

**CHAP. 11.** **SEC. 3.** The provisions of the preceding section shall not extend to any person whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years continuously, the party marrying again not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony.

**Fornication.** **SEC. 4.** If any man and woman, not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness and lascivious behavior, every such person shall, on conviction, be punished by fine not exceeding three hundred, nor less than fifty dollars, or by imprisonment in the county jail, not exceeding three months.

**Seduction under promise of marriage.** **SEC. 5.** Any unmarried man who, under promise of marriage, or any married man who shall seduce and have illicit connection with any unmarried female of previous chaste character, upon conviction, shall be punished by imprisonment in the penitentiary not more than five years, nor less than one year, or by imprisonment in the county jail not more than one year, nor less than six months, or by fine not exceeding one thousand, nor less than five hundred dollars; but no conviction shall be had under the provisions of this section, on the testimony of the female seduced, unsupported by other evidence, nor unless the indictment shall be found within two years after the commission of the offence; *provided*, that the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

**Concealing death of bastard.** **SEC. 6.** If any woman shall conceal the death of any issue of her body, which if born alive would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall, on conviction, be punished by imprisonment in the penitentiary not more than one year, nor less than six months, or by fine not exceeding three hundred, nor less than one hundred dollars.

**Indictable with murder.** **SEC. 7.** Any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offence described in the last preceding section; and if on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

**Keeping house of ill fame.** **SEC. 8.** Every person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, on conviction, shall be punished by imprisonment in the county jail not more than one year, nor less than six months, or by fine not exceeding five hundred nor less than one hundred dollars.

**Ib. Lease of when void.** **SEC. 9.** Whenever the lessee of any dwelling-house shall be convicted of the offence mentioned in the next preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void; and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

**Publishing obscene books, &c.** **SEC. 10.** If any person shall import, print, publish, sell or distribute any book or any pamphlet, ballad, printed paper or other

**CHAP. 11.** thing containing obscene language or obscene prints, pictures, figures, or other descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education, or shall buy, procure, receive, or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school, or place of education, he shall, on conviction, be punished by imprisonment in the county jail not more than six, nor less than three months, or by a fine not more than three hundred, nor less than fifty dollars.

**SEC. 11.** All persons being within the degree of consanguinity, within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished on conviction, by imprisonment in the penitentiary not more than two years, nor less than six months.

**SEC. 12.** Every person who shall commit sodomy, or the crime against nature, either with mankind or any beast, shall, on conviction, be punished by imprisonment in the penitentiary not more than five years nor less than one year.

**SEC. 13.** If any person, not being lawfully authorized, shall wilfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender and every accessory thereto, either before or after the fact, shall, on conviction, be punished 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 fifty dollars.

**SEC. 14.** If any person shall wilfully or with evil intent, destroy, mutilate, deface or remove any tomb, monument, grave-stone or other structure, or thing placed, designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or for the ornament of any tomb, monument, grave-stone or other structure before mentioned, or of any inclosure for the burial of the dead, or shall wilfully and with evil intent, destroy, mutilate, remove, cut, break or injure any tree, shrub or plant, placed or being within any such inclosure, the person so offending, shall, on conviction, be punished by a fine not exceeding one thousand, nor less than twenty-five dollars.

**SEC. 15.** If any person shall open or make any highway or town-way, or shall construct any railroad, turnpike, canal, or any other thing in the nature of a public easement, over, in, through, or upon such part of any inclosure, being the property of a town, village, or religious society, or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall have been specially granted by law, or unless the consent of such town, village, religious society, or private proprietors respectively, shall have first been obtained, he shall be liable to punishment by imprisonment in the county jail not more than one year, nor less than six months, or by fine not more than five hundred, nor less than one hundred dollars.

**SEC. 16.** Every person who shall cruelly beat or torture any

Incest.

Sodomy.

Illegal disinterments.

Injuring grave stones, &amp;c.

Making roads &amp;c. through grave-yards..

Cruelty to animals.

CHAP. 12. horse, ox or other animal, whether belonging to himself or another, shall be liable to punishment by imprisonment in the county jail, not more than thirty nor less than ten days, or by fine not exceeding fifty, nor less than five dollars.

Disturbing religious meetings.

SEC. 17. Every person, who, on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people, met for the worship of God, within the place of such meeting, or out of it, shall be liable to fine not exceeding fifty, nor less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

Civil process not to be executed on Sunday.

SEC. 18. No person shall serve or execute any civil process from the midnight preceding to the midnight following the Lord's day, but such service shall be void, and the person serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

Jurisdiction of justice.

SEC. 19. Justices of the peace shall have jurisdiction of the offences mentioned in the seventeenth and eighteenth sections of this chapter.

## CHAPTER XII.

### OFFENCES AGAINST THE PUBLIC HEALTH.

- SEC. 1. Punishment for selling unwholesome food.  
 2. For adulterating food, liquors, &c.  
 3. For adulterating medicines and drugs.  
 4. For inoculating with small pox.  
 5. For selling poisons without labels.

Selling unwholesome provisions, &c.

SEC. 1. If any person shall, knowingly, sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished, on conviction, 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 ten dollars.

Adulterating food or liquors.

SEC. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquors, or other liquor intended for drinking, with any substance injurious to health, 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 one thousand, nor less than fifty dollars, and the articles so adulterated shall be forfeited and destroyed.

Adulterating medicine.

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or knowingly offer any adulterated drug or medicine for sale, in such a manner as to render the same injurious to health, 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, and such adulterated drugs and medicines shall be forfeited and destroyed.

Inoculating with small pox.

SEC. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated with the small pox,

within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall, on conviction, be punished by imprisonment in the penitentiary, not more than three years, nor less than one year.

CHAP. 13.

SEC. 5. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "poison," and the true name thereof, in English, written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction, be punished by a fine not exceeding one hundred, nor less than ten dollars.

Selling poison without label.

## CHAPTER XIII.

### GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

- SEC. 1. Punishment for being accessory to felony before the fact.  
 2. For procuring felony to be committed.  
 3. Trial of accessory.  
 4. Punishment for assisting principal or accessory to escape.  
 5. Accessory may be convicted before principal.  
 6. Offences, near boundary lines, how alleged in indictment.  
 7. Offence where prosecuted, when wound is given in one county and death occurs in another.  
 8. Ib. When wounds, &c., are given out of territory and death occurs in territory.  
 9. Allegation in indictment for embezzling.  
 10. Certain fines appropriated for schools.  
 11. Benefit of clergy, wager of battle, petty treason, abolished.

SEC. 1. Every person who shall be aiding in the commission of any offence, which shall be a felony, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall, on conviction, be punished in the same manner as is or shall be prescribed for the punishment of the principal felon.

Aiding in felony.

SEC. 2. Every person who shall counsel, hire, or otherwise procure any offence to be committed, which shall be a felony, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the same.

Procuring felony.

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

Trial of accessory.

SEC. 4. Every person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal, maintain, or assist any principal felon or accessory before the fact, or shall give such offender any other aid, knowing that he has committed a felony, or has been accessory thereto before the fact, with intent that he shall avoid and escape from detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and on conviction,

Assisting in escape of principal or accessory.

CHAP. 13. shall be imprisoned in the county jail not more than one year, or by fine not exceeding two hundred dollars.

Trial of accessory.

SEC. 5. Every accessory either before or after the fact to any felony, by any statute made, or which shall hereafter be made, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, and either in the county where such person shall have become an accessory, or in the county where such principal felony shall have been committed.

Offences near boundary lines.

SEC. 6. Offences committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment, to have been committed in either of them, and may be prosecuted and punished in either county.

Wound in one county and death in another.

SEC. 7. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted in either county.

Wound out of territory and death in territory.

SEC. 8. If any such mortal wound shall be inflicted, or other violence or injury done, or poison administered, either within or without the limits of this territory, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Allegation for embezzling.

SEC. 9. In the prosecution of any offence committed upon, or in relation to, or in any way affecting any real estate, or any offence committed in stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proven on trial that at the time when such offence was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment, or other accusation, to be the owner thereof.

Certain fines appropriated to schools.

SEC. 10. When any fine shall have been imposed upon any person, upon conviction upon an indictment or presentment of a grand jury, or where such fine shall have been imposed by a justice of the peace, such fine, when the same shall be collected, shall in all cases be paid into the county treasury of the county where the conviction was had, and shall be appropriated for schools in the same manner as the yearly school fund collected in such county.

Benefit of clergy, battle, petit treason, &c., abolished.

SEC. 11. The plea of benefit of clergy, wager of battle, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder in the second degree.

## CHAPTER XIV.

## SEARCH WARRANT, AND PROCEEDINGS THEREON.

- SEC. 1. Search warrants, when and by whom issued.  
2. Magistrate, when to issue warrant.  
3. Warrants, to whom issued and what to contain.  
4. Property seized, how kept and disposed of.

SEC. 1. When complaint shall have been made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue his warrants to search for such property.

SEC. 2. Any such magistrate, when satisfied that there is reasonable cause, may also upon like complaint made on oath, issue search warrants in the following cases, to wit:

1. To search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments or tools, machines or materials prepared or provided for making either of them;

2. To search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, distributed or introduced into any family, school, or place of education;

3. To search for and seize any gaming apparatus or implements used or kept, and to be used in unlawful gaming in any gaming-house or in any building, apartment or place resorted to for the purpose of unlawful gaming.

SEC. 3. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property, or other things for which he is required to search, are believed to be concealed, which place and property or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who issued the warrant, or before some other magistrate or court having cognizance of the case.

SEC. 4. When any officer in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant, shall be destroyed under direction of the court or magistrate.

Search warrants.

Magistrate when to issue warrant.

To whom directed and what to contain.

Property seized how kept.

## CHAPTER XV.

## DEMANDING FUGITIVES FROM JUSTICE.

- SEC. 1. Governor may appoint agents to demand fugitives from justice.  
 2. Proceedings when such demand is made by executive of another state, &c.  
 3. When and how magistrate to issue warrant; contents of warrant.  
 4. Person charged to give recognizance; when to be committed; forfeiture of recognizance.  
 5. When discharged; may be delivered up on warrant of executive.  
 6. Complainant liable for costs, &c.

Governor may appoint agents to demand fugitives.

SEC. 1. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any person charged with felony, or any other crime in this territory, and whenever an application shall be made to the governor for that purpose, the district attorney, or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the grounds of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the governor may in any case appoint such agents without requiring the opinion of, or any report from the district attorney; and the accounts of the agents appointed for such purpose, shall, in all cases, be audited by the governor, and paid from the territorial treasury.

Demand by governors of other states.

SEC. 2. When a demand shall be made upon the governor of this territory by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason, felony or any other crime, the district attorney, or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody, or is under recognizance to answer for any offence against the laws of this territory, or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory, at the expense of such agents, and shall also by such warrant require the civil officers within this territory, to afford all needful assistance in the execution thereof.

Warrant of magistrate.

SEC. 3. Whenever any person shall be found within this territory, charged with any offence committed in any state or territory, and liable by the constitution and laws of the United States, to be

delivered over on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate within the territory, to answer such complaint, as in other cases.

SEC. 4. If upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient securities, in a reasonable sum, to appear before such court or magistrate, at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner as if the offence charged had been committed within this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

Recognizance when required.

SEC. 5. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so appearing shall be recognized, committed, or discharged, any person authorized by the warrant of the executive, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Discharge of person recognized, &c.

SEC. 6. The complainant in such cases, shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week so long as such person shall remain in jail; and if he fail to do so, the jailor may forthwith discharge such person from his custody.

Complainant liable for costs, &c.

## CHAPTER XVI.

## PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

- SEC. 1. Certain officers conservators of the public peace.
2. Proceedings when complaint is made to magistrate.
3. Magistrate when to issue warrant.
4. Proceedings on examination before magistrate.
5. Privilege of defendant.
6. Recognizance, when required.
7. Defendant, when to be committed.
8. Discharge of defendant; complainant, when to pay costs.
9. In other cases, costs, how and when paid.
10. Appeal, when allowed.
11. When magistrate may require witnesses to recognize.
12. Proceedings on appeal by district court.
13. Consequence of appellant failing to prosecute appeal.
14. After commitment, defendant may be discharged on giving security.
15. Recognizance to be transmitted to district court.
16. When person may be ordered to recognize without warrant.
17. Armed persons, when required to find sureties.
18. Suit on recognizance.
19. Surety may surrender principal.

Keeping the peace.

SEC. 1. The judges of the several courts of record, in vacation as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

When sureties may be required. 17 Wen. 181; 23 do. 639.

SEC. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Warrant to issue.

SEC. 3. If, upon examination, it shall appear that there is just cause to fear that such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Examination

SEC. 4. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which may be deemed pertinent.

Privilege of defendant.

SEC. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Recognizance when required.

SEC. 6. If, upon examination, it shall appear that there is just cause to fear that any such offence will be committed by the party

complained of, he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is charged with some offence for which he ought to be held to answer at said court.

SEC. 7. If the person so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

When to be committed. 23 Wen. 639.

