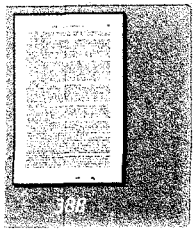

or excusable homicide.

SEC. 39. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 40. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused—unless the proof on the part of the prosecution sufficiently manifest that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 41. If any woman shall endeavor, privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the Territorial prison for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 42. Every person who shall administer or cause to be administered or taken, or furnished to another to be taken, any medical substance, or shall use or cause to be used any instrument whatever with the intent to procure the miscarriage of any woman then being with child (unless the same shall be done to save the life of such woman), and shall be convicted thereof, shall be punished by imprisonment in the Territorial prison for a term of not less than two years, nor more than five years.

SEC. 43. If any person shall hereafter challenge another to fight a duel with deadly weapons, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 44. Every person who shall willfully and maliciously administer, or cause to be administered to, or taken by, any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than ten years, and which may extend to life.

EXHIBIT 27
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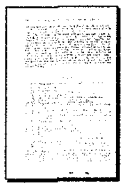
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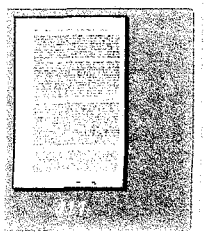

more than five hundred dollars, and shall be imprisoned in the Territorial prison for a term not exceeding three years. It shall be the duty of the judges holding the several district courts in this Territory to give this act in charge to the grand jury at each term of their court.

SEC. 146. *First.* Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the Territorial prison not less than one nor exceeding ten years.

Second. That if any married woman shall hereafter desert her husband, and live and cohabit with another man, in a state of adultery, she shall, on conviction thereof, be imprisoned in the county jail of the county where such offence is committed, not exceeding sixty days. And if any married man shall hereafter desert his wife, and live and cohabit with any other woman in a state of adultery, or if any married man living with his wife, shall keep any other woman and notoriously cohabit with her, in a state of adultery; or if any unmarried man shall live and cohabit with a married woman in a state of adultery; or if any unmarried man shall live and cohabit with an unmarried woman, every person so offending shall, on conviction thereof, be fined in any sum not exceeding three hundred dollars, and be imprisoned in the county jail of the county where such offence is committed, for a period not exceeding six months, and not less than sixty days.

NOTE.—The second clause of preceding section is from the Act of January 28th, 1876.

SEC. 147. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley, of any city, town, or village, or any public bridge, or causeway, mill-race, mill-dam, or ditch, or public river, or stream, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in any wise pollute or obstruct any watercourse, waterditch, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive

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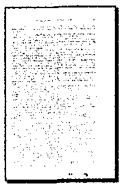

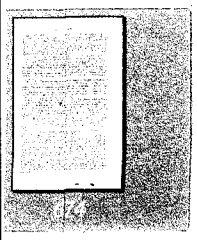

ture of school rooms.

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SEC. 1120. The education of children of African descent shall be provided for in separate schools. Upon the written application of the parents or guardians of at least ten such children to any board of trustees, a separate school shall be established for the education of such children, and the education of a less number may be provided for by the trustees, in separate schools, in any other manner, and the same laws, rules and regulations which apply to schools for white children shall apply to schools for colored children.

SEC. 1121. No books, tracts, papers, catechisms, or other publications of a partisan, sectarian, or denominational character, shall be used or distributed in any schools, neither shall any political, sectarian, or denominational doctrine be taught therein; and any school district, the officers of which shall knowingly allow any school to be taught in violation of these provisions, shall forfeit all right to any county apportionment of school moneys, and upon satisfactory evidence of such violation, the county superintendent shall withhold its county apportionment.

SEC. 1122. The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees may fix, as the school day, a less number of hours than six: *Provided*, It be not less than four, for any primary school under their charge, and any teacher may dismiss any and all scholars under eight years of age, in any incorporated village, town, or city, after an attendance of four hours a day, exclusive of an intermission at noon.

SEC. 1123. All pupils who may be attending public schools shall

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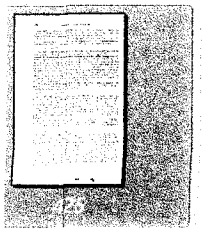

parent or guardian of such minor, shall be liable in damages to any person who may be injured thereby, in money, property, or means of support, and such person so selling or giving intoxicating liquors as aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court.

