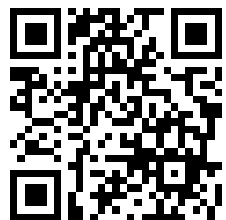

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COLLATED STATUTES

OF THE

TERRITORY OF MINNESOTA,

AND

DECISIONS

OF SUPREME COURT.

COLLATED PURSUANT TO A RESOLUTION OF MARCH 5th, 1853.

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GENERAL LAWS
OF THE
TERRITORY OF MINNESOTA.

CHAPTER 1.

An Act declaring the time at which the several acts passed at the present session of the Assembly shall take effect.

Oct. 11, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That all acts passed during the present session of the Legislative Assembly, shall take effect from and after the first day of December, one thousand eight hundred and forty-nine: *Provided,* That nothing herein contained shall prohibit the Legislature from prescribing a different time by special enactment, at which any act shall take effect.

All acts take effect first December 1849, unless, etc.

Approved—October 11, 1849.

CHAPTER 2.

An Act for the Apportionment of Representation in the Territory.

March 31, 1851.

SECTION.

1. Districts to remain as designated.
2. First council district, its limits and representation.
3. Second council district, its limits and representation.
4. Third council district, its limits and representation.
5. Fourth council district, its limits and representation.

SECTION.

6. Fifth council district, its limits and representation.
7. Sixth council district, its limits and representation.
8. Seventh council district, its limits and representation.
9. Candidates how eligible.
10. Returns of election made to Registers of Deeds, who shall issue certificates.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the Council and House of Representatives Districts, shall be and remain as hereinafter designated, until otherwise provided by law.

Districts to remain as designated

1st council district, limits and representation.

SEC. 2. The counties of Washington, Itasca and Chisago, shall constitute the first council district, and shall be entitled to elect two members of the Council. The following precincts in the said county of Washington, shall be Representative Districts, as follows: The Cottage Grove precinct shall constitute one district, and shall be entitled to elect one member to the House of Representatives: The precinct of Stillwater shall constitute one district, and shall be entitled to elect two members to the House of Representatives: The Marine precinct in said county of Washington, and the counties of Itasca and Chisago, shall constitute one district, and shall be entitled to elect one member to the House of Representatives.

2d council district, limits and representation.

SEC. 3. The precincts of St. Paul and Little Canada, in the county of Ramsey, shall constitute the second council district, and shall be entitled to elect two members of the Council, and to elect five members to the House of Representatives.

3d council district, limits and representation.

SEC. 4. The precinct of the Falls of St. Anthony, in the county of Ramsey, shall constitute the third council district, and shall be entitled to elect one member of the Council and elect two members to the House of Representatives.

4th council district, limits and representation.

SEC. 5. The counties of Wabashaw and Washington and the precincts of St. Paul and Little Canada jointly, shall constitute the fourth council district, and shall be entitled to elect one member to the Council; and the said county of Wabashaw shall constitute one representative district, and shall be entitled to elect one member to the House of Representatives.

5th council district, limits and representation.

SEC. 6. The counties of Benton and Cass shall constitute the fifth council district, and shall be entitled to elect one member of the Council; and the county of Cass and the county of Benton, each to elect one member to the House of Representatives.

6th council district, limits and representation.

SEC. 7. The county of Dakota shall constitute the sixth council district, and shall be entitled to elect one member of the Council, and to elect two members to the House of Representatives.

7th council district, limits and representation.

SEC. 8. The county of Pembina shall constitute the seventh council district, and shall be entitled to elect one member of the Council, and to elect two members to the House of Representatives.

Candidates how eligible.

SEC. 9. No person shall be eligible to be elected as a member of the Council or House of Representatives, unless he has been a resident of the district for which he is a candidate, six months previous to said election; and the members of the Council and House of Representatives, shall reside in, and be inhabitants of the district for which they may be elected respectively, in conformity with a provision of the fourth section of the "Organic Act."

Returns of election made to registers of deeds, who shall issue certificates.

SEC. 10. The returns from the counties of Wabashaw and Dakota, for members of the Council and House of Representatives, shall be made to the Register of Deeds of the county of Ramsey. The returns from the counties of Pembina and Cass, for members of the Council and House of Representatives, shall be made to the Register of Deeds of the county of Benton. The returns from the counties of Chisago and Itasca, for members of the Council and House of Representatives, shall be made to the Register of Deeds of the county of Washington; and the votes so returned from all the said counties, shall be canvassed and certificates issued in accordance with the statutes providing for the regulation of general elections.

Approved—March 31, 1851.

CHAPTER 3.

An Act Regulating the sale of Spirituous Liq.

Feb. 13, 1851.

SECTION.

1. License from county commissioners necessary for retailing of liquor.
2. Licenses, mode of application to obtain them.
3. Licenses, commissioners to fix the price: their duration.
4. Bond to be filed.
5. Not to sell on Sunday.
6. Penalty for selling without license.
7. Pretext with intent to evade the law.

SECTION.

8. Duty of officers to make complaints for violation of this act.
9. Clerk of board of county commissioners to furnish list of persons paying license.
10. Grand Jury to inquire into violation of this act.
11. Licenses for selling in quantities not less than one quart.
12. Former acts repealed.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That no person shall be permitted to sell spirituous liquors in less quantities than one quart, without having obtained a license from the board of county commissioners of the proper county, for that purpose.

License from co.
commissioners necessary for retailing of liquor.

SEC. 2. That every application to the commissioners for a license to sell spirituous liquors, shall be in writing, signed by the applicant; in which the applicant shall state the place where he proposed to sell the same; and the applicant shall produce to the commissioners satisfactory evidence by his own affidavit, or otherwise, of his having given twenty days previous notice, by advertisements set up in three of the most public places in the township or neighborhood, where he proposed to sell spirituous liquors, of his intention to apply at the next meeting of the board of county commissioners for a license; but no notice of the intended application for the renewal of his license shall be required.

Mode of obtaining license.

SEC. 3. That the commissioners granting the license shall fix the price thereof; which shall not be more than fifty dollars, nor less than twenty dollars per annum, having proper regard to the apparent advantages of the applicant's situation for business; and on the applicant's producing the county treasurer's receipt for the payment of the sum so fixed, he shall receive a license, which shall continue for the term of one year, unless sooner revoked by the said commissioners, for a violation of the provisions of this act.

Licenses, commissioners to fix the price; duration of.

SEC. 4. That every person applying for a license to sell spirituous liquors, before receiving the same, shall execute to the board of county commissioners of the proper county, a bond, in the penal sum of five hundred dollars, with two or more good and sufficient sureties, conditioned that he will keep an orderly house, and that he will not permit any unlawful gaming, or riotous conduct in or about his house; and in case of a violation of the foregoing conditions by any person giving such bond, he shall be liable to pay a fine of not less than ten, nor more than fifty dollars, for every such violation; the same to be for the use of the common schools of the county in which the offence was committed, to be recovered by an action of debt as hereinafter prescribed; and the bond so given as aforesaid, by such person, shall also be liable to be prosecuted, as hereinafter prescribed, for any violation of its conditions.

Bond to be filed.

Not to sell on Sunday.

SEC. 5. That no person shall keep open any house or room, in which intoxicating liquor is kept for retail, on the first day of the week, commonly called Sunday, or give, sell or otherwise dispose of intoxicating liquor on that day; any person violating this section, shall be fined in a sum not exceeding twenty-five, nor less than ten dollars for each offence; such fine to be for the use of the common schools of the county in which the offence may be committed: *Provided*, That this section, so far as it prohibits keeping open a house or room, shall not apply to tavern keepers.

Penalty for selling without license

SEC. 6. If any person or persons shall sell, barter or dispose of in any manner, any spirituous liquors in less quantity or quantities than one quart, without first having obtained a license, agreeably to the provisions of this act, he shall, upon conviction thereof, by indictment in any court having jurisdiction of the same, or by complaint before a justice of the peace, be fined in any sum not exceeding one hundred, nor less than fifty dollars, for the use of the common schools of the county where the offence shall have been committed, and upon failure to pay the fine so assessed, shall be confined in the county jail, one day for every two dollars thereof, until said fine is discharged.

Pretext with intent to evade law.

SEC. 7. Any person who shall dispose of any spirituous or vinous liquors, under pretext of exhibiting any show or curiosity or dispose of the same in connection with any other article, or in any manner from which an intention to evade the provisions of this act may appear, shall be deemed guilty of a violation of the same, and shall be liable to the penalties prescribed in the sixth section of this act.

Duty of officers.

SEC. 8. And it is hereby made the duty of the prosecuting attorney, sheriffs, constables, and justices of the peace, knowing of any violation of the provisions of this act, to make complaint thereof to the grand jury at the next session of the district court of the county in which the offence may have been committed after said violation, or to a justice of the peace; which justice shall have full power to proceed to judgment thereon. And the moneys collected on such judgments, except the taxable costs, shall be paid to the treasurer of the proper county, for the use of the common schools therein. It shall also be the duty of the clerk of the board of county commissioners and county treasurer, to prosecute the bond given by such applicant, as is required by the fourth section of this act for any violations of its conditions.

List of persons paying license to be furnished by the clerk of board of co. com.

SEC. 9. That every clerk of the board of county commissioners, shall, on the first day of the term of each district court, deliver to the grand jury an accurate list of all persons holding licenses under the provisions of this act within his county, which list shall show the date and expiration of said licenses.

Duty of grand jury.

SEC. 10. That it shall be the duty of the grand jury at each and every term of the district court in any county in the Territory, to make strict inquiry and return bills of indictment against every person violating any of the provisions of this act.

Licenses for selling not less than one quart.

SEC. 11. Any person desirous of disposing of spirituous liquors in quantities not less than one quart, may without previous notice, pay to the treasurer of the proper county, the sum of twenty dollars, who shall give a receipt therefor, and on production of such receipt to the board of county commissioners, they shall grant to such person a license to dispose of spirituous liquors in quantities not less than one quart, for the term of one year: *Provided*, That

if such commissioners shall deem such person unfit to be entrusted with a license, they may refuse the same, in which case they shall order the treasurer to return the money paid by the applicant.

SEC. 12. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed: *Provided*, That all suits or prosecutions now pending, commenced under any law which by this act is repealed, shall be prosecuted to final judgment and execution, as though this act had not passed: *And provided, also*, That all licenses granted in pursuance of any law, which by this act is repealed, shall continue in full force and effect for the full period for which it was granted.

Former acts repealed.

SEC. 13. This act shall take effect on the first day of April next.
Approved, February 13, 1851.

CHAPTER 4.

An Act for the restriction of the sale of intoxicating liquors within the Territory of Minnesota.

March 6, 1852.

SECTION.

1. Sell or manufacture, prohibited.
2. Agents to sell, how appointed. Agents regulated, how.
3. Certificate of agent; bond of agent.
4. Prohibition; general violation of act, penalty for.
5. Penalty, how recovered, commissioners duty to enforce.
6. Appeal, how taken; bond and recognition fees.
7. Commissioners, duty of in case of violation of bond.
8. Manufacturers of liquors, appointment of.
9. Jurors; persons violating this law incompetent to sit as jurors, when.
10. Precedence of cases, under this law. Nolle prosequi not to be entered; continuance not to be granted.

SECTION.

11. Complaint, how made. Warrant of search; officers power and duty.
12. Seized liquors sold; advertised, how.
13. Appeal, by whom and when taken.—Chemist, artist, manufacturer, use of not prohibited to them.
14. Liquors seized, when destroyed; destroyed, by whose order.
15. Appeal; bond of appellant; costs.
16. Contracts for liquor, void.
17. Agents to sell; report of, how and when made; profits, how regulated.
18. Resistance to officers and penalty; second offence.
19. Mayor and aldermen; election; voters, how to vote.
20. Repeal of all former acts.
21. Commissioners not to grant license.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, No person shall be allowed at any time to manufacture or sell, by himself, his clerk, servant or agent, directly or indirectly, any spirituous or intoxicating liquors, or any mixed liquors, a part of which is spirituous, or intoxicating, except as hereinafter provided.

Not allowed to sell

Agents appointed to sell.

SEC. 2. The county commissioners of any county, on the first Monday of May, annually, or as soon thereafter as may be convenient, may appoint two or more suitable persons, who shall reside in different precincts, as the agents of said county, or within the precincts of any unorganized county, which may be attached to such county for judicial purposes, to sell in their respective precincts within said county, spirits, wines, or other intoxicating liquors, to be used for medicinal or mechanical purposes and no other; and said agents shall receive such compensation for their services as the board appointing them shall prescribe, and shall, in the sale of such liquors, conform to such rules and regulations as said commissioners shall prescribe for that purpose. And such agents appointed as aforesaid, shall hold their situations for one year, unless sooner removed by the board from which they received their appointments, as they may be at any time, at the pleasure of said board.

Agents to have certificate.

SEC. 3. Such agents shall receive a certificate from such county commissioners, by whom they have been appointed, authorizing them as the agents of such county, to sell intoxicating liquors for medicinal and mechanical purposes only, but such certificate shall not be delivered to the persons so appointed, until they each shall have executed and delivered to said board a bond, with two good and sufficient sureties, in the sum of six hundred dollars, in substance, as follows: Know all men that——, as principal, and——, as sureties, are holden and stand firmly bound unto the county of——, in the sum of six hundred dollars, to be paid to the treasurer of said county, to which payment we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this —— day of ——, A. D. The conditions of this obligation are such, that whereas the above bounden——, has been duly appointed an agent for the county of——, to sell within, and for and on account of said county, intoxicating liquors for medicinal and mechanical purposes, and no other, until the —— day of ——, A. D., ——, unless sooner removed from said agency.

Now, if the said —— shall in all respects conform to the provisions of the law relating to the business for which he is appointed, and to such rules and regulations as now are, or shall be from time to time established by the board making the appointment, then this obligation to be void, otherwise to remain in full force.

Penalty for violation of act.

SEC. 4. If any person by himself, clerk, servant or agent, shall at any time sell any intoxicating liquors, or any mixed liquors, part of which is intoxicating, in violation of the provisions of this act, he shall forfeit and pay, on the first conviction, ten dollars and costs of prosecution, and shall stand committed until the same be paid; on the second conviction, he shall pay twenty dollars and the cost of prosecution, and shall stand committed until the same be paid; on the third, and every subsequent conviction, he shall pay twenty dollars and the cost of prosecution, and shall be imprisoned in the common jail not less than three months, nor more than six months. And if any clerk, servant, agent or other person in the employment or on the premises of another, shall violate the provisions of this section, he shall be held equally guilty with the principal, and on conviction, shall suffer the same penalty.

Penalty how recovered.

SEC. 5. Any forfeiture or penalty arising under the above section, may be prosecuted for, and recovered in a civil action, or by complaint by any individual in the name of the county commission-

ers, before any justice of the peace or district court, in the county where the offence was committed. And the forfeiture so recovered shall go into the county treasury, for the support of schools in the precinct where the convicted party resides; and if any one of the county commissioners shall approve of the commencement of such suit by endorsing his name upon the summons, the defendant shall in no event recover any costs, and in all civil actions arising under this section, the fines and forfeitures suffered by the defendant, shall be the same as if the actions had been by complaint. And it shall be the special duty of the county commissioners, or any of them, to commence an action in behalf of said county, against any person guilty of a violation of any of the provisions of this act, on being informed of the same, and being furnished with the proof of this fact.

Forfeiture to go to support of common schools.

