

TITLE 1. decree shall be made, his heirs, devisees, executors, administrators or assigns, as the case may require, shall, within one year after notice be given to him of such decree, or within three years after such decree shall have been made, if no notice as aforesaid shall have been given, petition the court touching the matter of such decree, and pay or secure, or cause to be paid, such costs as the court may think reasonable to order and direct; then, and in such case, the person aforesaid petitioning, may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had, as if such absent defendant had appeared in due season, and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of review in the said court for an account and settlement of the amount which was really due, and owing to the complainant at the time of the decree, to compel the complainant to refund what he may wrongfully have recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding; but in case no petition shall be presented, or bill filed as before provided for, within one year from the time of notice as aforesaid shall be given, due proof thereof being made, or within three years from the decree, such decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree; and the decree shall be executed and performed as in cases where the defendant had duly appeared.

When may file bill of review.

Rights of bona fide purchaser protected.

Final decree.

Decree to be considered executed.

Decrees how enforced.

Certain suits not to abate.

May abate as to some of the parties.

SEC. 36. The title to any real or personal property which shall have passed into the hands of a *bona fide* purchaser, by virtue of the former decree, shall not be affected by any proceedings under the last section.

SEC. 37. A final decree of a court of chancery shall have the same operation, force and effect from the time of signing the same, as a judgment at law.

SEC. 38. When a decree shall be made for a conveyance, release, or acquittance in any court of chancery, and the party against whom any such decree shall pass, fails to comply therewith by the time appointed, such decree shall be considered and taken in all courts of law and equity, to have the same operation and effect, and be as available as if the conveyance, release or acquittal had been executed conformably to such decree.

SEC. 39. A court of chancery, or a judge thereof in vacation, shall have power to enforce its decrees, orders and injunctions by attachment, sequestration, or by such process against the real or personal property, or against the person of any defendant, as the usages of chancery allow; and such process shall be obeyed, executed and returned by the sheriff or other officer to whom the same shall be directed, in like manner and under the same penalties as is provided in cases of process issuing from a court of law.

SEC. 40. When the cause of action shall survive, no suit in chancery shall abate by the death of one or more of the complainants or defendants; but upon satisfactory suggestion to the court, the cause shall proceed in favor of or against the surviving parties.

SEC. 41. When one or more of the complainants or defendants shall die, and the cause of action shall not survive, the suit shall

abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit. **TITLE 2.**

SEC. 42. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but the court may, by order, direct the same to stand revived upon the petition of the complainant. **Bill of revivor.**

SEC. 43. A copy of such order shall be served upon the representatives against whom the revival is ordered, who shall be allowed thirty days after service, or such further time as the court may allow to appear and answer, or disclaim. **Order of revival to be served, &c.**

SEC. 44. If they shall not within the time prescribed in the last section, appear and answer or disclaim, the court, upon due proof of the service of such order, may cause their appearance to be entered, and in such case, the answer of the deceased party shall be deemed the answer of such representatives. **Ib. Proceedings if no answer.**

SEC. 45. If no answer have been filed by the deceased party, the court may order the bill to be taken as confessed against such representatives, or compel them to answer by attachment or otherwise. **Ib.**

SEC. 46. If a female party to a suit marry at any time before a final decree, her husband may, on his application, be made a complainant or defendant with her, on the order of the court, in which the suit is pending, or the judge thereof, to be granted on due proof of the marriage, and after notice to such female party, and the other parties to the suit. **Husband, how made a party.**

SEC. 47. Such husband may also be made a party with his wife, on the application of any other party to the suit, by petition, upon proof of the marriage, and notice to such husband and wife, and the other parties to the suit. In such cases the husband may contest all facts in the same manner as if he had originally been made a party. **Ib., his privileges as a party.**

TITLE II.

Writs of Ne Exeat.

SEC. 48. *Ne exeat*, by whom granted.
49. Proceedings to obtain *ne exeat*.
50. When *ne exeat* may be discharged.

SEC. 48. The district court, as a court of chancery, or any judge thereof in vacation, may grant writs of *ne exeat*, to prevent any person from going out of the territory, until he shall give security. **Ne exeat, how granted.**

SEC. 49. No writ of *ne exeat* shall be granted, but upon bill or petition filed, and affidavit of the complainant, or some other person, of the truth thereof; and the court or judge granting the writ, shall direct to be indorsed thereon, the amount of the security to be given to the defendant. **Proceedings to obtain writ.**

SEC. 50. If the defendant shall, by answer or otherwise, satisfy the court or judge granting such writ of *ne exeat*, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged. **When writ may be discharged.**

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TITLE III.

Of Granting Injunctions.

- SEC. 51. Injunction, when to issue.
 52. How granted.
 53. Not to stay proceedings at law unless undertaking be given.
 54. Proceedings when injunction for recovery of money has been dissolved.
 55. Proceedings of sheriff, when execution debtor obtains injunction.

When to issue. SEC. 51. No writ of injunction shall be issued in any case, but upon bill or petition filed, verified by the oath of the person applying for such injunction, or by some competent witness.

How granted. SEC. 52. Writs of injunction may be granted by the court or a judge thereof in vacation; but no injunction shall issue in any case, until the complainant shall execute a bond or undertaking, with one or more sureties, in such sum as the court or judge shall deem sufficient, conditioned that the complainant will abide the decision which shall be made thereon, and pay all sums of money, damages and costs that may be adjudged against him if the injunction should be dissolved.

Not to stay proceedings at law unless undertaking be given. SEC. 53. No injunction shall operate to stay proceedings at law, before or after judgment, until the party obtaining the same shall give a bond or undertaking with sufficient security, to be approved by the clerk of the court, in the amount required by the court or judge granting such injunction, for the payment of all moneys and costs due, or to become due from the complainant in such action, or judgment at law, and all moneys and costs that may be decreed against him in case such injunction shall be dissolved.

Proceedings when injunction for recovery of money has been dissolved. SEC. 54. In all cases where an injunction shall be allowed to stay proceedings at law in an action for the recovery of money only, upon the dissolution of the injunction and dismissal of the bill, the court shall render a decree in favor of the defendant (plaintiff at law) for the debt, or damages, interest and costs accruing in chancery, together with five per centum penalty on the amount of debt or damages and interest.

Proceedings of sheriff when execution debtor obtains injunction. SEC. 55. When a sheriff or other officer has received the whole or any part of the money for the collection of which an execution has issued, and the person against whom such execution has issued, his executors or administrators shall obtain an injunction to stay the proceedings under such execution, the sheriff or other officer shall repay to the person against whom such execution issued, his executors, administrators or attorney of record, the money so received, or such part thereof as may be enjoined, retaining sufficient to pay the costs of the collection by execution; *Provided*, the money has not been paid over to the plaintiff, his executors, administrators or attorney of record.

TITLE IV.

Of the Foreclosure of Mortgages.

- SEC. 56. When sale of premises may be decreed.
 57. Payment of balance due after sale may be decreed.
 58. No proceedings to be had at law during pendency of suit.
 59. Payment of balance by surety of mortgagee may be decreed.
 60. Proceedings at law to be stated in bill.

TITLE 4.

- SEC. 61. In certain case, execution at law must have been returned.
 62. Sales of mortgaged premises, when, and by whom to be made.
 63. Rights of redemption by mortgagor, or lien creditor after sale.
 64. Sheriff's deed, its effect, &c.
 65. Proceeds of sale, how applied.
 66. Surplus, when to be invested.
 67. Defendant may dismiss bill, on paying portions, &c., due.
 68. Proceedings if payment made after decree of sale.
 69. Proceedings if no payment made; when part of premises to be sold.
 70. Proceedings to collect subsequent instalments.
 71. In what cases the whole of mortgaged premises to be sold.
 72. Proceeds of sale, in such cases, how applied.

SEC. 56. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage and costs of suit.

SEC. 57. When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power not only to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary executions, as in other cases, against other property of the mortgagor.

SEC. 58. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceeding whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

SEC. 59. If the mortgage debt be secured by the obligation or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

SEC. 60. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof has been collected or paid.

SEC. 61. If it appear that any judgment has been obtained in a suit at law for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

SEC. 62. All sales of mortgaged premises under the decree of a court of chancery, shall be made by the sheriff in the county where the premises, or some part of them are situated, unless otherwise directed in the decree of sale.