Any married woman may sue in her own name, and a minor by guardian or next friend, for the purpose of recovering the damages named in this section and costs of suit.

NOTE.—Act of April 30th, 1873.

SEC. 206. Hereafter it shall be unlawful for any person, either as principal, agent, or otherwise, on any general election day to sell, barter, give or furnish, or cause to be furnished to any person or persons whomsoever, any spirituous or malt liquors, wine or cider, or any intoxicating liquors or intoxicating drinks of any kind or character.

That each and every person violating any of the provisions of this section shall, for each offence, upon conviction thereof, be punished by a fine not less than ten dollars, nor more than two hundred and fifty dollars.

The provisions of this section shall not be construed to include druggists or other persons who shall in good faith sell or dispose of the articles hereinbefore mentioned for medicinal or mechanical purposes only.

NOTE.—Act of February 11th, 1876.

SEC. 207. If any officer, board, or commission charged by law with any official duty, shall neglect or willfully fail or refuse to fully do, perform or discharge such duty, such officer, and the members comprising such board, or commission, responsible therefor, shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment of not less than ten days nor more than one year, or by both such fine and imprisonment in the discretion of the court. And if such imprisonment shall not be for more than three months, the same shall be in the county jail of the county in which such offense was committed; but if the said imprisonment shall exceed three months, then such imprisonment shall be in the

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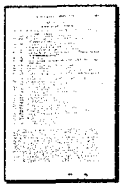
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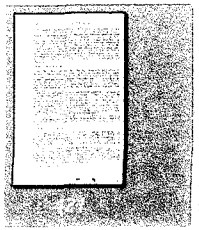

Any person living in the Territory of Montana, or any person coming into said Territory, who shall practice medicine in any of its departments, or perform or attempt to perform any surgical operation upon any person within the limits of said Territory, in violation of this section, shall, upon conviction thereof, be fined not less than fifty nor more than one hundred dollars, and for each subsequent violation of this section, shall, in addition to the above fine, be imprisoned in the county jail of the county in which said offence shall have been committed, for the term of thirty days, and in no case wherein this section shall have been violated shall any person so violating receive any compensation for services rendered: *Provided*, That nothing herein contained shall in any way be construed to apply to any person practicing dentistry.

NOTE.—Act February 3d, 1876.

SEC. 189. *First*. It shall hereafter be unlawful for any person or persons to ride or drive any animal over or across any public bridge, crossing any stream or river in the Territory of Montana, faster than a walk. And any person violating the provisions of this clause shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

Second. It shall hereafter be unlawful for any person or persons to drive any loose stock, such as horses, mules or cattle, over or across any public bridge, crossing any stream or river in the Territory of Montana, in a larger number than fifteen head of such loose stock, at any one time. And any person violating the provisions of this clause shall be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment.

It shall be the duty of the board of county commissioners to cause to be posted at each end of all bridges coming under the provisions of this section, notices setting forth substantially the provisions of this section.

NOTE.—Act February 5th, 1876.

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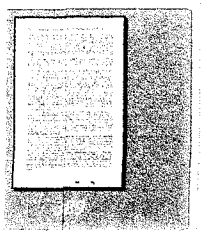

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shall be adjudged guilty of the crime of rape, and, upon conviction thereof, shall be imprisoned for life. And every person of the age of sixteen years or over, who shall have carnal knowledge of any woman above the age of ten years, without her consent, by administering to her any substance or liquid, which shall produce such stupor or imbecility of mind or weakness of body as to prevent effectual resistance, shall, upon conviction, be adjudged guilty of rape, and be punished by imprisonment in the Territorial prison for a term not less than ten years.

SEC. 47. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the Territorial prison for a term of not less than five years, and which may extend to life.

SEC. 48. Kidnapping is the forcible and unlawful taking or the stealing away of a man, woman, or child from his or her own home.

SEC. 49. Every person who shall forcibly take or arrest, unlawfully, or steal any man, woman, or child, either white, colored, or Indian, and carry him or her away from his or her home or place of abode, shall be deemed to have committed the crime of kidnapping, and, upon conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years.