SEC. 6. If any person shall claim an appeal from a judgment rendered against him by any judge or justice on trial of such action or complaint, he shall, before the appeal shall be allowed, recognize in the sum of one hundred dollars, with two good and sufficient sureties, in every case so appealed, to prosecute, his appeal and to pay all costs, fines, and penalties that may be awarded against him upon a final disposition of such suit or complaint. And before his appeal shall be allowed, he shall also in every case give a bond, with two good and sufficient sureties running to the county where the offence was committed, in the sum of two hundred dollars, that he will not, during the pendency of such appeal, violate any of the provisions of this act. And no recognizance or bond shall be taken in cases arising under this act, except by the justice or judge before whom the trial was had; and the defendant shall be held to advance the jury fees in every case of an appeal in a civil action; and in the event of a final conviction before a jury, the defendant shall pay and suffer double the amount of fines, penalties and imprisonments awarded against him by the justice or judge from whose judgment the appeal was made. The forfeiture for all bonds and recognizances, given in pursuance of this act, shall go to the county for the support of schools, in the precinct wherein the offence was committed; and if the recognizances and bonds mentioned in this section, shall not be given within twenty-four hours after the judgment, the appeal shall not be allowed; the defendant in the meantime to stand committed.

Appeal, how taken

SEC. 7. The county commissioners of any county, whenever complaint shall be made to them, that a breach of the conditions of the bonds given by any person appointed under this act has been committed, shall notify the person complained of, and if, upon a hearing of the parties, it shall appear that any breach has been committed, they shall revoke and make void his appointment. And whenever breach of any bond given to the commissioners of any county, in pursuance of any of the provisions of this act, shall be made known to the said commissioners, or shall in any manner come to their knowledge, they or some of them, shall at the expense, and for the use of said county, cause the bond to be put in suit in any court proper to try the same.

Duty of county commissioners.

SEC. 8. No person shall be allowed to be a manufacturer of any spirituous or intoxicating liquor, or common seller thereof, without being duly appointed as aforesaid, on pain of forfeiting on the first conviction, the sum of one hundred dollars, and costs of prosecution, and in default of the payment thereof, the person so convicted, shall be imprisoned sixty days in the common jail; and on the second

Manufacturers, etc to be appointed.

Penalty for selling or manufacturing contrary to law.

conviction, the person so convicted shall pay the sum of two hundred dollars, and costs of prosecution, and in default of payment, shall be imprisoned four months in the common jail, and on the third and every subsequent conviction, shall pay the sum of two hundred dollars, and shall be imprisoned four months in the common jail of the county where the offence was committed; said penalties to be recovered before any court of competent jurisdiction, by indictment or by civil action, in the name of the county where the offence shall be committed, and whenever a default shall be had of any recognizance arising under this act, scire facias shall be issued, returnable at the next term, and the same shall not be continued unless for good cause, satisfactory to the court.

Persons violating this law not to sit on juries.

SEC. 9. No person engaged in the unlawful traffic in intoxicating liquors, shall be competent to sit on any jury, in any case, arising under this act, and when information shall be communicated to the court, that any member of any pannel is engaged in such traffic, or that he is believed to be so engaged, the court shall enquire of the jurymen of whom such belief is entertained, and no answer which he shall make shall be used against him in any case arising under this act, but if he shall answer falsely, he shall be incapable of serving on any jury in this Territory; but he may decline to answer, in which case he shall be discharged by the court from all further attendance as a jurymen.

Cases how disposed of.

SEC. 10. All cases arising under this act, whether by action, indictment, or complaint, which shall come before a superior court, either by appeal or certiorari, shall take precedence in said court of all other business, except those criminal cases in which the parties are actually under arrest awaiting a trial, and the court and prosecuting officer shall not have authority to enter a nolle prosequi, or to grant a continuance in any case arising under this act, either before or after the verdict, except where the purposes of justice will require it.

Complaint, how made.

SEC. 11. If any three persons, voters in the county where the complaint shall be made, shall before any justice's court, make complaint under oath or affirmation, that they have reason to believe, and do believe, that spirituous or intoxicating liquors are kept or deposited, and intended for sale, by any person not authorized to sell the same in said county, under the provisions of this act, in any store, shop, warehouse or other building, or place, in said county, said justice or judge shall issue his warrant of search to any sheriff or constable, who shall proceed to search the premises described in said warrant, and if any spirituous or intoxicating liquors are found therein, he shall seize the same and convey them to some proper place of security, where he shall keep them until final action is had thereon. But no dwelling house in which, or in part of which a shop is not kept, shall be searched unless at least one of said complainants shall testify to some act of sale of intoxicating liquor therein, by the occupant thereof, or by his consent or permission, within one month of the time of making said complaint. And the owner or keeper of said liquors seized as aforesaid, if he shall be known to the officer seizing the same, shall be summoned forthwith before the justice or judge by whose warrant the liquors were seized, and if he fail to appear, or unless he can show by positive proof that such liquors are not kept for the purposes of sale, but only in reasonable quantities for medicinal purposes, they shall be declared forfeited, and shall be destroyed by authority of the written order to

that effect, of said justice or judge, and in his presence, or in the presence of some person appointed by him to witness the destruction thereof, and who shall join with the officer by whom they have been destroyed, in attesting the fact upon the back of the order, by authority of which it was done; and the owner, or keeper of such liquors, shall pay a fine of twenty dollars and costs, or stand committed for thirty days in default of payment, if in the opinion of the court, said liquors shall have been kept or deposited for the purposes of sale.

By whom liquors
to be destroyed.

SEC. 12. If the owner, keeper or possessor of liquors seized under the provisions of this act, shall be unknown to the officer seizing the same, they shall not be condemned and destroyed until they have been advertised, with the number and description of the packages as near as may be, for two weeks, by posting up a written description of the same in some public place, that if such liquors are actually the property of any county in the Territory, and were so at the time of the seizure, purchased for sale by the agent of said county, for medicinal and mechanical purposes only, in pursuance of the provisions of this act, they may not be destroyed, but upon satisfactory proof of such ownership, within said two weeks, before the judge or justice by whose authority said liquors were seized, said justice or judge shall deliver to the agent of said county, an order to the officer having said liquors in custody, whereupon said officer shall deliver them to said agent, taking his receipt therefor, upon the back of said order, which shall be returned to said justice or judge.

Liquors seized to
be advertised.

SEC. 13. If any person claiming any liquors seized as aforesaid, shall appeal from the judgment of any justice or judge, by whose authority the seizure was made, to the district or supreme court, before his appeal shall be allowed, he shall give a bond in the sum of two hundred dollars, with two good and sufficient sureties, to prosecute his appeal, and to pay all fines and costs which may be awarded against him, and in the case of any such appeal, where the quantity of liquors so seized shall exceed five gallons, and if the final decision shall be against the appellant, that such liquors were intended by him for sale, he shall be adjudged by the court a common seller of intoxicating liquors, and shall be subject to the penalties provided for in section eight, of this act; and said liquors shall be destroyed as provided for in section eleven. But nothing in this act shall be construed to prevent any chemist, artist or manufacturer, in whose art or trade they may be necessary, from keeping at his place of business such reasonable and proper quantity of distilled liquors as he may have occasion to use in his art or trade.

Bond for appeal.

SEC. 14. It shall be the duty of any sheriff or constable, if he shall have information that any intoxicating liquors are kept or sold on any boat, scow, raft or canoe, on any river within the limits of this Territory, or in any tent, shanty, hut or other place of any kind, for selling refreshments in any public place on or near the ground of any cattle show, agricultural exhibition, military muster, or public occasion of any kind, to search such suspected place, and if such officer shall find upon the premises, any intoxicating drinks, he shall seize them and arrest the keeper or keepers of such place, and take them forthwith, or as soon as may be, before some justice or judge of a district court, with the liquors so found and seized, and upon proof that such liquors are intoxicating, that they were found in possession of the accused, in a boat, tent, shanty or place as afore-

Liquors when to
be seized and des-
troyed.

said, he or they shall be sentenced to imprisonment in the county jail for thirty days, and the liquors so seized, shall be destroyed by order of said justice or judge.

Bond for appeal.

SEC. 15. If any person arrested under the preceding section, and sentenced as aforesaid, shall claim an appeal, before his appeal shall be allowed, he shall give a bond in the sum of one hundred dollars, with two good and sufficient sureties, that he will prosecute his appeal, and pay all fines, costs and penalties that may be awarded against him; and if on appeal, the verdict of the jury shall be against him, he shall, in addition to the penalty awarded by the lower court, pay a fine of twenty dollars. In all cases of appeal under this act, from the judgment of a justice or judge of any district court to the district or supreme court, where the proceeding is by civil action, they shall be conducted in said district or supreme court, by the district attorney of the county, and said officer shall be entitled to receive all costs taxable to the county in all criminal proceedings under this act, in addition to the salary or compensation allowed to such officer by law; but no costs in such cases shall be remitted or reduced by the prosecuting officer or the court. In any suit, complaint, indictment or other proceeding against any person for a violation of any of the provisions of this act, other than for the first offence, it shall not be requisite to set forth particularly the record of a former conviction, but it shall be sufficient to allege briefly that such person has been convicted of a violation of the fourth section of this act, or as a common seller, or as the case may be, and such allegation in any civil or criminal process in any stage of the proceedings before final judgment, may be amended without terms, and as a matter of right.

Liquor contract void.

SEC. 16. All payments or compensations for liquors sold in violation of law, whether in money, labor or other property, either real or personal, shall be held and considered to have been received in violation of law, and without consideration, and against law, equity and a good conscience, and all sales, transfers and conveyances, mortgages, liens, attachments, pledges and securities of every kind, which either in whole or in part, shall have been for or on account of spirituous or intoxicating liquors, shall be utterly null and void against all persons and in all cases, and no rights of any kind shall be acquired thereby; and in any action, either at law or equity, touching such real or personal estate, the purchaser of such liquors may be a witness for either party.

Report of agents to sell.

SEC. 17. Each person appointed to sell liquors, as provided in section second, shall keep an accurate account in writing, of all the liquors bought or manufactured by him, specifying the quantity of each kind purchased or manufactured, the price of that purchased, the names of the persons from whom it was purchased, and the date of the purchase, the quantity of each kind sold, and the date of the sale, its price, the name, residence, and occupation of the person to whom it was sold, and the purpose for which it was purchased by him. He shall once in each quarter, on a day and at a place to be appointed by said county commissioners, whereof public notice shall be given in one or more newspapers printed in the Territory, exhibit upon his oath or solemn affirmation, the book or books in which said account or specifications are kept, to the said county commissioners, together with a balance sheet showing the quantity of each kind of liquor bought and sold by him during the quarter, and the aggregate cost and proceeds thereof. If it shall appear to the said

county commissioners, that the profits of said business amount to more than would be a fair and just compensation to such persons for transacting the same, they shall fix the amount to be retained by him for such compensation, and shall require him to pay the surplus to the treasurer of the county, for the support of schools as hereinbefore provided.

SEC. 18. Any person who shall oppose an officer, or any person acting under the direction of an officer, when endeavoring to carry out the provisions of this act, either by threats, the exhibition or use of weapons, or in any other way, shall be guilty of a high misdemeanor; and upon conviction thereof before any court having jurisdiction in criminal cases in this Territory, shall for the first offence, be fined not less than five dollars, or more than twenty dollars and costs, and shall be imprisoned not less than five days, or more than twenty days; and for the second and all subsequent offences, shall be fined not less than twenty dollars, or more than one hundred dollars and costs, and imprisoned not less than twenty days, or more than one hundred days; and in all cases to stand committed until all fines and costs are paid.

Penalty for resisting.

SEC. 19. All the provisions of this act relating to counties, shall be applicable in cities and towns; and those relating to county commissioners, shall also be applied to the mayor and aldermen of cities, and the president and council of towns. This act to take effect from and after the first Monday of May next: *Provided*, That a special election be held throughout the Territory, on the first Monday of April next, at which election, the provisions of this act shall be submitted to the voters of the Territory; which election shall be held at the places, and by the officers now provided by law for holding general elections. The voters at said election shall vote by ballot, and all the ballots at said election, having the word "yes" written or printed thereon, shall be counted as voting for the adoption of this act, and those having written or printed thereon, the word "no," shall be counted as voting against the adoption of this act. The returns of said election shall be made to the register of deeds of the several counties, in the manner now required for making election returns, who shall proceed to canvass the votes in the manner that they are now required to canvass the votes of a general election, and immediately make and transmit to the secretary of the Territory, a certified statement of the number of votes cast, for and against the adoption of this act. The governor and secretary of the Territory shall, immediately upon the receipt of the returns from the several organized counties, proceed to canvass the returns, and on or before the first Monday in May next, the governor shall make proclamation of the result. If from the returns, said election shall show that a majority of the votes cast, were for the provisions of this act, then and in that case, this act shall fully and to all intents and purposes, take effect and be enforced according to the provisions of the same; but if a majority of the votes cast shall be against the provisions of this act, then the same shall be null and void, and of no effect.

Liquor election.

SEC. 20. All acts and parts of acts now in existence for regulating the sale of spirituous liquors, and for granting licenses for the sale thereof, are hereby repealed.

County commissioners not to grant licenses.

SEC. 21. The county commissioners from and after the approval of this act, shall not grant any license to sell or retail spirituous liquors for a longer term than the first Monday in May next.

Approved, March 6, 1852.

CHAPTER 5.

Feb. 19, 1851.

An Act to authorize the Establishment and Regulation of Ferries.

SECTION.

1. The board of commissioners of any county, may grant licenses.
2. Tax for license.
3. License to bear the county commissioners' seal; term of duration.
4. Notice of intention to apply for license to be publicly given.

SECTION.

5. Regulations of the ferry.
6. The commissioners to regulate the rate of ferriage.
7. Penalty for maintaining a ferry without license.
8. License tax, to whom and how paid.
9. The license to be paid in advance.

County commissioners to grant license.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, The board of commissioners of any county in this Territory may grant a license to any person applying therefor, to keep a ferry across any stream within their respective counties, upon being satisfied that a ferry is necessary at the point applied for; but no ferry shall be established within one-half mile of any ferry already established, unless when the county commissioners think it necessary.

Tax for licenses.

SEC. 2. The board of commissioners shall tax such sum as may appear reasonable, not less than five, nor more than fifty dollars per annum; and the person to whom such license shall be granted, shall pay to the county treasurer, the tax for one year in advance, and file the receipt therefor with the register of deeds; and shall also pay to the said register one dollar, as fees for issuing said license.

Licenses to bear seal of county commissioners.

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

Notice of application for license to be given.

SEC. 4. All persons intending to apply for a license, shall give notice of their intention to apply for a license for a ferry, at a certain point, by posting up at least three notices in public places, in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular meeting of the board of commissioners: *Provided,* That when application shall be made for a renewal of a

license, where the former license has expired, the same may be granted or renewed, without previous notice or petition.

SEC. 5. Every person obtaining a license to keep a ferry, shall provide and keep in complete repair, the necessary boat or boats, for the safe conveyance of persons and property, and shall keep a sufficient number of hands to give due attendance, from day light in the morning until dark in the evening; and shall moreover, at any hour in the night or day, when called upon for the purpose, convey the United States Mail or other public express, across said ferry: *Provided*, That when the stream is impassable from the high stage of water, or from the drift ice in the river, or when the river is frozen over, no damage shall be recovered for a failure or refusal to convey any person or property across said stream.

Regulations of the ferry.

