

SEC. 25. The party brought before any judge on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon the judge shall proceed in a summary way to hear such allegations and proofs, as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

Evidence against return, &c. Hill 647, note; 1 Barb. 349.

SEC. 26. Whenever from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the judge before whom the writ is made returnable, the party in whose custody he is, may state the fact in his return to the writ, verifying the same by his oath, and if the judge be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return, and to dispose of the matter, and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the judge shall grant a writ of discharge, commanding those having such person in their custody, to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such judge shall cease from all further proceedings thereon.

Sickness, &c. of prisoner.

CHAPTER 1.

Writ of discharge, &c., how enforced.

SEC. 27. Obedience to any writ of discharge or to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the judge issuing such writ, or granting such order by attachment, in the same manner as herein provided for a neglect to make a return to a writ of *habeas corpus*, and with the like effect in all respects; and the person guilty of such disobedience, shall forfeit to the party aggrieved one thousand dollars, in addition to any special damage such party may have sustained.

Officers protected for obeying.

SEC. 28. No sheriff or other officer shall be liable to any action at law for obeying any such writ or order of discharge, and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such writ or order, he may set up the same in answer in bar of the action.

Not to be re-imprisoned.

SEC. 29. No person who has been discharged by the order of any judge, upon a *habeas corpus*, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause:

May be in certain cases

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence by legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence; or

By court upon indictment, &c.

Upon new proof for process.

2. If after a discharge for defective proof, or for any material defect in the commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence; or

Legal process in civil action.

3. If in a civil action the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or

In another action or in execution.

4. If in any civil action he shall have been discharged from commitment on process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause, after such first action shall have been discontinued.

Penalty for re-committing.

SEC. 30. If any person shall knowingly re-commit, imprison, or restrain of his liberty, or cause to be committed, imprisoned, or restrained of his liberty, for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved one thousand dollars.

Ib. for concealing prisoner after writ allowed.

SEC. 31. Any one having in his custody, or under his power, any person for whose relief a writ of *habeas corpus* shall have been, or is about to be duly issued, pursuant to this chapter, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, and every person who shall knowingly aid or assist in so doing, shall forfeit to the party aggrieved five hundred dollars.

Warrant for prisoner.

SEC. 32. Whenever it shall appear by satisfactory proof that any person is held in illegal confinement, or custody, and that there is

CHAPTER 1.

good reason to believe that he will be carried out of the territory, or suffer some irreparable injury before he can be relieved by the issuing of a *habeas corpus*, any judge authorized to issue such writs, may issue a warrant reciting the facts, and directed to any sheriff, constable, or other person, commanding such officer or person to take such prisoner, and forthwith to bring him before such judge, to be dealt with according to law.

SEC. 33. When the proof mentioned in the last section, shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence, committed in the taking or detaining of such prisoner, the warrant may also contain an order for the arrest of such person for such offence.

For persons detaining him.

SEC. 34. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the judge issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of *habeas corpus* had been issued in the first instance.

Execution of warrant; proceedings.

SEC. 35. If the person having such prisoner in his custody, shall be brought before the judge as for a criminal offence, he shall be examined, committed, bailed or discharged by the judges in like manner as in other criminal cases of the like nature.

Ib. against persons detaining prisoners

SEC. 36. Any officer or other person, refusing to deliver a copy of any order, warrant, process or other authority, by which he shall detain any person, to any one who shall demand such copy, and tender the fees therefor, shall forfeit two hundred dollars to the person so detained.

Refusing copy of process

SEC. 37. Every writ of *habeas corpus* may be made returnable at a day certain or forthwith, as the case may require.

Return day.

SEC. 38. Every such writ shall be indorsed with a certificate that the same has been allowed, and with the date of such allowance, which indorsement shall be signed by the judge allowing the writ.

Allowance.

SEC. 39. Writs of *habeas corpus* shall 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 prisoner to be brought up before the judge 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 enter into an undertaking to such 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 a sum as the judge granting the writ shall direct, not exceeding one thousand dollars, conditioned that such person shall pay the charges for 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. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed, shall make return thereto, in the manner required by section nine of this chapter, and thereupon, the judge granting the writ, may proceed as if the prisoner were

Serving writ, fees, bond, &c.