SEC. 63. Sales of mortgaged premises shall be made by the

Sale of premises may be decreed.

Payment of balance due after sale may be decreed.

How compelled.

No proceedings to be had at law during pendency of suit.

Payment by surety of mortgagor. 9 Paige 91.

Bill to state proceedings at law. 4 Paige 550; 8 do. 648.

When execution must be returned. 4 Paige 550.

Sales by whom and when to be made.

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Ib. Rights of redemption by mortgagor or lien creditor after sale. Sheriff's deed; its effects, &c.

sheriff or other officer, in the same manner as other sales of real property on execution, unless otherwise directed by the court; and the mortgagor, or any lien creditor shall have the same rights of redemption after a sale.

SEC. 64. After the right of redemption shall have passed, deeds shall be executed by the sheriff or other officer, which shall vest in the purchaser the same estate, and no other or greater than would have vested in the mortgagee if the equity of redemption had been foreclosed; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against either of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Proceeds of sale.

SEC. 65. The proceeds of every such sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

Surplus when to be invested.

SEC. 66. If such surplus, or any part thereof, shall remain in the said court for the term of three months without being applied for, the district judge may direct the same to be put out at interest, subject to the order of the court for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

When bill to be dismissed on payment of sum due, &c. 2 Coms. 360.

SEC. 67. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest, with costs.

Proceedings to stay in certain cases

SEC. 68. If after a decree of sale entered against a defendant in such case, he shall bring into court the principal and interests due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court upon a subsequent default in the payment of any portion or instalment of the principal, or any interest thereafter to grow due.

When part of premises to be sold. 2 Paige 302.

SEC. 69. If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the court may direct a reference to a master to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony: and if it shall appear that the same can be sold in parcels without injury to the interests of the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on the mortgage, with costs: and such decree shall remain as security for any subsequent default.

Subsequent instalments, &c.

SEC. 70. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principal, or of any interest due upon such mortgage, the court may, upon petition of the complain-

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ant, by a further order founded upon such first decree, direct a sale of so much of the mortgage premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon: and the same proceedings may be had as often as a default shall happen.

When whole of premises to be sold.

SEC. 71. If in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall in the first instance, be entered for a sale of the whole premises accordingly.

Application of proceeds.

SEC. 72. In such case the proceeds of such sale shall be applied as well to the interest portion or instalment of the principal due, as towards the whole, or residue of the sum secured by such mortgage and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the legal interest for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the instalments or portions of the principal, or the interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

TITLE V.

Miscellaneous Provisions.

- SEC. 73. Master in chancery, how appointed, his powers, compensation.
- 74. Receiver not to be appointed until after notice given.
- 75. Supreme court may prescribe rules for court of chancery.
- 76. Appeals from chancery to supreme court.
- 77. Act when to take effect.

SEC. 73. Whenever it shall be deemed necessary, the court may appoint a master in chancery; such master shall be sworn and give bond if required, for the faithful performance of the duties assigned him, and shall have power to administer oaths in any proceeding before him, and shall receive for his services such reasonable compensation as the court may allow.

Master in chancery how appointed; his compensation.

SEC. 74. No receiver shall be appointed in any cause commenced or pending in chancery, until after notice is given to the adverse party.

Receiver how appointed.

SEC. 75. It shall be lawful for the supreme court from time to time, to make, alter or amend, or revoke any rule of practice, so as to obviate doubts, advance justice and expedite suits in the courts of chancery, so that the same be not contrary to the provisions of any statute.

Supreme court may prescribe rules for chancery.

SEC. 76. Any person aggrieved by the final decision in a suit in equity, may appeal to the supreme court within the same time and under the same regulations as are prescribed for prosecuting writs of error at law, so far as the same may be applicable, but without impairing the general discretionary powers of courts of equity in cases of appeal.

Appeals from chancery to supreme court.

SEC. 77. This act shall take effect and be in force from and after the first day of May next.

Act when to take effect.

Passed January 23d, 1854.

CHAPTER 2.

AN ACT TO DEFINE CRIMES AND MISDEMEANORS, AND REGULATE CRIMINAL PROCEEDINGS.

CHAPTER I.

OF CRIMES AND PUNISHMENTS.

- SEC. 1. Crime or public offence defined.
 2. Felony defined.
 3. Misdemeanor defined.
 4. All felonies and misdemeanors indictable, unless, &c.

Definition of crime. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That a crime or public offence, is an act or omission forbidden by law, and punishable by death, imprisonment, fine, removal from office, or disqualification to hold or enjoy any office of honor, trust or profit, under the laws of this territory.

Ib. of felony. SEC. 2. A felony is a public offence punishable with death, or which is or may be punishable by imprisonment in the penitentiary.

Ib. of misdemeanor. SEC. 3. Every other public offence is a misdemeanor.

Felonies and misdemeanors indictable. SEC. 4. All felonies and misdemeanors are, unless some other express provision is made by law, indictable offences.

CHAPTER II.

OF RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENCES.

- SEC. 1. Person not held to answer except on presentment or indictment.
 2. Rights of defendants in criminal actions.
 3. Person not to be convicted, except upon confession or verdict of jury.
 4. No person held to answer a second indictment, &c.
 5. Technical acquittal, not a bar to a second indictment.
 6. Person not to be punished for crime, until after a legal conviction.

Persons not held to answer unless on indictment or presentment. SEC. 1. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury; except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia, when in actual service in times of war, or public danger.

Rights of defendant. SEC. 2. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial, by an impartial jury of the county wherein the offence shall have been committed, except when the crime is committed on a lake, river, bay, sound, or other stream or body of water situate in two or more counties; or where the boundary line of counties are not distinctly marked out, and there is doubt as to the county in which the crime was committed; then

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 the trial may be had in any county bordering on such lake, river, bay, sound, or other stream or body of water, and opposite the place where the crime was committed, or in either county having such uncertain boundaries.

SEC. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court.

SEC. 4. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by the jury, upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted.

SEC. 5. If any person indicted for an offence, shall on his trial be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned again on a new indictment, and he may be tried and convicted for the same offence, notwithstanding such former acquittal.

SEC. 6. No person charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the case, and of the person.

CHAPTER III.

OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

- SEC. 1. As to what constitutes murder in the first degree.
 2. & 3. Murder in the second degree.
 4. What proof of malice necessary to constitute murder.
 5. Degree of guilt, how ascertained.
 6. Homicides less than murder.
 7. Justifiable homicide by public officers.
 8. Justifiable homicide by individuals.
 9. Excusable homicide.
 10. Verdict of not guilty to be rendered in certain cases.
 11. 12, 13, 14, & 15. Manslaughter.
 16. Punishment of manslaughter.
 17. When person tried for murder, may be convicted of manslaughter.
 18. Punishment of rape.
 19. Punishment for compelling woman to marry.
 20. Punishment of mayhem.
 21. Punishment for killing in a duel, in territory.
 22. Punishment of accessories in duel.
 23. Punishment of principal, &c. for duelling out of territory.
 24. Punishment for engaging in duel, challenging, &c.
 25. Punishment for accepting, carrying a challenge, &c.
 26. Punishment for posting another, &c.
 27. Punishment for being armed and beating another with cowhide.
 28. Punishment for assault, with intent to commit murder.
 29. Punishment for attempt to poison.
 30. Punishment for robbing, being armed.
 31. Punishment for assault, with intent to rob, &c., being armed.
 32. Punishment for robbing, not being armed.
 33. Punishment for attempt to rob, not being armed.
 34. Punishment for attempting to extort money by threats.

CHAPTER 8.

Murder in the first degree.

Murder in the second degree.

Ib.

What proof of malice necessary to constitute murder.

Degree of guilt, how ascertained.

Homicides less than murder.

Justifiable homicide by public officers.

Ib. by individuals.

SEC. 1. If any person shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate any rape, arson, robbery or burglary, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death.

SEC. 2. If any person shall, purposely and maliciously, but without deliberation and premeditation; or being engaged in the commission of any felony, other than rape, arson, burglary and robbery, without any desire to effect death, kill another, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor during life.