SEC. 6. Whenever a board of commissioners, of any county, shall grant a license to keep a ferry across any stream, the said board shall establish the rate of ferriage which may be demanded for the transportation of persons and property; and the register of deeds shall furnish every person to whom a license has been granted a list of the rate of ferriage allowed at said ferry; which list the ferry-keeper shall post up at the door of his ferry-house, or in some other conspicuous place, near the landing of said ferry; and any person who shall demand or receive more than the amount so designated, for ferrying, shall pay such sum, not exceeding twenty dollars, as any court having competent jurisdiction shall determine, to be recovered in an action of debt, by any person suing for the same.

Commissioners to fix rate of ferriage.

SEC. 7. Any person who shall maintain any ferry and receive pay for ferriage, without first obtaining a license for the same, shall pay a fine of not less than one, nor more than twenty-five dollars; to be collected for the use of the county, by any person who may sue for the same.

Penalty for keeping ferry without license.

SEC. 8. Any person who shall have obtained a license for a ferry, shall pay his yearly tax to the county treasurer, and file the treasurer's receipt with the register of deeds; and whenever there shall be a failure of filing such receipt on the part of any person or persons, having a license to keep a ferry, for twenty days after the expiration of the time when such tax shall have become due, the said register of deeds, shall forthwith cause suit to be brought against such person or persons, so failing aforesaid, in the name of the board of commissioners of the county, for said tax, with ten per cent. interest thereon; and every such failure to pay said tax, as aforesaid, within twenty days after the time it becomes due, shall annul the license of any such person or persons, so failing as aforesaid.

License tax, to whom and how paid.

SEC. 9. All annual taxes for ferries, shall be paid in advance; and no license for a ferry, for a longer period than one year shall be granted at a special meeting of any board, of commissioners, nor shall the payment of any annual tax imposed by this act, be valid or complete, until the treasurer's receipt shall have been filed in the register of deeds' office.

License to be paid in advance.

Approved, February 19, 1851.

CHAPTER 6.

March 6, 1852.

An Act to amend an act entitled "An Act to authorize the Establishment and Regulation of Ferries;" approved February 19, 1851.

SECTION.

1. Licenses granted by commissioners.
2. Amount of license; when paid.
3. Forfeiture of license.

SECTION.

4. Persons prohibited from charging unless licensed. Fine and forfeiture in such case.
5. Former act partly repealed.

Commissioners
to grant license.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, Hereafter the board of commissioners of the several counties may, and they are hereby authorized to grant ferry licenses for any period not exceeding six years.

License paid to
county.

SEC. 2. Any person or persons who have heretofore, and all persons who may hereafter obtain a charter of the legislature authorizing them to keep and maintain a ferry across any stream in this Territory, shall annually pay into the treasury of the county in which said ferry is situated, or the county to which the county is attached, in which said ferry is situated, such sum, not less than five dollars, nor more than fifty dollars, as the county commissioners of the respective counties may tax; which said tax shall be paid annually in advance, and the county treasurer's receipt therefor filed with the register of deeds within sixty days after the passage of any act granting to him or them a ferry charter, or license to keep a ferry as aforesaid. And all ferries shall be deemed to be situated in the county in which the keeper thereof resides, on that side of a river on which the ferry house is situated; and no ferry shall be liable to pay tax to but one county.

Fine and forfei-
ture.

SEC. 3. Any person or persons failing to comply with the provisions of the second section of this act, shall forfeit all rights, and privileges and immunities that may have accrued to him or them by virtue of any ferry charter or license, to keep and maintain a ferry granted by the legislature.

SEC. 4. Any person or persons who shall maintain any ferry, and receive pay for ferriage, without first complying with the provisions of this act, and the provisions of the act to which this is amendatory, shall, in addition to a forfeiture of their charter or license, pay a fine of not less than five, nor more than twenty-five dollars, to be recovered by a civil action before any court having competent jurisdiction; one half of said fine to go to the person prosecuting the suit, and the other half to go to the county; and it shall be the duty of the register of deeds, and of the board of commissioners, of the several counties, to prosecute all persons keeping a ferry contrary to law.

SEC. 5. So much of the act to which this is amendatory contravening the provisions of this act, is hereby repealed.

Approved—March 6, 1852.

CHAPTER 7.

An Act to amend "An act to provide for the erection of Public Buildings in the Territory of Minnesota." Approved February 7th, 1851; and an act amendatory thereto, approved March 31st, 1851.

March 6, 1852.

SECTION.

1. Building commissioners; new board; term of office.
2. President of the board, casting vote.
3. Treasurer; bond of treasurer.
4. Board to meet.
5. Board to meet, where.

SECTION.

6. Superintendents, appointment of, by whom made, compensation.
7. Oath; secretary of board.
8. Rules and regulations of board.
9. Board to report.
10. Repeal.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the term of office of the commissioners, elected under the acts to which this is amendatory, shall expire on the day of the next general election in this Territory, and if the public buildings shall not be then completed, the governor, the chief justice and the secretary of the Territory, shall constitute a board of commissioners, under whose directions said buildings shall be completed.

Building commissioners, new board; term of office.

SEC. 2. The governor shall be president of said board and have a vote on all questions before it, and in case of a tie, shall give the casting vote; any two of said commissioners shall constitute a quorum to do business.

President of the board, casting vote.

SEC. 3. The secretary of the Territory shall be treasurer of the building fund, both the capitol and the territorial prison fund, and shall, before entering upon the discharge of his duties as treasurer, enter into bond with two or more good and solvent sureties, to the satisfaction of the governor and chief justice, in such amount as they may deem necessary, for the faithful discharge of his duties as such, and for the forthcoming at all times of any moneys that may be in his hands, belonging to the said building fund; said bond shall be transcribed in the office of the secretary, and the original shall be filed in the office of the governor.

Treasurer; bond of treasurer.

SEC. 4. The secretary, as soon as he shall give bonds as treasurer shall demand, and receive from the present treasurers of the capitol and territorial prison fund respectively, all the moneys they may have in their hands belonging to said fund, and on such demand, the present treasurers shall respectively pay over to him the amount in their hands.

Board to meet.

SEC. 5. Said board shall meet as often as they may deem advisable, either at St. Paul or Stillwater, and they may, if in their judgment it shall be necessary, elect a secretary, whose duty shall be the same as that performed by the secretary of the present board: *Provided,* That if said board shall not deem it necessary to elect a secretary, any draft or other paper requiring his attestation by the act of 7th February, 1851, shall be good and have full effect without such attestation.

Board to meet, where.

Superintendents,
appointment of, by
whom made, com-
pensation.

SEC. 6. The board of commissioners shall appoint two superintendents, one of the capitol building and one of the territorial prison building; said superintendent shall receive such compensation as the board may deem reasonable, not exceeding the rate of two hundred and fifty dollars per annum, each, and the secretary of the board, if one shall be elected, shall receive such compensation as the board may allow him, not exceeding the rate of two hundred and fifty dollars per annum. The compensation to the secretary to be paid out of the general fund; that of the superintendents to be paid out of the fund of the buildings they superintend, respectively. The said commissioners shall receive no compensation for their services, except that the governor and chief justice may allow the secretary of the territory for his services as treasurer, such compensation as they may deem proper, not exceeding two per cent. on the amount he may receive and pay out, and provided this compensation shall in no case exceed the rate of two hundred and fifty dollars per annum.

Oath; secretary
of board.

SEC. 7. Each of said commissioners shall, before entering upon the discharge of his duties, take an oath faithfully and impartially to discharge the same. And the superintendents of public buildings, whose appointment is provided for in the preceding section, and the secretary of the board, if one shall be elected, shall, before entering upon the discharge of their duties, take and subscribe a like oath which shall be filed in the office of the secretary of the territory.

Rules and regu-
lations of board.

SEC. 8. The said board shall have power to adopt such rules and regulations as may be necessary to carry into effect the intent and purposes of this act.

Board to report.

SEC. 9. The said board of building commissioners, hereby created, shall annually report to the legislative assembly their proceedings, and the secretary of the territory shall account to the legislative assembly for all moneys received by him as treasurer of the building fund.

Repeal.

SEC. 10. The fourth section of the amendatory act of the 31st March, 1851, and all other parts and clauses of the acts to which this is amendatory, that are inconsistent with this act, are hereby repealed, and all parts and clauses of said acts not inconsistent herewith, shall remain in full force and govern the board hereby created.
Approved, March 6, 1852.

CHAPTER 8.

March 6, 1852.

An Act to punish trespassers on school lands in Minnesota Territory.

SECTION.

1. Trespassers, punishment of.
2. Committal of offender.
3. Information, by whom made.

SECTION.

4. Jurisdiction of offender.
5. Act to take effect, when.

Trespassers, pun-
ishment of.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That any person who shall wilfully cut any standing or other timber, on any lands set apart as school lands, for the use either of

common schools or the university of Minnesota, not having acquired a title to such lands, every such person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the county jail for a period of not less than three days, nor more than six months, or shall forfeit and pay a fine of not less than twenty-five nor more than five hundred dollars; one half of said fine to go to the party complainant, and the other half to the common school fund; and in case of the neglect or refusal of the person so convicted, to pay the fine above specified, he shall be, in addition to the imprisonment above imposed, confined in the county jail or territorial prison, one day for every dollar thereof, until said fine shall be discharged.

Sec. 2. In all cases of conviction under this act, if there be no jail within the county where the offence was committed, (or to which it may be attached for judicial purposes,) it shall be competent for the court before which such conviction was had, to commit the offender to the nearest jail in any other county; and it is hereby made the duty of the keeper of such jail, to receive the prisoner so committed, and in all respects to proceed with him as if he had been committed by the proper authorities of the county in which such jail is situated: *Provided*, That the county in which the offence was committed shall pay the costs of his confinement.

Sec. 3. It shall be the duty of all sheriffs, justices of the peace, county commissioners, constables, and all school trustees, to use all necessary means to obtain information of trespassers on said school lands, and to give such information to the proper authorities.

Sec. 4. The several district courts and justices of the peace shall have concurrent jurisdiction in all cases arising under this act.

Sec. 5. This act shall take effect from and after its passage.

Approved—March 6, 1852.

Committal of offender.

Information, by whom made.

Jurisdiction of offender.

Act to take effect, when.

CHAPTER 9.

An Act to authorize the exercise of all equity jurisdiction in the form of civil actions, and for other purposes.

March 5, 1853.

SECTION.

1. Equity proceedings, as in civil actions.
2. Suits, etc., how conducted.
3. No exeat and injunction, how granted; answer.
4. No exeat and injunction, how granted.
5. Equities, how interposed.
6. Counter claim.
7. Discovery, how enforced.

SECTION.

8. Bonds &c., may be required.
9. Receivers may be appointed.
10. Referees authorized.
11. Rules of court and defects provided for.
12. Appeals.
13. Taxes and costs.
14. Chancery proceedings abolished.
15. Act when to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That all equity and chancery jurisdiction, authorized by the

Equity proceedings as in civil actions.

organic act of the Territory, shall be exercised, and all suits or proceedings to be instituted for that purpose are to be commenced, prosecuted, and conducted to a final decision and judgment, by the like process, pleadings, trial, and proceedings as in civil actions, and shall be called civil actions.

Suits, etc., how conducted.

SEC. 2. All suits, applications and proceedings, now authorized by statute to be commenced, prosecuted, and conducted in chancery, or enforced by chancery jurisdiction, including the foreclosure and satisfaction of mortgages, shall hereafter be commenced, prosecuted, and conducted to a final decision and judgment, by the like process, pleadings, trial and proceedings, as in civil actions.

Ne exeat and injunction how granted; answer.

SEC. 3. The district court, or any judge thereof, may grant writs of ne exeat, and injunction in all civil actions, on complaint, and when a counter claim or equities in the nature of a counter claim are set up in an answer, then on such answer, and in such case there may be annexed to the duly verified complaint or answer, affidavits of persons other than the party, tending to show the truth of the facts and allegations relied upon for the allowance of such application.

Ne exeat and injunction how granted.

SEC. 4. Such writs of ne exeat and injunction may be granted in the progress of any action, at any time before the final decision, judgment or decree therein, either by petition duly verified, or on affidavits, or both, provided that no injunction shall issue to stay proceedings in any civil action before final decision therein.

Equities, how interposed.

SEC. 5. All equities existing at the time of the commencement of any action, in favor of a defendant therein, or discovered to exist after such commencement or intervening before a final decision, in such action, shall be interposed, if at all, by way of defence to the action by answer or supplemental answer, in the nature of a counter claim, and issue taken thereon by a reply or supplemental reply thereto, and be determined as the other issues in said actions.

Counter claim.

SEC. 6. In all civil actions commenced after this act shall take effect, when the party prosecuted has equities, claims, or demands which could heretofore only be enforced by cross action or cross bill, the same shall be interposed by way of answer in the nature of a counter claim, and the plaintiff may reply thereto, and put the same in issue. And if the same be admitted by the plaintiff, or the issue thereon be determined in favor of the defendant, he shall be entitled to such relief, equitable or otherwise, as the nature of the case demands, by judgment, or otherwise.

Discovery, how enforced.

SEC. 7. When ever equity and justice requires a discovery which could before this act took effect be enforced by a bill or cross bill, such discovery may be compelled to be made under the oath of the parties of whom the discovery is sought, either by a verified complaint or answer, setting forth therein specifically the matters upon which a discovery is required, and the party seeking such discovery may have the answer or reply stricken out for insufficiency, and compel a further answer, or reply, in case such pleading does not contain the full and complete discovery sought, or give a good and sufficient reason for not making such discovery.

Bonds &c., may be required.

SEC. 8. In all cases wherein chancery suits and proceedings were authorized before this act took effect, and in which bonds, undertakings, or other securities were, or might be required, the same may be hereafter required in the civil actions substituted therefor by virtue of this act.

SEC. 9. In all civil actions wherein receivers may be necessary,

or where in chancery suits or proceedings they were authorized to be appointed previous to this act taking effect, they may hereafter be appointed, if necessary, and they may be required to give such securities for the faithful performance of their duties, and the discharge of their trusts, as by law, rule of court, or former practice, were authorized.

Receivers may be appointed.

SEC. 10. In all cases where, in chancery before this act took effect, masters and examiners were required to act, or might have acted, the like acts and duties shall and may hereafter be performed when necessary, by a referee or referees appointed as in civil actions.

Referees authorized.

SEC. 11. The supreme court shall have the power to provide general rules for its own conduct, and the conduct of the district courts of the Territory, and the judges thereof and other officers of said courts, and to carry into effect legal rules and statutory provisions; and also to supply defects or omissions in practice, in respect to the commencement, prosecution and conducting all civil actions, special proceedings, appeals, writs of error and certiorari, and all other writs and statutory proceedings: *Provided, always,* That no legal rule or statutory provision is to be violated or abrogated thereby.

Rules of court and defects provided for.

SEC. 12. All the statutory provisions authorizing appeals in civil actions, and appeals in chancery existing before the passage of this act, which are necessary and applicable, may be applied and used in appealing causes which under this act are intended to be conformed to and are called civil actions.

Appeals.

SEC. 13. All the provisions respecting fees, costs, and disbursements, in civil actions and appeals, in force at the time of the passage of this act, shall be applicable to the civil actions, proceedings and appeals authorized by this act, and all provisions for fees, costs, and disbursements in chancery suits and proceedings are hereby abolished: *Provided,* That in actions for the foreclosure of mortgages and for the partition of real property, where no issue is joined, the costs of the plaintiff shall be the same as if issue had been joined therein.

Taxes and costs.