SEC. 8. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Complainant when to pay costs.

SEC. 9. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order the costs of prosecution, or any part thereof, to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Costs.

SEC. 10. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, within ten days after the decision of the justice, on giving the security required, appeal to the district court, next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Appeal.

SEC. 11. The magistrate, from whose order an appeal is to be taken, shall require such witnesses as he may deem necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

Witnesses when to recognize.

SEC. 12. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution, as it may deem just and reasonable.

Power of appellate court

SEC. 13. If any party appealing, shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as security for any cost which shall be ordered by the court appealed to, to be paid by the appellant.

Failing to prosecute appeal.

SEC. 14. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be dis-

Discharge of party committed.

CHAP. 17. charged by any judge or justice of the peace, on giving such security as was required.

Recognizances when to be transmitted. SEC. 15. Every recognizance taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate to the district court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Order to recognize without warrant. SEC. 16. Any person, who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill, or beat another, or to commit any violence or outrage against his person or property, and every person, who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Armed persons, when required to find sureties. SEC. 17. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault, injury, or other violence to his person, or to his family or property, he may, on complaint of any other person, having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

Suit on recognizance. SEC. 18. Whenever on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender principal. SEC. 19. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempted from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered, may recognize anew with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

## CHAPTER XVII.

### ARRESTS.

- SEC. 1. Arrest defined.  
 2. Arrest, how and by whom made.  
 3. Every person must aid officer in making arrest, if required.  
 4. Arrest for felony and misdemeanor, when may be made.  
     5. As to what constitutes arrest.  
 6. Officer may pursue fugitive into other counties.  
 7. When an officer or private person may arrest without warrant.  
 8. Arrest, how made in such case.  
 9. Escape and capture of prisoner.

Arrest. SEC. 1. Arrest is the taking a person into custody, that he may be held to answer for a public offence.

SEC. 2. An arrest may be either, by a peace officer under a warrant, or without a warrant, or by a private person.

CHAP. 18. How made. SEC. 3. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution. Assisting officer.

Arrest, when to be made. SEC. 4. If the offence charged be a felony, the arrest may be made on any day, and at any time of the day or night; if it be a misdemeanor, the arrest shall not be made on Sunday, or at night, unless upon the direction of the magistrate indorsed upon the warrant.

What constitutes arrest. SEC. 5. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Pursuit. SEC. 6. If any person against whom a warrant may be issued for an alleged offence committed in any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

Arrest without warrant. SEC. 7. A peace officer, or a private person may, without a warrant, arrest a person:

1. For a public offence, committed or attempted in his presence;
2. When the person arrested has committed a felony, though not in his presence;
3. When a felony has in fact been committed, and he has reasonable cause for believing that the person arrested committed it.

SEC. 8. He shall before making the arrest, inform the person to be arrested, of the cause thereof, and require him to submit, except, when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission. How to be made.

SEC. 9. If a person arrested escape or be rescued, the person from whose custody he escaped, or was rescued, may immediately pursue and retake him, at any time, and in any place, in the territory. Escape and capture.

## CHAPTER XVIII.

### EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

- SEC. 1. What officers authorized to issue process, under this chapter.  
 2. Proceedings of justice on complaint being made; issue of warrant.  
 3. Bail, when and when not to be taken.  
 4. When witnesses may be held to bail.  
 5. Id. When additional securities may be required.  
 6. In case a married woman or minor is witness.  
 7. Witness refusing to recognize may be committed.  
 8. When prisoner may be released.  
 9. Justice may associate with himself another justice.  
 10. Testimony to be reduced to writing.  
 11. Return of examination, recognizance, &c., to district attorney or clerk.  
 12. Discharge of defendant on giving satisfaction.  
 13. Order discharging recognizance, when filed.  
 14. Forfeiture of recognizance, proceedings, &c.  
 15 & 16. Action on recognizance.  
 17. Examination how conducted.  
 18. When persons not to be admitted to bail.

CHAP. 18.

Who to issue process.

Duty of magistrate on complaint. Hill 300.

Issue of warrant. Barb. 465.

Bail when taken. Wen. 393; 10 do. 431, 465.

Ib. When not taken.

Witnesses when to recognize.

Additional security when required.

Married woman, or minor.

How compelled.

Admitting to bail.

Associating of magistrates.

SEC. 1. For the apprehension of persons charged with offences, the judges of the district courts, in vacation as well as in term-time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter.

SEC. 2. Upon complaint being made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

SEC. 3. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and, if the offence be bailable by the magistrate, and the prisoner offer sufficient bail, or the amount of money in lieu thereof, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed for trial.

SEC. 4. When a magistrate admits a prisoner to bail, or commits him, he shall also bind by recognizances such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

SEC. 5. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court.

SEC. 6. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor, in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

SEC. 7. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

SEC. 8. Any judge of a court of record, on application of any prisoner, committed for a bailable offence, may inquire into the case, and admit such prisoner to bail; and any person, committed for not finding sufficient securities, may be admitted to bail, by either of said judges.

SEC. 9. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself, one or more magistrates of the same county; and they may together exe-

CHAP. 18.

Testimony how written.

Return of examination.

Discharge of defendant on giving satisfaction.

Order discharging recognizance when filed.

Forfeiture of recognizance Proceedings, &c.

Action on recognizance

Ib., when not to be barred or defeated.

cute the powers and duties before mentioned, but no fees shall be taxed for such associates.

SEC. 10. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his discretion, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate.

SEC. 11. All examinations and recognizances taken by any magistrate in pursuance of the provisions of this chapter, shall be certified, and returned by him to the district attorney, or the clerk of the court, before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith, by rule of court, and in case of disobedience, may be proceeded against by attachment, as for contempt.

SEC. 12. When any person shall be committed to prison, or shall be under recognizance to answer any charge for a misdemeanor, for which the party injured may have a remedy by a civil action, except when the offence was committed upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment, or took the recognizance, and acknowledged in writing that he has received satisfaction for the injury, the magistrate may in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supersede the commitment by an order under his hand; and may also discharge all recognizances, and supersede the commitment of all witnesses in the case.

SEC. 13. Every such order of the magistrate, discharging the recognizance of the party, or witness, shall be filed in the office of the clerk before the sitting of the court before which they are bound to appear; and every order superseding the commitment of the party charged, or of any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

SEC. 14. When any person under recognizance in any criminal prosecution, either to appear and answer, or to prosecute an appeal or testify in any court, shall fail to perform the condition of any such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

SEC. 15. When any action is brought in the name of the territory, against a principal or surety in any recognizance entered into either by a party, or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the territory, according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

SEC. 16. No such action brought on a recognizance as mentioned in the preceding section, shall be barred or defeated, nor shall

**CHAP. 19.** judgment be arrested thereon by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

Examination  
how conducted.

**SEC. 17.** The magistrate, while examining any witness, may in his discretion exclude from the place of examination all the other witnesses; he may also if requested, or if he can see cause, direct the witnesses for or against the prisoner to be kept separate, so that they cannot converse with each other until they shall have been examined.

Bail when  
not to be  
taken.

**SEC. 18.** Persons charged with an offence punishable with death, shall not be admitted to bail when the proof is evident or the presumption great; but for all other offences bail may be taken in such sum as in the opinion of the magistrate will secure the appearance of the person charged with the offence, at the court where such person is to be tried.

## CHAPTER XIX.

### OF CHALLENGING JURORS.

- SEC. 1.** Defendant may challenge; panel of grand jury.  
**2.** Challenge to grand jury, for what cause interposed.  
**3.** Challenge to individual juror, for what cause interposed.  
**4.** Challenge must be entered on minutes of court.  
**5.** If challenge allowed, grand jury not to find indictment.  
**6.** If challenge to individual juror be allowed, he cannot act.  
**7.** Jury must inform court, of a violation of last section.  
**8.** Court to appoint foreman of grand jury.  
**9.** Oath to be administered to grand jury.  
**10.** Oath to be administered to grand juror.  
**11.** Court must charge grand jury.  
**12.** Grand jury must retire.  
**13.** Grand jury must appoint clerk; duty of clerk.  
**14.** Power and duties of grand jury.  
**15.** Indictment defined.  
**16.** Foreman may administer oath to witness.  
**17.** What evidence can be received.  
**18.** The evidence must be legal.  
**19.** Jury must weigh the evidence.  
**20.** Grand jury when to make complaint.  
**21.** Grand jury, inquiries of.  
**22.** Grand jury have access to prison.  
**23.** Grand jury may ask advice of court.  
**24.** What grand juror may be required to disclose.  
**25.** Grand juror not liable for his proceedings before grand jury.

Defendant  
may chal-  
lenge.

**SEC. 1.** A person held to answer a charge for a public offence, may challenge the panel of the grand jury, or an individual grand juror, before they retire, after being sworn and charged by the court.

Ib. To grand  
jury for what  
cause inter-  
posed.

**SEC. 2.** A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury box of the county.

**CHAP. 19.** 2. That the drawing was not had in the presence of the officer, or officers prescribed by law.

3. That the drawing was not had at least ten days before the court.

**SEC. 3.** A challenge, to an individual grand juror, may be interposed by a person actually in custody, or on bail, for one or more of the following reasons:

Ib. To indi-  
vidual juror  
for what  
cause inter-  
posed.

1. On the ground of a want of any of the qualifications, prescribed by statute to render a person competent as a juror;

2. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot act impartially, and without prejudice to the substantive rights of the party challenging.

**SEC. 4.** Challenges shall be entered upon the minutes, and decided by the court.

Challenges  
must be en-  
tered.

**SEC. 5.** If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charges, against the defendant, by whom the challenge is made.

If challenge  
to jury al-  
lowed.

**SEC. 6.** If a challenge to an individual grand juror be allowed, he cannot be present at, or take any part in the consideration of the charge against the defendant, who interposed the challenge, or the deliberation of the grand jury thereon.

If challenge  
to juror al-  
lowed.

**SEC. 7.** The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt.

Jury to in-  
form, &c.

**SEC. 8.** The court shall appoint a foreman to the grand jury.

Appointm't  
of foreman.

**SEC. 9.** The following oath shall be administered to the grand jury: "You, as grand jurors, for the body of the county of \_\_\_\_\_, (as the case may be,) do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, of the district attorney, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice; neither will you leave any person unrepresented through fear, favor, affection, or hope of reward; but that you will present things truly, as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory. So help you, God."

Oath to be  
administer-  
ed to grand  
jury.

**SEC. 10.** If after the foreman is sworn, any grand juror appear, and be admitted as such, the oath, as prescribed in section nine, shall be administered to him, commencing, "You, as one of this grand jury," and so on to the end.

Ib. To grand  
juror.

**SEC. 11.** The grand jury being empaneled and sworn, shall be charged by the court; in doing so, it shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand jury.

Court to  
charge jury.

**SEC. 12.** The grand jury then shall retire to a private room and inquire into the offences cognizable by them.

Grand jury  
must then  
retire.

**SEC. 13.** The grand jury shall appoint one of their number as clerk, who shall preserve the minutes of their proceedings, except of the votes of the individual members on a presentment or indictment, and of the evidence given before them.

Ib. To ap-  
point clerk;  
his duties.

CHAP. 19. SEC. 14. The grand jury have power, and it is their duty to inquire into all public offences committed, or triable in the county, and to present them to the court by indictment.

Power and duty of grand jury. Indictment defined.

SEC. 15. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offence.

Foreman may administer oath.

SEC. 16. The foreman may administer an oath to any witness appearing before the grand jury.

What evidence can be received.

SEC. 17. In the investigation of a charge for the purpose of indictment, the grand jury shall receive no other evidence than :

1. Such as is given by witnesses produced and sworn before them ; or,

2. By legal documentary evidence.

ib. Must be legal.

SEC. 18. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay and secondary evidence.

Must weigh the evidence

SEC. 19. The grand jury are not bound to hear evidence for the defendant ; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Grand juror when to complain.

SEC. 20. If a member of the grand jury knows, or has reason to believe, that a public offence has been committed, which is triable in the county, he shall declare the same to his fellow jurors, who shall thereupon investigate the same.

Into what to inquire.

SEC. 21. The grand jury shall inquire :

1. Into the condition of every person imprisoned on a criminal charge, triable in the county, and not indicted ;

2. Into the condition and management of the public prisons in the county ; and

3. Into the wilful and corrupt misconduct in office, of public officers of every description in the county.

Have access to prisons.

SEC. 22. They shall be entitled to free access at all reasonable times to the public prisons, and to the examination without charge of all public records in the county.

May ask advice of court

SEC. 23. The grand jury may at all reasonable times ask the advice of the court, or of the district attorney ; and whenever required by the grand jury, it shall be the duty of the district attorney to attend them for the purpose of framing indictments, or of examining witnesses in their presence, but no district attorney, sheriff, or other person, except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes upon any matter before them.

What juror may be required to disclose. Denio 133.