CHAPTER I. before him, or he may order him to be brought up notwithstanding.

Mode of serving writ. SEC. 40. Every writ of habeas corpus, issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined with any under officer, or other person of proper age, having charge for the time of such prisoner.

Id., where person conceals himself &c. SEC. 41. If the person on whom the writ ought to be served, conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling-house or of the place where the party is confined.

Fees to persons not of officers. SEC. 42. The judge, allowing a writ of habeas corpus, directed to any other than a sheriff, coroner, constable or marshal, may, in his discretion, require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner, shall be paid by the applicant, and in such case, he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

Time for returning writ. SEC. 43. If the writ be returnable at a day certain, such return shall be made, and such prisoner produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Act when to take effect. SEC. 44. This act shall take effect and be in force from and after the first day of May next.

Passed January 5th, 1854.

AN ACT RELATING TO THE QUALIFICATIONS OF JURORS, AND THE MODE OF SELECTING THEM.

CHAPTER I.

QUALIFICATIONS AND EXEMPTION OF JURORS.

- SEC. 1. Qualifications of jurors.
2. Persons exempt from acting as jurors.
3. When persons may be excused from acting as jurors.

Qualifications of jurors. SEC. 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That a person shall not be competent to act as a juror, unless he be:

- 1. A citizen of the United States;
2. An elector of the county in which he is returned;
3. Over twenty one and under sixty years of age; and
4. In possession of his mental faculties;
5. Nor shall any person be competent to act as a juror who has

CHAPTER 2. been convicted of a felony or a misdemeanor involving moral turpitude.

SEC. 2. A person shall be exempt from liability to act as a juror, if he be:

- 1. A judicial officer;
2. Any other civil officer of this territory or of the United States, whose duties at the same time are inconsistent with his attendance as a juror;
3. An attorney or counsellor;
4. A minister of the gospel, or a priest of any denomination;
5. A teacher in a college, academy or school;
6. A practising physician;
7. An officer, keeper or an attendant of an alms-house, poor-house, hospital, asylum or other charitable institution, created by or under the laws of this territory;

8. The captain, mate, or other officer or any person employed on board of a steamer, vessel or boat navigating the waters of this territory; also, ferrymen, millers and supervisors of roads.

SEC. 3. A person may be excused from acting as a juror, when for any reason his interests or those of the public, will be materially injured by his attendance, when his own health or the sickness or death of a member of his family requires his absence.

CHAPTER II.

MANNER OF FORMING JURY LIST.

- SEC. 1. County commissioners when and how to form jury list.
2. Persons to be selected as jurors.
3 & 4. Jury list; what to contain.
5. Clerk to keep jury box, ballots how deposited.

SEC. 1. The county commissioners of each county shall at their first session of each year, or, in case of omission or neglect, then at any following session, make from the assessment roll of the county, a list containing the names of persons to serve as jurors, until new lists be returned.

SEC. 2. In preparing the jury list, the names of those persons only shall be selected who are known or believed to be possessed of the qualifications prescribed in this act, and not entitled to exemption.

SEC. 3. The jury list shall contain the names of one hundred and fifty persons, if there are that number of qualified jurors within the county. They shall be apportioned among the different sections of the county, according to the number of persons on the assessment roll.

SEC. 4. The jury lists shall contain the christian and surname at length, and the place of residence and occupation of each person named therein, and shall be certified by the county commissioners and filed with their clerk.

SEC. 5. The said clerk shall keep in his office a sufficient box, in which he shall prepare and deposit separate ballots, containing the names of all the jurors on the list. Each ballot shall be folded so that the name cannot be seen.

CHAPTER III.

MANNER OF DRAWING AND SUMMONING JURY.

- SEC. 1. Clerk to draw ballots; who to assist him.
- 2. Drawing when and where to take place.
- 3. Drawing, how to be conducted.
- 4. Trial jury; where and how to be drawn.
- 5. Clerk, &c., to sign the minutes of drawing.
- 6. Certified list of trial and grand jurors to be given to sheriff.
- 7. Sheriff when and how to summon grand jurors.
- 8. Sheriff to return list of jurors summoned.
- 9. Jurors, when and how punished for failing to appear.
- 10. Number of jurors to constitute grand jury; deficiencies how filled.