SEC. 14. The court of chancery and the right to commence or institute chancery suits and proceedings, and all statutes and statutory provisions inconsistent with this act, shall be, and are hereby abrogated and abolished: *Provided, however,* That this act shall not apply to suits and proceedings commenced before this act takes effect, which shall be prosecuted and conducted to a final determination under the laws as they existed previous to the existence of this act.

Chancery proceedings abolished.

SEC. 15. This act shall take effect from and after its passage.

Act when to take effect.

Approved March 5, 1853.

CHAPTER 10.

An Act to amend an act providing for the appointment of a librarian, and for other purposes.
"Approved February 25th, 1851."

March 4, 1852.

SECTION.

1. Salary increased.

SECTION.

2. Repeal.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the territorial librarian shall receive for his services, at

Salary increased.

the rate of six hundred dollars per annum, to be paid quarter yearly by the Secretary of the Territory, out of the money appropriated by Congress to defray the expenses of the Legislative Assembly.

Repeal.

Sec. 2. So much of the act to which this is an amendment, as authorizes the librarian to employ, at the public expense, a deputy or assistant librarian during the sessions of the Legislative Assembly and Supreme Court, is hereby repealed.

Approved—March 4, 1852.

CHAPTER 11.

March 5, 1853.

An Act to amend the Revised Statutes, passed March 31st, 1851.

Page 5-

SECTION.

1. Amendments. Counties organized; electors of; surveyor of; duty, oath, &c.; surveyor, bond of, how made.
2. Amendments. Assignments when void. Conveyances, when void; fraudulent conveyances, &c.
3. Appeal from justice of peace. Replevin, what amount requisite. Forcible entry and detainer. Appeal, time of, affidavit in etc. Recognizance in appeal, how made.
4. Amendments. Causes of action, when several joined, etc. Action, what causes joined.
5. Amendments. Attachment, service of; inventory in and how made.

SECTION.

6. Amendments. Actions, service in when made by publication; proof of service — Judgment how obtained. Restitution and bond.
7. Amendments to criminal law. Murder, first degree, second degree, third degree; punishment for and manner of execution. Death warrant.
8. Amendments. Grand jury, its duty; presentment, when proper.
9. Officers of the Territory; reports of; accounts.
10. Commissioners. Supervisors of roads. Road districts, alteration of. Vacancy filled, how.

Statutes amended.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the revised statutes of said Territory be, and the same are hereby amended as follows:

Sec. 1. Section 1 of article 7, chapter 8, page 72, is hereby amended so as to read as follows:

Surveyors to be elected, to take an oath and give bond

Sec. 1. The qualified electors in each of the organized counties of the Territory, shall at the annual election elect a surveyor, who shall hold his office for two years and until his successor shall be elected and qualified; and who shall reside in the county for which he shall have been elected, and shall previous to his entering upon the duties of his office, take and subscribe an oath or affirmation faithfully to discharge the duties of the same, and shall give bond to the clerk of the board of county commissioners of the proper county, in the sum of five hundred dollars, conditioned for the faithful discharge of his duties.

Sec. 2. Section 1 of chapter 64, page 269, is hereby amended so as to read as follows:

Sec. 1. Every conveyance or assignment in writing or other-

wise, of any estate or interest in lands or of goods, chattels, or things in action, or of any rents, issues or profits, made with the intent to hinder, delay or defraud creditors, or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered, with the like interest as against the person so hindered, delayed or defrauded, shall be void.

Certain conveyances to be void.

Sec. 3. Section 123 of chapter 69, page 315, is hereby amended so as to read as follows:

Sec. 123. Any person aggrieved by any judgment rendered by any justice of the peace under this article, when the judgment shall exceed fifteen dollars, or in action of replevin, when the value of the property as sworn to in the affidavit for a writ of replevin shall exceed fifteen dollars, or when the amount claimed in the complaint shall exceed thirty dollars, may appeal by himself or agent, to the district court of the county where the same was rendered: *Provided, however*, That when the claims of either party as proven in the cause at the trial, shall exceed one hundred dollars, or the claims of both parties as proven on the trial, shall exceed two hundred dollars, then either party may appeal from such judgment, although the recovery before the justice be less than fifteen dollars; in which case the fact of sum or sums having been proven on the trial shall be set forth and certified by the justice in his return: *Provided*, This law shall not interfere with any action in case of forcible entry and detainer. *And provided further*, That no appeal shall be allowed in any case unless the following requisitions are complied with within ten days after judgment rendered, viz:

Aggrieved party may appeal from justices' court in certain cases.

1st. An affidavit shall be filed with the justice before whom the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

Affidavit and recognizance on appeal, when and how made.

2nd. A recognizance entered into by the party appealing, his agent or attorney, to the adverse party in a sum sufficient to secure such judgment and cost of appeal, must be entered into with one or more sureties, to be approved by the justice.

Sec. 4. Section 83, page 339, is hereby amended so as to read as follows:

Sec. 83. The plaintiff may unite several causes of action in the same complaint, whether legal or equitable, when they are included in either of the following classes:

Several causes of action may be united.

1st. The same transaction or transactions connected with the same subject of action.

What.

2nd. Contracts expressed or implied.

3d. Injuries with or without force to person and property, or either.

Sec. 5. The following subdivisions shall be and are hereby added to section 140, on page 346:

4th. The sheriff shall serve a copy of the warrant of attachment, and inventory certified by him upon the defendant if he can be found within the county, and if not so found, by leaving the same at his usual last place of abode.

Service of attachment and inventory, how made

Sec. 6. Subdivision three, of section 165, page 350, is hereby amended so as to read as follows:

3. In actions where the service of the summons was by publication or by leaving a copy of the same at the usual last place of abode of the defendant, the plaintiff may in like manner apply for judgment, and the court must thereupon require proof to be made

Servicce by publication or leaving copy, plaintiff may apply for judgment.

Security necessary.

of the demand mentioned in the complaint, and must require the plaintiff or his agent, to be examined on oath, respecting any payments that have been made to the plaintiff or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover; before judgment the plaintiff must give satisfactory security to abide the order of the court, touching the restitution of any property collected or received under the judgment, in case the defendant or his representatives are admitted to defend the action and succeed in the defence.

CRIMINAL PROCEEDINGS.

SEC. 7. Section 2 of chapter 100, page 492, is hereby amended so as to read as follows:

Murder in first degree.

Warrant for execution.

Murder in second degree.

Penalty.

Murder in third degree.

Penalty.

Duty of grand jury.

Presentment.

Territorial officers shall render accounts, when.

Commissioners to alter road districts and appoint supervisors.

SEC. 2. Such killing when perpetrated with a pre-meditated design to effect the death of a person killed, or any human being, shall be murder in the first degree; and the person who shall be convicted of the same, shall suffer the penalty of death; but any person convicted of any capital crime, shall be kept in solitary confinement for a period of not less than one month, nor more than six months, in the discretion of the judge before whom the conviction is had; at the expiration of which time, it shall be the duty of the Governor to issue his warrant of execution. When perpetrated by any act eminently dangerous to others, and evincing a depraved mind regardless of human life, although without any pre-meditated design to effect the death of any particular individual, shall be murder in the second degree, and shall be punished by imprisonment in the territorial prison or penitentiary, for life; when perpetrated without any design to effect death by a person engaged in the commission of any felony, shall be murder in the third degree, and shall be punished by imprisonment in the territorial prison not more than fourteen years, nor less than seven years.

SEC. 8. Sections 30 and 31 of chapter 116, page 539, are hereby amended so as to read as follows:

SEC. 30. Upon such inquiry, if from the evidence, the grand jury believe any person charged with a public offence to be guilty of the same or any other public offence, they shall find an indictment, against such person.

SEC. 31. In all other cases, if upon investigation, the grand jury believe that a person is probably guilty of such offence, the grand jury shall proceed by presentment only.

SEC. 9. All territorial officers who are required to render accounts to the legislative assembly, shall close those accounts on the 31st day of December, in each year, and shall render such accounts as soon after that day in each year as may be practicable.

SEC. 10. That from and after the passage of this act, the county commissioners of each county shall have authority to make any alterations that they may deem necessary, in the road districts in their respective counties, and to appoint supervisors in any district whenever a vacancy may occur.

Approved March 5, 1853.

CHAPTER 12.

An Act for the government of the Territorial Prison of Minnesota.

March 5, 1853.

Page 10

SECTION.

1. Prison, who may be imprisoned therein
2. Hard labor; solitary confinement; convicts, treatment of.
3. Warden, his duty.
4. Warden's duty; prisoners of counties; county pay expenses.
5. Prison inspectors.
6. Inspectors, by whom appointed, term of office. oath of warden and inspectors; bond, condition of, where filed.
7. Duties.
8. Report, by whom made.
9. Conduct of warden, charges, etc., inspectors to enquire into.
10. Prisoners, disorderly conduct, etc.; punishment of prisoners.
11. Rules of government, approved of by whom.
12. Duties and powers of warden.
13. Inspection by warden, authority of to punish; register to be kept.
14. Process within prison, by whom served; return of process; guard of prison.

SECTION.

15. Actions; warden may sue and be sued; successor, his duty; papers delivered, when.
16. Deputy warden, duties of.
17. Deputy warden's bond; removal, by whom made and the cause; salary, etc.
18. Meeting of inspectors, record to be kept.
19. Physician to prison, appointment of, his duties.
20. Convicts, removed, when.
21. Escape of convicts.
22. Obedience to officers how enforced.
23. Insurrection in prison, duty of officers.
24. Escapes; apprehension and reward for.
25. Discharge of convict.
26. Property of convict, how disposed of.
27. Good conduct, reward for.
28. Admission fee; visitors.
29. Visitors, who admitted.
30. Economy to be used.
31. Salary of inspectors; clerk to inspectors; compensation of officers.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, The prison in course of erection at Stillwater, in the county of Washington, shall be maintained as the Territorial Prison of this Territory, in which convicts sentenced for life or any term of time confined, employed and governed as hereinafter provided.

Territorial prison.

SEC. 2. All punishment in the Territorial Prison by imprisonment, must be by confinement to hard labor and not by solitary imprisonment; but solitary imprisonment may be used as a prison discipline for the government and good order of the convicts hereinafter mentioned.

Punishment.

SEC. 3. Convicts sentenced to hard labor in the Territorial Prison for life or any term of time by any court of the United States or of this Territory, held within the Territory, must be received into the prison by the warden thereof when delivered by the authority of the United States or this Territory, and there kept in pursuance of their sentence.

Warden must receive prisoners.

SEC. 4. It shall be the duty of the warden to receive and confine in said territorial prison, all persons committed to imprisonment in any county in this Territory, in which there shall be no or an insufficient, county jail, and the certificate of the committing magistrate shall be sufficient evidence that there is no sufficient jail in the county: *Provided,* That the county from which such persons may be committed shall be liable to pay for the expenses of such imprisonment two and a half dollars per week. And the said warden is

Duty of warden.

Expenses, when paid by county.

hereby authorized to sue for and collect the same in his name of office.

Inspectors.

SEC. 5. The territorial prison shall be under the government and direction of three inspectors and one warden.

Appointments.

SEC. 6. The inspectors shall be appointed by the Governor, (by and with the consent of the council,) and be commissioned to hold their office for two years and until others are appointed and qualified. One of the inspectors shall in his commission be designated as chairman. The inspectors and warden, before entering upon the discharge of their respective duties, must take an oath of office, and the warden must also give bonds to the secretary of the territory in the sum of ten thousand dollars, with sufficient sureties to be approved by the governor, conditioned that he will account for all moneys that come into his hands as treasurer of the territorial prison; and that he will faithfully perform all the duties incumbent on him as warden of such prison, which bond must be filed in the office of the secretary of the territory.

Oath of office and bond.

Duty of inspectors.

SEC. 7. It is the duty of the inspectors to meet together at stated times, at the prison, once at least in every three months, and oftener if necessary, to attend to and inspect the concerns of the prison, the manner of keeping the books and accounts, and the register of punishments kept by the warden; and from time to time carefully to examine the same, and to keep a record of their doings; one of them at least, must visit the prison as often as once in each month, to examine into all the concerns thereof, and to see that the laws and regulations thereof are duly observed, and the duties of the warden faithfully performed, and to advise with the warden of the prison on the concerns thereof, whenever thereto requested; and each of them shall at all times have free access to all parts of the prison, and be allowed to inspect and examine all the books, accounts and writings, pertaining to the prison, or the business, management and government thereof; and the inspectors, as soon as may be after each stated meeting, or oftener if necessary, shall transmit to the governor a transcript of the record of their doings, and such other information relative to the concerns of the prison, as they may deem proper.

Report to governor.

SEC. 8. It is the duty of the inspectors, on the first Monday of January, annually to audit, correct, and settle the accounts of the warden with the prison and the territory for the year ending on the last day of December, preceding, and make report thereof in the same month to the governor; which report must exhibit all particulars necessary to give the governor a full understanding of the fiscal and other concerns of the prison, and must at the same time furnish an estimate of the probable income and expense of the prison for the ensuing year.

Enquire into conduct of warden.

SEC. 9. It is the duty of the inspectors to inquire into any improper conduct which may be alleged to have been committed by the warden of the prison in relation to the concerns thereof; and for that purpose may issue subpoenas for witnesses to compel their attendance, and the production of papers and writings, and may examine witnesses under oath to be administered by the chairman, and may adjudicate on such alleged improper conduct, in like manner and with like effect as in case of arbitration.

May punish prisoners.

SEC. 10. The inspectors must examine into all disorderly conduct among the prisoners, and when it appears to them that such conduct is disorderly, refractory or disobedient, they may order

such punishment as they may deem necessary, to enforce obedience, and as shall not be inconsistent with humanity and may be authorized by the rules and regulations established for the government of the prison.

Sec. 11. The inspectors must from time to time establish such rules and regulations, consistent with the laws of the territory, as they may deem necessary and expedient for the direction of the warden of the prison in the discharge of his duties; for the government, instruction and discipline of the convicts, and for their clothing and subsistence; and for the custody, preservation and management of the public property; and so soon as may be, after the establishment of the same by the inspectors, they shall cause a copy thereof to be laid before the governor, who may approve or modify the same, and make and establish such other rules and regulations consistent with the laws of the Territory as to him may seem fit; and the governor must communicate all such rules and regulations as shall be thus approved or established, to the next legislature, after the same shall have been so approved and established, and the inspectors must cause a copy of such rules and regulations to be certified by the clerk and delivered to the warden.

Must establish rules.

Governor may approve or modify.

Sec. 12. The warden shall have the care and custody of the prison, and of the convicts therein, in conformity to their respective sentences, and of the lands, buildings, machines, tools, stock, provisions, and every other kind of property belonging to, or within the precincts of the same. He is the treasurer of the prison, and must receive, pay out, and be accountable for all moneys granted for maintaining or improving the same, or derived from the manufactures or other concerns thereof and shall make or cause to be made in the books of the prison, regular entries of all pecuniary and other concerns of the prison, and must render to the inspectors whenever required, a fair account of all the expenses and disbursements, receipts and profits of the prison, with sufficient vouchers for the same, and a statement of its general affairs for the year then passed, including the number of convicts received and discharged during the year, and the number remaining; and a similar account and statement, examined and approved by the inspectors; the warden shall render under oath to the legislature at the commencement of every regular session thereof.

Duty and powers of warden.

Sec. 13. It is the duty of the warden to inspect and oversee the conduct of the convicts, and cause all the rules and regulations of the prison to be strictly and promptly enforced. He has authority to punish any convict for disobedience, disorderly behavior or idolence, in such manner as may be directed by the inspectors, or prescribed in the rules and regulations, and must keep a register of such punishments, and the cause for which they were inflicted.