SEC. 24. A member of the grand jury may be required by any court, to disclose the testimony of any witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any other person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Grand juror not liable for his proceed-

SEC. 25. A grand juror shall not be questioned for any thing he may say, or any vote he may give in the grand jury, relative to a

matter legally pending before the jury, except for a perjury, of which he may have been guilty in making an accusation, or giving testimony to his fellow jurors.

CHAP. 20, 21. Indictment before the grand jury.

## CHAPTER XX.

### FINDING AND PRESENTATION OF INDICTMENT.

- SEC. 1. Indictment, how found.
2. Charge dismissed, may be again submitted.
3. Names of witnesses must be indorsed on indictment, and when name of prosecutor.
4. Indictment must be presented by foreman.

SEC. 1. An indictment shall not be found without the concurrence of at least twelve grand jurors ; when so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury ; and when not so found, it shall be indorsed, "not a true bill," and signed in like manner.

Indictment how found.

SEC. 2. The dismissal of the charge shall not, however, prevent it being again submitted to a grand jury, as often as the court may direct.

Charge dismissed may be again submitted.

SEC. 3. When an indictment shall be found, the names of the witnesses examined before the grand jury, shall, in all cases, be inserted at the foot of the indictment, or indorsed thereon before it is presented to the court ; and in cases of indictments, other than for felony, the grand jury shall indorse thereon the name of any person who shall voluntarily appear as prosecutor.

Names of witnesses to be indorsed on indictment

When name of prosecutor

SEC. 4. When an indictment is found by the grand jury, it shall be immediately presented by their foreman, in their presence, to the court, and shall be filed with the clerk, and remain in his office as a public record.

Indictment how presented.

## CHAPTER XXI.

### INDICTMENT.

- SEC. 1. Indictment.
2. What to contain.
3. Forms of indictment.
4. Above forms sufficient.
5. Indictments must be direct.
6. Proceedings when defendant is indicted by fictitious name.
7. Indictment must charge but one offence.
8. Time of offence, how stated.
9. Certain allegation immaterial.
10. Words in an indictment, how construed.
11. Words of statute need not be strictly construed.
12. Indictment when sufficient.
13. Defects in matter of form, how regarded.
14. Presumptions of law need not be stated.
15. Judgments, how pleaded.
16. Private statute, how pleaded.
17. Indictment for libel, need not state extrinsic facts.
18. Misdescription in forgery, when immaterial.
19. What sufficient in perjury.
20. Upon indictments against several, any or all may be convicted.
21. Distinction between principal and accessory before the fact, and principals in first and second degree, abolished.
22. Compounding offences, how indictable.

CHAP. 21.  
Indictment,  
what to con-  
tain.

SEC. 1. The first pleading on the part of the territory, shall be the indictment.

SEC. 2. The indictment shall contain:

1. The title of an action specifying the name of the court to which the indictment is presented, and the names of the parties;
2. A statement of the acts constituting the offence, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Its form.

SEC. 3. It may be substantially in the following form:

[No. 1.]

*The Territory of Oregon,* }  
 vs. } The district court for the county of  
*A— B—,* } ———, and Territory of Oregon.

A. B. is accused by the grand jury of the county of ———, by this indictment, of the crime of (here insert the name of the offence, if it have one, such as treason, murder, arson, or the like, or if it be a misdemeanor, having no general name, such as libel, larceny, or the like, insert a brief description of it, as it is given by law,) committed as follows:

The said A. B., on the ——— day of ———, A. D. 18—, at the town, (city, or village, as the case may be,) of ———, in this county, (here set forth the act, charged as an offence, according to the form adapted to the case, as provided in the following forms, or similar ones.)

Dated at ———, in the county of ———, the ——— day of ———, A. D. 18—.

(Signed,)

S. H.,

*Foreman of the Grand Jury.*

[No. 2.]

*In an indictment for murder in the first degree.*

[Commencement the same as No. 1.]

Indictment  
for murder.

—— Purposely, feloniously, and of deliberate and premeditated malice, and without the authority of law, or in the perpetration or attempt to perpetrate a rape, arson, robbery, or burglary, (as the case may be,) killed C. D., by shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand jury, or as the case may be.

[No. 3.]

*In an indictment for murder in the second degree.*

Ib. In sec-  
ond degree.

—— Without the authority of law, purposely, feloniously, maliciously, but without deliberation and premeditation, or being engaged in the commission of some felony, (as the case may be,)

CHAP. 21.

other than a rape, arson, robbery, and burglary, without any desire to effect death, killed C. D., by shooting him with a gun, as the case may be.

[No. 4.]

*Manslaughter.*

—— Feloniously, unlawfully, and voluntarily killed C. D., without malice, and without any mixture of deliberation, by stabbing him with a knife, or as the case may be.

Indictment  
for man-  
slaughter.

[No. 5.]

—— Deliberately and feloniously assisted one C. D. in the commission of self-murder, which crime the said C. D. then and there committed, by hanging himself by the neck until he was dead, as the case may be.

Indictment  
for aiding  
self-murder.

[No. 6.]

*In an indictment for rape.*

—— Foreibly and feloniously ravished C. D., a woman of the age of ten years, or upwards; or

Indictment  
for rape.

[No. 7.]

—— Unlawfully, carnally and feloniously knew and abused C. D., a female child under the age of ten years.

Ib.

[No. 8.]

*In an indictment for robbery.*

—— Feloniously took a gold watch, (or any other property,) the property of C. D., from his person, and against his will, by violence to his person, (or by putting him in fear of some immediate injury to his person;) or

Indictment  
for robber.

[No. 9.]

—— Feloniously took a gold watch, (or as the case may be,) the property of C. D., in his presence, and against his will, by violence to his person.

Ib.

[No. 10.]

*In an indictment for arson.*

—— Wilfully, maliciously and feloniously set fire to, (or burned,) in the night time, a dwelling-house in which there was a human being at the time lawfully residing, namely, N. H., (or whose name is unknown to the grand jury;) or

Indictment  
for arson.

[No. 11.]

—— Wilfully, maliciously, and feloniously set fire to, (or burned,) the dwelling-house of another in the day time; or

Ib.

CHAP. 21.

[No. 12.]

*In an indictment for larceny.*

Indictment for larceny. — Feloniously took and carried away one gold watch and one silver chain, the personal property of J. D., or of a person whose name is unknown to the grand jury, of the value of more than thirty-five dollars; or

[No. 13.]

*In an indictment for burglary.*

Indictment for burglary. — Feloniously broke into and entered in the night time, the dwelling-house of C. D., in which there was at the time a human being, namely, the said C. D., (or whose name is unknown to the grand jury,) with intent to commit murder, (a rape, robbery, or larceny, or other public offence, describing it generally,) therein, by forcibly bursting or breaking the wall or outer door or window of such house, (or as the case may be;) or

[No. 14.]

*In an indictment for forging and counterfeiting.*

Indictment for forgery and counterfeiting. — Feloniously forged or counterfeited, or falsely altered, by erasing a material part thereof, (as the case may be,) an instrument purporting to be (or being) the last will and testament of C. D., devising certain real and personal property, with intent to defraud; or

[No. 15.]

1b. — Feloniously forged a certificate purporting to have been issued by J. C., an officer duly authorized to make such certificate, of the acknowledgment of C. D., of the execution by him of a conveyance to E. F. of certain real property in the town of —, with intent to defraud the said C. D.; or

[No. 16.]

1b. — Feloniously and falsely made an impression, purporting to be the impression of the great seal of the territory, on an instrument in writing, being, (or purporting to be) a —, (stating generally the purport of the instrument,) with the intent to defraud; or

[No. 17.]

1b. — Feloniously counterfeited a gold (or silver) coin of the Republic of Mexico, called a dollar, which was at that time current by custom or usage within this territory; or

[No. 18.]

Indictment for having counterfeit coin. — Feloniously had in his possession a counterfeit of a gold (or silver) coin of the Republic of Mexico, called a dollar, which was at that time current in the territory, knowing the same to be counterfeited, with intent to defraud (or injure) by uttering the same as true or false.

[No. 19.]

*In an indictment for perjury.*

Indictment for perjury. —, On his examination as a witness duly sworn to testify the truth, on the trial of a civil action in the court of —, between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, he feloniously testified falsely, that (stating the facts to be alleged to be false,) the matters so testified being material, and the testimony being wilfully and corruptly false.

[No. 20.]

*In an indictment for bigamy.*

Indictment for bigamy. —, Having a wife then living, feloniously and unlawfully married one G. A.

[No. 21.]

*In an indictment for libel.*

Indictment for libel. — Feloniously published in a newspaper called the —, the following libel concerning C. D., (here insert the article charged as being a libel.)

SEC. 4. The manner of stating the fact constituting the offence, as set forth in the preceding forms, shall be sufficient in all cases where the forms given are applicable. In all other cases, forms may be used as nearly similar as the nature of the case may permit.

SEC. 5. The indictment shall be direct and certain as it regards: Indictment must be direct.

1. The party charged;
2. The offence charged;
3. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

SEC. 6. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment. Proceedings when defendant is indicted by fictitious name.

SEC. 7. The indictment shall charge but one offence, and in one form only, except that where the offence may be committed by the use of different means, the indictment may allege the means in the alternative. Indictment must charge but one offence.

SEC. 8. The precise time at which the offence was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offence. Time of offence how stated.

SEC. 9. When the offence involves the commission of or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material. Certain allegation immaterial.

SEC. 10. The words used in an indictment shall be construed in their usual acceptations, in common language, except words and Words in an indictment how construed.

CHAP. 21. phrases defined by law, which are to be construed according to their legal meaning.

Words of statute need not be strictly construed. Indictment when sufficient.

SEC. 11. Words used in the statutes to define a public offence, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

SEC. 12. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court is not accurately stated;

2. That it was found by a grand jury of the county in which the court was held;

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name;

4. That the offence was committed at some place within the jurisdiction of the court, except where as provided by law, the act, though done without the local jurisdiction of the county, is triable therein;

5. That the offence was committed at some time prior to the time of finding the indictment;

6. That the act or omission charged as the offence, is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

7. That the act or omission charged as the offence, is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Defects in matters of form how regarded.

SEC. 13. No indictment shall be deemed insufficient, nor shall the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Presumptions of law need not be stated. Judgments how pleaded.

SEC. 14. Neither presumptions of law nor matter of which judicial notice is taken, need be stated in an indictment.

SEC. 15. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, shall be established on trial.

Private statute how pleaded.

SEC. 16. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to the statute by its title, and the day of its passage, and the court thereupon shall take special notice thereof.

Indictment for libel need not state extrinsic facts.

SEC. 17. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published shall be established on the trial.

Misdescription in forgery when immaterial.

SEC. 18. When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or

withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial. CHAP. 22.

What sufficient in perjury.

SEC. 19. In an indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person, before whom the perjury was committed.

Part or all defendants may be convicted. Distinction between principal and accessory before the fact abolished.

SEC. 20. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

SEC. 21. The distinction between an accessory before the fact and a principal, and between the principals in the first and second degree in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid and abet in the commission, though not present, shall hereafter be indicted, tried and punished as principals in the case of a misdemeanor.

Compound offence, how indicted.

SEC. 22. A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity, or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence has not been indicted or tried.

## CHAPTER XXII.

### ARRAIGNMENT OF THE DEFENDANT.

- SEC. 1. Defendant how arraigned.
2. Defendant must be present in cases of felony.
  3. Court may direct officer to arraign defendant.
  4. When defendants do not appear after giving bail, bench warrant may issue.
  5. Clerk may issue such warrant.
  6. Form of bench warrant in certain cases.
  7. Bench warrant in case of misdemeanor.
  8. In such case amount of bail to be indorsed on warrant.
  9. Bench warrant how served.
  10. Magistrate of another county how to proceed in admitting to bail.
  11. Certificate of such magistrate on warrant.
  12. Court may order defendant to be committed.
  13. If defendant present, must be committed.
  14. Court must inform defendant of his rights to counsel.
  15. Arraignment, how made.
  16. Defendant must be asked to give his true name.
  17. Defendant allowed one day to answer.
  18. Defendant may demur or plead to answer.

Defendant how arraigned.

SEC. 1. When the indictment is filed, the defendant shall be arraigned thereon before the court in which it is found, if it be triable therein, or if not, before the court to which it is sent or removed.

CHAP. 22.

When defendant must be present.

Court may direct officer to arraign defendant.

When bench warrant may issue.

Ib. How issued.

Ib. Form of.

Ib.

Amount of bail to be indorsed on warrant.

Bench warrant how served.

Magistrate of another county how to proceed.

Ib. Must certify on warrant.

SEC. 2. If the indictment be for a felony, the defendant shall be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

SEC. 3. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned; and the officer shall do so accordingly.

SEC. 4. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 5. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

SEC. 6. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form:

*The district court for the county of \_\_\_\_\_, and Territory of Oregon:*

In the name of the United States, to any sheriff (or other proper officer) in the territory of Oregon—An indictment having been found on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, in the district court for the county of \_\_\_\_\_, charging C. D. with the crime of (designating it generally,) you are therefore commanded forthwith to arrest the above named C. D. and bring him before this court, (or if the venue has been changed, take him before that court, as the case may be,) to answer the indictment; or if the court have adjourned for the term, that you deliver him into custody of the jailor of the county (or city) of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

By order of the court.