SEC. 3. If any person shall, by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual, kill another, such person shall be guilty of murder in the second degree, and shall upon conviction, be imprisoned in the penitentiary, and kept at hard labor during life.

SEC. 4. There shall be some other evidence of malice, than the mere proof of the killing, to constitute murder in the first or second degree, unless the killing was effected in the committing, or attempting to commit a felony; and deliberation and premeditation, when necessary to constitute murder in the first degree, shall be evidenced by poisoning, lying in wait, or some other express proof that the design was formed and matured in cool blood, and not hastily upon the occasion.

SEC. 5. Upon the trial of an indictment for murder, the jury, if they find the defendant guilty, shall inquire and by their verdict ascertain whether he be guilty of murder in the first or second degree; but if such defendant be convicted upon his own confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of murder, and award sentence accordingly.

SEC. 6. The killing of a human being by the act, procurement, or omission of another, in cases where such killing shall not be murder, according to the provisions of this chapter, is either justifiable or excusable homicide, or manslaughter.

SEC. 7. Such homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,
3. When necessarily committed in re-taking felons, who have been rescued, or who have escaped; or,
4. When necessarily committed in arresting felons fleeing from justice.

SEC. 8. Such homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person shall be;

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2 Coms. 193.

2. When committed in the lawful defence of such person, or of his, or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished;

3. When necessarily committed in attempting by lawful ways and means, to apprehend any person, for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

SEC. 9. Such homicide is excusable when committed:

Excusable homicides.

1. By accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent; or,

2. By accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage having been taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner.

SEC. 10. Whenever it shall appear to the jury, on the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances or in cases where by law, such homicide was justifiable or excusable, the jury shall render a general verdict of not guilty.

Verdict of not guilty in certain cases

SEC. 11. Manslaughter shall consist in the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary, in the commission of an unlawful act, or a lawful act, without due caution or circumspection.

Manslaughter.

SEC. 12. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

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SEC. 13. Any person who shall administer to any woman pregnant with a quick child, or prescribe for any such woman, or advise, or procure any such woman, to take any medicine, drug, or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child, or of such mother, be thereby produced, be deemed guilty of manslaughter.

Ib. 2 Barb. 216.

SEC. 14. If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person which shall produce the death of such other person, he shall be deemed guilty of manslaughter.

Ib.

SEC. 15. Every other killing of a human being by the act, procurement, or culpable negligence of another, when such killing is not justifiable or excusable, or is not declared in this chapter to be murder, shall be deemed manslaughter.

Ib.

SEC. 16. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary not less than one nor more than ten years, and by fine not exceeding five thousand dollars.

Punishment for manslaughter.

CHAPTER 3.

When person tried for murder may be convicted of manslaughter.

Punishment of rape.

Compelling woman to marry, &c.

Punishment of mayhem.

Killing in a duel.

Accessories.

Duel out of territory.

Engaging in duel, challenging, &c.

Accepting or carrying challenge, &c.

SEC. 17. Any person may be convicted of manslaughter under an indictment for murder, if the evidence fail to prove the latter, and establishes the former offence.

SEC. 18. Any person who shall be convicted of a rape, either:

1. By carnally and unlawfully knowing any female child under the age of ten years; or,

2. By forcibly ravishing any woman of the age of ten years, or upwards, shall be punished by imprisonment in the penitentiary not more than twenty nor less than three years; and if the rape shall have been committed upon a sister or a daughter, then the imprisonment shall be for life.

SEC. 19. Any person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than seven years.

SEC. 20. Every person who, from premeditated design, evinced by laying in wait for the purpose, or in any other manner; or with intention to kill, or commit any felony, shall:

1. Cut out or disable the tongue; or
2. Put out an eye; or,
3. Slit the lip, or slit or destroy the nose; or,
4. Cut off or disable any limb or member, on purpose, upon conviction thereof, shall be imprisoned in the penitentiary, not less than one nor more than twenty years.

SEC. 21. Every person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder in the second degree.

SEC. 22. Every person who shall have been the second of either party, in such duel, as is mentioned in the preceding section, and shall have been present when such wound shall have been inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact, to the crime of murder in the second degree.

SEC. 23. Every person who shall fight a duel, or act as second, or surgeon at the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office in this territory, thereafter.

SEC. 24. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the penitentiary not more than ten, nor less than two years, and shall be incapable of voting or holding any office of trust or profit under the laws of this territory.

SEC. 25. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not; and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, second or surgeon, or who shall advise, encourage or promote such duel,

CHAPTER 3.

Posting another, &c.

Ib., armed person beating another with cowhide.

Assault with intent to commit murder.

Attempt to poison.

Robbing, being armed.

Assault with intent to rob, &c., being armed.

Robbing, not being armed.

Attempt to rob, not being armed.

Attempt to extort by threats, &c. 2 Barb. 429.

shall be liable to imprisonment in the penitentiary not less than one nor more than two years.

SEC. 26. If any person shall post another, or in writing or print, shall use any reproachful and contemptuous language to, or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be liable to imprisonment in the penitentiary not more than one year, nor less than six months.

SEC. 27. If any person shall assault and beat another with a cowhide, stick or whip, having at the time in his possession a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction, be imprisoned in the penitentiary not less than one or more than ten years.

SEC. 28. If any person shall assault another with intent to murder or to maim, or to disfigure his person in any way, or to commit a rape, he shall be liable to imprisonment in the penitentiary not more than five years, nor less than one year, and by fine not exceeding one thousand, nor less than one hundred dollars.

SEC. 29. If any person shall attempt to commit the crime of murder, by poisoning, or by any other means not constituting an assault with intent to murder, every such offender, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one, nor more than ten years.

SEC. 30. If any person shall assault another, and shall feloniously rob, steal, and take from his person, any money, or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed, he shall wound or strike the person robbed, he shall be liable to punishment by imprisonment in the penitentiary, not more than ten nor less than three years.

SEC. 31. If any person, armed with a dangerous weapon, shall assault another with intent to rob or murder, upon conviction, he shall suffer imprisonment in the penitentiary not more than five years, nor less than one year.

SEC. 32. If any person shall by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be liable to punishment by imprisonment in the penitentiary not more than three years, nor less than one year.

SEC. 33. If any person not armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or steal, he shall be subject to punishment by imprisonment in the penitentiary not more than two years, nor less than six months.

SEC. 34. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever; or to compel the person so threatened to do any act against his will, he shall be punished upon conviction, by imprisonment not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars.

CHAPTER IV.

OF OFFENCES AGAINST PROPERTY.

- SEC. 1. Punishment for burning dwelling in night time.
 2. Punishment for burning dwelling in day time.
 3. Punishment for burning church, court-house, vessel, &c., in night time.
 4. Punishment for burning same in day time.
 5. Punishment for burning or attempting to burn certain buildings day or night.
 6. Punishment for burning lumber, hay, &c., day or night.
 7. Married woman liable.
 8. Punishment for burglary, being armed or making assault.
 9. Punishment for burglary, not being armed or making assault.
 10. Punishment for breaking in office, &c., at night.
 11. Punishment for entering house at night, &c., without breaking, &c.
 12. Punishment for larceny in dwelling-house, &c.
 13. Punishment for simple larceny, exceeding \$35.
 14. Punishment for stealing horse, mule, &c.
 15. Punishment for defacing mark on cattle.
 16. Jurisdiction of justice in larcenies.
 17. Buying and receiving stolen property.
 18. Jurisdiction of justice of peace in case of buying, &c., stolen property.
 19. Not necessary in prosecuting to aver principal's conviction.
 20. Officer arresting to secure goods.
 21. Prosecutor and officer to be paid.
 22. Embezzlement by clerks, agents, &c.
 23. Embezzlement by carriers, &c.
 24. Embezzlement or fraudulently selling by warehousemen, &c.
 25. Embezzlement or loaning, &c., of public moneys by officers and others.
 26. Punishment for embezzling public money.
 27. Public moneys when to be paid over; officer cannot set off private demand.
 28. Punishment for uttering false receipt by warehousemen, millers, &c.
 29. Punishment for falsely personating another.
 30. Punishment for obtaining goods, &c., under false pretence.
 31. Frauds at common law, how punishable.
 32. Maliciously killing or maiming cattle, injuring property, &c.
 33. Punishment for selling lands without title.
 34. Malicious injury to mill-dams, &c.
 35. Malicious injury to bridges.
 36. Maliciously burning prairies, woods, &c.
 37. Maliciously injuring fruit or ornamental trees, fences, crops, &c.
 38. Malicious injury to monuments, guide-boards, &c.
 39. Trespassing in gardens, improved land, &c.
 40. Jurisdiction of justice.