Mode of drawing. SEC. 1. The clerk of the board of commissioners shall call to his assistance the sheriff or his deputy, or a justice of the peace, and proceed to draw the ballots as hereinafter provided.

When and where the drawing shall take place. SEC. 2. The drawing shall take place at the office of the said clerk, not less than ten nor more than thirty days before the holding of each regular term of court, provided that when any judge shall appoint a district court for the indictment and trial of any person, the drawing may take place at any time ordered by the judge, and the jurors for such appointed court shall be summoned forthwith by the sheriff.

Drawing how conducted. SEC. 3. The drawing shall be conducted as follows:
1. The clerk shall shake the box containing the ballots so as to mix them as much as possible;

For grand jury. 2. He shall then draw out of the box twenty-three ballots, which said twenty-three ballots first drawn shall constitute the grand jury;

Each name drawn to be entered. 3. A minute of the drawing shall be kept, in which shall be entered the name contained on every ballot drawn, before any other shall be drawn.

Drawing of trial jury. SEC. 4. After the grand jury is completed, the clerk shall proceed to draw twenty-four ballots, which shall constitute the trial jury.

Minutes to be signed and filed. SEC. 5. The minutes of the drawing shall then be signed by the clerk and the attending officer, and forthwith filed in the office of the clerk of the board of commissioners.

Certified list to be given to sheriff. SEC. 6. A list of the names of persons drawn as grand jurors, and a list of the names of persons drawn as trial jurors, shall then be made, and certified by the clerk, and delivered to the sheriff of the county without delay.

Summoning jurors. SEC. 7. At least five days before the opening of the court, the sheriff shall summon the persons named in the lists delivered to him, to attend the court, by giving written notice to each of them personally, or by leaving the same at his place of residence, with some person of suitable age and discretion.

Return of lists. SEC. 8. The sheriff shall also return the lists to the district court at its opening, specifying the persons summoned, and the manner in which each was summoned.

Fine for default. SEC. 9. Every person who shall fail to appear when lawfully summoned as a grand or petit juror, without having a reasonable

excuse, shall be considered as being guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars, for the use of the county, unless good cause be shown for such default, at or before the next term of said court; and it shall be the duty of the clerk of the district court, when directed by the court, to issue a summons against such delinquent, when such person shall not come in without process, to show cause at the next term of court why he should not be fined for such contempt; *Provided*, that the oath or affirmation of any such delinquent, shall at all times be received as evidence in his favor.

SEC. 10. When of the persons summoned as grand jurors, sixteen or any number over shall attend, they shall constitute the grand jury. If any number less than sixteen shall attend, they shall be placed upon the grand jury, and the court shall order the sheriff to summon from the body of the county a sufficient number of persons to make up the deficiency. If the grand jury shall be diminished by challenge, or disqualifications, the panel may be filled in like manner.

Deficiency of grand jurors how filled.

CHAPTER IV.

FORMATION OF JURIES.

- SEC. 1. Jury how drawn.
- 2. When court may order sheriff to summon more jurors.
- 3. Clerk's certificate of juror's fees: fees how paid.
- 4. Privilege of jurors.
- 5. Act when to take effect.

SEC. 1. The clerk of the district court, shall prepare separate folded ballots, containing the names of the petit or trial juries, and deposit them in a box. He shall then draw from the box twelve names, and the persons drawn shall form a jury unless some are rejected by challenge, disqualification, or otherwise, in which case the clerk shall continue to draw until the panel is complete.

Jury how drawn.

SEC. 2. If necessary, the court may order the sheriff to summon persons from the body of the county to fill up the trial jury.

Vacancies how filled.

SEC. 3. It shall be the duty of the clerk of the district court at the close of each term of said court, to make out a list of the grand and petit juries, certifying the number of days of attendance, and amount of compensation due to each one; which certificate shall be presented to the board of county commissioners and allowed as other demands against said county; *Provided*, that no juror shall be paid out of the county treasury for any day's attendance as a juror in the district court of the territory, for which he may have received, or be entitled to receive pay as a juror of the district court of the United States.