E. F., Clerk.

SEC. 7. If the offence be a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

SEC. 8. If the offence charged be bailable, the court, upon directing the bench warrant to issue, shall fix the amount of bail, and an indorsement shall be made upon the bench warrant, and signed by the clerk to the following effect: "The defendant is to be admitted to bail in the sum of \_\_\_\_\_ dollars.

SEC. 9. The bench warrant may be served in any county in the same manner as a warrant of arrest.

SEC. 10. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest.

SEC. 11. On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and undertaking of bail to the

CHAP. 23.

officer having charge of the defendant; the officer shall then discharge the defendant from arrest, and without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

SEC. 12. When the indictment is for a felony, and the defendant before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented or sent, or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in the increased amount to be specified in the order.

SEC. 13. If the defendant be present when the order is made, he shall be forthwith committed accordingly; if he be not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter.

SEC. 14. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned; and he shall be asked if he desire the aid of counsel.

SEC. 15. The arraignment shall be made by the court, or by the clerk or district attorney under its direction, and shall consist in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsement thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

SEC. 16. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment.

SEC. 17. If on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable to answer the indictment.

SEC. 18. If the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

CHAPTER XXIII.

SETTING ASIDE INDICTMENT.

- SEC. 1. Indictment may be set aside on motion.
- 2. Consequence of neglecting to make such motion.
- 3. Motion when heard.
- 4. If denied, defendant must demur or plead.
- 5. If granted, defendant to be discharged, unless, &c.
- 6. Effect of order for re-submission.
- 7. If new indictment not found, court to make order of discharge.
- 8. Order to set aside an indictment, no bar to future action.

SEC. 1. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion in either of the following cases:

- 1. When it is not found indorsed and presented according to statute;

Indictment when set aside on motion.

CHAP. 24. 2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or indorsed thereon;

3. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except such persons as are permitted to be present by statute.

Neglecting to make motion. SEC. 2. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Motion when heard. SEC. 3. The motion shall be heard at the time of the arraignment, unless for good cause the court postpone the hearing to another time.

If denied, &c. SEC. 4. If the motion be denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto.

If granted, &c. SEC. 5. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless it direct that the case be re-submitted to the same or another grand jury.

Order for re-submission. SEC. 6. If the court direct that the case be re-submitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

If new indictment not found; order of discharge. SEC. 7. Unless a new indictment be found before the next grand jury of the county is discharged, the court shall on the discharge of such grand jury, make the order prescribed by section five.

Order to set aside, no bar to future action. SEC. 8. An order to set aside an indictment as provided in the preceding sections, shall be no bar to a future prosecution for the same offence.

### CHAPTER XXIV.

#### DEMURRER.

- SEC. 1. Pleadings of defendant.
2. Demurrer, when filed.
3. When defendant may demur.
4. Demurrer, what to specify; must be in writing.
5. Objection on demurrer, when heard.
6. Judgment on demurrer final, and a bar to another action.
7. If case be not re-submitted, defendant discharged.
8. Proceedings if the case be re-submitted.
9. If demurrer disallowed, defendant may plead.
10. Certain objections to be taken advantage of by demurrer only.

Pleadings of defendant. SEC. 1. The only pleading on the part of the defendant shall be either a demurrer or a plea.

Demurrer and when filed. SEC. 2. Both the demurrer and the plea shall be put in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

SEC. 3. The defendant may demur to the indictment, when it appears from the face thereof either:

1. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the county;

2. That it does not substantially conform to the requirements of the statute;

3. That more than one offence is charged in the indictment;

4. That the facts stated do not constitute a public offence;

5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

SEC. 4. The demurrer shall be in writing, signed either by the defendant or his counsel; it shall distinctly specify the ground of the objection to the indictment, or it shall be disregarded.

SEC. 5. Upon the demurrer being filed, the objections presented thereby shall be heard, either immediately, or at such time as the court may appoint.

SEC. 6. Upon considering the demurrer, the court shall give judgment either allowing or disallowing it, and an order to that effect shall be entered upon the minutes.

SEC. 7. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution for the same offence, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

SEC. 8. If the court do not direct the case to be re-submitted, the defendant, if in custody, shall be discharged; or if admitted to bail, his bail shall be exonerated; or if he have deposited money instead of bail, the money shall be refunded to him.

SEC. 9. If the court direct that the case be submitted anew, the same proceedings shall be held thereon as are prescribed in sections six and seven of the preceding chapter.

SEC. 10. If the demurrer be disallowed, the court shall permit the defendant at his election, to plead, which he shall do forthwith, or at such time as the court may allow; if he do not plead, judgment shall be pronounced against him.

SEC. 11. When the objections mentioned in section three appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty and in arrest of judgment.

CHAP. 24. When defendant may demur.

Demurrer what to specify.

Objection when heard.

Judgment how given.

When judgment on demurrer final, and a bar, &c.

If case not re-submitted.

Proceedings if re-submitted.

If demurrer be disallowed, defendant may plead.

Certain objections to be demurred to.

## CHAPTER XXV.

## OF PLEAS.

## SEC. 1. Three kinds of plea to indictment.

2. Plea, how made.
3. Plea, how entered.
4. Plea of guilty must be put in by defendant, except in case of incorporation.
5. Plea of guilty may be withdrawn.
6. Plea of not guilty, what a denial of.
7. What may be given in evidence under a plea of not guilty.
8. When acquittal not a bar to another prosecution.
- 9 & 10. When acquittal a bar to another prosecution.
11. Not guilty to be entered when defendant refuses to plead.

Three kinds of pleas to indictment.

SEC. 1. There are three kinds of pleas to an indictment: a plea of

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

Plea how made.

SEC. 2. Every plea shall be oral, and shall be entered upon the minutes of the court.

Plea how to be entered.

SEC. 3. The plea shall be entered in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offence charged in this indictment;"
2. If he plead not guilty: "The defendant pleads that he is not guilty of the offence charged in this indictment;"
3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted or acquitted, (as the case may be,) of the offence charged in this indictment, by the judgment of the court of —, (naming it,) rendered at —, (naming the place,) on the — day of —."

Plea of guilty how put in.

SEC. 4. A plea of guilty can in no case be put in, except by the defendant himself in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

Ib. May be withdrawn.

SEC. 5. The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Plea of not guilty a denial.

SEC. 6. The plea of not guilty is a denial of every material allegation in the indictment.

Evidence under plea of not guilty.

SEC. 7. All matters of fact tending to establish a defence other than that specified in the third subdivision of section three, may be given in evidence, under the plea of not guilty.

When acquittal not a bar to another prosecution.

SEC. 8. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance without a judgment of acquittal, it shall not be an acquittal of the same offence.

Ib. When a bar, &c.

SEC. 9. When, however, he was acquitted on the merits, he shall be deemed acquitted of the same offence, notwithstanding a defect in the form or substance of the indictment on which he was acquitted.

SEC. 10. When the defendant shall have been convicted or acquitted upon an indictment for an offence consisting of different degrees, the conviction or acquittal is a bar to another indictment for the offence charged in the former, or for any inferior degree of that offence, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment.

CHAP. 26.  
Acquittal when a bar.

SEC. 11. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered.

If defendant refuses to plead, &c.

## CHAPTER XXVI.

## OF THE CHANGE OF VENUE IN CRIMINAL CASES.

## SEC. 1. Criminal cases where tried.

2. Proceedings when venue is changed to another county.
3. When venue is changed, defendant must recognize.
4. When venue is changed, witness must recognize.
5. District attorney may apply for change of venue.

SEC. 1. All criminal cases shall be tried in the county where the offence was committed, except where otherwise provided by law, unless it shall appear to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county, in which case the court before whom the cause is pending, if the offence charged in the indictment be punishable with death or imprisonment in the penitentiary, may direct the person accused to be tried in some adjoining county, where a fair and impartial trial can be held; but the party accused shall be entitled to a change of venue but once, and no more.

Criminal cases where tried.

SEC. 2. When the venue is changed to an adjoining county, in a criminal case, the trial shall be conducted in all respects as if the indictment had been found in the county to which the venue is changed; and the costs accruing from a change of venue shall be paid by the county in which the offence was committed.

Proceedings when venue changed.

SEC. 3. When the court has ordered a change of venue, they shall require the accused, if the offence be bailable, to enter into recognizance with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge may direct, conditioned for his appearance in the court to which the venue is changed, at the first day of the next term thereof, and abide the order of such court, and in default of such recognizance, a warrant shall be issued, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he or she is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

Ib. Defendant must recognize to appear.

SEC. 4. When a change of venue is allowed, the court shall recognize the witnesses on the part of the territory, to appear before the court in which the prisoner is to be tried.

Ib. Witnesses to recognize.

SEC. 5. The district attorney on behalf of the territory may also apply for a change of venue, and the court being satisfied that it will promote the ends of justice, may award a change of venue upon

District attorney may apply for change of venue.

CHAP. 27, 28 the same terms, and to the same extent that are provided in this chapter, and the proceedings on such change of venue, shall be in all respects as above provided.

CHAPTER XXVII.

ISSUES.

- SEC. 1. Issues of fact defined.
- 2. Issues of fact how tried.
- 3. When defendant must be present on trial.

Issues of fact defined.

SEC. 1. An issue of fact arises :

- 1. Upon a plea of not guilty ; or
- 2. Upon a plea of a former conviction or acquittal of the same offence.

Ib. How tried.

SEC. 2. An issue of fact shall be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court, as provided in this chapter.

When defendant must be present.

SEC. 3. If the indictment be for a misdemeanor, trial may be had in the absence of the defendant, if he appear by counsel ; but if for a felony, he shall be personally present.

CHAPTER XXVIII.

CRIMINAL CALENDAR.

- SEC. 1. Clerk to prepare calendar.
- 2. Issues on calendar how disposed of.
- 3. Clerk to keep register : what to contain.
- 4. Register to be submitted to court at commencement of term.

Clerk to prepare calendar.

SEC. 1. The clerk shall prepare a calendar of the indictments pending to be tried at the term, enumerating them according to the date of the filing of the indictments, and specifying opposite to the title of each action whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail ; and shall in like manner enter therein all indictments found during the term, and on which issues of fact are joined.

Issues on calendar, how disposed of.

SEC. 3. The issues on the calendar shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court direct an indictment to be tried out of its order :

- 1. Indictments for felony, when the defendant is in custody ;
- 2. Indictments for misdemeanors, when the defendant is in custody ;
- 3. Indictments for felony, when the defendant is on bail ;
- 4. Indictments for misdemeanors, when the defendant is on bail ;

Clerk to keep register.

SEC. 3. The clerk shall keep a register of all the criminal actions in the court, in which he shall enter :

Ib. What to contain.

- 1. All cases returned to the court by a magistrate ;
- 2. All indictments found in the court, or sent, or removed thereto

for trial, with the time of finding the indictments, or when they were sent or removed ; and

3. The time of arraignment of the demurrer or plea, and of the trial, conviction, or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

SEC. 4. The register shall be submitted to the court at its opening at every term.

Ib. When to be submitted to court.

CHAPTER XXIX.

OF POSTPONEMENT OF TRIAL.

- SEC. 1. When cause may be postponed ; affidavit must be filed.
- 2. When defendant discharged, unless cause be shown for postponement.
- 3. Order of discharge not to bar another prosecution.

SEC. 1. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by the affidavit of the defendant, or the statement of the district attorney, direct the trial to be postponed to another day in the same term, or to another term ; all affidavits read upon the application, shall at the same time be filed with the clerk.

When cause may be postponed.

Affidavits must be filed.

SEC. 2. If, when the indictment is called for trial, the defendant appear and be ready for trial, and the district attorney be not ready, the court may order the indictment to be discharged, unless, being of the opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

When defendant discharged, unless, &c.

SEC. 3. If the court order the indictment to be discharged, the order shall not be a bar to another prosecution for the same offence, unless the court so direct ; if the court so direct, judgment of acquittal shall be entered.

Order not a bar to another prosecution, unless, &c.

CHAPTER XXX.

OF CHALLENGING JURORS.

- SEC. 1. Trial juries, how formed.
- 2. Challenge defined.
- 3. Defendants must join in challenge.
- 4. Challenge to panel defined.
- 5. Challenge to panel, on what founded.
- 6. Challenge to panel, when and how taken.
- 7. An adverse party may except to challenge.
- 8. On such challenge, court how and when to proceed.
- 9. Denial of challenge, how made, and trial thereof.
- 10. Who may be examined on trial of challenge.
- 11. If challenge allowed, jury to be dismissed.
- 12. Defendant to be informed of right to challenge individual juror.
- 13. Different kinds of challenge to juror.
- 14. Challenge, when to be taken.
- 15. Peremptory challenge defined.
- 16. Number defendant entitled to.
- 17. Challenge for cause defined.
- 18. General causes of challenge.
- 19. Particular causes of challenge.