Burning dwelling in night time.

SEC. 1. Any person who shall maliciously and wilfully burn, in the night time the dwelling-house of another, or shall, in the night time, wilfully and maliciously set on fire any other building, owned by himself or another, by the burning whereof such dwelling-house shall be burned in the night time, shall suffer the same punishment, provided for the crime of murder in the second degree; but if at the time of committing the offence there were no person lawfully residing in the dwelling-house so burned, he shall be subject to imprisonment in the penitentiary not more than ten, nor less than three years.

ib. In day time.

SEC. 2. Every person who shall wilfully and maliciously burn, in the day time, the dwelling-house of another, or any building adjoining such dwelling, and shall wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling-house shall be burned in the day time, or shall in the day time wilfully and maliciously set on fire any building

owned by himself or another, by the burning whereof such dwelling-house shall be burned in the night time, shall be liable to imprisonment in the penitentiary not more than fifteen nor less than five years.

SEC. 3. Any person who shall wilfully and maliciously burn in the night time, any meeting-house, church, court-house, town-house, college, academy, jail, or other building erected for public uses, or any steamboat, ship or other vessel, or any express office, warehouse, store, manufactory or mill of another, or any barn, stable, shop or office of another, within the curtilage of any dwelling-house or any other building, by the burning whereof any building mentioned in this section shall be burned in the night time, shall be subject to punishment by imprisonment in the penitentiary not more than fifteen nor less than five years.

Burning church, court-house, vessel, &c., in night time.

SEC. 4. Every person who shall wilfully and maliciously burn in the day time, any building mentioned in the next preceding section, the punishment for which, if burned in the night time, would be imprisonment in the penitentiary not more than fifteen nor less than five years, shall be punished by imprisonment in the penitentiary not more than eight, nor less than four years.

ib. In day time.

SEC. 5. Every person who shall wilfully and maliciously burn any building whatsoever of another, other than are mentioned in the preceding sections of this act, or any bridge, lock, dam or flume, shall be liable to imprisonment in the penitentiary not more than eight nor less than four years; and every person who shall make an unsuccessful attempt to commit either of the offences mentioned in this or the preceding sections of this chapter, shall be liable to imprisonment in the penitentiary for a term not exceeding five years nor less than one year.

ib. Or attempting to burn certain buildings, &c., day or night.

SEC. 6. Every person who shall wilfully and maliciously burn any pile or parcel of boards, timber, or other lumber, or any stack of hay, grain or other vegetable product, severed from the soil, but not stacked, or any standing grain, grass or other standing product of the soil, shall be subject to imprisonment in the penitentiary not more than two years, nor less than six months.

ib. Lumber, hay, &c.

SEC. 7. The preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property burned or set on fire may belong partly or wholly to her husband.

Married woman liable.

SEC. 8. Every person who shall break and enter any dwelling-house in the night time, with the intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent, shall break any such dwelling-house in the night time, any person then being lawfully therein, and the offender being armed with a dangerous weapon, at the time of such breaking or entering, or so arming himself in such house, or making any actual assault on any person lawfully therein, shall be liable to punishment by imprisonment in the penitentiary not more than twelve nor less than four years.

Burglary, being armed or making assault.

SEC. 9. Every person who shall break and enter a dwelling-house in the night time, with such intent as is mentioned in the last preceding section, or who having entered with such intent, shall break such dwelling-house in the night time, the offender

Burglary, not being armed or making assault.

CHAPTER 4. not being armed, nor arming himself in such house with a dangerous weapon nor making an assault upon any person being then lawfully therein, shall be liable to imprisonment in the penitentiary not more than five nor less than two years.

SEC. 10. Every person, who shall break and enter, in the night time, any office, shop, or warehouse, not adjoining to, or occupied with a dwelling-house, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, upon conviction, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

SEC. 11. Every person who shall enter in the night time without breaking, or shall break and enter in the day time, any dwelling house or outhouse thereto adjoining, and occupied therewith, or any office, shop, store or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or other felony, upon conviction, shall be punished by imprisonment in the penitentiary not more than three years nor less than six months.

SEC. 12. Every person who shall commit the crime of larceny in any dwelling-house, office, shop, warehouse, store, ship, steamboat or vessel, or shall break and enter in the night time, or day time, any meeting-house, church, court-house, town-house, college, academy or other public buildings erected for public use, and steal therein, upon conviction, shall be punished by imprisonment in the penitentiary, not more than seven years, nor less than one year, or by fine not exceeding five hundred dollars.

SEC. 13. Every person who shall commit the crime of larceny, by stealing the property of another, any money, goods, chattels, or any bank note, bond, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts for, or concerning money or goods due, or to become due, or to be delivered, or any deed or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen shall exceed the value of thirty-five dollars, shall be liable to punishment by imprisonment in the penitentiary not more than five years nor less than one year; that if any person shall steal any money, or other personal goods, or chattels, the property of another—the value of thirty-five dollars or less—the person so offending, shall, upon conviction thereof, be fined in any sum not to exceed two hundred dollars, to be paid into the treasury of the county in which the crime is committed; and shall be liable to confinement in the county jail, at the discretion of the court, not to exceed twenty days.

SEC. 14. Every person who shall commit the crime of larceny, by stealing any horse, mare, gelding, foal or mule, of any value, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than fifteen nor less than three years.

SEC. 15. If any person shall wilfully and knowingly make, alter, or deface any artificial ear-mark or brand upon any horse, mare, gelding, foal, mule, ass, sheep, goat, swine, bull, cow, steer or heifer, the property of another, intending thereby to convert the same to his own use, he shall be deemed guilty of larceny, and upon conviction thereof, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

Breaking in to office, &c., at night.

Entering house at night, &c., without breaking, &c.

Larceny in dwelling-house, &c.

Simple larceny exceeding \$35.

Stealing horse, mule, &c.

Defacing mark on cattle.

tion thereof, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

SEC. 16. Every justice of the peace shall have jurisdiction concurrent with the district court, of all the larcenies mentioned in the next preceding section of this chapter, when the money or property stolen shall be alleged to exceed ten and less than twenty dollars; and exclusive jurisdiction of all larcenies whatever, when the money or other property stolen, shall not be alleged to exceed the value of ten dollars, in all which cases the punishment shall be by fine not exceeding fifty, nor less than ten dollars, or by imprisonment in the county jail for the term of three months, saving to every person who shall be convicted before the justice, the right to appeal as in other cases.

SEC. 17. Every person who shall buy, receive, or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than four years, nor less than one year, or by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than one hundred dollars.

SEC. 18. Every justice of the peace shall have jurisdiction concurrent with the district court, or exclusive, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods or other property, in all cases, in which they would have jurisdiction of a larceny of the same goods, or other property; and the punishment of buying, receiving, or aiding in the concealment of such goods or other property, shall be the same as in a case of a larceny of the same goods, or other property, with the same right of appeal on conviction.

SEC. 19. In any prosecution for the offence of buying, receiving, or aiding in the concealment of stolen money, or other property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

SEC. 20. The officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall, if he be able, secure the property alleged to have been stolen, and shall be answerable for the same; and he shall annex a schedule thereof to his return of the warrant, and upon the conviction of the offender, the stolen property shall be restored to the owner.

SEC. 21. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

SEC. 22. If any officer, agent, clerk, or servant of any incorporated company, or if any clerk, agent, or servant of any private person, or of any co-partnership, except apprentices and other persons under the age of sixteen years, shall embezzle, or fraudulently convert to his own use, or shall take and secrete with the intent to embezzle and convert to his own use, without consent of his employers or master, any money or property of another, which shall have come into his possession, or be under his care by virtue

CHAPTER 4. Jurisdiction of justice of peace.

Buying, receiving, &c., stolen property. Wen. 76; 3 Hill, 196.

Jurisdiction of justice.