SEC. 50. Every person who shall forcibly and unlawfully take or arrest any person whomsoever, with an intention to take him or her out of this Territory, without having first obtained permission so to do, in accordance with the provisions of law, shall be deemed guilty of an attempt to kidnap, and, upon conviction, shall be punished by imprisonment in the Territorial prison for a term not less than one year, nor more than ten years.

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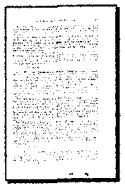

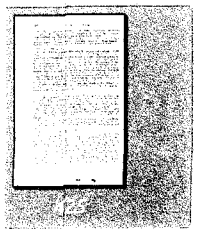

into the county treasury for the benefit and use of the common schools of said county.

NOTE.—Act of December 27th, 1871.

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SEC. 204. It shall be unlawful for any person or persons, within the Territory of Montana, to conduct or establish, or cause to be conducted or established, any dancing saloon or hurdy-gurdy house.

Any person or persons offending against the provisions of this section, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined in any sum not exceeding one hundred dollars.

NOTE.—Act of April 28th, 1873.

SEC. 205. That any person who shall sell or give intoxicating liquors to any man or woman who is in the habit of becoming drunk or intoxicated, or of drinking intoxicating liquors to excess, after being notified of such habit, or coming to a knowledge thereof, or who shall sell or give intoxicating liquors to any minor, without the consent of the parent or guardian of such minor, shall be liable in damages to any person who may be injured thereby, in money, property, or means of support, and such person so selling or giving intoxicating liquors as aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court.

Any married woman may sue in her own name, and a minor by guardian or next friend, for the purpose of recovering the damages named in this section and costs of suit.

NOTE.—Act of April 30th, 1873.

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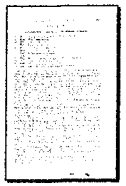
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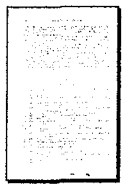
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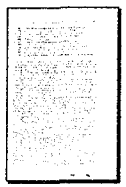
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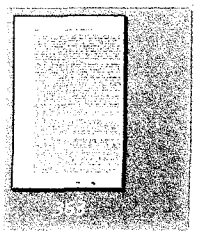

to require the assistance of any citizen of the Territory in securing such criminal, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy, when required, shall be liable to the same penalties as for similar refusals in other cases.

SEC. 374. Whenever any criminal shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence.

SEC. 375. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the court may adjudge.

SEC. 376. When execution of such sentence is respited to a further day by the governor, the sheriff must note the same on the warrant, and the defendant must be detained in custody until the day to which the respite is granted, at which time the sheriff, unless the judgment is revoked, or the defendant is pardoned, must execute the sentence, between the hours specified in the judgment, and return the warrant with the respite.

SEC. 377. The sentence of death shall be executed in some private enclosure, as near the jail as possible. The sheriff shall invite to be present at the execution, by at least three days' notice, the judge of the court, the attorney prosecuting, and the clerk of the court, together with two physicians, and twelve reputable citizens to be selected by him. He must also, at the request of the prisoner, permit any minister of the gospel whom the prisoner may name, and any of his relations and friends whom he may desire, not exceeding two, to attend the execution, and also such peace officers as the sheriff may deem proper. No person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

SEC. 378. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time or suspend the execu-

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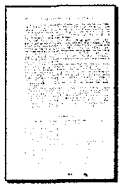
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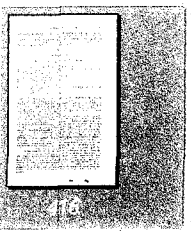
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SEC. 169. If the keeper of any house, shop, tent, saloon, booth, or other place, shall knowingly permit any of the games mentioned in the preceding section, or any game of similar character, or any other game or games where fraud or cheating is practiced, or where loaded dice, marked cards, or waxed cards are used, within said house, shop, tent, saloon, booth, place, or enclosure, every such person so offending shall, on conviction, be punished by fine not exceeding one thousand dollars, and shall forfeit any license he may have obtained to keep any tavern, saloon, shop, or other place.