- CHAP. 30. SEC. 20. Grounds of challenge for implied bias.
21. Grounds of challenge for actual bias.
  22. Exemption, not a ground of challenge.
  23. Causes of challenge, how stated.
  24. Exception to challenge, and denial thereof.
  25. Challenge, how tried if denied.
  26. Juror challenged, may be examined.
  27. Rules of evidence on trial of challenge.
  28. Juror, when excluded.
  29. Challenge to be first by defendant, then by territory.
  30. Order of challenge.
  31. When peremptory challenge may be taken.
  32. Form of oath to be administered to jurors.
  33. Jurors may affirm.
  34. Court may order a view by the jury.
  35. Proceedings when defendant has been in part acquitted.
  36. When defendant, charged with assault, with intent to commit felony, may be convicted of assault.
  37. Verdict in case of insanity.
  38. Defendant, when not liable to costs.

Trial juries how formed. SEC. 1. Trial juries for criminal actions, shall be formed in the same manner as trial juries for civil actions.

Challenge defined. SEC. 2. A challenge is an objection made to the trial jury, and is of two kinds ;

1. To the panel ;
2. To an individual juror.

Defendants must join challenge. SEC. 3. When several defendants are tried together, they cannot sever the challenges, but shall join therein.

Challenge to panel. SEC. 4. A challenge to the panel is an objection made to all the petit jurors returned, and may be taken by either party.

Ib. On what founded. SEC. 5. A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury.

How taken. SEC. 6. A challenge to the panel shall be taken before a jury is sworn, and shall be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

When adverse party may except. SEC. 7. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge; the exception need not be in writing, but shall be entered upon the minutes of the court; and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Court how then to proceed. SEC. 8. If on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge; if the exception be allowed, the court may in like manner permit an amendment of the challenge.

Denial and trial of challenge. SEC. 9. If the challenge be denied, the denial may in like manner be oral, and shall be entered upon the minutes of the court, and the court shall proceed to try the question of fact.

Who examined on trial of challenge. SEC. 10. Upon the trial of the challenge, the officer, whether judicial or ministerial, whose irregularity is complained of, as well as any other person, may be examined to prove or disprove the facts alleged as the ground of the challenge.

If challenge allowed, jury dismissed. SEC. 11. If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court shall discharge the jury so far as the trial of the indictment in question is con-

cerned, and no other jury for the trial [thereof can be summoned for the same term; if it be disallowed, the court shall direct the jury to be empannelled.

SEC. 12. Before a juror is called, the defendant shall be informed by the court, or under its direction, that if he intend to challenge an individual juror, he shall do so when the juror appears, and before he is sworn.

SEC. 13. A challenge to an individual juror is either :

1. Peremptory ; or,
2. For cause.

SEC. 14. It shall be taken when the juror appears, and before he is sworn ; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

SEC. 15. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

SEC. 16. If the offence charged be punishable with death, or imprisonment in the penitentiary for life, the defendant shall be entitled to twenty peremptory challenges ; on a trial for any other offence, he shall be entitled to five peremptory challenges, and the prosecution shall be entitled to ten peremptory challenges, in cases where the punishment is death or imprisonment in the penitentiary for life, and three in all other cases.

SEC. 17. A challenge for cause may be taken either by the territory or the defendant ; it is an objection to a particular juror, and shall be either :

1. General, that the juror is disqualified from serving in any case ; or
2. Particular, that he is disqualified from serving in the case on trial.

SEC. 18. General causes of challenge are ;

1. A conviction for a felony ;
2. A want of any of the qualifications prescribed by the laws to render a person a competent juror ;
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body, as renders him incapable of performing the duties of a juror.

SEC. 19. Particular causes of challenge are of two kinds :

1. For such a bias as, when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this statute as implied bias ;
2. For the existence of a state of mind on the part of a juror in reference to the case, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this statute as actual bias.

SEC. 20. A challenge for implied bias may be taken for all or any of the following causes and no other :

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant ;
2. Standing in relation of guardian and ward, attorney and client,

Defendant to be told of his right to challenge jurors.

Kinds of challenge.

When to be taken.

Peremptory challenge.

Ib. Number defendant entitled to.

Challenge for cause.

Causes of challenge.

Particular causes.

Grounds of challenge for implied bias.

CHAP. 30. master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury, which has tried another person for the offence charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror in a civil action brought against the defendant, for the act charged as an offence;

8. If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty, in which case he shall not be permitted to serve as a juror.

Id. For actual bias.

SEC. 21. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section nineteen and for no other cause.

Exemption not a ground for challenge

SEC. 22. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Causes of challenge how stated.

SEC. 23. In a challenge for implied bias, one or more of the causes stated in section twenty shall be alleged; in a challenge for actual bias, the cause stated in the second subdivision of section nineteen shall be alleged, in either case the challenge may be oral, but shall be entered upon the minutes of the court.

Exception to challenge and denial thereof.

SEC. 24. The adverse party may accept to the challenge in the same manner as to a challenge to a panel, and the same proceedings shall be had thereon, except that if the exception be allowed, the juror shall be excluded; the adverse party may also orally deny the facts alleged as the ground of challenge.

How tried if denied.

SEC. 25. If the facts be denied, the challenge shall be tried by the court, whether it be for implied or actual bias.

Juror challenged may be examined

SEC. 26. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be bound to answer every question pertinent to the inquiry therein.

Rules of evidence.

SEC. 27. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, shall govern the admission or exclusion of testimony on the trial of the challenge.

Juror when excluded.

SEC. 28. The court shall determine the law and fact, and shall either allow or disallow the challenge, and direct an entry accordingly upon the minutes; if the challenge be allowed, the juror shall be excluded.

Challenge, first by defendant.

SEC. 29. All challenges to an individual juror, except peremptory, shall be taken first by the defendant, and then by the terri-

tory, and each party shall exhaust all his challenges to each juror as he is called, before the other begins. CHAP. 30.

SEC. 30. The challenges of either party need not all be taken at once; but they may be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class: Order of challenges.

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror for actual bias.

SEC. 31. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted. Peremptory, when may be taken.

SEC. 32. The following oath shall be administered to all jurors for the trial of all criminal cases not capital: "You shall well and truly try the issue between the Territory of Oregon and the defendant, (or defendants, as the case may be,) according to the evidence: so help you God." In capital cases, the following oath shall be administered to the jurors: "You shall well and truly try, and true deliverance make between the Territory of Oregon and the prisoner at the bar, whom you shall have in charge, according to evidence: so help you God." Form of oath.

SEC. 33. Any juror who is conscientiously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, "This you do under the pains and penalties of perjury;" instead of the words, "So help you God." Jurors may affirm.

SEC. 34. The court may order a view by any jury empanelled to try a criminal case. Court may order a view.

SEC. 35. Whenever any person indicted for a felony, shall, on trial, be acquitted by verdict, of part of the offence charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly. When defendant is in part acquitted.

SEC. 36. In all cases of indictment in the district court for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the assault, and the court shall have power to sentence the person so convicted, to be punished by imprisonment in the jail of the county for a term not exceeding one year, or by fine not exceeding five hundred dollars. When defendant, charged with assault with intent to commit felony, may be convicted of assault.

SEC. 37. When any person indicted for an offence, shall, on trial, be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged. Verdict in case of insanity.

## CHAP. 31.

Defendant when liable for costs.

SEC. 38. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any cost or fees of officers, or for any charge for subsistence while he was in custody.

## CHAPTER XXXI.

## APPEALS FROM JUSTICES OF THE PEACE.

- SEC. 1. Appeal from conviction of justice.  
 2. Copy of conviction to be filed.  
 3. Costs on appeal.  
 4. Recognizance of appellant when forfeited.  
 5. Proceedings on suit, brought on recognizance.  
 6. New trial of indictment when granted.  
 7. Exception to judgment, or decision of district court by defendant.  
 8. Questions of law that may be prosecuted to supreme court.  
 9. When in such cases defendant may recognize to appeal.  
 10. Proceedings if defendant does not recognize.

Appeal from conviction of justice.

SEC. 1. Every person convicted before a justice of the peace of any offence, may appeal from the sentence to the district court, then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice, until he shall recognize to the territory in such reasonable sum, with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace and be of good behavior.

Copy of conviction, &c., to be filed.

SEC. 2. The justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any shall be taken, to the clerk of the court appealed to; and the fees of the justice therefor shall be paid out of the county treasury, in like manner as other costs in criminal prosecutions are paid.

Costs on appeal.

SEC. 3. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the whole or any part of the costs of prosecution.

Recognizances of appellant, when forfeited.

SEC. 4. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the district court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he be not then in custody, process may be issued to bring him into court to receive sentence.

Proceedings on suit brought on recognizance

SEC. 5. Whenever, upon suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when, by leave of the court, such penalty shall have been paid to the county treasurer or to the clerk of the district court, without a suit, or before judgment shall be given in a manner by law provided, if by law any forfeiture shall accrue to any person by reason of the offence of which the appellant was con-

## CHAP. 31.

victed, the court may award to him such sum as he may be entitled to out of such forfeiture.

New trial, when granted.

SEC. 6. The district court may, at the term in which the trial of any indictment may be had, or within one year thereafter, or the supreme court within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court may direct.

Exceptions to judgment or decision of district court.

SEC. 7. Any person who shall be convicted of an offence before the district court, being aggrieved by any opinion, direction, or judgment of the court, in any matter of law, may allege exceptions to such opinion, direction or judgment, which exceptions being reduced to writing in a summary mode, and presented to the court at any time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge, and thereupon all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge that such exceptions are frivolous, immaterial, or intended only for delay; and in that case judgment may be entered, and sentence awarded in such manner as the judge may deem reasonable, notwithstanding the allowance of such exceptions.

Effect of exceptions.

SEC. 8. If, upon the trial of any person who shall be convicted in said district court, any question of law shall arise which, in the opinion of the judge, shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it, or consent thereto, report the case so far as may be necessary to present the question of law arising therein, and thereupon all proceedings in that court shall be stayed.

Questions of law that may be prosecuted to supreme court.

SEC. 9. Any person being accused of an offence not punishable with death, or imprisonment in the penitentiary for a term not exceeding three years, who shall file exceptions, or for whose benefit a report shall be made by the judge, and proceedings stayed, as is provided in the two preceding sections, may recognize to the territory in such sum as the judge may order, with sufficient sureties for his personal appearance at the supreme court of the next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time keep the peace and be of good behavior; and the judge may, in his discretion, allow any person so to recognize, charged with an offence not punishable with death.

When in such case defendant may recognize to appear.

SEC. 10. If any person so filing exceptions, or desiring a report to be made by the judge, shall not so recognize, he shall be committed to prison to await the decision of the supreme court; and in that case, the clerk of the court in which the conviction was had shall file a certified copy of the record and proceedings in the case, in the supreme court, and the court shall have cognizance thereof, and consider and decide the questions of law, and shall render judgment, and award such sentence, or make such order thereon as law and justice shall require; and if a new trial be ordered, the cause shall be remanded to the said district court for such new trial; but the proceedings here prescribed shall not deprive any party of his writ of error for an error or defect appearing of record.

When in such case defendant to be committed.

Filing copy of record.

Judgment of supreme court.

## CHAPTER XXXII.

## WRITS OF ERROR.

- SEC. 1. Writs of error on conviction for capital offences, how allowed.  
 2. Writs of error in other cases are writs of right; when to stay proceedings.  
 3. Application how made.  
 4. Return to writ of error, by whom made, what to contain.  
 5. Custody of the defendant, on request to be taken before judge of supreme court to give bail.  
 6. Admitting to bail; recognizance how filed.  
 7. Judgment of supreme court on affirmance or reversal.  
 8. If court be equally divided, cause to stand continued.

Writs of error in capital cases. 2  
 Const. 9.

SEC. 1. In all cases of final judgment rendered upon an indictment, a writ of error to the supreme court may be allowed to the defendant. In capital cases this shall not be permitted, except upon the allowance of a judge of the supreme court, and after sufficient notice to the district attorney of the time and place of making the application.

In other cases writs of right. 2  
 Barb. 450.

When to stay proceedings.

SEC. 2. In all other than capital cases, writs of error shall issue as a matter of course, upon a mere application to the clerk of the supreme court, in term or vacation; but the writ shall not operate as a stay of proceedings, unless allowed in the manner provided in the preceding section.

Application how made.

SEC. 3. Applications for such allowance shall in all cases be made upon a transcript of the indictment and bill of exceptions, or other record, upon which error is alleged under the seal of the court where the indictment was tried.

Return of writ.

SEC. 4. Upon filing the writ of error and the allowance of the judge, (if such allowance has been made,) with the clerk of the court where the indictment was tried, he shall forthwith make returns thereto, containing a like transcript as is required in the last preceding section.

Custody of defendant.

SEC. 5. If a stay of proceedings be allowed, the sheriff, upon being served with the district clerk's certificate thereof, shall cease all further proceedings in execution of the sentence, but shall retain the defendant in custody, and at his request take him before one of the judges of the supreme court, for the purpose of giving bail if the offence charged be bailable.

Admitting to bail.