Not necessary to aver principal's conviction.

Officer arresting to secure goods.

Prosecutor and officer to be paid.

Embezzlement, Wen. 298; 5 do. 150, 581; 1 Denio 16.

CHAPTER 4. of such employment, he shall be deemed by so doing to have committed the crime of larceny.

Embezzlement by carriers, &c.

SEC. 23. If any carrier, or other person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall have been intrusted with such property, shall embezzle, or fraudulently convert to his own use, or shall secrete with intent to embezzle and convert to his own use, any money, goods, or property, either in the mass, as the same were delivered, or otherwise, and before delivery of such money, goods, or property, at the places where or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

Embezzlement, &c., by warehousemen, &c.

SEC. 24. Any warehouseman, storage, forwarding, commission merchant, or miller, or his or their agents, clerks or servants, who shall embezzle or fraudulently convert to his or their own use, or fraudulently sell or otherwise dispose of for their or his own gain, profit or advantage, without the consent of the owner thereof, any grain, flour, pork, beef, wool, or other goods, wares or merchandise, which shall have been received by such warehouseman, miller, or storage, forwarding or commission merchant, to be stored for hire or for any other purpose, shall be deemed to have committed the crime of larceny.

Embezzlement or loaning, &c., of public moneys by officers and others.

SEC. 25. If any person having in his possession any money belonging to this territory, or any county, town, city, or other municipal corporation or school district; or in which this territory, or any county, town, city, village, or corporation or school district has any interest; or if any collector or treasurer of any county, incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the territory, or any other person holding an office under any law of this territory, or any officer of any incorporated company, who now is by virtue of his office, or shall hereafter be intrusted with the collection, safe keeping, receipt, transfer or disbursement of any tax, revenue, fine or other money, shall convert to his own use in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money intrusted to him as aforesaid, or who shall wilfully neglect or refuse to pay over the same or any part thereof, according to the provisions of law, so that he shall not be able to meet the demands of any person lawfully demanding the same, whether such demand be made before or after the expiration of his office, he shall be deemed and adjudged guilty of an embezzlement.

Punishment for embezzling public money.

SEC. 26. Any person who shall be deemed guilty of embezzling any money, prohibited by the last preceding section, not exceeding in amount the sum of one hundred dollars, shall, upon conviction thereof, be punished by imprisonment in the county jail not more than twelve nor less than three months; and any person convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year, and by a fine in each case of twice the amount so embezzled; and if the court cannot determine from the verdict of the jury, or otherwise, the amount of the sum embezzled, they shall impose such fine as in their discretion shall be adequate,

and corresponding as nearly as possible with the penalty imposed by this section; and any refusal by an officer to pay any sum lawfully demanded, shall be deemed an embezzlement of the same so demanded.

SEC. 27. No officer or other person mentioned in the twenty-fifth section of this chapter, shall be permitted to set up any private demand, as a set-off against any money he may have received by virtue of his office; and all justices of the peace, clerks of the district court, sheriffs and other officers, shall pay into the respective treasuries all the money collected on fines, within thirty days after said moneys shall have been collected.

SEC. 28. If any warehouseman, miller, or storage, forwarding, or commission merchant, or his or their servants, agents or clerks, shall wilfully and fraudulently make or utter any receipt or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them or either of them, or his or their employers, of any grain, flour, pork, beef or wool, or other goods, wares, or merchandise which shall not have been so received, or delivered into such mill, warehouse, store or other building, previous to the making and uttering of such receipt, or other written evidence thereof, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not more than two years, nor less than one year.

SEC. 29. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny.

SEC. 30. If any person shall designedly, by any false pretence, or by any privy, or false token, and with intent to defraud, obtain from any other person any money, or goods, wares or merchandise, or shall obtain with such intent the signature of any person, to any written instrument, the false making whereof would be punishable as forgery, he shall be subject to imprisonment in the penitentiary not more than five years, nor less than one year.

SEC. 31. Any person convicted of any gross fraud or cheat at common law, shall be punished by fine not exceeding one thousand, nor less than fifty dollars, and the party committing such fraud shall be liable to the party defrauded in double damages.

SEC. 32. Every person who shall wilfully and maliciously kill, maim, or disfigure any horse, cow, ox, sheep, or other beast of another person; or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent that the same may be taken or swallowed by them; or shall wilfully and maliciously destroy or injure the personal property of another, in any manner, by any means, not particularly mentioned or described in this chapter, upon conviction thereof, shall be punished by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

SEC. 33. If any person shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same, with intent to de-

CHAPTER 4.

Officer cannot set off private demand: public moneys when to be paid over.

False receipt &c. by warehousemen, millers, &c.

Falsely personating another.

False pretence. 13 J. R. 292; 14 do. 371; 9 Cow. 578; 9 Wen. 180; 11 do. 18; 13 do. 311; 14 do. 31, 560; 17 do. 541. (a)

Frauds at common law.

Maliciously killing or maiming cattle, or injuring personal property.

Selling lands without title.

CHAPTER 4. fraud any person whatever, he shall, upon conviction thereof, be imprisoned in the penitentiary not more than two years, nor less than six months.

Injuring mill dams, &c.

SEC. 34. Every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash-boards or other appurtenances thereof, or of the wheels, mill-gear or machinery of any mill; or shall wilfully or wantonly, and without color of right, draw off the water contained in any mill-pond, reservoir, canal or trench, shall, upon conviction thereof, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months, or by fine not exceeding four hundred, nor less than fifty dollars.

Injuries to bridges, roads, &c.

SEC. 35. Every person, who shall wilfully, or maliciously break down, injure, remove or destroy any public or toll-bridge, railroad, or plank-road, or any turnpike or plank-road gate, or any lock, culvert, or embankment of any canal, or shall maliciously, or wilfully make any aperture or breach in any such embankment, with intent to destroy or injure the same, upon conviction shall be imprisoned in the penitentiary for not more than three years, nor less than six months, or pay a fine not exceeding six hundred, nor less than fifty dollars.

Burning woods, prairies, &c.

SEC. 36. If any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, prairie or other grounds, other than his own, or shall intentionally or by neglect permit the fire to pass his own premises or grounds to the injury of any other person or persons, every person so offending, shall on conviction thereof, for every such offence, be fined in a sum not exceeding five hundred, nor less than ten dollars.

Injuring fruit or ornamental trees &c.

SEC. 37. Every person who shall wilfully and maliciously, or wantonly and without cause, cut down and destroy, or by girdling, lopping or otherwise, shall injure any fruit-tree or any other trees not his own, standing or growing for shade, ornament, or other useful purposes; or shall maliciously or wantonly break the glass, or any part of it, in any building not his own; or shall maliciously break down any fence belonging to or enclosing land not his own; or shall maliciously throw down or open any bars, gate or fence, and leave the same down or open; or shall maliciously and injuriously sever from the freehold of another any produce thereof, or anything attached thereto, shall upon conviction be imprisoned in the county jail not more than one year, nor less than three months, or pay a fine not exceeding two hundred, nor less than ten dollars.

Injuring monuments, guide-boards &c.

SEC. 38. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any tract or lot of land, or any tree marked for that purpose; or shall so break down, injure, remove or destroy any mile-stone, mile-board, or guide-board erected upon any highway or other public way, turnpike, railroad or plank-road; or shall wilfully or maliciously deface or alter the inscription on any such stone or board; or shall wilfully or maliciously mar or deface any building or any sign-board, or shall extinguish any lamp, or break or remove any lamp or lamp-post, or any railing or post erected on any bridge, sidewalk, street, highway, court, or passage, shall upon conviction be punished by fine not exceed-

ing five hundred, nor less than fifty dollars, or by imprisonment in the county jail not more than six, nor less than three months.

SEC. 39. Every person who shall wilfully commit any trespass by entering upon the garden, orchard, or other improved land of another, without permission from the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall, upon conviction, be punished by fine not exceeding fifty, nor less than three dollars.

Trespass on improved lands.

SEC. 40. Every justice of the peace shall have concurrent jurisdiction in his own county, with the district court, of all offences mentioned in the last three preceding sections of this chapter, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass shall not exceed the sum of one hundred dollars, and in such case the punishment shall be by fine not exceeding one hundred, nor less than three dollars.