Certificate of juror's fees.

SEC. 4. All grand and petit jurors shall be privileged from arrest, in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going to and returning from the same; *Provided*, that when any grand jury shall make presentment of one of their own body, he shall be liable to be proceeded against in the usual form.

Privilege of jurors.

CHAPTER 1. SEC. 5. This act shall take effect and be in force from and after the first day of May next.

Passed January 10th, 1854.

AN ACT FOR THE LIMITATION OF ACTIONS.

CHAPTER I.

LIMITATION OF ACTIONS.

- SEC. 1. Time of commencing actions in general. 2. Within twenty years. 3. Within ten years. 4. Within six years. 5. Within three years. 6. Within two years. 7. Within one year. 8. Actions for penalties, &c., by any person who will sue, when to be brought. 9. Actions for relief not before provided for. 10. When cause of action accrued, in an action upon a current account. 11. Actions by the territory subject to the same limitation. 12. When action deemed to have been commenced. 13. Attempt to commence deemed equivalent to commencement of action. 14. Exception when defendant is out of territory or concealed. 15. Exceptions as to persons under disabilities. 16. Provisions where person entitled, dies before limitation expires. 17. In actions by aliens, time of war to be deducted. 18. Time of stay, by injunction, or statutory prohibition, to be deducted. 19. Provision when judgment has been reversed. 20. Disability must exist, when right of action accrued. 21. Where several disabilities, limitation does not attach, till all removed. 22. Acknowledgments or new promise must be in writing. 23. Limitation to commence from time of partial payment. 24. No cause of action barred by statute of state where it accrued, is actionable. 25. This chapter not to extend to actions already commenced. 26. Act when to take effect.

Time for commencing civil actions. SEC. 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That actions shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute. But in the district court the objection that the action was not commenced within the time limited, can only be taken by answer.

Within twenty years 3 Hill 85; 6 do. 634. SEC. 2. The periods prescribed in the preceding section for the commencement of actions, shall be as follows:

Within twenty years:

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seised or possessed of the premises in question, within twenty years before the commencement of the action.

Within ten years. 7 Wen. 242; 5 Hill. 409. SEC. 3. Within ten years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States;

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Within six years. 1 Sandf. 98, 220; 8 Barb. 171.

- 2. An action upon a sealed instrument. SEC. 4. Within six years: 1. An action upon a contract or liability, express or implied, excepting those mentioned in the last section; 2. An action upon a liability created by statute, other than a penalty or forfeiture; 3. An action for waste or trespass upon real property; 4. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof; 5. An action for criminal conversation, or for any other injury to the person or rights of another, not hereinafter enumerated. 6. An action for relief, on the ground of fraud in cases cognizable in a court of chancery; the cause of action in such case not to be deemed to have accrued, until the discovery by the aggrieved party of the facts constituting the fraud.

6 Barb. 436.

SEC. 5. Within three years:

Within three years. 13 Wen. 40; 19 do. 283.

1. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office; or by the omission of an official duty; including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the territory, except where the statute imposing it prescribes a different limitation.

1 Coms. 47.

SEC. 6. Within two years:

Within two years.

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the territory.

SEC. 7. Within one year:

Within one year. 7 Wen. 459.

An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned on civil process.

SEC. 8. An action upon a statute for a penalty given in the whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offence; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the territory, by the district attorney of the county where the offence was committed.

Actions for penalties, &c., by any person who will sue.

SEC. 9. An action for relief not hereinbefore provided for, shall be commenced within ten years after the cause of action shall have accrued.

Actions for relief, not before provided for.

SEC. 10. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

Action on a current account. 1 Sanf. 220.

SEC. 11. The limitations prescribed in this chapter, shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

Actions by the territory subject to the same limitation. When action deemed to

SEC. 12. An action shall be deemed commenced as to each de-

CHAPTER 1. defendant, when the summons is served on him, or on a co-defendant who is a joint contractor, or otherwise united in interest with him.

have been commenced. Attempt to commence deemed equivalent to commencement.

SEC. 13. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the summons is delivered, with the intent that it shall be actually served to the sheriff, or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt shall be followed by the first publication of the summons, or the service thereof within sixty days.