SEC. 6. Such judge may admit the defendant to bail by recognizance, with sufficient surety; such recognizance shall be filed with the clerk of the supreme court.

Judgment. 3  
 Denio 91; 2  
 Barb. 459.

SEC. 7. If the judgment below be affirmed, the sentence there pronounced shall be executed accordingly. If it be reversed, the supreme court may grant a new trial, or discharge the defendant altogether. In either case, the certificate of the clerk of the supreme court, under the seal of said court, shall be sufficient authority for the court below and its officers to act in the premises.

If court be equally divided.

SEC. 8. Whenever the supreme court shall be equally divided in opinion on hearing a writ of error, the cause shall stand continued until all the judges are on the bench.

## CHAPTER XXXIII.

## JUDGMENT IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

- SEC. 1. Power of court to require surety of peace, &c., from convicts.  
 2. Proceedings in case of breach of such recognizance.  
 3. When judgment against prosecutor for costs; county to pay costs in other cases.  
 4. When clerk shall deliver transcript of conviction to sheriff.  
 5. In case of punishment in territorial prison, sentence how made.  
 6. Sentence, when no jail in county.  
 7. Death warrant, how signed and attested: what to contain.  
 8. Punishment of death, how and by whom inflicted.  
 9. Sheriff's warrant, &c., where to be filed, clerk to subjoin abstract, &c.

SEC. 1. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the penitentiary, or county jail, may in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

SEC. 2. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had, that are by law prescribed in relation to recognizances to keep the peace.

SEC. 3. In all criminal cases, other than for a felony, if the defendant be acquitted, and the court shall deem the prosecution to have been unfounded, frivolous or malicious, it shall enter judgment against the prosecutor for the costs of prosecution and the necessary costs for the defence; and execution shall issue therefor. In all other cases of acquittal the county shall pay such costs, to be taxed by the court under the supervision of the prosecuting attorney.

SEC. 4. Whenever any person convicted of any offence shall be sentenced to pay a fine or costs, or to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly.

SEC. 5. In every case in which punishment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment, the solitary imprisonment shall precede the punishment by hard labor, unless the court shall otherwise order.

SEC. 6. Whenever it shall appear to the court at the time of passing sentence upon any convict, who is to be punished by confinement in the penitentiary or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this territory in which there may be

Surety of peace by convicts.

Proceedings in case of breach of recognizance.

Judgment against prosecutor for costs.

b. When by county.

Clerk to deliver transcript of conviction to sheriff.

Punishment in territorial prison; sentence how made.

Sentence, when no jail in the county.

CHAP. 34, 35 a jail suited for that purpose; and the expenses of such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offence was committed.

Death warrant. SEC. 7. When judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of judgment.

Punishment how and by whom inflicted. SEC. 8. The mode of inflicting punishment of death in all cases under this act, shall be by hanging by the neck until the person be dead; and the sheriff, and in case of his death, inability, or absence, the coroner of the county in which sentence of death shall have been pronounced, by virtue of this act, shall be the executioner; except in cases where a change of venue has been taken, in which case, the prisoner shall be sent back and executed in the county in which the prosecution originated.

Sheriff's warrant, &c. to be filed. Abstract of clerk. SEC. 9. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

## CHAPTER XXXIV.

### OF PARDONS.

#### SEC. 1. Governor may grant pardons or reprieve.

Governor may grant pardons. SEC. 1. In all cases in which the governor is authorized to grant pardons, he may upon the petition of the person convicted, grant a pardon upon such conditions and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all public officers to carry into effect such constitutional pardon; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper.

## CHAPTER XXXV.

### TIME FOR COMMENCING CRIMINAL ACTIONS.

- SEC. 1. Prosecution for murder not barred by lapse of time.
2. Indictments for other felonies, within three years.
  3. Indictments for misdemeanors, within two years.
  4. If defendant be absent from territory, secreted, &c., time of such absence not included in limitation.
  5. Indictment when deemed found.

For murder. SEC. 1. There shall be no limitation of time within which a prosecution for murder shall be commenced. It may be commenced at any time after the death of the person killed.

SEC. 2. An indictment for any other felony than murder, shall be found within three years after its commission.

SEC. 3. An indictment for any misdemeanor shall be found within two years after its commission.

SEC. 4. If the defendant shall absent himself from the territory, or shall secrete himself so as to prevent process being served upon him, the indictment may be found within the term herein limited after his coming within the territory, or within the reach of process, and no time during which defendant is not an inhabitant of, or usually resident within the territory, or shall secrete himself, shall be a part of the limitation.

SEC. 5. An indictment is found within the meaning of this chapter, when it is duly presented by the grand jury in open court, and there received and filed.

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Other felonies. Misdemeanor's

Exceptions to the foregoing provisions.

Indictment when found.

## CHAPTER XXXVI.

### MISCELLANEOUS PROVISIONS.

SEC. 1. In case of doubt as to degree of guilt, may be convicted of the lowest degree.

2. Joint defendants may have separate hearings.
3. Co-defendant, how made a witness.
4. Co-defendant may be witness for other defendants.
5. Confession not evidence, if extorted by threats.
6. As to what constitutes rape.
7. Testimony of accomplice must be corroborated.
8. When juror must be sworn as witness.
9. Court to decide question of law.
10. Ib. Right of defendant to except; questions of fact to be decided by law.
11. Court must inform jury that they are exclusive judges of the facts.
12. Jury may retire or decide in court.
13. When defendant appearing on trial may be committed.
14. Jury may take with them papers received in evidence.
15. Jury may take with them notes of testimony.
16. When jury disagree as to testimony, may inquire of court.
17. If juror be taken sick, jury may be discharged.
18. Where jury may find defendant guilty of a less degree than that charged.
19. Jury may find defendant guilty, &c.
20. Jury may find part of defendants guilty of any offence charged in indictment.
21. Jury may be polled.
22. Clerk must record verdict.
23. Acquittal on grounds of insanity to be stated.
24. Court may hear circumstances in aggravation or mitigation of sentence.
25. Such circumstances, how introduced.
26. Justification of bail.
27. Clerk must issue blank subpoenas on application of either party.
28. When person held to answer, if indictment be not found at next term, prosecution to be dismissed.
29. If defendant on prosecution be not tried, when prosecution to be dismissed.
30. When court may order action to be continued.
31. Discharge of defendant on dismissal of action.
32. When court may dismiss action after indictment.
33. Nolle-prosequi abolished.
34. When order of dismissal a bar to another action.
35. Stolen or embezzled property, how disposed of.
36. Stolen, &c., property to be returned to owners.

SEC. 1. When it appears that a defendant has committed a public offence, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only.

Doubt as to degree of guilt.

## CHAP. 36.

Joint defendants may have separate hearings, &c. Co-defendant how made a witness.

SEC. 2. When two or more defendants are jointly indicted for a felony, any defendant requiring it shall be tried separately; in other cases, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

SEC. 3. When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defence, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the territory.

May be witness for the other defendants.

SEC. 4. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant, there is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant; the order shall be an acquittal of the defendant discharged, and a bar to another prosecution for the same offence.

Confession not evidence if extorted by threats.

SEC. 5. A confession of the defendant, whether made in the course of judicial proceedings, or to a private person, cannot be given in evidence against him, when made under the influence of fear produced by threats, nor is it sufficient to warrant his conviction without proof that the offence charged has been committed.

What constitutes rape

SEC. 6. Proof of actual penetration into the body, is sufficient to sustain an indictment for rape, or for the crime against nature.

Accomplice's testimony must be corroborated.

SEC. 7. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to convict the defendant of the commission of the offence; and the corroboration is not sufficient if it merely show the commission of the offence, or the circumstances thereof.

When juror must be sworn as witness.

SEC. 8. If a juror have any personal knowledge respecting a fact in controversy in a cause, he shall declare it in open court during the trial; if, during the retirement of a jury, a juror declares a fact which could be evidence in a cause, as of his own knowledge, the jury shall return into court; in either of these cases, the juror making the statement shall be sworn as a witness, and examined in the presence of the parties.

Courts shall decide questions of law. Questions of fact, how decided.

SEC. 9. The court shall decide all questions of law which shall arise in the course of the trial.

SEC. 10. On the trial on an indictment for an offence, questions of law are to be decided by the court, except in cases of libel, saving the right of the defendant to except. Questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Charge to jury.

SEC. 11. In charging the jury the court shall state to them all matters of law which it thinks necessary for their information, in giving their verdict; and if it present the facts of the case, shall, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

Jury may retire or decide in court.

SEC. 12. After hearing the charge, the jury may either decide in court, or may retire for deliberation; if they do not agree without retiring, one or more officers shall be sworn to keep them together in some private and convenient place, and not to permit any

## CHAP. 36.

person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court, when they have so agreed, or when ordered by the court.

SEC. 13. When a defendant who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly.

When defendant appearing may be committed.

SEC. 14. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Jury may take certain papers.

SEC. 15. The jury may also take with them notes of the testimony, or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

Ib. Notes of testimony.

SEC. 16. After the jury has retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they shall require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the district attorney, and the defendant or his counsel.

When jury may inquire of the court.

SEC. 17. If at any time during the trial, any of the jury become so sick as to prevent the continuance of their duty, or any other accident or cause occur to prevent them being kept together for deliberation, the jury may be discharged by the court, and the trial commence anew at the same or another term.

Causes for discharging jury.

SEC. 18. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offence, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the defendant not guilty thereof, they may upon the same indictment, find the defendant guilty of manslaughter.

Jury may find defendant guilty of less degree, &c.

SEC. 19. In all other cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment.

Ib.

SEC. 20. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Verdict as to part of defendants.

SEC. 21. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they shall be severally asked whether it is their verdict; and if any one answer in the negative, the jury shall be sent out for further deliberation.

Jury may be polled.

SEC. 22. When a verdict is given, and is such as the court may receive, the clerk shall immediately record it in full on the minutes, and shall read it to the jury, and inquire of them whether it is

Clerk must record verdict.

CHAP. 36. their verdict; if any juror disagree, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury shall be discharged from the case.

Acquittal for insanity to be stated. SEC. 23. If the defence to an indictment be the insanity of the defendant, the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict.

Aggravating or mitigating circumstances. SEC. 24. After a plea or verdict of guilty in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

Ib. How introduced. SEC. 25. The circumstances shall be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition shall be taken by a magistrate of the county, out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

Justification of bail. SEC. 26. Bail shall, when requested by either party, or ordered by the court, judge or magistrate, justify by affidavit before the court, judge or magistrate, as the case may be.

Clerk to issue blank subpoenas. SEC. 27. The clerk of the court at which any indictment is to be tried, shall at all times, upon the application of either party, issue as many blank subpoenas under the seal of the court, and subscribed by him as clerk, for witnesses within the territory as may be required.

Charge against person for public offence when to be dismissed. SEC. 28. When a person has been held to answer for a public offence, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the charge to be dismissed, unless good cause to the contrary be shown.

Ib. If indictment be not tried. SEC. 29. If a defendant indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

Action may be continued. SEC. 30. If the defendant be not indicted or tried as is provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the mean time may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Discharge of defendant on dismissal of action. SEC. 31. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

Dismissal of action after indictment. SEC. 32. The court may in its discretion, or upon the application of the district attorney, and in furtherance of justice, order an action after indictment to be dismissed; but in that case the rea-

sons of the dismissal shall be set forth in the order, which shall be entered upon the minutes. CHAP. 37.

SEC. 33. The entry of a *nole prosequi* is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offence, except as provided in the last section. *Nolle prosequi* abolished.

SEC. 34. An order for the dismissal of the action as provided in this chapter, shall be a bar to another prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar, if the offence charged be a felony. Dismissal, when a bar, &c.

SEC. 35. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the magistrate authorized by the next section, to direct the disposal thereof. Stolen property, &c., how disposed of.

SEC. 36. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, shall order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property. Ib. When to be returned to owner.

CHAPTER XXXVII.

OF JUDGMENT ROLL.

- SEC. 1. Judgment roll how made and what to contain.
2. Copy of judgment, &c., how to be attested, for purposes of evidence.
3. Writ of error not to delay execution, unless ordered.
4. Consequence if defendant bailed after verdict not appearing.
5. This act how to be construed.

SEC. 1. When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offence for which the conviction has been had, and shall immediately annex together and file the following papers which, constitute the judgment roll: Judgment roll, how made and what to contain.

- 1. A copy of the minutes of challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon;
2. The indictment, and a copy of the minutes of the plea or demurrer;
3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, to an individual juror, and the proceedings and decision thereon;
4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. The bill of exceptions, if there be one.

SEC. 2. A copy of the minutes of any conviction and judgment, duly certified by the clerk, in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence in all courts and places, of such conviction and judgment, without the production of the judgment roll. Copy of minutes and judgment, when evidence.

## CHAP. 37.

Writ of error not to delay execution, unless, &amp;c.

Defendant bailed after trial, &amp;c. not appearing.

This act how construed.

SEC. 3. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the supreme court, with an express direction therein that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And upon such direction being given, during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail if it be a bailable offence.