May punish convicts.

Sec. 14. The warden or his deputy shall serve, execute and return all process within the precincts of the prison, and such process may be directed to him or his deputy accordingly; and for the doings of his deputy the warden as well as his deputy is answerable. The warden shall have the command of all the force for guarding the prison, and of all officers and persons employed under him.

Sec. 15. All actions founded on contract made with the warden

- How actions may be brought.** in his official capacity, may be brought by or against the warden for the time being; and any action for injuries done or occasioned to the real or personal property belonging to the Territory and appropriated to the use of the prison, or being under the management of the warden thereof, may be prosecuted in the name of the warden for the time being, and no such action shall abate by the warden's ceasing to be in office; but his successor, upon notice, is required to assume the prosecution or defence of the same. In any such action, the warden is a competent witness, and his property shall not be taken or attached in any such suit, nor shall any execution issue against him on any judgment thereon; but such judgment shall stand as an ascertained claim against the Territory, and whenever a new warden is appointed, all the books, accounts, and papers belonging to the prison, shall be delivered to him, and he shall be invested with all the powers and subject to all the obligations with regard to any contracts or any debts due to or from the prison, that his predecessor would have been if no change had taken place in the office.
- How continued.**
- Deputy warden.** SEC. 16. Whenever the office of warden is vacant, or he is absent from the prison, or unable to perform the duties of his office, the deputy warden has the power to perform the duties, and shall be subject to all the obligations and liabilities of the warden.
- To give bond.** SEC. 17. If the office of warden becomes vacant before a new one is appointed and the deputy warden enter upon the duties of the office, the inspectors may require such deputy to give bond to the Territory in the sum of ten thousand dollars with good security, conditioned for the faithful discharge of the duties incumbent on him as deputy warden and Treasurer, which bond must be approved by the inspectors; and from the time such bond is approved, the deputy may receive the salary and emoluments of the warden so long as he performs the duty of the office; if the deputy warden do not give such bond when required, the inspectors may remove him from office and appoint a warden for the time being, who must give bond similar to the one required of the deputy warden, and shall have the power and authority, and perform the duties and receive the salary and emoluments of the warden until a warden is duly appointed and enters upon the discharge of the duties of his office.
- May be removed.**
- Duty of warden.** SEC. 18. It is the duty of the warden to attend the meetings of the inspectors when they require him so to do, and keep a record of their proceedings; and perform such other services pertaining to his employment and the superintending of the prison, as may be directed by the inspectors.
- Physician to be appointed.** SEC. 19. The inspectors must appoint some suitable person to be physician and surgeon to the territorial prison, whose duty it is to visit the prison whenever requested by the warden, prescribe for the convicts who may be sick, see that proper attention be paid to the clothing, regimen and cleanliness of such as may be in the hospital, and advise when the illness of any convict may require his removal to the same; and upon such advice he must forthwith be removed to the hospital, there to receive such care and attention, and be furnished with such medicines and diet as his situation may require, until the physician determine that he may leave it without injury to his health.
- His duties.** SEC. 20. In cases of any pestilence or contagious sickness

breaking out among the convicts in the prison, the inspectors and warden may cause the convicts confined therein, or any of them, to be removed to some suitable place of security, where such of them as are sick shall receive all necessary care and medical assistance. Such convicts may be returned as soon as may be, to the prison, to be confined according to their respective sentence, if the same be unexpired.

Convicts may be removed.

SEC. 21. If any officer or other person employed in the prison or its precinct, negligently suffer any convict confined therein to be at large, without the precincts of the prison, or out of the cell, or apartment assigned to him, or to be conversed with, relieved or comforted contrary to law, or the rules and regulations of the prison, he shall be punished by fine not exceeding five hundred dollars.

Liability for escape of convict.

SEC. 22. If a convict sentenced to the territorial prison resist the authority of any officer, or refuse to obey his lawful commands, it is the duty of such officer immediately to enforce obedience by the use of such weapons or other aid as may be effectual, and if in so doing, any convict thus resisting, be wounded or killed by such officer or his assistants, they are justified and shall be held guiltless.

Officers may enforce obedience.

SEC. 23. It is the duty of the officers and other citizens of this Territory, by every means in their power to suppress any insurrection among the convicts sentenced to the territorial prison and to prevent the escape or rescue of any such convicts therefrom, or from any other legal confinement, or from any person in whose legal custody they may be; and if in so doing, or in arresting any convict who may have escaped such officer or other person wound or kill such convict, or other person aiding or assisting such convict, they shall be justified and held guiltless.

Duty of officers and others to suppress insurrection.

SEC. 24. When any convict escapes from the prison, it is the duty of the warden to take all proper measures for his apprehension, and for that purpose shall offer a reward of fifty dollars; to be paid by the warden from his own resources, for the apprehension and delivery of such convict.

Convicts to be apprehended.

SEC. 25. No convict can be discharged from the prison, until he has remained the full term for which he was sentenced, to be computed from, and including the day on which he was received into the same, exclusive of the time he may have been in solitary confinement for any violation of the rules and regulations of the prison, unless he be pardoned or otherwise released by legal authority.

When convict to be discharged.

SEC. 26. It is the duty of the warden to receive and take care of any property a convict may have with him at the time of his entering the prison; and when it may be convenient, to place the same at interest, for the benefit of such convict; of which property the warden must keep an account, and pay the same to such convict on his discharge, or, in case of his death to his representatives, unless the same have been legally otherwise taken and disposed of.

Property of convicts, disposition of.

SEC. 27. When any convict is discharged from the prison who has conducted well during his imprisonment, the warden at his discretion, may give such convict, from the funds of the prison, a sum not exceeding five dollars; and if he desire it, a certificate of such good conduct, and must take care that every

Reward for good conduct of convict.

convict on his discharge from the prison is provided with decent clothing.

Admittance fee
from visitors.

SEC. 28. The warden has authority to demand and receive of each person not exempt by law, who visits the prison for the purpose of viewing the interior or precincts, a sum not exceeding twenty-five cents, and under such regulations as the inspectors may prescribe, of which the warden must keep an account, which money shall be applied for the purchase of books for the use of the prison, under the direction of the inspectors.

Exceptions.

SEC. 29. The following persons are authorized to visit the prison at pleasure: The governor and secretary of the Territory, members of the legislature, judges of the district courts, prosecuting attorneys of any of the counties of this Territory, and all regularly officiating ministers of the gospel; and no other person shall be permitted to go within the walls of the prison where convicts are confined, except by special permission of the warden, or under such regulations as the inspectors shall prescribe.

Economy re-
quired.

SEC. 30. It is the duty of the inspectors and warden to see that rigid economy is practiced in all matters pertaining to the prison and the employment of the convicts, and that duplicate receipts be taken for all expenditures made on account of the prison, one copy of which must be forwarded to the secretary of the Territory monthly.

Compensation of
inspectors.

SEC. 31. The inspectors shall be allowed for their services the sum of three dollars for each and every day actually and necessarily occupied in inspecting the prison and inquiring into the management thereof, not exceeding twenty days each in any year. F. R. Delano is hereby appointed warden of the territorial prison for the term of five years. Said Delano shall act as clerk to the board of inspectors, and as superintendent of all improvements made in and about said prison under the direction of the inspectors. He shall execute or cause to be carried into effect all orders of the board of inspectors concerning the regulation of the prison, or prisoners, and shall furnish at his own expense all overseers, guards, and hands, necessary for the purpose. The said Delano shall also furnish and procure all furniture, food, fuel, clothing, tools, stock, and materials, necessary for the prison and for the prisoners therein, at his own cost and expense, and without any charge whatever to the Territory. The said F. R. Delano shall receive for the performance of the duties required by this act, a salary of six hundred dollars per year, payable quarterly from the territorial treasury, and shall have the use of all the buildings and grounds belonging to the territorial prison, for the purpose of complying with the provisions of this act. This act shall be in force from and after its passage.

F. R. Delano ap-
pointed warden.

His duties and
liabilities.

Compensation.

Approved March 5, 1853.

CHAPTER 13.

An Act to establish the terms of the Supreme and District Courts of the Territory, and for other purposes.

March 5, 1853.

SECTION.

1. Supreme court.

Terms of supreme court, when and where held, special terms how ordered.

2. District court, terms of Counties, Ramsey, county, Washington, Chisago, Benton, Hennepin, Dakota, Scott, Le Sueur, Blue Earth, Nicollet, Wabasha, Fillmore.

SECTION.

3. First district; second district; third district.

4. Judges may hold term.

5. Counties attached for judicial purposes, Itasca, Cass, Pembina, Sibley, Pierce, Goodhue.

6. Repealing clause.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there shall be two terms of the supreme court annually at the seat of government of said Territory, to be held on the last Monday of February and the first Monday of September, in each year, and such other special terms thereof as the judges of said court may deem necessary and shall from time to time order.

Terms of supreme court.

SEC. 2. The terms of the district court of the Territory shall be held at the times and places following, to wit:

In the county of Ramsey, on the third Monday of April and the third Monday of October, in each year.

Ramsey county.

In the county of Washington, on the first Monday of April and on the first Monday of October, in each year.

Washington.

In the county of Chisago, on the first Monday of June, in each year.

Chisago.

In the county of Benton, on the second Monday of June and second Monday of December, in each year.

Benton.

In the county of Hennepin, on the first Monday of April and the first Monday of September, in each year.

Hennepin.

In the county of Dakota, on the second Monday of September, in each year.

Dakota.

In the county of Scott, on the third Monday of September, in each year.

Scott.

In the county of Le Sueur, on the fourth Monday of September, in each year.

Le Sueur.

In the county of Blue Earth, on the first Monday of October, in each year.

Blue Earth.

In the county of Nicollet, on the second Monday of October, in each year.

Nicollet.

In the county of Wabasha, on the second Monday in June, in each year.

Wabasha.

In the county of Fillmore, on the fourth Monday in June, in each year.

Fillmore.

SEC. 3. The counties of Ramsey, Washington and Chisago, shall constitute the first judicial district and the Hon. H. Z. Hayner, or any judge appointed in his place, is hereby assigned to the same as district judge thereof.

First district.

- Second district. The counties west of the Mississippi river, except the counties of Pembina and Cass, shall constitute the second judicial district, and the Hon. David Cooper, or any judge appointed in his place, is hereby assigned to the same as district judge thereof.
- Third district. And the counties of Benton, Cass and Pembina, shall constitute the third judicial district, and the Hon. B. B. Meeker, or any judge appointed in his place, is hereby assigned as district judge thereof.
- Any judge may hold court at request. SEC. 4. Either of the district judges are hereby authorized and empowered to hold any of the district courts assigned to any of the other district judges, or any of the special terms appointed to be held, not within his own district, or any of the chamber duties within each district at the request of the district judge to whom such district is assigned.
- Itasca county, to what county attached. SEC. 5. For judicial and other purposes to enforce civil rights and criminal justice, the county of Itasca is hereby attached to, and made a part of, Chisago, and for that purpose, all the officers necessary to effect the same, belonging to the county of Chisago, shall have and exercise full jurisdiction, power and authority over, and act in and for the county of Itasca as fully as if they were a part of the same. And for the like purposes and to the same extent, the counties of Cass and Pembina are hereby attached to the county of Benton. And for the like purposes and to the same extent, the county of Sibley is hereby attached to the county of Hennepin. And for the like purposes and to the same extent, the county of Pierce is hereby attached to the county of Nicollet. And for the like purposes and to the same extent, the county of Rice is hereby attached to the county of Dakota. And for the like purposes and to the same extent, the county of Goodhue is hereby attached to the county of Wabasha: *Provided*, That this act shall not interfere with the legal exercise of authority by the officers of the counties attached.
- Cass and Pembina attached to Benton.
- Sibley.
- Pierce.
- Goodhue.
- Repeal. SEC. 7. All laws and parts of acts inconsistent with this act are hereby repealed, and this act is to take effect from its passage. Approved March 5, 1853.

CHAPTER 14.

March 6, 1852.

An Act to provide for the Collection of Territorial Taxes in Unorganized Counties.

SECTION.

1. Assessors and collectors for unorganized counties.
2. Bond and its conditions.

SECTION.

3. Duties of Assessors, &c.
4. Statement to be annual.
5. Repealing clause.

Assessors and collectors for unorganized counties

Their bond and its conditions.

SEC. 1. The Governor shall appoint in each of the unorganized counties of the Territory, one or more suitable persons who shall be assessor and collector of the Territorial taxes in said counties.

SEC. 2. Each person appointed assessor and collector of taxes in the unorganized counties according to the provisions of the first

section of this act, shall, before entering upon the duties of his office, file with the Territorial Treasurer, a bond with two or more good and sufficient sureties, to be approved by the Territorial Treasurer, in the penal sum of two hundred dollars, conditioned that he will faithfully perform the duties of his office, and that he will pay over all the moneys by him collected, as hereinafter provided.

SEC. 3. It shall be the duty of the assessors and collectors appointed under the provisions of this act, to annually assess all property in their respective counties subject to taxation for Territorial purposes, in the manner that assessors are now required by law to make assessments in organized counties, and they shall levy and collect the taxes thereon, in the manner that sheriffs are now required to collect taxes, and to pay the amounts by them so collected, into the Territorial Treasury, on or before the first day of January, in each and every year.

Duties.

SEC. 4. The assessors and collectors aforesaid, shall annually transmit, on or before the first day of January, in each year, to the Territorial Auditor, a certified statement of the amount of property by them assessed, and the amount of taxes collected thereon, and the amount of taxes remaining unpaid.

Annual statement.

SEC. 5. That so much of any law now in force as contravenes the provisions of this act, is repealed.

Repeal.

Approved—March 6, 1852.

CHAPTER 15.

Page 35.

An Act to organize certain Counties and for other purposes.

March 5, 1853.

SECTION.

1. Boundary of counties. Dakota county.
2. Goodhue.
3. Wabasha.
4. Fillmore.
5. Scott.
6. Le Sueur.
7. Rice.
8. Blue Earth.
9. Sibley.
10. Nicollet.

SECTION.

11. Pierce.
12. Judicial purposes; counties attached
13. Justices of peace, what counties entitled to, and how many; constables.
14. Counties organized.
15. Commissioners of county, election of.
16. Election precincts.
17. Election judges.
18. County seat, location of, by whom made.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That so much territory as is contained in the following boundaries, be and the same is hereby created into the county of Dakota, to wit: Beginning at a point in the Minnesota river at the mouth of Credit river, thence on a direct line to the upper branch of Cannon river, thence down said river to its lower fork as laid down on Nicollet's map, thence on a direct line to a point on the Mississippi river opposite the mouth of St. Croix Lake, thence

Dakota county.

up the Mississippi river to the mouth of the Minnesota river, thence up the Minnesota river to the place of beginning.

Goodhue.

SEC. 2. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Goodhue, to wit: Beginning at the south-west corner of Dakota county, thence due south-east on a line twenty-five miles, thence on a due line to Lake Pepin, at a point on said lake seven miles below Sand Point, thence up to the middle of said lake and the Mississippi river, to the boundary line of Dakota county, thence along the line of said county to the place of beginning.

Wabasha.

SEC. 3. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Wabasha, to wit: Beginning at the south-west corner of the county of Goodhue, thence on a line south-east twenty-five miles, thence on a due line to the head waters on the Minneskah river, thence down said river to its junction with the Mississippi river, thence up the middle of the said Mississippi river and Lake Pepin, to the line of Goodhue county, thence along said county line to the place of beginning.

Fillmore.