Jurisdiction of justice.

CHAPTER V.

OF FORGERY AND COUNTERFEITING.

- SEC. 1. Forgery of records, deeds, &c.
2. Uttering forged records or instruments.
3. Forging notes, &c., issued by officer.
4. Forging bank notes, &c.
5. Having counterfeit bills in possession, with intent to pass.
6. Passing counterfeit bills, &c.
7. Making or having tools, &c., for counterfeiting.
8. Testimony of president, &c., of banks, may be dispensed with.
9. Sworn certificate of certain officers, evidence.
10. Fraudulently joining instruments, &c.
11. Affixing fictitious signature.
12. In indictment for forgery what allegation sufficient.
13. Counterfeiting coin or having same in possession, with intent, &c.
14. Making or keeping dies, moulds, &c., for coining.
15. Punishment on conviction of second offence.

SEC. 1. Every person who shall falsely make, alter, forge, or counterfeit any public record, or any certificate, return, or attestation of any clerk of the court, register, notary public, justice of the peace, or any other public officer, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof; or any charter, deed, will, testament, bond, writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance, or discharge for money or other property, or any acceptance of a bill of exchange, indorsement or assignment of a bill of exchange, promissory note, or any accountable receipt for money, goods, or other property, with intent to injure or defraud any person, upon conviction, shall be punished by imprisonment in the penitentiary not more than ten nor less than two years, or by a fine of not more than ten thousand, nor less than one hundred dollars.

Forgery of records, deeds, &c.

SEC. 2. Every person who shall utter and publish as true, any false, forged, or altered record, deed, instrument, or other writing, mentioned in the next preceding section, knowing the same to be

Uttering forged record, &c.

CHAPTER 5. false, forged, or altered, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten years nor less than one year.

Forging notes, &c. issued by officer.

SEC. 3. Every person who shall falsely make, alter, forge, or counterfeit any note, issued by any commissioner or other officer authorized to issue the same, for any debt of this territory, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten nor less than three years.

Ib. Bank notes, &c.

SEC. 4. Every person who shall make, alter, forge or counterfeit any bank bill, promissory note, draft, or other evidence of debt, issued by any corporation, or company, duly authorized for that purpose by the laws of the United States, of any state of the United States, of this territory, or of any territory of the United States, or of any other state, government or country, with intent to injure or defraud, shall, upon conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Having counterfeit notes in possession. 21 Wen. 309.

SEC. 5. Every person who shall have in his possession any forged, counterfeit or altered bank bill, promissory note, draft, or other evidence of debt, issued, or purporting to have been issued, as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to have been so forged, counterfeited or altered, as aforesaid, shall, upon conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

Passing counterfeit notes, &c.

SEC. 6. Every person who shall utter or pass, or tender in payment as true, any false, altered, forged, or counterfeit note, certificate, or bill of credit for any debt of this territory, or bank bill, promissory note, draft or other evidence of debt, issued or purporting to have been issued, as is mentioned in the fourth section of this chapter, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Making or having tools, &c., for counterfeiting, with intent, &c.

SEC. 7. Every person who shall engrave, make, or begin to engrave, make, or mend any plate, block, press, or other tool, instrument, or other implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate, or other bill of credit, in the similitude of the notes, certificates, or bills of credit, issued by lawful authority for any debt of this territory, or any false, counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established within the United States, or any territory thereof, or within any other government or country; and every person who shall have in his possession any such plate or block engraved in any part, or any press, or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills, or notes, shall, on conviction, be punished by imprisonment in the penitentiary not more

than five years, nor less than one year, or by a fine of not more than five thousand, nor less than five hundred dollars.

CHAPTER 5.

SEC. 8. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and false bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

Testimony of president, &c. of bank, when dispensed with.

SEC. 9. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof, with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such note, certificate, bill of credit, or security purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeited.

Sworn certificate of certain officers, evidence.

SEC. 10. If any person shall fraudulently connect together different parts of several bank notes, or other genuine instruments, in such manner as to produce an additional note, or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner as if each of them had been falsely made or forged.

Fraudulently joining instruments, &c.

SEC. 11. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt, issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or such corporation ever have existed.

Affixing fictitious signature.

SEC. 12. In any case where the intent to defraud is necessary to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate, intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an attempt to defraud the United States, or any state, territory, county, city, town, or village, or any body corporate, or any public officer in his official capacity, or any co-partnership, or member thereof, or any particular person.

What allegations sufficient.

SEC. 13. Every person who shall counterfeit any gold or silver coin, current by law, or usage within this territory, and every person who shall have in his possession false money or coin, counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeited, and with the intent to utter or pass the same as true, and any person who shall

Counterfeiting coin, or having same in possession.

CHAPTER 6. utter, pass or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year, or by a fine not exceeding five thousand, nor less than five hundred dollars.

Making or keeping dies, moulds, &c., for coining.

SEC. 14. Every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession, any mould, pattern, die, puncheon, engine, press, or other tool, or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten, nor less than two years, or by fine not less than one hundred, nor more than five thousand dollars.

Punishment on conviction of second offence, &c.

SEC. 15. Any person who may be convicted of the same offence a second time, shall be punished by imprisonment not exceeding twice the longest term mentioned in the section under which he may be indicted and tried.

CHAPTER VI.

OFFENCES AGAINST PUBLIC JUSTICE.

- SEC. 1.** Perjury, how punished.
 2. What deemed perjury.
 3. Subornation of perjury.
 4. Inciting person to commit perjury.
 5. Proceedings where witness is suspected of perjury by court.
 6. Copies of papers, &c., may be taken for purposes of prosecution in such case.
 7. Giving or offering bribes to officers.
 8. Accepting bribes.
 9. Corrupting jurors, referees, &c.
 10. Jurors, referees, &c., accepting bribes.
 11. Aiding to escape from prison.
 12. Aiding to escape from officer.
 13. Officer suffering a voluntary escape.
 14. Officer suffering a negligent escape, or refusing to receive prisoner.
 15. Officer refusing to serve process.
 16. Refusal to aid officer.
 17. Refusing to aid justice.
 18. Falsely assuming to be a justice or other officer.
 19. Disguising one's self to obstruct officer.
 20. Concealing and compounding offences.
 21. Officers taking reward for omitting duty.

Perjury, how punished.

SEC. 1. Every person being lawfully required to depose the truth in any proceedings in a court of justice, who shall commit perjury, shall be liable, if such perjury were committed on the trial of an indictment for a capital crime, to imprisonment in the penitentiary not more than fifteen nor less than three years, and if committed in any other case, to imprisonment in the penitentiary not more than ten nor less than two years.

What deemed perjury.

SEC. 2. If any person, of whom an oath shall be required by law, shall wilfully swear falsely in regard to any matter or thing

respecting which such oath is required, such person shall be deemed guilty of perjury. **CHAPTER 6.**

SEC. 3. Every person who shall be guilty of subornation of perjury, by procuring another person to commit the crime of perjury as aforesaid, shall be punished in the same manner as for the crime of perjury.

Subornation of perjury.

SEC. 4. If any person shall endeavor to procure or incite any other person to commit the crime of perjury, though no perjury be committed, upon conviction, he shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year.

Inciting to commit perjury.

SEC. 5. Whenever it shall appear to any court of record, that any witness or party, who has been legally sworn and examined, or has made an affidavit in any proceedings in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may take a recognizance with sureties, for his appearing to answer to an indictment for perjury, and thereupon the witnesses to establish such perjury, may be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney.

Proceedings when perjury suspected by court.

SEC. 6. If in any proceeding in a court of justice in which perjury shall be reasonably presumed as aforesaid, any papers, books or documents shall have been produced, which shall be deemed necessary to be used in any prosecution for such perjury, the court may order a certified copy of such books, papers or documents, to be taken, to be used in such prosecution, in the same manner as the original might have been.

Copies of papers, &c., may be taken.

SEC. 7. Every person who shall corruptly give, offer or promise to any executive, judicial or legislative officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment in any matter, question, cause or proceeding, which may then be pending, or may by law, come or be brought before him in his official capacity, shall, upon conviction, be punished by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine not exceeding five thousand, nor less than one hundred dollars.

Bribing officers.