SEC. 4. If a defendant in any indictment shall have been let to bail after verdict or trial, and shall neglect to appear before any court or officer, at any time or place at which he is bound to appear, and submit to the jurisdiction of the proper court or officer, the court or officer before which he shall have been bound to appear, may cause such defendants to be arrested in the same manner as upon the finding of an indictment, and may direct his recognizance to be prosecuted.

SEC. 5. Nothing in this act contained shall invalidate an action, suit, prosecution, process, pleading or proceeding commenced, issued, had or taken before, or pending when it goes into effect.

SEC. 6. This act shall take effect and be in force from and after the first day of May next.

Passed Dec. 22d, 1853.

## AN ACT, TO PROVIDE AGAINST DANGEROUS AND VICIOUS CATTLE.

SEC. 1. Owners of vicious cattle, suffering them to run at large after notice, liable to a fine; fine, how recovered.

2. Killing vicious cattle, when justifiable.

Owners when liable.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person or persons, who own or are owners of dangerous and vicious cattle, which animal or animals, are known to endanger the safety of persons travelling through neighborhoods, by their dangerous and vicious dispositions, such person or persons, having twelve hours' notice of the dangerous disposition of such animal or animals, and will not keep such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five dollars, nor exceeding fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

When may be killed.

SEC. 2. That any person who should in defence of himself or others, kill one or more cattle, shall not be liable to any damages for any such act done in self-defence.

Passed 3d September, 1849.

## AN ACT TO PROHIBIT THE SALE OF ARMS AND AMMUNITION TO INDIANS.

- SEC. 1. Sale of arms, &c., to Indians, how punished.  
2. Prosecutions to be by indictment, where to be commenced.  
3. Act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That if any white citizen, or other person than an Indian, shall sell, barter, or give to any Indian in this territory any gun, rifle, pistol or other kind of firearms, any powder, lead, percussion caps or other ammunition whatever, any person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than six months, nor less than one month, and by fine not exceeding five hundred, nor less than one hundred dollars.

Sale of arms, &amp;c., to Indians, prohibited.

SEC. 2. All prosecutions under the provisions of this act shall be by indictment before the district court in the county where the offence shall have been committed, in the same manner that other offences may be prosecuted in this territory.

Prosecutions how commenced.

SEC. 3. This act to be in force from and after its passage.

Passed January 16th, 1854.

## AN ACT TO PREVENT THE SALE OF ARDENT SPIRITS TO INDIANS.

- SEC. 1. Persons selling ardent spirits to Indians, how punished.  
2. All sheriffs, &c., required to complain of violations of this act; duty of judges of district court.  
3. Justice when to issue warrant, jurisdiction of justice.  
4. Moneys collected, to be appropriated to common school.  
5. Act when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That if any tavern-keeper, grocery-keeper or other person or persons shall sell, barter or in any manner dispose of any spirituous liquor, or any other liquor of intoxicating quality, to any Indian or Indians within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, by indictment in any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offence may have been committed, a fine of not less than twenty-five dollars, and not more than five hundred dollars, and shall be committed to the jail in the county in which he or they may live for the term of fifteen days.

Sale of spirituous liquors to Indians, how punished.

SEC. 2. All sheriffs, constables and justices of the peace within their respective counties, are hereby authorized and required, under the penalty of forfeiting their respective offices, to make complaint of such violations of this law as come within their knowledge, in their respective counties, and the judges of the several district courts in this territory are hereby required to give this act in special charge to the grand juries of their respective courts.

Sheriffs, &amp;c., required to complain, &amp;c.

SEC. 3. Upon complaint being made to any justice of the peace of the proper county in this territory, it shall be the duty of said justice to issue his warrant to any constable or the sheriff of his

When justice to issue warrant.

Justices' jurisdiction. county, commanding him to bring said defendant forthwith before the said justice, who may proceed to hear and determine the case as in other cases of misdemeanor, whenever such justice shall be of opinion that the fine should be less than one hundred dollars; and where he is of opinion that it should exceed that sum, he shall bind him over to appear at the next term of the district court, or commit him to the jail of the county in default of bail.

Moneys collected how appropriated. SEC. 4. All moneys collected in accordance with the provisions of this act shall be paid into the county treasury, to be applied to the use of common schools.

When to take effect. SEC. 5. This act to be in force from and after its passage.

Passed January 23d, 1854.

AN ACT TO PREVENT SABBATH BREAKING.

- SEC. 1. Sabbath how to be observed. Proviso.
- 2. Penalty for offending, penalty how appropriated.
- 3. This act when to take effect.

Sabbath how to be observed. Proviso. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That no person shall keep open his or her store, shop, grocery, ball alley, billiard saloon, tippling house, or any place of gaming or amusement, or do any secular business, other than works of necessity and mercy, on the first day of the week, commonly called the Lord's Day or Sunday; *provided, however,* that this act shall not be so construed as to have effect where the circumstances of the case render it necessary that the above provision be not observed.

Penalty for offending. SEC. 2. Any person offending against the provisions of this act, shall, upon conviction before any justice of the peace of the proper county, be fined in any sum not exceeding ten dollars, and such fine when collected shall be paid into the county treasury for the common school fund.

Act when to take effect. SEC. 3. This act to take effect and be in force from and after its passage.

Passed January 13th, 1854.

AN ACT FOR THE PRESERVATION OF OYSTERS.

- SEC. 1. Oysters not to be gathered in certain months. Proviso.
- 2. Persons not inhabitants prohibited from gathering oysters for sale.
- 3. Complainant entitled to one half the fine.

When not to be gathered. Proviso. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That it shall not be lawful for any person to take, rake or gather oysters, in any of the rivers, bays or waters of this territory, during the months of May, June, July, or August, in any year, under penalty not exceeding one thousand dollars for each offence, to be recovered by an action in the district court; *provided,* that this section shall not be so construed, as to prevent the taking or gathering of oysters at any season of the year for the purpose of bedding or propagation in any of the waters of this territory.

SEC. 2. It shall not be lawful for any person who is not at the time an inhabitant and resident of this territory, and who shall not have been for three months next preceding, an inhabitant and resident as aforesaid, to take, rake, or gather oysters, for sale or transportation, in any of the rivers, bays, or waters of this territory; and any person offending against the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail, not exceeding three months, or by a fine not exceeding one hundred and fifty dollars, or by both such imprisonment and fine.

Persons prohibited from gathering for sale, &c.

Penalty.

SEC. 3. Any person instituting suit or informing against any one offending against the provisions of this act, shall be entitled to one-half of the amount recovered, or the fine imposed, and the other half shall be paid into the county treasury.

Complainant entitled to half the fine.

Passed December 22d, 1853.

AN ACT FOR THE PROTECTION OF SCHOOL LANDS.

- SEC. 1. County commissioners to be trustees of school lands.
- 2. Trespasses on school lands, liable in double damages.
- 3. Moneys collected, where to be deposited, and for what purpose.
- 4. County officers, to inform commissioners of such trespasses.
- 5. This act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the several boards of county commissioners are hereby made trustees of the school lands in their respective counties, and they shall execute the duties of trustees of the school lands, so far as relates to the thirty-sixth and sixteenth sections, or such lands as may be selected in lieu thereof, according to law and their best ability.

County commissioners, trustees of school lands

SEC. 2. If any person shall hereafter trespass upon the school lands, the sixteenth or thirty-sixth sections, or any other lands selected in lieu thereof, by cutting down, destroying, or hauling off of such land, any timber, stone, stone-coal or minerals of any description, every person so offending, shall forfeit and pay double the value of the materials so used or destroyed, to be recovered in the official name of the board of county commissioners, before any justice of the peace, or before any court having competent jurisdiction thereof, or by indictment by the grand jury of the district court of the county in which such offence shall have occurred.

Trespassers.

SEC. 3. All moneys collected by this act shall be paid into the county treasury, and be an irreducible fund, the interest of which shall be used for the support of common schools, as other school funds are used for that purpose.

Moneys collected, where to be deposited; for what purpose.

SEC. 4. It shall be the duty of all county officers, when any of the offences described in the second section of this act, shall come to their knowledge, to immediately give notice to the county commissioners of their county, by stating the fact and the circumstances connected with it, and on hearing such complaint from an officer or any other person, the county commissioners or either of them shall immediately proceed to execute their duties as trustees or trustee of the school lands.

County officers to inform county commissioners of trespass.

SEC. 5. This act to take effect and be in force from and after its passage.

When to take effect.

Passed January 16th, 1854.

TITLE I. AN ACT RELATING TO ELECTION OF JUSTICES OF THE PEACE, AND CONSTABLES, AND TO PROCEEDINGS IN JUSTICES' COURTS.

CHAPTER I.

ELECTION OF JUSTICES OF THE PEACE AND CONSTABLES.

TITLE I. Election of Justices of the Peace.

TITLE II. Of Constables.

TITLE I.

Election of Justices of the Peace.

- SEC. 1. Justices of the peace, when and where elected.
2. When an additional justice may be elected.
3. Persons eligible.
4. Manner of conducting election, certificate of election.
5. Oath of office, when and how taken; its form; oath to be indorsed on certificate.
6. Bond, when to be entered into by justice, its form.
7. Bond, where to be filed, action thereon, &c.
8. Term of office.
9. County commissioners may fill vacancies.
10. Extent of justice's jurisdiction.
11. In case of division of precinct, justice to continue in office.
12. In case of removal, &c., docket, &c., to be delivered to nearest justice in precinct.
13. Penalty for certain persons neglecting to deliver over such papers, &c.
14. Justice to be removed on conviction.
15. Order of removal, how entered up.

Election of justice. SEC. 1. Be it enacted by the Legislative Assembly of the Territory of Oregon, That the qualified voters of each election precinct, in the several organized counties of this territory, shall, at the time and place of holding the annual elections, elect one or more justices of the peace.

When additional justice may be elected. SEC. 2. Each precinct shall be entitled to one justice of the peace, but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace, to be elected therein.

Who eligible. SEC. 3. No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, and who has not been a resident of the county, in which he is elected, six months next preceding his election; nor shall any sheriff, coroner or clerk of the district court, be eligible to or hold such office.

Return, how made. SEC. 4. The election of justice of the peace shall be conducted, and the return of such election made, in the same manner, as other elections; and every person duly elected, shall be entitled to a certificate of election, which may be in the following form:

Territory of Oregon, }
County of } ss.

Certificate of election. I do hereby certify, that at an election, held on the day of , A. D. 18 , in the precinct of in said county, J. P. was duly elected a justice of the peace.

In testimony whereof, I have hereunto set my hand, with the seal of the board of county commissioners, hereunto affixed this day of , A. D. 18 .

C. D., Clerk of the Board of County Commissioners.

SEC. 5. Every person elected a justice of the peace, shall, within twenty days, after receiving his certificate of election, take an oath before any person, authorized to administer oaths, in the following form:

Territory of Oregon, }
County of } ss.

I, J. P., do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States, and the laws of this territory: that I will administer justice without respect to persons; and faithfully and impartially discharge, and perform all duties incumbent upon me as a justice of the peace, according to the best of my ability.

J. P.
Subscribed and sworn to before me, this day of ,
A. D. 18 .

C. D., Clerk of the District Court.

Which oath shall be indorsed on the back of the certificate of election, and together with the certificate, filed in the office of the clerk of the district court for the proper county.

SEC. 6. Every person elected a justice of the peace, shall, at the time of filing his oath of office, with the clerk of the district court, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said clerk of the district court, in the sum of five hundred dollars, conditioned, that he will faithfully pay over, according to law, all moneys which shall come into his hands, by virtue of his office as justice of the peace. Said bond may be in the following form:

Know all men by these presents, that we, J. P., A. B., and C. D., are held and firmly bound, unto the board of commissioners, of the county of , in the territory of Oregon, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals, dated this day of ,
A. D. 18 .

Whereas, the said J. P. has been duly elected a justice of the peace, in and for the precinct of in the county of , A. D. 18 . Now the condition of the above obligation is such, that if the said J. P. shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office, as justice of the peace, then this obligation shall be void, otherwise, in full force.

J. P. [L. S.]
A. B. [L. S.]
C. D. [L. S.]

SEC. 7. Such bond shall be filed in the office of the clerk of the district court, and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment

**TITLE I.** against the justice and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-five per cent. per annum; and upon any such judgment, stay of execution shall not be allowed.

**Term of office.** SEC. 8. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

**Vacancies, how filled.** SEC. 9. All vacancies existing in the office of justice of the peace, whether happening by death, resignation, or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office until the next election; and is required to qualify in the same manner as if he had been duly elected to the office of justice of the peace under the provisions of this act.

**Extent of jurisdiction.** SEC. 10. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this chapter, shall be co-extensive with the limits of the county in which they are elected or appointed, and no other or greater, whether said county be attached to any other county for judicial purposes or not. But every justice of the peace shall continue to reside in the precinct for which he was elected or appointed, during his continuance in office.

**Id. in case of division of precinct.** SEC. 11. When a precinct shall be divided, and any justice of the peace, of the original precinct, shall fall into the new one, he shall continue to discharge the duties of a justice of the peace until his term of office expires, and his successor is elected and qualified.