SEC. 4. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Fillmore, to wit: Beginning at the south-west corner of Wabasha county, thence south-east to the Iowa State line, thence east on the said Iowa State line to the Mississippi river, thence up the middle of said river to the mouth of Minneskah or White river, thence up said river on the south line of Wabasha county to the place of beginning.

Scott.

SEC. 5. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Scott, to wit: Beginning at the mouth of Credit river in the Minnesota river, thence up the Minnesota river to the mouth of Techankiute river, thence on a direct line to the north-west point of Sakatah Lake, thence on a direct line to the south-west corner of Dakota county, thence up the line of Dakota county to the place of beginning.

Le Sueur.

SEC. 6. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Le Sueur, to wit: Beginning at the mouth of Techankiute river, thence up the Minnesota river to the mouth of Whiwhi creek, thence on a direct line to the Psah Lake, thence on a direct line to Sakatah Lake, thence on the line of Scott county to the place of beginning.

Rice.

SEC. 7. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Rice, to wit: Beginning at the south-west corner of Dakota county, thence west along said county line to Lake Sakatah, thence south to the Iowa state line, thence east along the said state line to the south-west corner of Fillmore county, thence along the west lines of Fillmore, Wabasha and Goodhue counties, to the place of beginning.

Blue Earth.

SEC. 8. That so much territory lying south of the Minnesota river, as remains of Wabasha and Dakota counties undivided by this act is hereby created into the county of Blue Earth.

Sibley.

SEC. 9. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Sibley, to wit: Beginning at the north-west corner of

Hennepin county, thence up the north fork of Crow river to its second fork, thence in a direct line to the mouth of Rush river, thence down the Minnesota river to the line of Hennepin county, thence along the line of said county to the place of beginning.

Sec. 10. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Nicollet, to wit: Beginning at the mouth of Rush river, thence up the Minnesota river to the mouth of Little Rock river, thence due north to the north fork of Crow river, thence down said river to the north-west corner of Sibley county, thence along said county line to the place of beginning.

Nicollet.

Sec. 11. That so much territory as is contained within the following boundaries be, and the same is hereby created into the county of Pierce, to wit: Beginning at the mouth of Little Rock river, thence up the Minnesota river to the county line of Pembina county, thence east on the south line of Pembina and Cass counties to the north-west corner of Nicollet county, thence south along the west line of said county to the place of beginning.

Pierce.

Sec. 12. That the county of Sibley shall be, and is hereby attached to the county of Hennepin for judicial purposes; the county of Pierce shall be, and is hereby attached to the county of Nicollet for judicial purposes; the county of Rice shall be and is hereby attached to the county of Dakota for judicial purposes; and the county of Goodhue shall be, and is hereby attached to the county of Wabasha for judicial purposes.

Counties attached to others for judicial purposes.

Sec. 13. That the counties of Pierce, Sibley, Rice and Goodhue, shall each be entitled to any number of justices of the peace and constables, not exceeding four, which said justices and constables shall receive their appointment from the Governor, and their term of office shall be two years, unless sooner removed by the governor.

What counties entitled to justices and constables.

Sec. 14. That the counties of Dakota, Wabasha, Fillmore, Scott, Le Sueur, Blue Earth and Nicollet, be, and the same are hereby declared to be organized counties, and invested with all and singular, the rights and privileges and immunities to which all organized counties are in this Territory entitled to by law; and it is hereby declared to be the duty of the governor at so soon a time as practicable, to appoint all county officers, justices of the peace and constables, as said counties may be entitled to by law, who shall hold their offices until their successors shall be duly elected at the next general election. That such officers so appointed in the organized and unorganized counties, shall give bonds for the faithful performance of their duties in such sums as is now required by law.

What counties organized.

Sec. 15. The counties which are unorganized for judicial purposes, which are annexed to an organized county for judicial purposes, shall, for the purpose of assessment and the collection of taxes, be deemed to be within the limits of the county to which they are so annexed, and as forming a part thereof, unless and until otherwise provided by law.

County commissioners elected.

Sec. 16. That at any general election hereafter, the counties of Sibley, Pierce, Rice and Goodhue, or either of them, may elect their county commissioners and all other county and precinct officers, and thereafter the said county or counties shall be deemed to be organized for all county and judicial purposes: *Provided*, That at said election for county officers, as aforesaid, there shall

Their duty.

not be less than fifty legal votes cast for said county and precinct officers within the said county so holding said election.

Their duty.

SEC. 17. It shall be the duty of the county commissioners of any county to which other county or counties may be attached for judicial purposes, to locate election precincts and appoint judges of election in the county or counties so attached for judicial purposes, in the same manner as provided by law for establishing election precincts within the county to which said counties are so attached.

To locate county seat.

SEC. 18. It shall be the duty of the first board of county commissioners which shall be hereafter elected in any county laid off in pursuance of the provisions of this act, as soon after said board shall have been elected and qualified as provided by law, as the said board or a majority thereof shall determine, to locate the county seat of the county, and the location so made as aforesaid, shall be the county seat of the county to all intents and purposes, until otherwise provided by law.

Approved March 5, 1853.

CHAPTER 16.

Feb, 27, 1852.

An Act providing for the appointment of a Supreme Court Reporter.

SECTION.

1. Appointment of reporter, by whom made.
2. His duties.
3. Reporter to publish reports, etc.

SECTION.

4. Term of office, salary, etc.
5. Oath of office, when administered.
6. Repeal.

Supreme court reporter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That immediately after the passage of this act, and every two years thereafter, the governor of this Territory, by and with the advice and consent of the council, shall appoint a supreme court reporter.

His duties.

SEC. 2. It shall be the duty of said reporter to attend personally all the terms of the supreme court of this territory, and make a true and correct report of their decisions, and publish the same annually: *Provided*, That when the reporter shall be necessarily prevented from attending personally any term of said court, he shall depute some suitable person to attend for him and take notes of the decisions: *And provided also*, That when any judgment shall be given by said court, at any other time than a regular term thereof the court shall communicate to the reporter a statement in writing of their decision in the case,

Publication of reports, etc.

SEC. 3. He shall have said reports printed by the public printer and bound in good paper binding, and deliver one hundred copies thereof, annually to the secretary of the territory for the use of the territory. The expenses for printing the same to be paid out of the

funds appropriated for the payment of the legislative expenses of the territory.

SEC. 4. The said reporter shall hold his office for the term of two years, and until his successor shall be appointed and qualified, and shall receive a salary of one hundred dollars annually, to be paid out of the funds appropriated for the legislative expenses of the Territory, and to be paid by the secretary of the Territory.

SEC. 5. The said reporter shall, before entering upon the duties of his office, take an oath to support the constitution of the United States and the act organizing the Territory of Minnesota, and faithfully and impartially to discharge the duties of his office.

SEC. 6. *And be it further enacted*, That so much of the seventh section of chapter sixty-nine, article one of the revised statutes, as requires the supreme court to appoint a reporter, be and the same is hereby repealed.

Approved Feb. 27, 1852.

Term of office.

Salary.

Oath of office.

Repeal.

CHAPTER 17.

An Act to provide for the establishment of election precincts in unorganized counties.

March 1, 1852.

SECTION.

1. Precincts, how established and by whom.
2. List of precincts to be published, when.

SECTION.

3. Elections, how conducted.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That whenever any number of voters not less than ten, residing in an unorganized or partially organized county, and not within twenty miles of an election precinct, shall petition the governor to establish a new precinct, it shall be the duty of the governor, and he is hereby authorized to lay out and establish new election precincts in the unorganized counties, in the manner that county commissioners are now required by law to do the same, at such place or places as the petitioners may require.

Precincts, how established.

SEC. 2. The governor shall, within six weeks of every general and three weeks of every special election, publish in some newspaper printed in the Territory, a list of all the election precincts by him so established, and the places where the elections are to be held.

List of, published.

SEC. 3. All elections held at such precincts shall be conducted and returns made, as is now provided by law, for such precincts, as heretofore established by the governor in unorganized counties west of the Mississippi river.

Elections how conducted.

Approved March 1, 1852.

CHAPTER 18.

March 6, 1852.*An Act to establish the price of binding.*

SECTION.

1. Price of binding.
2. Duties of territorial binder.
3. Binding, prices of to be fixed by law.

SECTION.

4. Acts, etc. of 1852 to be bound, how.
5. Revision, how bound, what number.

Price of binding.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the price paid for binding the session laws and journals, in pamphlet form be twenty cents per copy.

Duty of binder.

SEC. 2. There shall be bound by the territorial binder, the journal of both houses of this session, in one volume in full sheep binding, to the number of fifty copies for which he shall be paid the sum of one dollar per copy.

SEC. 3. All other binding, such prices as may hereafter be allowed by law.

Acts, etc., how bound and distributed.

SEC. 4. Eight hundred copies of all the acts, parts of acts, joint resolutions and memorials, passed by the present legislative assembly, shall be printed and bound in pamphlet form and distributed according to law.

Revision, how bound.

SEC. 5. Fourteen hundred copies of chapters one and two, of an act entitled an act to amend the revised statutes, approved March 6th, 1852, shall be printed and bound with the revised statutes.

Approved March 6, 1852.

CHAPTER 19.

March 6, 1852.*An Act to change the time of electing a Delegate to Congress.*

SECTION.

1. Delegate, time of electing.

SECTION.

2. Repealing clause.

Delegate, time of electing.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That at the general election in 1853, and every two years thereafter, an election shall be held in this Territory for a delegate to congress, *Provided,* That if an extra session of congress, shall be called after the termination of the previous congress, and before the first of September of the year when a delegate is to be elected, but not otherwise, the governor of the Territory shall, by proclamation, designate an earlier day for the election of a delegate, and

the election shall be conducted in the same manner, held at the same places, and in all respects have the same effect as if held at the regular time fixed by this act.

SEC. 2. *Be it further enacted*, That the first section of article five, chapter four, page 42, and so much of section three, chapter five, page 45, of the revised statutes, as requires a delegate to congress to be elected at the October election in 1852, be, and the same is hereby repealed.

Approved March 6, 1852.

Repeal.

CHAPTER 20. *1853*

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An Act to amend an act entitled "An act to provide for the Erection of Public Buildings in the Territory of Minnesota, approved February 7, 1851;" and An Act amendatory thereto, approved March 6, 1852.

March 5, 1853.

SECTION.

1. Amendment; commissioner appointed.
2. Duties of commissioner; salary, etc.

SECTION.

3. Commissioner to be elected annually.
4. Repealing clause.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That an act to amend an act to provide for the erection of public buildings in the Territory of Minnesota, approved February 7, 1851, and an act amendatory thereto, approved March 6, 1852, be amended as follows: That the words "the chief justice" wherever they occur in the act to which this is amendatory, be and the same are hereby erased, and that Benjamin W. Brunson be, and he is hereby constituted one of the said board of building commissioners, in lieu of the chief justice, for the term of one year, and until his successor shall be elected and qualified.

Act amended.

SEC. 2. The duty of the commissioner herein appointed, shall be to exercise a general superintendence over the public buildings of the Territory, to let all contracts under the direction of said board of building commissioners, for labor or materials to be used in or about said buildings, and be the general business agent of said board, for which services, he shall receive a salary of five hundred dollars per annum, said salary to be paid out of any money appropriated for the use of the Territory.

Commissioners appointed.

His duties.

Salary.

SEC. 3. Hereafter the legislative assembly in joint convention, shall annually elect some person to act as commissioner, as aforesaid, until the said buildings shall be completed.

Commissioners to be elected annually.

SEC. 4. All acts, or parts of acts conflicting herewith be and the same are hereby repealed.

Approved—March 5th, 1853.

CHAPTER 21.

March 6, 1852. *An Act to provide for the appointment of clerks of the probate courts, and to specify their powers and duties, and for other purposes.*

SECTION.

1. Judge of Probate to appoint clerk.
2. Appointment how made.
3. Office where kept.
4. Bond how and to whom made.

SECTION.

5. Penalty for violation of duty.
6. Duties, what.
7. Seal.
8. Date of act.

Clerks of probate courts.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, The judges of the several probate courts, constituted and to be constituted, in this Territory, shall have power, and are hereby authorized, to appoint a clerk of their respective courts.

SEC. 2. Such appointment shall be in writing, and liable to be revoked at any time by said judge.

SEC. 3. Said clerk shall keep his office at the county seat.

Bond of clerk.

SEC. 4. Before entering upon the duties of his office, such clerk shall execute a bond to the county treasurer, with one or more securities, to be approved by him, in the penal sum of five hundred dollars, conditioned for the faithful discharge of his duties. The said clerk shall also take and subscribe an oath or affirmation, to support the Constitution of the United States, and faithfully and honestly discharge the duties of the said office, according to the best of his abilities; which oath or affirmation shall be certified on the back of said bond, and filed with the said treasurer.

Violation of duty.

SEC. 5. For any violation of duty on the part of said clerk, the party aggrieved shall have an action against him in any court, having competent jurisdiction.

Duty.

SEC. 6. It shall be the duty of the clerk of the said courts, to perform all duties, which are, or may be assigned him by law or order of the court of which he is clerk.

Seal of probate court.

SEC. 7. Every probate court, now organized, or to be organized, shall be a court of record, and authorized to adopt such seal with such inscription and devices, as the judge thereof may allow and direct.

SEC. 8. This act shall take effect immediately upon its passage.
Approved—March 6, 1852.

CHAPTER 22. — *Ch. 25**An Act to incorporate Colleges, Seminaries, Churches, Lyceums and Libraries.*

March 5, 1853.

Page 59.

SECTION.

1. Colleges, &c., how incorporated; name, place of business; amount of capital; officers, etc.

SECTION.

2. Powers of corporation; may make rules.
3. May confer degrees.
4. Act, when to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That any three or more persons desirous of forming a corporation for a college, seminary, church, lyceum or library, they shall adopt articles setting forth, **FIRST**, The names of the persons concerned, and their design to be incorporated: **SECOND**, Their corporate name and place of business: **THIRD**, The amount of capital stock and the amount constituting a share: **FOURTH**, What officers the company will have, by what officers business will be conducted, and when they are to be elected—*which Articles* shall be subscribed and sworn to by them before some officer authorized to take the acknowledgement of deeds—and filed in the office of the register of deeds, of the county where such corporation shall exist, and a duplicate thereof shall be filed in the office of the Secretary of the Territory.

Colleges, etc., how incorporated.

SEC. 2. When such *Articles* shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors shall be a body politic and corporate, with perpetual succession. They shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered, in all courts of law and equity. They may have a common seal, alter and change the same at pleasure; acquire and sell property, personal and real, make by-laws, rules and regulations as they may deem proper or best for the good order of the corporation: *Provided*, That such by-laws, rules and regulations be not contrary to the Constitution and laws of the United States, or the Organic Act of this Territory.

Powers of corporations.

SEC. 3. That any college or seminary hereafter incorporated by the provisions of this act, shall have power and are hereby invested with authority to confer the degrees usually conferred by such institutions.

May make rules, etc.,

SEC. 4. This act shall take effect and be in force from and after its passage.

May confer degrees.

Approved March 5, 1853.

CHAPTER 23.

ch 22

March 5, 1853.

An Act to provide for the printing of the Laws and Journals of the present session of the Legislative Assembly.

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SECTION.

1. Laws, etc., by whom printed.

SECTION.

2. Journals.

Laws, etc., by whom printed.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there shall be printed by the Territorial Printer, and bound in pamphlet form by the Territorial Binder, five hundred copies of all Acts, Memorials and Joint Resolutions passed at the present session of the Legislative Assembly.