SEC. 8. Every executive, legislative or judicial officer, who shall corruptly accept any gift or gratuity, or any promise to make any gift, or do any act beneficial to such officer, under an agreement or with an understanding that his vote, opinion or judgment, shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is, or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall, upon conviction, be punished by imprisonment in the penitentiary not more than four, nor less than two years, or by fine not exceeding one thousand, nor less than one hundred dollars.

Accepting bribes.

SEC. 9. Every person who shall corrupt, or attempt to corrupt any court, commissioner, juror, arbitrator, umpire or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias his opinion, or influence the decision of such court,

Corrupting jurors, &c.

CHAPTER 6. commissioner, juror, arbitrator, umpire or referee, in relation to any cause or matter which may be pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire or referee shall have been appointed, shall be punished, upon conviction, by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine not exceeding one thousand, nor less than one hundred dollars.

Jurors, &c.
accepting
bribes.

SEC. 10. If any person summoned as a juror, or chosen or appointed as an arbitrator, umpire or referee, or if any court or commissioner, shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause, or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determining of which, such court, commissioner, arbitrator, umpire or referee shall have been chosen or appointed, he shall, upon conviction, be punished by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine of not more than one thousand, nor less than one hundred dollars.

Aiding es-
capes from
prison.

SEC. 11. Every person who shall convey into any penitentiary, jail, house of correction, house of reformation, or other like place of confinement, any disguise, or any instrument, tool, weapon, or other thing, adapted or useful in aiding any prisoner to make his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall, by any means whatever, aid or assist any such prisoner, in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who shall forcibly rescue any prisoner held in custody, upon any conviction or charge of an offence, shall be liable to punishment by imprisonment in the penitentiary, not more than four nor less than two years; or if the person, whose escape or rescue was effected or intended, was charged with an offence not capital, nor punishable by imprisonment in the penitentiary, the punishment for the offence mentioned in this section, shall be by imprisonment in the county jail not more than one year, or by fine of not more than five hundred, nor less than one hundred dollars.

Aiding to es-
cape from
officer.

SEC. 12. Every person who shall aid or assist any prisoner in escaping, or in attempting to escape from any officer or person who shall have the lawful custody of such prisoner, shall, on conviction, be punished by imprisonment, in the penitentiary not more than four, nor less than two years, or by a fine not exceeding five thousand, nor less than one hundred dollars.

Voluntary
escape.

SEC. 13. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offence to escape, he shall suffer, unless the prisoner were charged with or convicted of a capital offence, the like punishment and penalties, as the prisoner so suffered to escape, was sentenced to, or would be liable to suffer, upon conviction for the crime or offence wherewith he stood charged; and if the prisoner were charged with or convicted of a capital offence, he shall be punished by imprisonment in the penitentiary not more than twenty nor less than five years.

Suffering ne-
gligent es-

SEC. 14. If any jailor or other officer shall, through negligence,

CHAPTER 6. suffer any prisoner in his custody, upon conviction, or upon any criminal charge to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be punished by imprisonment in the county jail not more than two years, or by a fine of not more than five hundred, nor less than one hundred dollars.

cape and re-
fusing to re-
ceive pri-
soner.

SEC. 15. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished on conviction, by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred, nor less than fifty dollars.

Refusing to
serve pro-
cess.

SEC. 16. If any person, being required in the name of the United States, or of the Territory of Oregon, by any marshal or deputy marshal, sheriff or deputy sheriff, coroner, or constable, shall neglect or refuse to assist them in the execution of their office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested on civil process, he shall upon conviction, be punished by fine, not exceeding five hundred, nor less than twenty-five dollars.

Refusing to
aid officer.

SEC. 17. If any justice of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse or neglect to obey such justice, shall, on conviction, be punished in the same manner as is provided in the next preceding section, for refusing assistance to a sheriff; and no person to whom such justice shall be known or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse, or pretence of ignorance of his office.

Refusing to
aid justice.

SEC. 18. If any person shall falsely assume to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take on himself to act as such, and require any person to aid or assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, he shall on conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred, nor less than fifty dollars.

Falsely as-
suming to be
justice or
other officer.

SEC. 19. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt any officer, or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States, or of this territory, whether such intent shall be effected or not, shall be punished, on conviction, by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred, nor less than fifty dollars.

Disguising
one's self to
obstruct offi-
cer.

SEC. 20. If any person, having knowledge of the commission of any offence, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understanding express

Concealing
and com-
pounding of-
fences, &c.

CHAPTER 7. or implied, to compound or conceal such offence, or not to prosecute therefor, or not give evidence thereof, he shall, where such offence was punishable with death, upon conviction, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months; and where the offence was punishable in any other manner, he shall be punished by imprisonment in the county jail not more than six, nor less than three months, or by fine not exceeding two hundred, nor less than fifty dollars.

Officers receiving reward to neglect duty.

SEC. 21. If any sheriff, constable or other officer, authorized to serve legal process, shall receive from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement for delaying or omitting to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

CHAPTER VII.

OFFENCES AGAINST PUBLIC PEACE.

- SEC. 1. Unlawful assemblage, how suppressed.
- 2. Refusing to assist officer when required.
- 3. Neglect of officer how punished.
- 4. Duties of officers when rioters refuse to disperse.
- 5. Armed force when called out to obey certain civil officers.
- 6. When officer to be considered guiltless if death ensues.
- 7. Riotously destroying house, &c.

Unlawful assemblages how suppressed.

SEC. 1. If any persons to the number of three or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city, town, or county, it shall be the duty of the mayor and each of the aldermen and councilmen of such city, and of every justice of the peace, living in such city or town, and of the sheriff of the county, and his deputies, and also of every constable and coroner, living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the Territory of Oregon, to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

Refusing to assist when required.

SEC. 2. If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section, to aid and assist in seizing and securing such rioters, or persons unlawfully assembled, or in suppressing such riot, or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters, or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

SEC. 3. If any mayor, councilman, justice of the peace, sheriff, deputy sheriff, constable or coroner, having notice of such riotous, or tumultuous and unlawful assembly, as is mentioned in this chapter, in the city, town or county in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall omit or neglect to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

CHAPTER 7. Neglect of officer, how punished.

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who shall have been commanded to disperse as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the officers or magistrates before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise as may be necessary, and shall proceed in such manner as in their judgment shall be deemed expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Duty of officers when rioters refuse to disperse.

SEC. 5. Whenever an armed force shall be called out, for the purpose of suppressing any tumult or riot, or dispersing any body of men, acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this territory, such armed force, when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county; and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section.

Armed force when called out to obey certain civil officers.

SEC. 6. If by reason of any of the efforts made by any of the said magistrates or officers, or by their direction to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person or other persons then present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons acting by their order, or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously, and tumultuously assembled, shall be held answerable therefor.

Officers when guiltless if death ensue.

SEC. 7. If any of the persons so unlawfully assembled, shall demolish, pull down or destroy, or begin to demolish, pull down or destroy any dwelling-house, or any other building, or any ship, steamboat or vessel, or do any other unlawful act, he shall, on conviction, be punished by imprisonment in the penitentiary, not more than three years, or in the county jail, not exceeding one year, or by fine, not exceeding one thousand dollars.

Riotously destroying house, &c.

CHAPTER VIII.

OFFENCES AGAINST PUBLIC POLICY.

- SEC. 1. Setting up or promoting illegal lotteries.
 2. Selling lottery tickets or aiding therein.
 3. Second conviction.
 4. Advertising lottery tickets, &c.
 5. Making and selling tickets in fictitious lotteries.
 6. Defendant to prove genuineness of ticket.
 7. Prizes forfeited to the territory.

Setting up or promoting illegal lotteries.

SEC. 1. Every person who shall promote or set up any lottery for money, or shall dispose of any property of value, real or personal, by way of lottery; and every person who shall aid, either by printing or writing, or shall in any way be concerned in setting up, managing, or drawing any such lottery; or who shall in any house, shop or building, owned or occupied by him, or under his control, knowingly permit the setting up, managing or drawing of any such lottery, or the sale of any lottery tickets, or share of a ticket, or any other writing, certificate, bill, token, or any other device, purporting or intended to entitle the holder, bearer or any other person, to any prize or interest, or share of any prize to be drawn in a lottery, shall, for every such offence, upon conviction, be punished by imprisonment in the penitentiary not more than one year, nor less than six months, or by a fine not exceeding one thousand, nor less than fifty dollars.