Exception where defendant is out of the territory or concealed. 1 Deno 151; 5 do. 532; 2 Barb. 309; 1 do. 76; 2 Sanf. 518.

SEC. 14. If when the cause of action shall accrue against any person, who shall be out of the territory, or concealed, such action may be commenced within the terms herein respectively limited, after the return of such person into the territory, or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this territory, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exception as to persons under disabilities.

SEC. 15. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be, at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life; or
4. A married woman;

The time of such disability shall not be a part of the time limited for the commencement of the action.

Provision where person entitled dies before limitation expires. 10 Wen. 278.

SEC. 16. If a person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time, and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

In actions by aliens time of war to be deducted.

SEC. 17. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Time of stay by injunction or statutory prohibition to be deducted.

SEC. 18. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition, shall not be a part of the time limited for the commencement of the action.

Provisions where judgment has

SEC. 19. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be re-

versed on appeal, the plaintiff, or if he die, and the cause of action survives, his heirs or representatives, may commence a new action within one year after the reversal.

SEC. 20. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 21. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

SEC. 22. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

SEC. 23. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

SEC. 24. When the cause of action has arisen in another state, territory or country, between non-residents of this territory, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this territory.

SEC. 25. This chapter shall not extend to actions already commenced, but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revised by the provisions of this chapter.

SEC. 26. This act shall take effect and be in force from and after the first day of May next.

Passed Jan. 6th, 1854.

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been reversed.

Disability must exist when right of action accrued. Where several disabilities all must be removed. Acknowledgment or new promise must be made in writing.

Limitation from time of partial payment.

When cause of action is barred by the statutes of another state.

This chapter not to extend to actions already commenced.

AN ACT TO REGULATE PROCEEDINGS IN SUITS IN EQUITY.

CHAPTER I.

SUITS IN EQUITY.

- TITLE I. *Proceedings in Equity.*
 TITLE II. *Of Writs of Ne Exeat.*
 TITLE III. *Of the Granting of Injunctions.*
 TITLE IV. *Of the Foreclosure of Mortgages.*
 TITLE V. *Miscellaneous Provisions.*

TITLE I.

Proceedings in Equity.

- SEC. 1. Exclusive jurisdiction of district court in equity.
 2. Suits in equity where brought.
 3. Complaint, how addressed and what to contain.
 4. Pleadings of defendant.
 5. Exceptions for insufficiency abolished, allegations deemed true unless denied.

- TITLE 1. SEC. 6. Complaint and answer, how verified.
 7. Rule requiring answer to be overcome, by two witnesses, &c., abolished.
 8. Examination of parties, consequence of parties refusing to be examined.
 9. Admissions of fraud &c., not to be used except for relief.
 10. In suits for recovery of money, set-offs, how to be allowed.
 11. Subpœna, how to issue and when returnable.
 12. Subpœnas, when several defendants reside in different counties.
 13. Service, how made.
 14. Copy of bill to accompany subpœna.
 15. Notice of suit by order, when and how given to non-residents.
 16. Notice of suit by order when defendant cannot be found by sheriff.
 17. When names of parties are unknown to defendant.
 18. Order against non-resident, absent or unknown defendant, how published.
 19. When complainant may serve copy of bill out of territory.
 20. Delivery, in such case how made.
 21. Proceedings when several absent defendants have not been served.
 22. Time allowed defendant to plead after service of subpœna.
 23. Proceedings when defendant neglects to plead.
 24. Defendant may exhibit interrogatories to complainant.
 25. Complainant's answer evidence.
 26. Complainant, when required to answer cross bill.
 27. Rules by consent to be entered.
 28. Amendments, how allowed.
 29. Cause, when deemed at issue.
 30. Issue of fact, how tried.
 31. Rules for taking depositions.
 32. Bill, when dismissed.
 33. Proceedings if defendant does not appear.
 34. Complainant to give bond after decree and before issue of process against absent defendant.
 35. When defendant may have the decree opened.
 36. Rights of bona fide purchaser protected.
 37. Effects of final decree.
 38. Decree, when to be considered executed.
 39. Decree, how enforced.
 40. Certain duties not to abate.
 41. Proceedings by surviving parties.
 42. Bill of revivor not necessary to revive suits against representatives, &c.
 43. Service of order of revival, &c.
 44 & 45. Proceedings in such cases, if no answer or disclaimer.
 46 & 47. Husband, how made a party, and his privileges as such.