SEC. 170. Any person who shall, after the passage of this act, sell, barter, give, or in any manner dispose of, any fire-arms or ammunition of any description whatever, to any hostile Indians within this Terri-

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tory, shall be deemed guilty of a misdemeanor, and upon due conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment, in the discretion of the court.

CHAPTER XII.

FRAUDULENT AND MALICIOUS MISCHIEF.

Sec. 171. *Injury to domestic animals by poisoning.*
Sec. 172. *Injury to domestic animals by maliciously killing or maiming.*

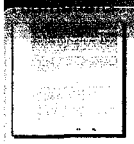
SEC. 388. It shall be the duty of the clerk of the district court, at the end of each term, to issue executions for all fines imposed, and the costs of convictions in criminal cases during the term and remaining unpaid, which shall be executed in the same manner as executions in civil cases, and the property of the defendant and his bail may be seized and sold thereon, notwithstanding the defendant may be in custody for the same demand.

SEC. 389. When judgment of fine and costs is entered against a defendant, and it is ordered that he be committed until the same shall be paid, if the defendant prove to the court, or judge thereof, by his own affidavit, or that of any person, that he is unable to pay such fine and costs, or any part thereof, the court, or judge thereof, may order the sheriff to release him, upon his having been confined in jail one day for every five dollars of such fine and costs, or any portion thereof remaining unpaid; but if the defendant do not prove to the satisfaction of the court, or judge thereof, that he is unable to pay such fine and costs, or any part thereof, he shall not be released from confinement, except as hereafter provided, unless the sheriff has made the same upon execution out of his property.

SEC. 390. Whenever any defendant shall have been committed to jail for the failure to pay any fine and costs adjudged against him, and has failed to prove to the satisfaction of the court, or judge thereof, that he is unable to pay the same, or any part thereof, the court may, upon the joint recommendation of the grand jury and prosecuting attorney for the county, order that he be discharged from custody when he shall have served one day for every two dollars of such fine and costs.

SEC. 391. Judgment shall not be entered against any defendant while he is insane.

SEC. 392. If any defendant, upon whom the court is about to pass judgment, declare that he is insane, the court, if he finds there is reasonable cause for believing the declaration, may order a jury to be impannelled to determine the fact; and witnesses may be introduced on the part of the defendant and the Territory. If the jury find that the defendant is insane, the court shall order him to be placed in the custody of the person provided by law for the keeping of insane per-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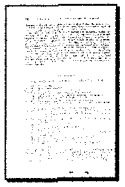
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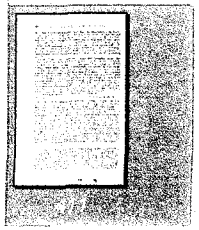

neglect or refuse to proceed to the place of such assembly, or as near thereto as may be safe, and exercise the authority vested in him for suppressing the same, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, and by imprisonment in the county jail not less than ten days, nor more than ninety days.

SEC. 145. If any person shall, directly or indirectly, sell, barter, or give intoxicating liquor, whether fermented, vinous, or spirituous, or any decoction or composition of which fermented, vinous, or spirituous liquor is a part, to any Indian or half-breed Indian in this Territory, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine of not less than one hundred dollars, nor

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more than five hundred dollars, and shall be imprisoned in the Territorial prison for a term not exceeding three years. It shall be the duty of the judges holding the several district courts in this Territory to give this act in charge to the grand jury at each term of their court.

SEC. 146. *First.* Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the Territorial prison not less than one nor exceeding ten years.

Second. That if any married woman shall hereafter desert her husband, and live and cohabit with another man, in a state of adultery, she shall, on conviction thereof, be imprisoned in the county jail of the

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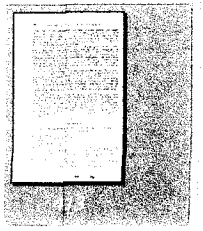

SEC. 155. Every apothecary, druggist, or other person, who shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "Poison," and the true name thereof in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding two hundred dollars.

SEC. 156. That if any person shall exchange, give, barter or dispose of any spirituous liquors or wine and beer to any troops of the United States, serving within the limits of this Territory, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof before the district court of the United States, or before any court of competent jurisdiction of this Territory, hereafter to be formed, shall be imprisoned for a period not to exceed one year, and be fined in the sum of five hundred dollars.