**In case of removal, &c., docket, &c., to be delivered to nearest justice in precinct.** SEC. 12. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records, and papers appertaining to his office, or relating to any suit, matter, or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and determine such matter, suit, or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced, to have done.

**Penalty for neglecting to deliver over such papers, &c.** SEC. 13. Every person, whose duty it is to deliver over the docket, books, records, and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person.

**Removal of justice on conviction.** SEC. 14. Every justice of the peace, who shall, upon indictment in the district court, be convicted of bribery, perjury, or other infamous crime, or a wilful misdemeanor in office, shall be removed from office.

**Order of removal.** SEC. 15. The court, before whom any justice may be tried and convicted of any of the offences mentioned in the preceding section, shall enter up an order removing such justice from office, and from the time such order of removal shall be entered, all the authority of such justice shall cease.

**TITLE II.***Of Constables.*

**SEC. 16.** Number of constables.

17. County commissioners to fill vacancies.

18. Election, how conducted; return, how made; certificate, how issued.

19. Oath of office, when to be taken and how filed.

20. Official bond, when entered into and where filed.

21. Duty of constables.

**SEC. 16.** At each general election, there shall be elected by the qualified electors of each precinct, in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct. Number of constables.

**SEC. 17.** All vacancies existing in the office of constable, whether happening by death, resignation, or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county, and every person so appointed shall hold his office until the next election. Vacancies, how filled.

**SEC. 18.** The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same, as in elections of justices of the peace. Election how conducted, &c.

**SEC. 19.** Every person elected or appointed a constable shall, within twenty days after receiving his certificate of election, take an oath before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be indorsed on the back of the certificate of election or appointment, and filed, together with the certificate, in the office of the clerk of the district court of the proper county. Oath of office.

**SEC. 20.** Every person elected or appointed to the office of constable shall, within the time prescribed for filing his oath of office, enter into a bond to the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the clerk of the district court, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law. The clerk shall indorse thereon his approval of the sureties therein named, and shall file the same in his office. Ib. where filed.

**SEC. 21.** Any constable may, within his county, serve any writ, process, or order lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts by law required of constables. Official bond where filed.

Duty of constables.

TITLE 1.

CHAPTER II.

COURTS OF JUSTICES OF THE PEACE.

- TITLE I. *Of Jurisdiction of the Justice of the Peace.*
- TITLE II. *Of Commencement of Actions: Service and Return of Process.*
- TITLE III. *Of Pleadings and Adjournment.*
- TITLE IV. *Of Witnesses and Depositions.*
- TITLE V. *Of Title to Lands.*
- TITLE VI. *Of Trial by Jury.*
- TITLE VII. *Of Judgment.*
- TITLE VIII. *Of Stay of Execution and Filing Transcript.*
- TITLE IX. *Of Setting off Judgments.*
- TITLE X. *Of Executions and Proceedings thereon.*
- TITLE XI. *Of Reprieve.*
- TITLE XII. *Of Attachment.*
- TITLE XIII. *Of Forcible Entry and Detainer.*
- TITLE XIV. *Action to Recover Possession of a Mining Claim.*
- TITLE XV. *Of Proceedings for Contempt, before Justice of the Peace.*
- TITLE XVI. *Certiorari and Proceedings thereon.*
- TITLE XVII. *Of Appeals to the District Court.*
- TITLE XVIII. *Of Qualification of Sureties.*
- TITLE XIX. *Of Criminal Proceedings before Justice of the Peace.*
- TITLE XX. *Miscellaneous Provisions in Criminal Cases.*

TITLE I.

*Jurisdiction of the Justice of the Peace.*

- SEC. 1. Jurisdiction to be co-extensive with limits of county.
- 2. Justice where to keep office.
- 3. Justice not to hold his office with practising attorney.
- 4 & 5. Powers and jurisdiction of justice.
- 6. Jurisdiction not to extend to civil action in certain cases.

Jurisdiction. SEC. 1. The jurisdiction of all justices of the peace, shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

Where to keep office. SEC. 2. Every justice of the peace shall keep his office in the precinct, for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

Do. Not in same room with attorney. SEC. 3. No justice of the peace shall hold his office in the same room with a practising attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practise as an attorney, in any case tried before such justice of the peace.

Justices to hold court. SEC. 4. Every justice of the peace, elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts

General powers, 10 Wen. 213; 2 Barb. 320.

TITLE 2.

of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

SEC. 5. Every justice of the peace shall have jurisdiction over, and cognizance of, the following actions and proceedings:

Justices to have jurisdiction over certain cases

- 1. Of an action arising on contract, for the recovery of money only, if the sum claimed do not exceed one hundred dollars;
- 2. Of an action for damages for an injury to the person, or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars;
- 3. Of an action for a penalty, not exceeding one hundred dollars;
- 4. Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by instalments, an action may be brought for each instalment, as it shall become due;
- 5. Of an action on an undertaking or surety bond taken by him, if the amount claimed do not exceed one hundred dollars;
- 6. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars;
- 7. Of an action for damages for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars;

- 8. Of an action for a forcible, or unlawful entry upon, or forcible or unlawful detention of lands, tenements, or other possessions;
- 9. Of an action to try the right of occupancy or possession to a mining claim;
- 10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

SEC. 6. The jurisdiction conferred by the last section shall not however extend to the civil action:

Limitation of jurisdiction.

- 1. In which the title to real property shall come in question;
- 2. Nor to an action for the foreclosure of a mortgage, or the enforcement of a lien on real estate;
- 3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or upon a promise to marry;
- 4. Nor to any action against an executor or administrator as such.

TITLE II.

*Commencement of Action, Service and Return of Process.*

- SEC. 7. Justice to keep a docket, what to contain.
- 8. Actions how commenced.
- 9. Justice may require security for costs of plaintiff.
- 10. Process to be in name of United States.
- 11. Summons to be the first process, what to contain.
- 12. Summons, how and when to be served.
- 13. Officer serving process, how to make return.
- 14 & 15. Justice may issue warrant of arrest.

## TITLE 2.

- SEC. 16. Before issuing warrant, justice shall require undertaking.  
 17. Warrant how served, another justice when to proceed.  
 18. Notice of arrest to be given to plaintiff.  
 19. Defendant how long to be kept in custody on warrant.  
 20. When an adjournment may be granted to defendant.  
 21. Justice may empower a citizen to execute process.  
 22. Liability of officer failing to execute process.  
 23. Parties may appear in person, or by attorney.  
 24. Appointment of next friend for infant plaintiffs; his liability for costs.  
 25. Guardians, for infant defendants; when and how appointed.  
 26. Parties entitled to one hour, after time mentioned for appearance.

Docket.  
 4 Comst. 885.  
 Entries  
 therein.

SEC. 7. Every justice of the peace shall keep a docket, in which he shall enter :

1. The titles of all actions commenced before him ;
2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand ;
3. The date of the summons, and the time of its return ; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts ;
4. The time when the parties, or either of them appear, or their non-appearance if default be made ;
5. A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated ;
6. Every adjournment, stating at whose request, and for what time ;
7. The demand of a trial by jury, when the same is made, and by whom made ; the order for the jury, and the time appointed for the trial, and return of the jury ;
8. The names of the jury, who appear and are sworn ; the names of all witnesses sworn ; and at whose request ;
9. The verdict of the jury, and when received ; if the jury disagree, and are discharged, the fact of such disagreement and discharge ;
10. The judgment of the court, and the time when rendered ;
11. The time of issuing execution, and the name of the officer, to whom delivered, and an account of the debt, and costs, and the fees due to each person separately ;
12. The fact of an appeal having been made and allowed, and the time when ;
13. Satisfaction of the judgment, or any money paid thereon, and the time when ;
14. And such other entries as may be material.

Actions how  
 commenced.

SEC. 8. Actions may be instituted before a justice of the peace, either by the voluntary appearance, and agreement of the parties, or by the usual process.

Security for  
 costs, when  
 required.

SEC. 9. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs, before the commencement of the action ; and whenever an action has been commenced by any person, whether a resident of the county or not, the justice may in his discretion, on the application of the defendant, order the plaintiff to give security for the costs ; and if the plaintiff refuse to comply with the order, the justice shall dismiss the action.

Process to be  
 in the name

SEC. 10. All processes issued by justices of the peace shall run in

## TITLE 2.

the name of the United States, be dated the day it issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff, or any constable of the proper county.

of United  
 States.

SEC. 11. In all cases not otherwise specially provided for, the first process shall be a summons, directed to the sheriff or constable, and commanding him to summon the defendant to appear before such justice, at a time and place to be named in the summons, not less than six, nor more than twenty days from the date thereof, to answer the complaint of the plaintiff.

Summons,  
 first process.

SEC. 12. The summons shall be served at least five days before the time of appearance therein mentioned, by delivering a copy thereof as follows :

Summons,  
 when and  
 how to be  
 served, &c.  
 10 Wen. 422.

1. If the action be against a corporation, to the president, or other head of the corporation, secretary, cashier or managing agent thereof ;

2. If against a person judicially declared of an unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian, and to the defendant personally ;

3. In all other cases to the defendant personally, or if he be not found to some white person of the family, above the age of fourteen years, at the dwelling-house or usual place of abode of the defendant.

SEC. 13. Every constable or sheriff serving any process, shall return thereon in writing, the time and manner of service, and shall sign his name to such return.

How return-  
 ed. 17 Wen.  
 518.

SEC. 14. A justice of the peace shall issue a warrant of arrest, as hereinafter prescribed, in the following cases :

Warrant of  
 arrest when  
 issued.

1. In an action for the recovery of damages on a cause of action, not arising out of contract, when the defendant is not a resident of the territory, or is about to remove therefrom ; or when the action is for a wilful injury to person or to property, the defendant knowing the property to belong to another ;

2. In an action for the recovery of money, or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors ;

3. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer, or officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in a professional employment ;

4. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff or constable, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof ;

5. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought ;

TITLE 2.

6. When the defendant has removed or disposed of his property, or a part thereof, or is about to do so, with intent to defraud his creditors;

But no female shall be arrested in any action, except for a wilful injury to person or property.

Warrant, when to issue.

SEC. 15. The warrant of arrest shall be issued when it shall appear to the justice, by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, supported by the additional affidavit of some disinterested person, and that the case is one of those mentioned in the last section. The affidavit shall be either positive, or upon information and belief; and when upon information and belief, they shall state the facts upon which the information and belief are founded.

Undertaking of plaintiff before issue of warrant.

SEC. 16. Before issuing the warrant of arrest, the justice shall require a written undertaking on the part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

How served.

SEC. 17. The warrant shall be served by arresting the defendant, and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof, be absent, or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action for such defendant, or is near of kin to the plaintiff, stating there in the degree, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

When another justice to proceed. 10 Wen. 515, &c.

Notice of arrest, to the plaintiff.

SEC. 18. The officer making the arrest shall immediately give notice thereof to the plaintiff, his agent or attorney, and indorse on the warrant, the time of the arrest, and the time of serving notice on the plaintiff.

Custody of defendant in warrant. 10 Wen. 515.

SEC. 19. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time, the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

Adjournment, when granted to defendant.

SEC. 20. If the defendant on his appearance demand an adjournment, the same shall be granted, on condition, that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action; and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment, which he may recover in the action. On filing such undertaking, the justice shall order the defendant to be discharged from custody.

Justice may empower a

SEC. 21. Every justice issuing any process authorized by this chapter, upon being satisfied that such process will not be executed,

for want of an officer, to be had in time to execute the same, may empower any suitable person, not being a party to the action, to execute the same, by an indorsement on the process to the following effect:

TITLE 2. citizen to execute process.

"At the request and risk of the plaintiff, (or defendant, as the case may be,) I authorize A. B. to execute and return this writ."

S. F.,

Justice of the Peace.

And the person so empowered shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Fees and authority of such person.

SEC. 22. If any officer without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer for every such offence, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action founded upon this statute.

Officers failing to execute process.

SEC. 23. Parties, in justices' courts may prosecute, or defend in person, and by attorney, and any person may act as attorney in justices' courts, except that the constable or sheriff by whom the summons or jury process was served, cannot appear or act on the trial in behalf of either party. The authority of a person to act as attorney for another may be oral or written; but unless admitted by the adverse party, must be proven by the oath of the attorney, or otherwise.

How parties may appear.

§ Denie 85; 5 Hill 429; 4 Denio 130.

SEC. 24. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend, in such action, and who shall be responsible for the costs therein.

Next friend for infant plaintiff.

SEC. 25. After the service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defence of the action; and if the defendant shall not appear on the return day of the process, or if he neglect, or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice, and such guardian for the defendant shall not be liable for any costs in the action.

Guardians for infant defendants.

Consent to be filed, &c.

SEC. 26. The parties shall be entitled to one hour, in which to make their appearance, after the time mentioned in the summons for appearance; but shall not be required to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case, he may postpone the time of appearance, until the close of such trial.

Justice to wait one hour. 4 Denio, 160, 182.