Journals.

Sec. 2. There shall also be printed and bound in the same manner, five hundred copies each, of the Journal of the Council and House of Representatives of the present session of the Legislative Assembly. Said Laws and Journals to be distributed and disposed of according to law.

Approved March 5, 1853.

CHAPTER 24.

March 6, 1852.

An Act prescribing the time when certain acts shall take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That all acts passed at the present session of the Legislative Assembly, shall take effect and go into operation from and after the first day of May, one thousand eight hundred and fifty-two, unless otherwise specially provided in said acts.

Approved—March 6, 1852.

ACTS

OF A

PRIVATE CHARAGTER.

PRIVATE ACTS
OF THE
TERRITORY OF MINNESOTA.

CHAPTER 1.

An Act to provide for the payment of the expenses of the Legislative Assembly of the Territory of Minnesota.

Nov. 1, 1849.

SECTION.

1. Payments out of the appropriation made by congress.

To judges and clerks of election.

J. W. Simpson; C. P. V. Lull; Postmaster; W. H. Forbes; J. Hughes.

J. C. Ramsey; L. A. Babcock; Henry A. Jackson; Giles D. Filley.

John Condon; Louis Roberts; St. Anthony Mill Co.; steamboat; George Wells.

Thomas Foster; R. Parker; H. W. Tracy & Co.; McBoal & Crumbacker.

C. M. Berg; Willoughby & Powers.

J. C. Ramsey; O. H. Kelly; Freeman, Larpeuteur & Co.; J. P. Charles.

C. B. Bevins; C. W. Borup; Wm. Armstrong; S. Cook & Co.; Phillips & Co.

J. Frost; Johnson & Stockton.

Witness fees—Joseph Bessow, Alex. P. Bailly, Oliver Crattl, Louis Rock, Samuel Whitman, Charles Reed, Francis LaPoint, William Smothers.

N. M'Lean; G. H. Pond; Louis M. Olivier; Joseph R. Brown; Rev. Mr. Hobart.

Sergeant-at-Arms; Watson & Williams; H. D. White; James Graham.

SECTION.

William Fisher; Bustamelle.

J. Snyder; E. Booth; E. Brown; J. P. Charles.

Freight bill. Rent of Legislative rooms.

C. K. Smith; D. Olmsted; W. H. Forbes; S. Burkleo; D. B. Loomis; J. R. Brown; H. A. Lambert.

B. L. Sellors; Robert Cummings; Henry A. Glidden; D. D. Williams.

Joseph W. Furber; S. Traak; W. D. Phillips; L. B. Waite; J. P. Charles.

James Taylor; Curtis Bellows; O. H. Kelley; David Hone; Henry Kennedy; A. R. McLeod; W. D. Phillips.

J. R. Brown; O. H. Kelley; Aaron V. Fryer;

Rev. Mr. Brown; Rev. Mr. Neill; Mr. Hoyt; Joseph R. Brown; Henry A. Lambert; Jas. M. Goodhue; J. P. Owens; Conway; B. E. Hutchinson; E. H. Ditmars.

J. M. Goodhue; M'Lean & Owens.

James Hughes; Rev. Mr. Boutwell; Rev. Mr. Parsons; Rev. Mr. Neill; Rev. Hobart; Rev. Mr. Pond.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid out of the sum appropriated by congress for defraying the expenses of the legislative assembly of this Territory for the year ending on the first day of November, one thousand eight hundred and forty-nine:

Payments out of the appropriation made by Congress.

To judges and
clerks of election.

To sundry judges and clerks, for services at the general and special elections held in the Territory of Minnesota for the election of the Legislative Assembly thereof, three hundred and forty-three dollars and eighty cents.

Legislative ex
penses.

J. W. Simpson, for various articles furnished the legislature, as per bill, twenty-two dollars and eighty-two cents.

C. P. V. Lull, for desks, locks, book case, &c., for legislature, as per bill, one hundred and eighty one dollars.

J. W. Bass, postmaster, postage of members during the session of legislature, as per bill, two hundred and twenty dollars and forty-eight cents

W. H. Forbes, hauling wood for and furnishing various articles for legislature, as per bill, seventy-five dollars and fifty-two cents.

James Hughes, for publishing in Chronicle governor's proclamation, as per bill, one hundred and sixty-one dollars.

J. C. Ramsey, with an assistant, for going to and bringing from St. Louis twelve thousand nine hundred dollars in silver, twenty-six days' services for two, as per bill, one hundred and four dollars.

To L. A. Babcock, rent for committee room, as per bill, ten dollars.

Henry A. Jackson, to five volumes statutes of Wisconsin and rent for committee room for the legislature, as per bill, ten dollars.

To Giles D. Filley, of St. Louis, two box stoves No. 7 and pipe, bill, twenty-five dollars and eighty-eight cents.

To John Condon for a large table, as per bill, four dollars.

To Louis Roberts, for twenty-five cords wood, as per bill, fifty dollars.

To St. Anthony Mill Company, for lumber, as per bill, forty-two dollars and sixty cents.

To steamer Senator, freight on three barrels (*boxes*) books for library, one dollar and fifty cents.

To George Wells, for drayage, one dollar and twenty-five cents.

To Thomas Foster, librarian, as per bill, one hundred and sixty-five dollars.

To Rodney Parker, for room rent, twenty-eight dollars.

To H. W. Tracy & Co., for pen knives furnished council, five dollars and fifty cents.

To McBoal & Crumbacker, oil, painting desks, chairs, tables, furnishing materials, &c., for council and house of representatives, eighty-six dollars and ninety cents.

To Chas. M. Berg, for work, five dollars.

To Willoughby & Powers, horse hire, as per bill, three dollars.

To J. C. Ramsey, for stationery, ink, paper, &c., as per bill, seven hundred dollars.

To O. H. Kelly, for assisting in putting up house of representatives, carrying boxes to library room, three dollars and fifty cents.

To Freeman, Larpenteur & Co., for clock for house of representatives, freight on stoves, candlesticks, shovel and tongs, freight on books for territorial library, &c., as per bill, seventy-five dollars and thirty cents.

To J. P. Charles, for tables, chairs (four dozen,) map of world, window blinds, &c., as per bill, one hundred and fifty-four dollars and seventy-five cents.

To C. B. Bevins, putting up two stoves, two drum drawers, as per bill, seven dollars and twenty cents.

To C. W. Borup, for ten (*one hundred*) yards carpeting, two

stoves, eight-day clock for council, spittoons, suspension lamps, sperm candles, &c., as per bill, two hundred and forty-five dollars and four cents. Legislative expenses.

To William Armstrong, for services as messenger, making fires, cutting wood, &c., twenty-five dollars.

To S. Cook & Co., for one extra concrete safe, two boxes candles, as per bill, one hundred and eighty-six dollars.

To Phillips & Co., for copying press, records, paper, ink, &c., as per bill, one hundred and seven dollars and sixty-five cents.

To J. Frost, for cushions, stands, tables, &c. for house, eighty dollars.

To Johnson & Stockton, one dozen cast iron inkstands, two dollars and twenty-five cents.

Witness fees in contested election case between H. D. White and J. Weils, to wit:

Joseph Bessow, two days, two dollars.

Alex. P. Bailly, two days, two dollars.

Oliver Cratti, two days, two dollars.

Louis Rock, two days, two dollars.

Samuel Whitman, two days, two dollars.

Charles Reed, two days, two dollars.

Francis La Point, one day, one dollar.

William Smothers, one day, one dollar.

N. M'Lean, for bust of Gen. Z. Taylor, President of the United States, for the use of library, five dollars.

G. H. Pond, for six candlesticks, two dollars.

Louis M. Olivier, for translating governor's message into French language, one hundred dollars.

Joseph R. Brown, for twenty-four copies of journal of Wisconsin furnished to the legislative Assembly, twelve dollars.

Rev. Mr. Hobart, for seventeen days for services as chaplain to house, fifty-one dollars.

That the sum of two dollars and fifty cents be paid to the sergeant-at-arms for horse and buggy hire, whilst acting under orders of the house.

To Watson & Williams, of St. Louis, Missouri, for nine large blank books for the use of the Territory, and other small books, one hundred and forty-one dollars.

That the sum of fifty dollars be allowed to H. D. White, for per diem and mileage, from the time that said H. D. White filed his petition for a seat in this house until the question of the right to his seat was decided.

To James Graham, seven and one-half reams of paper, as per bill, twenty-two dollars.

To William Fisher, Washington city, stationery, as per bill, fifteen dollars and sixty cents.

To Bustamelle, Washington city, writing desk, &c., as per bill, six dollars and fifty cents.

To J. Snyder, for furnishing sheet iron, painting and gilding sign to secretary's office, as per bill, three dollars and forty-five cents.

To E. Booth, for erecting flag staff in front of capitol with ropes, &c., forty dollars.

To E. Brown, for platforms for use of speakers in house and council, ten dollars.

To J. P. Charles, for assisting, fitting, superintending, and arranging the council chamber and House, as per bill, twenty dollars.

Legislative ex-
penses.

To freight bill for safe, stationery, &c., as per bill, eighty-six dollars and eighty-seven cents.

Rent of legislative rooms, &c., two hundred and seventy-five dollars.

To C. K. Smith, indexing, inserting marginal notes, glossary of law terms, and distributing the laws, superintending the public property of the Territory, superintending generally, and purchasing various articles for the use of the legislative assembly, and transporting the same, &c.; renting rooms; for extra labor and service done in transcribing and furnishing extra copies of the laws, memorials, and resolutions of the legislature not provided for by the organic law, but directed by the legislature, five hundred dollars.

D. Olmstead, as president of the council twenty-seven days, eighty-one dollars.

Win. H. Forbes, as president of the council pro tem. thirty days, ninety days (*dollars.*)

S. Burkleo, as president of the council pro tem. two days, six dollars.

D. B. Loomis, as president of council one day, three dollars.

J. R. Brown, secretary of council, sixty days, one hundred and eighty dollars.

H. A. Lambert as assistant secretary of council, sixty days, one hundred and eighty dollars.

B. L. Sellors, sergeant-at-arms of council, sixty days, one hundred and eighty dollars.

Robert Cummings, messenger to the council, fifty-nine days one hundred and seventy-seven days (*dollars.*)

Henry A. Glidden, messenger to the council, two days, six dollars.

D. D. Williams, fireman to the council, fifty-eight days, one hundred and seventy-four dollars.

Joseph W. Furber, speaker of the house, fifty-eight days, one hundred and seventy-four dollars.

S. Trask, speaker of the house pro tem., two days, six dollars.

W. D. Phillips, chief clerk of the house, sixty days, one hundred and eighty dollars.

L. B. Waite, Assistant clerk of the house, fifty-eight days, one hundred and seventy-four dollars.

J. P. Charles, assistant clerk of the house, two days, six dollars.

Jesse Taylor, sergeant-at-arms of the house, fifty-eight days, one hundred and seventy-four dollars.

Curtis Bellows, sergeant-at-arms of the house pro tem., two days, six dollars.

O. H. Kelly, messenger to the house, sixty days, one hundred and eighty dollars.

David Hone, fireman of the house, forty-four days, one hundred and thirty-two dollars.

Henry Kennedy, fireman of the House pro tem., fourteen days, forty-two dollars.

A. R. McLeod, fireman to the house pro tem., two days, six dollars.

W. D. Phillips, for bringing up journal and indexing, two hundred dollars.

J. R. Brown, for bringing up journal and indexing, two hundred dollars.

O. H. Kelly, as clerk for judiciary committee, twenty-five dollars.

Aaron V. Freyer, enrolling clerk, two hundred and forty-three dollars.

The sum of six dollars to the Rev. Mr. Brown, for officiating as chaplain to the house of representatives, two days. Legislative expenses.

That there be allowed to the Rev. Mr. Neill sixty dollars for services as chaplain for the house of representatives at the present session.

To Mr. Hoyt, for services as chaplain, two days, six dollars.

To Joseph R. Brown for enrolling and engrossing, one hundred dollars.

To Henry A Lambert, for enrolling and engrossing, one hundred dollars.

To. James M. Goodhue, for printing one million ems, one dollar twenty-five cents, twelve hundred and fifty dollars.

Three hundred and fifty-four tokens press work, one dollar twenty-five cents, five hundred and two dollars and fifty cents.

One hundred and twelve reams of paper, four dollars, four hundred and forty-eight dollars.

Folding and stitching, fifty-nine dollars and sixty-eight cents.

To J. P. Evans (*Owens*), for assisting counters, one dollar.

To Conway, for assisting counters, one dollar.

To B. E. Hutchinson, for assisting counters, one dollar.

To E. H. Ditmars, for assisting counters, one dollar.

To J. M. Goodhue, for newspapers for members, two hundred and thirty-five dollars.

To M'Lean & Owens, for incidental printing for the present session of the legislative assembly, three hundred and thirty-two dollars and ten cents.

For printing proclamations, stationery, &c., for this session of the legislature, four hundred and ten dollars; making in all seven hundred and forty-two dollars and ten cents.

To James Hughes, for publishing in the Chronicle governor's proclamation, as per bill, one hundred and sixty-one dollars.

To the Rev. Wm. T. Boutwell, for services as chaplain to the council, twenty-six days, seventy-eight dollars.

To the Rev. Mr. Parsons, for same services, nine days, twenty-seven dollars.

To the Rev. Mr. Neill, for services as chaplain, six days, eighteen dollars.

To the Rev. Mr. Hobart, for services as chaplain, one day, three dollars.

To the Rev. Mr. Pond, for services as chaplain, two days, six dollars.

Approved Nov. 1, 1849.

CHAPTER 2.

An Act to dissolve the marriage contract between Catharine Hathaway and her husband.

Nov. 1, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between Catharine Hathaway and her husband, Isaac Hathaway, be, and the same is hereby dissolved; and the said parties are hereby restored to all the rights and privileges of unmarried persons.

Approved Nov. 1, 1849.

Divorce of Catharine Hathaway from her husband.

CHAPTER 3.

Nov. 1, 1849.

An Act to incorporate the Town of St. Paul, in the County of Ramsey.

*and 1858
ch. 24*

SECTION.

1. Town limits defined, etc.
2. Inhabitants, meeting of electors, qualifications; election of officers, etc.
3. Elections, first and subsequent one, how conducted; clerk to give notice of election.
4. Oath of officers.
5. Body corporate created "Town of St. Paul."
5. To have a common seal, first process against corporation served by copy left with Recorder six days before trial.
6. President and Recorder's duty, meetings of council, etc.
7. Vacancies filled, absence of president and recorder from meetings, etc.
8. By-laws, ordinances, etc.

SECTION.

9. Receipts and expenditures published annually.
10. Streets and alleys, width of, improvement of, market house, etc.
11. Taxes for corporation purposes not to exceed five mills on the dollar, etc.
12. Duplicate of taxes, etc.; recorder to make tax deeds, marshal's fees how paid.
13. President, his powers and duties, etc.
14. Marshal, powers and duties, jurisdiction in criminal matters, etc.
15. Jail, use of given for criminals convicted under the by-laws, etc.
16. Books, papers, etc., handed over to successors, etc.
17. When act in force.

Town limits defined, etc.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That so much of the Town of St. Paul as is contained in the original plat of said town made by Ira Brunson, together with Irvine and Rice's addition, be and the same is hereby created a town corporate, by the name of the town of St. Paul.

Inhabitants, electors, meeting of electors, etc.