SEC. 157. If any person who has been mustered into the United States service shall put off the uniform and other badges by which he is known and designated from a civilian, and with the intention to deceive, and shall obtain any spirituous liquor or wine and beer from any person, it shall be the duty of the marshal, sheriff, or any police officer of the Territory of Montana, upon complaint being made, to arrest, or cause to be arrested, such person, and keep him in custody until the commanding officer of the company to which he belongs shall apply for his release.

SEC. 158. If any person against whom complaint has been made for the violation of section one hundred and fifty-six of this act, can establish, by a good and competent witness, that spirituous liquor or wine and beer were obtained from him deceitfully, by a soldier, who did not wear, at the time of obtaining such spirituous liquor or wine and beer, a uniform, or other badges used to distinguish him from a civilian, and that he did not know such person to be a soldier, such person, so complained against, shall not be liable to the penalties enumerated in

Previous Next 613 (613 of 1049) Fit Page Width
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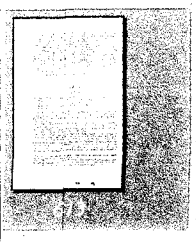

CHAPTER XLII.

LORD'S DAY.

Sec. 849. *Unlawful to keep open play houses, etc., on Lord's Day.*
Sec. 850. *Unlawful to keep open any gambling house.*
Sec. 851. *Violation of this act a misdemeanor.*
Sec. 852. *Justices to have jurisdiction under this act.*
Sec. 853. *Fines to go to school fund.*

SEC. 849. Hereafter it shall be unlawful for any person or persons to keep open any play house, theater, dance house, hurdy-gurdy house, prize ring, or race grounds on the first day of the week, commonly called the Lord's Day.

SEC. 850. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards on the first day of the week, commonly called the Lord's Day.

SEC. 851. If any person or persons shall violate the provisions of this chapter, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court having competent jurisdiction, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than thirty days for such offence, or by both such fine and imprisonment, and shall be adjudged to pay all costs of such prosecution.

SEC. 852. Justices of the peace shall have jurisdiction in all cases arising under the provisions of this chapter.

SEC. 853. All fines collected under this chapter shall be paid into the county treasury of the county where such conviction was had, and shall be for the benefit of the common schools of said county.

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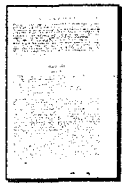

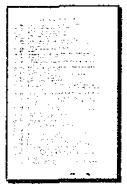

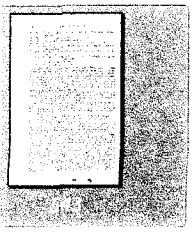

Sec. 564. *Penalty if officer receive and count votes from such pretended precinct.*
Sec. 565. *Penalty if officers neglect or refuse to act.*
Sec. 566. *Penalty for stuffing ballot-boxes, etc.*
Sec. 567. *Attempting to or obtaining possession of ballot-box, etc.*
Sec. 568. *Penalty for voting or attempting to vote in another's name, or abetting same.*
Sec. 569. *Penalty for person not qualified fraudulently voting or attempting to vote.*
Sec. 570. *Penalty for voting more than once, or knowingly offering two or more tickets folded together.*
Sec. 571. *Penalty for intimidating.*
Sec. 572. *Perjury and other offences.*

SEC. 515. That all male citizens of the United States above the age of twenty-one years, and all male persons of the same age who shall have declared their intention of becoming citizens, and who, under existing laws of the United States, may ultimately become citizens thereof, shall be deemed electors of this Territory, and be entitled to vote for delegate to congress, and for Territorial, district, county and precinct officers: *Provided*, They shall have resided in the Territory three months, and in the county where they may offer to vote, thirty days next preceding the day of election.

SEC. 516. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery, in this Territory or any other Territory or State in the Union, unless restored to civil rights, shall be permitted to vote at any election.

SEC. 517. A general election shall be held in the several counties, townships or precincts, in this Territory, on the first Tuesday after the first Monday in November, 1876, and every two years thereafter, at which election shall be chosen all such officers as are by law required to be elected.