Selling lottery tickets or aiding therein.
 Deak 161; 4
 Barb. 314; 1
 Comst. 180.

SEC. 2. Every person who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his possession, with intent to sell, or offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket, in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token, or other device as is mentioned in the preceding section, shall, on conviction, be punished by fine not exceeding one thousand, nor less than fifty dollars.

Second conviction.

SEC. 3. If any person shall, after being convicted of any offence mentioned in the preceding sections, commit the like offence a second time, he shall be punished by imprisonment in the penitentiary, not more than two years nor less than one year.

Advertising lottery tickets, &c.
 Dent 212.

SEC. 4. Every person who shall advertise any lottery ticket, or any share in such ticket, for sale, either by himself or any other person, or who shall set up or exhibit any sign, symbol, or any emblematic, or other representation of a lottery, or of the drawing thereof, or any such writing, certificate, bill, token, or other device before mentioned, or where the same may be purchased or obtained, or shall in any way invite or entice any other person to purchase or receive the same, shall, on conviction, be punished by fine, not exceeding two hundred nor less than twenty-five dollars.

Making or selling tickets in fictitious lotteries.

SEC. 5. Every person who shall make or sell, or shall have in his possession with intent to sell, exchange or negotiate, or who shall by printing, writing, or otherwise, assist in making or selling, or in attempting to sell, exchange or negotiate any false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill,

token, or other device before mentioned, or any ticket, or share thereof, in any fictitious or pretended lottery, knowing the same to be false, or fictitious, or who shall receive any money, or other thing of value, for any such ticket or share of a ticket, or for any such writing, certificate, bill, token, or other device, purporting that the owner, bearer, or holder thereof, shall be entitled to receive any prize, or any thing of value, that may be drawn in any lottery, knowing the same to be false or fictitious, shall, for every such offence, on conviction, be punished by imprisonment in the penitentiary, not exceeding two years nor less than six months.

SEC. 6. Upon a trial of an indictment for either of the offences mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned, which the defendant shall have sold, or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some legislature, within the United States, and that such lottery was existing and undrawn, and such ticket, or share thereof, or other writing or thing before mentioned, was issued by lawful authority and binding upon the person who issued the same.

Defendant to prove ticket genuine.

SEC. 7. All sums of money, and every other valuable thing drawn as a prize or share of a prize in any lottery, by any person being an inhabitant or resident within this territory, and all sums of money, and other things of value received by such person, by reason of his being the owner or holder of any ticket, or share of a ticket, in any lottery or pretended lottery, contrary to the provisions of this chapter, shall be forfeited to the use of the territory, and may be recovered by an information to be filed, or by a civil action, to be brought by the district attorney, in the name and on the behalf of said territory.

Prizes forfeited to territory.

CHAPTER IX.

OFFENCES AGAINST PUBLIC CONVENIENCE.

- SEC. 1. Punishment for obstructing highways.
 2. For discharging ballast in navigable waters.

SEC. 1. Every person, who shall in any manner obstruct any public highway, turnpike, plank-road or bridge, or injure any materials used in the construction of such road or bridge, shall, on conviction, be punished by a fine not exceeding five hundred nor less than twenty-five dollars.

Obstructing highways.

SEC. 2. Every master, mate or other officer of a vessel, and every other person who shall discharge the ballast of such vessel into the navigable portions, or channels of any of the bays, harbors or rivers of this territory, so as to obstruct navigation, shall, on conviction, be punished by a fine not exceeding one thousand nor less than one hundred dollars.

Discharging ballast in navigable water.

CHAPTER X.

GAMING.

- SEC. 1. All gaming tables prohibited.
2. Punishment for dealing at faro, or forty-eight, or keeping gambling devices.
3. Person betting how liable.
4. Person permitting gaming devices to be set up, how liable.
5. Who not excused from testifying, &c.
6. Jurisdiction of justice of peace under this chapter.
7. Duty of district attorney.
8. Money lost in gaming, to be recovered in name of county.
9. Gaming securities void.

Gaming tables, &c., prohibited.

SEC. 1. All E. O. or rolette tables, faro or faro banks, and all gaming with cards, gaming tables or gambling devices whatever, are hereby prohibited from being set up or used for gaming or gambling purposes in this territory.

Faro, or forty-eight.

SEC. 2. Every person who shall deal cards at the game called faro, or forty-eight, whether the same shall be dealt with fifty-two, or any other number of cards, and every person who shall keep to be used in gaming, any gambling device whatever, designed to be used in gaming, shall forfeit the same on conviction, and be punished by fine not more than one hundred nor less than fifty dollars.

Betting.

SEC. 3. Every person who shall bet any money or other property, at or on any gaming table, bank, or gambling device, prohibited by this chapter, shall on conviction be punished by fine not exceeding twenty, nor less than five dollars.

Permitting gaming device to be set up.

SEC. 4. Every person who shall suffer any gaming table, bank, or gambling device prohibited by this chapter, to be set up, or used for the purpose of gaming, in any house, building, steamboat, raft, keel-boat or boom, lot, yard, or garden, to him belonging, or by him occupied, or of which he has the control, shall be liable to punishment by fine, not exceeding one hundred, nor less than fifty dollars.

Testimony.

SEC. 5. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the provisions of this chapter, relating to gaming, by reason of his having bet or played at the prohibited games or gaming devices; but the testimony which may be given by such person, shall in no case be used against such witness.

Jurisdiction of justices.

SEC. 6. All fines and forfeitures mentioned in this chapter, may be recovered before a justice of the peace, in the name and for the use of the county, where such offence may have been committed.

Duty of district attorney.

SEC. 7. It shall be the duty of the district attorney, upon notice of the commencement of a suit under any of the provisions of this chapter, to immediately prosecute the same, in the name and for the use of the county in which the offence is committed.

Ib. To sue for money lost in gaming.

SEC. 8. If any person shall, by playing at cards, dice or other game, or by betting on the hands or sides of such as are gaming, lose to any person so playing or betting, any sum of money or any goods whatever, and shall pay or deliver the same, or any part thereof to the winner, it shall be the duty of the prosecuting attor-

ney to sue for and recover the same in the name of the county in which such game was played, or money lost, to go for the use of common schools. CHAP. 11.

SEC. 9. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by playing or gaming at cards, dice or any other game whatever, or by betting on the sides or hands of any persons gaming, or for re-imbursing or repaying any money knowingly lent or advanced at the time and place of such gaming or betting, or lent and advanced for any gaming or betting to any person so gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons, except such as shall hold or claim under them in good faith, and without notice of the illegality of the consideration of such contract or conveyance. Gaming securities void.

CHAPTER XI.

OFFENCES AGAINST CHASTITY, MORALITY AND DECENCY.

- SEC. 1. Punishment for adultery.
2. For polygamy.
3. Excepted cases.
4. Punishment for fornication and lasciviousness.
5. For seduction under promise of marriage.
- 6 & 7. For concealing death of bastard.
8. For keeping house of ill fame.
9. Lease of such house when void.
10. Punishment for publishing obscene books.
11. For incest.
12. For sodomy.
13. For illegal disinterment.
14. For injuring grave-stones.
15. For making roads through grave-yards.
16. For cruelty to animals.
17. For disturbing religious meetings.
18. Civil process not to be served on Sunday.
19. Jurisdiction of justice of peace under this chapter.

SEC. 1. Every person who shall commit the crime of adultery, shall be punished, on conviction, by imprisonment in the penitentiary, not more than two years nor less than six months, or by fine not exceeding one thousand nor less than one hundred dollars; and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and be liable to the same punishment; but no prosecution for adultery shall be commenced, except on the complaint of the husband or the wife, and no such prosecution shall be commenced after one year from the time of committing the offence. Adultery.

SEC. 2. If any person, who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, he or she shall, except in cases mentioned in the third section, be deemed guilty of the crime of polygamy, and shall be punished, on conviction, by imprisonment in the penitentiary, not more than four years nor less than one year, or by fine not exceeding one thousand nor less than five hundred dollars. Polygamy.