Jurisdiction of district court in equity. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, that the district courts shall have exclusive jurisdiction of all suits in equity.

Suit where brought. SEC. 2. A suit in equity shall be brought in the county in which an action at law might be brought for a like purpose.

Complaint what to contain. SEC. 3. The bill of the complainant shall be addressed "to the District Court of the county of —," and shall consist of a statement of the facts constituting the cause of action, and a prayer for specific relief; upon which any relief may be given applicable to the facts stated; the charges and interrogatories, the confederacy and jurisdiction clauses, and the prayers for answer, for process, and for general relief shall be omitted.

Pleadings of defendant. SEC. 4. The defendant may disclaim, demur, plead or answer as heretofore, omitting all savings, protestations, prayers for dismissal, and other matters of mere form.

Exceptions for insufficiency abolished. SEC. 5. Exceptions for insufficiency are hereby abolished, and every allegation in the bill not directly denied by the answer, or denied on belief, shall be taken to be true until disproved.

Verification of complaint and answer. SEC. 6. The bill of the complainant, as well as the answer of the defendant, shall be verified by oath, to the effect that the same is true to the knowledge of the person making it, except as to mat-

ters stated on information and belief, and as to those matters that he believes it to be true.

SEC. 7. The rule requiring the answer to be overcome by two witnesses, or their equivalent, is hereby abolished, and the credibility and effect of the answer, as evidence, shall be judged of as the statement of a witness in the same situation.

SEC. 8. Either party may examine the adverse party as a witness, and his refusal to testify, shall be taken as a confession of the bill or answer, as the case may be, saving the privilege of declining to answer questions which might subject the party to prosecution for felony; but an improper refusal to answer, under pretence of privilege, and other evasion in testifying, shall be taken as proof of the particular fact sought to be established.

SEC. 9. No person shall be privileged from disclosing his fraudulent conveyances, confessions of judgment, or other fraudulent, illegal, or improper acts or omissions, affecting the rights of others, but his admissions shall not be used against him except for the relief of the injured party.

SEC. 10. In suits for the payment, or recovery of money, set-off shall be allowed in the same manner, and with the like effect, as in actions at law.

SEC. 11. Upon the filing of the bill the clerk shall issue a subpoena, returnable to the next term of the court, and directed to the sheriff of the county in which the defendant resides, requiring him to summon the defendant to appear and answer the bill.

SEC. 12. When there are several defendants residing in different counties, a separate subpoena shall be issued to each county, including all the defendants residing therein.

SEC. 13. Every subpoena or process for appearance shall be served on the person to whom it is directed, by giving him a copy thereof, or if he be not found, by leaving a copy with some white person of the family above the age of fourteen years, at the dwelling-house or usual place of abode of the defendant.

SEC. 14. A copy of the bill shall accompany the subpoena and be delivered to the defendant, or left at the dwelling-house or place of abode of the defendant. If there be more than one defendant, such copy shall be given to the defendant, who shall be first served with the subpoena.

SEC. 15. If any complainant or any person for him, shall file with his bill an affidavit, stating that part or all the defendants are non-residents of the territory, the clerk shall make an order directed to the non-residents, notifying them of the commencement of the suit, and stating briefly the object and general nature of the bill, and requiring them to appear on a day to be named therein, (allowing sufficient time for publication) to appear and answer the bill, or that the same will be taken as confessed.

SEC. 16. When a subpoena shall be issued against any defendant, and the sheriff to whom it is directed, shall make return that the defendant cannot be found, the court being first satisfied that process cannot be served, shall make an order as is required in the preceding section in the case of non-resident defendants.

SEC. 17. If any complainant shall allege in his bill that there are, or that he verily believes there are persons interested in the subject

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Rule requiring answer to be overcome by two witnesses, &c., abolished. Examination of parties, &c.

Admissions of fraud, &c., not to be used except for relief.

Set-offs.

Subpœna when issued.

Subpœnas when defendants reside in different counties.

Ib. How served.

Ib. Of copy of bill.