SEC. 518. No person shall be eligible to the office of delegate to congress, member of the council or house of representatives, unless he has been a resident of the Territory for one year

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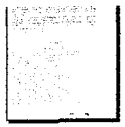
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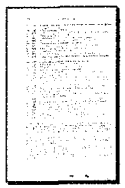
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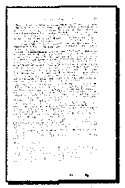
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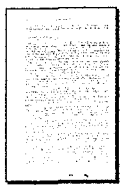
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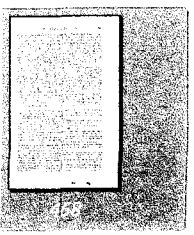


of some court of record, there to remain without bail, until he shall submit to answer, upon oath, as aforesaid; but no person shall be required to attend who resides out of the county in which proof is taken, unless his reasonable expenses be first tendered.

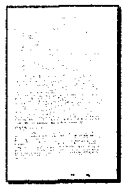
SEC. 195. A certificate of the acknowledgment of any conveyance, or the proof of the execution thereof, as provided in this act signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this Territory.

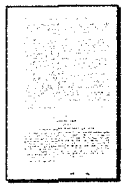
SEC. 196. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and by her husband, and certified in the manner hereinafter provided by the proper officer taking the acknowledgment.

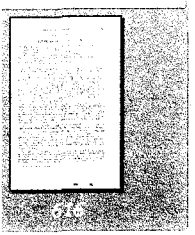
SEC. 197. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be effected, may take and certify the acknowledgment of a married woman to such conveyance of real estate.

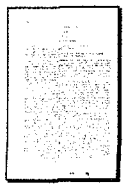
SEC. 198. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on examination apart from and without the hearing of her husband, that she does not wish to retract the execution of the same.

SEC. 199. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily,









thousand dollars.

Sec. 872. Husband not responsible for debts.

SEC. 867. Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this article.

SEC. 868. Any married woman residing within this Territory, desirous to avail herself of the benefit of this article, shall make her declaration before any person authorized to take acknowledgment of conveyances that she intends to carry on business in her own name and on her own account, specifically setting forth the nature of the business she intends to carry on and transact, and from that date shall be individually responsible in her own name for all the debts contracted by her by virtue of said business, the declaration to be recorded in the office of the county recorder of the county in which said business is to be transacted and carried on.

SEC. 869. After such declaration has been duly recorded as heretofore provided, the person so making her declaration as aforesaid shall be entitled to carry on her business in her own name, and the property, revenue, money, and debts and credits shall belong exclusively to said married woman, and shall not be liable for any of the debts of her husband, and she shall be allowed all the privileges and be liable for all the legal processes now or hereafter provided by law against debtors and creditors.

SEC. 870. Any married woman availing herself of the benefit of this article shall be responsible for the maintenance of her children.

SEC. 871. No married woman shall commence or carry on business on her own account under the provisions of this article, when the amount originally invested in said business exceeds the sum of ten thousand dollars, unless the declaration provided for in section 868 contain a statement, under oath, that the surplus of money above ten thousand dollars invested in said business did not come from any funds belonging to her husband.

SEC. 872. The husband of the wife availing herself of the benefit of this article shall not be responsible for any debts contracted by her in the course of said business, without the special consent of said

Previous Next 301 (301 of 1049) Fit Page Width
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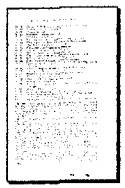

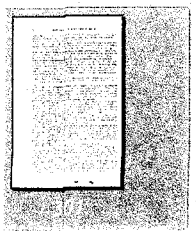

terms of such revocation that it was the intention to revive and give effect to the first will, or, unless, after such destruction, cancellation or revocation, the first will is duly republished.

SEC. 458. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provisions have been made for such issue by some settlement, or, unless such issue is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

SEC. 459. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

SEC. 460. A will executed by an unmarried woman is revoked by her subsequent marriage, and is not revived by the death of her husband.

SEC. 461. An agreement made by a testator for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal, but the property passes by the will, subject to the same remedies on the testator's agreement for a specific performance, or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

SEC. 462. A charge of incumbrance upon any estate for the purpose or securing payment of money, or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

SEC. 463. A conveyance, settlement, or other act of a testator by which his interest in a thing previously disposed of by his will is altered,