Notice by order non-residents.

When defendant cannot be found.

Ib. when names of parties are

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unknown to complainant

matter of the bill, whose names he cannot insert therein because they are unknown to him, and shall describe the interest of such persons, and how derived so far as his knowledge extends, and shall verify such allegations by affidavit to his bill annexed, the court, or in vacation, the judge or clerk thereof, shall make an order as in case of non-residents, reciting moreover all allegations in relation to the interest of such unknown parties.

Publication of order.

SEC. 18. Every order against non-resident, absent, or unknown defendants, shall be published in some newspaper printed in this territory, for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

Complainant may serve copy of bill out of territory.

SEC. 19. The complainant may cause a copy of the bill with a notice of the suit, to be delivered to any known defendant residing or being out of this territory, at any place within the United States or their territories, two months before the commencement of the term at which such defendant is required to appear.

To. Delivery how made, &c.

SEC. 20. Such delivery may be made by any white person above the age of twenty-one years, who is a competent witness in the cause, and being proved by the affidavit or deposition of such person, shall be as effectual as the service of the subpoena, and the delivery of a copy of the bill in this territory.

Proceedings where several absent defendants, not served.

SEC. 21. When there are several defendants, some of whom have not been served with process, and do not appear, the complainant may proceed against those, if any, who do appear, unless the court for good cause shall otherwise direct; or he may continue the cause, and proceed to bring in the other defendants by process or publication, as the case may require.

Time allowed defendant to plead after subpoena.

SEC. 22. If the subpoena shall have been served thirty days before the return day thereof, the defendant shall file his plea, demurrer or answer to the bill, on or before the third day of the term at which the process is returnable. If it shall have been served less than thirty days before such return day, the defendant shall file his plea, demurrer or answer within thirty days next after such return day. In either case the court may for just cause, allow the defendant further time to file the same.

Proceedings when defendant neglects to plead.

SEC. 23. If the defendant shall not file his plea, demurrer or answer within the time prescribed by the last section, the bill may be taken as confessed, and the court may thereupon, at its discretion, render a decree thereon, or order the complainant to prove the allegations in his bill, or examine him on oath, touching such allegations, and such decree shall then be made, as the court shall deem just and equitable.

Interrogatories to complainant.

SEC. 24. The defendant, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him on oath or affirmation, unless excepted to, and the exception allowed; and if the complainant shall not answer such interrogatories within the time appointed by the court, his bill may be dismissed with costs.

His answer, evidence.

SEC. 25. The answer of the complainant to such interrogatories, shall be evidence in the cause, in the same manner as the answer of the defendant.

TITLE 1.
Answer to cross-bill.

SEC. 26. If a cross-bill be filed by the defendant, he shall put in his answer to the complainant's bill before the complainant shall be required to put in his answer to such cross-bill.

Rules by consent to be entered.

SEC. 27. All rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time or vacation.

Amendments how allowed.

SEC. 28. 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 actions at law.

When at issue.

SEC. 29. Every cause in a court of chancery shall be deemed to be at issue on filing a replication, or at the expiration of the time therefor, if none be filed, nor further time allowed, and it shall not be necessary to issue a subpoena, or enter a rule to rejoin.

Issues of fact how tried.

SEC. 30. If there be an issue of fact which shall render the intervention 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.

Depositions how taken.

SEC. 31. Depositions may be taken in cases in chancery, in the same manner as is provided in actions at law; and the rules of evidence shall be the same in chancery as at law.

Bill when dismissed.

SEC. 32. If the complainant shall not attend at the time appointed for the hearing of the cause, his bill may be dismissed with costs.

Proceedings if defendant does not appear.

SEC. 33. If the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents and proofs shall be read, the witnesses examined, and the court shall thereupon make such decree as it shall deem equitable and just, or dismiss the complainant's bill.

When complainant to give bond after decree.

SEC. 34. In cases where a decree shall be made upon any bill in equity against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the re-payment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear as hereinafter provided not to have been due to him; and in case no security shall be given, no process or execution shall issue to compel the performance of the decree so made against such absent defendant; but the property of such absent defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as it may think just and proper respecting the same.

When defendant may

SEC. 35. In case any such absent defendant, against whom a