SEC. 2. That for the good order and government of said town, it shall be lawful for the male inhabitants thereof, having the qualifications of electors of members of Legislative Assembly of the Territory of Minnesota, to meet at the place of holding elections in said town on the sixth day of May next, and at the same time, annually thereafter, at such place in said town as the town council may direct, and then and there proceed by ballot, to elect one President, one Recorder and five trustees, being householders of said town, and having the qualifications of electors as aforesaid, who shall hold their offices one year and until their successors shall be elected and qualified, and such president, recorder and trustees being so elected and qualified, shall constitute the town council of said town, any three of whom shall constitute a quorum for the transaction of business pertaining to their duties.

Election how conducted, clerk to give notice of election, etc.

SEC. 3. At the first election to be holden under this act, there shall be chosen viva voce, by the electors present, two judges and a clerk of said election, who shall take an oath or affirmation faithfully to discharge the duties required of them by this act, and at all subsequent elections, the trustees or any two of them, shall be judges, and the recorder, or in his absence, some person to be appointed by the judges, shall be clerk. The polls shall be opened between the hours of ten and eleven o'clock in the forenoon, and close at four in the afternoon of said day, and at the close of the polls the votes shall be counted, and a true statement thereof proclaimed to the voters present by one of the judges, and the clerk shall make a true record thereof, and within five days thereafter, he shall give notice to the persons so elected, of their elections; and it shall be the duty

of the said town council, at least ten days before each and every election, to give notice of the same by setting up advertisements at three of the most public places in said town.

SEC. 4. Each member of said town council before entering upon the duties of his office, shall take an oath or affirmation, to support the Constitution of the United States, and also an oath of office.

Oath of officers.

SEC. 5. The President, Recorder and trustees of said town, shall be, and are hereby created a body corporate and politic, with perpetual succession, to be known and distinguished by the name and style of "The Town of St. Paul," and shall be capable in law, by their corporate name aforesaid, to acquire property, real, personal and mixed, for the use of said town, and may sell and convey the same at pleasure. They may have a common seal, which they may break, alter or renew at pleasure; they may sue and be sued, plead and be impleaded, defend and be defended, in all manner of actions in all courts of law or equity; and when any suit shall be commenced against said corporation, the first process shall be served by an attested copy thereof left with the recorder or at his usual place of residence, at least six days previous to the return day of such process.

Body corporate created Town of St. Paul.

To have a common seal, serving process against corporation, etc.

SEC. 6. The president, and in his absence, the recorder, shall preside at all meetings of the town council; and the recorder shall attend all meetings of the town council, and make a fair and accurate record of all their proceedings, and of the by-laws, rules and ordinances made or passed by the common council aforesaid, and the same shall at all times be open for the inspection of the electors of said town; but in case of the absence, or inability of the recorder, the trustees may appoint one of their own body clerk *pro tempore*.

President and recorder's duty, meetings of council, by-laws, etc.

SEC. 7. The town council shall have power to fill all vacancies which may happen in said board, from the householders who are qualified electors of said town, who shall hold their appointments until next annual election, and until their successors shall be elected and qualified; and in the absence of the president and recorder from any meeting of the town council, the trustees shall have power to appoint any two of their number to perform the duties of president and recorder for the time being.

Vacancies, how filled.

SEC. 8. The said town council shall have power to make, ordain and establish by-laws, ordinances, rules and regulations for the government of said town; and the same to alter, amend or to repeal at pleasure; to provide in such by-laws, for the appointment or election of a treasurer, town marshal and all the subordinate officers which they may think necessary for the good government and well being of said town; to prescribe their duties, and determine the period of their appointment, and the fees they shall be entitled to receive for their respective services, where the same is not otherwise provided for by this act; and to require of them to take an oath of office previous to entering upon the duties of their respective offices, and may further require of them, a bond with security, conditioned for the faithful performance of their respective offices. The town council shall also, have power to fix to the violation of the by-laws and ordinances of the corporation such reasonable fines and penalties: *Provided*, That such by-laws and ordinances be not inconsistent with the constitution and laws of the United States, or of this Territory. *And provided, also*, That no by-laws or ordinances of said corporation, shall take effect or be in force, until the same

By-laws, ordinances, etc.

shall have been posted up at least ten days in one of the most public places within said town, and the certificate of the recorder entered upon the records of said town council, shall be deemed and taken to be sufficient evidence of such publication.

Receipts and expenditures published annually.

SEC. 9. The town council shall, at the expiration of each and every year, cause to be made out and posted up as aforesaid, the receipts and expenditures of the preceding year.

Streets, alleys, public grounds and market house.

SEC. 10. The town council shall have power to regulate and improve the streets and alleys, and determine the widths of the side walks in said town, to regulate the public grounds, to erect a market house and regulate the markets, to remove all nuisances and obstructions from the streets and commons of said town, and do all things which similar corporations have power to do, in order to provide for and secure health, cleanliness and good order in said town.

Taxes for corporation purposes, how assessed.

SEC. 11. For the purpose of more effectually enabling the said town council to carry into effect the provisions of this act, they are hereby authorized and empowered to assess a tax for corporation purposes within the limits of said corporation, made taxable by the laws of this Territory, so that said tax shall not exceed in any year, five mills on the dollar of valuation, as the same may be found on the books of the county commissioners of the county of Ramsey at the time of assessing said tax. The town council shall also have power, if authorized to do so by a majority of all the electors in said town, at any meeting called for that purpose, to levy an additional tax as above specified, sufficient to organize and establish a fire company and purchase an engine, hose and other necessary apparatus, for the extinguishment of fires in said town; public notice of which meeting and the object thereof, shall be given by posting up a written or printed notice thereof, in at least three of the most public places in said town, ten days before the time of such meeting.

Duplicate of taxes how & by whom made out.

SEC. 12. When any tax is levied, it shall be the duty of the recorder to make out a duplicate of the taxes, charging each individual owning property in said corporation with the amount assessed on each item of property as found on the books of the county commissioners, of said county, which duplicate shall be certified by the president and recorder, and one copy thereof shall be placed in the hands of the marshal or such other person as shall be appointed collector, whose duty it shall be to collect said tax, in the same manner and under the same regulations as other county taxes are collected; and the said marshal or such other person as may be appointed collector, shall immediately after collecting said tax, pay the same over to the treasurer of said corporation and take his receipt therefor; and the said marshal or other collector, shall have the same power to sell both real and personal property for the non-payment of the corporation taxes, as is given to the county collector; and when necessary, the recorder shall have power to make deeds in the same manner that other sheriffs do, and the marshal or other collector, shall receive for his fees, such sum as the town council may direct, not exceeding six per centum on all moneys so by him collected, to be paid by the treasurer on the order of the recorder.

Recorder to make tax deeds, etc.

President, his powers and duties.

SEC. 13. The president of said town, shall be a conservator of the peace within the limits of said corporation, and shall have and exercise all the ordinary powers of justice of the peace, within the limits of the said corporation, in all matters civil or criminal, arising under the laws of this Territory; he shall give bond and security as required of justices of the peace, except that the said bond shall

he taken in the name of the town of St. Paul; and appeals may be taken from his judgment in all civil cases and in all penal cases arising under the laws and ordinances of said town, to the district court of the county of Ramsey, in the same manner and within the same time, as appeals are or may be taken and perfected in ordinary cases before justices of the peace. Said president, shall keep a docket and a fair and true record of his proceedings, judgments and executions in all cases which may come before him, and shall be entitled to the same fees as are allowed to justices of the peace for similar services.

Sec. 14. The marshal shall be principal ministerial officer of said town, and shall have the same powers therein as constables have by law in their respective counties, and his jurisdiction, in criminal cases, shall be co-extensive with the county; he shall execute all process issued by the president, and receive the same fees that constables are allowed in similar cases for like services.

Marshal, powers and duties of.

Sec. 15. Said corporation shall be allowed the use of the jail of the county for the imprisonment of such persons as may be liable to imprisonment under the by-laws and ordinances of said corporation, and such persons shall be under the charge of the sheriff of said county as in other cases.

Jail, use of given for criminals convicted under the by-laws, etc.

Sec. 16. That the president, recorder, trustees, or other officers of said corporation, shall, on demand, deliver to their successors in office, all such books, papers and other property as appertain in any wise to said corporation.

Books, papers, etc., handed over to successors,

Sec. 17. This act to take effect from and after its passage.

Approved—November 1, 1849.

CHAPTER 4.

An Act supplementary to an act entitled "An Act to incorporate the Town of Saint Paul, in the County of Ramsey." Approved, November 1, 1849.

March 31, 1851.

SECTION.

1. Limits of addition to town of St. Paul.

SECTION.

2. Extends the corporate authority over the addition.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Bazil and Guerin's additions, Roberts' and Randall's additions, Hoyt's addition, and Whitney and Smith's addition to the town of St. Paul, and that part of the south east quarter of section thirty-one, east of Hoyt's addition, and Whitney and Smith's addition, and the south west quarter of section thirty-two, in township No. twenty-nine, north of range No. twenty-two west, and lot No. one, in section No. five, in township, No. twenty-eight, north, range twenty-two, west of the fourth principal meridian, be, and the same are hereby included in the corporate limits of the town of Saint Paul; and entitled to all the rights, privileges and immunities of said corporation.

Limits of addition to town of St. Paul.

Extends the corporate authority over the addition.

SEC. 2. That all the duties performed by the president and trustees of the town Saint Paul, or any officer of by them appointed, in conformity with the provisions of "An Act to incorporate the town of Saint Paul, in the county of Ramsey," approved November 1, 1849, are hereby declared to be legal and binding to all intents and purposes.

Approved—March 31, 1851.

CHAPTER 5. *ch 24*

March 5, 1853.

An Act to amend an act to incorporate the town of St. Paul, in the County of Ramsey.

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SECTION.

1. A majority of the inhabitants, being owners of property, may call public meeting.

SECTION.

1. Inhabitants may assess tax for improvement of streets, etc.

Inhabitants may call meeting, etc.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the majority of the inhabitants, being owners of property, living upon any street within the corporate limits of the said town of St. Paul, upon giving three days notice, by posting said notices on three conspicuous places in said street, may call a public meeting of the said inhabitants, living upon the said street, and any twenty persons, property holders, on said street, being so assembled, it shall be and hereby is made lawful for them or a majority of the said persons voting in its favor, to raise such an amount of money as may be by them deemed necessary for grading, paving, or making any other public improvements upon said street, such moneys shall be obtained by assessing an equal tax upon all the assessable property situated and being in said street; for this purpose the president of the said meeting shall, within ten days after the said meeting, make out and deliver to the town marshal, a list containing the names of the persons taxed, the amount of the property taxed, and the amount of the tax, that thereupon the said marshal shall proceed to collect said tax as other town taxes are collected; that within thirty days after receiving said list, the said marshal shall make his return to the president of said meeting, paying over to him the amount collected, and taking therefor his receipt. The said marshal in this, shall have the same powers as are given him in section twelve of this act.

Approved—March 5, 1853.

CHAPTER 6.

*An Act to locate Territorial Roads from Point Douglass to St. Paul.*October 31, 1849.

SECTION.

1. W. B. Dibble, Theodore Furber, and B. W. Brunson, commissioners to locate road.

SECTION.

2. John A. Ford, Jacob Mosher and Colonel Hughes, commissioners to locate road.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That W. B. Dibble, Theodore Furber and B. W. Brunson, be, and are hereby appointed commissioners to lay out a Territorial Road from Point Douglass by way of Cottage Grove to the Town of St. Paul, on the most direct and feasible route, and report the location of the same to the Secretary of the Territory on or before the first day of June, in the year one thousand eight hundred and fifty.

Commissioners.

SEC. 2. That John A. Ford, Jacob Mosher and Col. Hughes, be, and hereby are appointed commissioners to lay out a Territorial Road from Point Douglass by Red Rock and Pig's Eye to St. Paul, on the most direct and practicable route, and report the location of the same to the Secretary of the Territory on or before the first day June, in the year one thousand eight hundred and fifty.

Approved—October 31, 1849.

CHAPTER 7.

*An Act to locate a Territorial Road from the town of St. Paul to Little Canada.*Nov. 1, 1849.

SECTION.

1. Road from St. Paul to Little Canada, and commissioners appointed to locate same.

SECTION.

1. Time of meeting, duty, etc.
2. When act to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That a Territorial Road shall be established from the town of St. Paul to Little Canada, in the county of Ramsey, and that James R. Clewet, David Eberts and Benjamin Jarvis, are hereby appointed commissioners to locate said road, and said commissioners shall meet in the town of St. Paul, on the first Monday in November next, or as soon as practicable thereafter, and proceed to the discharge of the duties herein assigned them.

Commissioners.

SEC. 2. This act shall take effect from and after its passage.

Approved—November 1, 1849.

CHAPTER 8.

Oct. 31, 1849, *An Act to provide for laying out a Territorial Road from Stillwater to the mouth of Rum River.*

SECTION.

1. Commissioners to locate road.
2. Commissioners to be sworn, their duty.
3. Map of road to be made and filed.

SECTION.

4. Commissioners to draw on treasurer of the Territory for fees, etc.
5. Commissioners when to meet.

Commissioners
appointed.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That B. W. Brunson, Albert Harris and Mahlon Black, be, and the same are hereby appointed commissioners to view and lay out and mark a territorial road, beginning at or near Stillwater, thence in a westerly direction to White Bear Lake, passing the said lake on either the northern or southern shore; thence as may be deemed the most practicable route by said commissioners, having reference to the distance, surface of the country and costs of construction, to some point at or near the mouth of Rum River.

Commissioners
to be sworn, their
duty and pay.

SEC. 2. That it shall be the duty of said commissioners or a majority of them, after they have been duly sworn or affirmed before a justice of the peace, who shall file and preserve the same in his office, to perform all the duties enjoined by this act with impartiality, carefully to view the ground over which the road to be laid out by them may pass, having due regard to as straight and easy a route as possible, and that they shall clearly and distinctly mark the road in such manner as shall render the route agreed upon, readily found by any person or persons who may be elected or appointed to open and construct said road. The commissioners shall be allowed the sum of three dollars per day for every day they shall be necessarily employed in performing the duties assigned by this act; and the said commissioners are hereby authorized to employ one surveyor, at three dollars per day, two chain-bearers and one axe-man, at a sum not exceeding for each, one dollar and fifty cents per diem.

Map of road to
be made and filed.

SEC. 3. Said commissioners shall make out a fair and accurate draft of the location of the road, noting thereon, courses, distances and places, waters, county and township lines, with such other matter as may serve for explanation; one copy whereof shall be deposited in the office of the Secretary of the Territory on or before the first day of January next, and one copy in the office of the clerk of the board of county commissioners of the respective counties through which said road may pass, on the time aforesaid, and from thenceforth said road shall be a public highway.

Treasurer of Ter-
ritory to pay ex-
penses.

SEC. 4. The commissioners shall draw on the Treasurer of the Territory, who shall, and he is hereby authorized and required to adjust the accounts of the commissioners, surveyor, chain-bearers and axe-man.

Commissioners
when to meet, va-
cancies how filled.

SEC. 5. Said commissioners shall meet on or before the first Monday of November next, or as soon thereafter as may be, and complete the location of said road as soon as practicable. And if any vacancy shall occur by resignation or otherwise, it shall be filled by the judge of the court of the county in which said person or persons shall have resided.

Approved—October 31, 1849.

CHAPTER 9.

An Act providing for laying out and establishing a Territorial Road from Rum River to Crow Wing.

Oct. 27, 1849.

SECTION.

1. S. B. Olmsted, David Gilman and Joseph Brown, commissioners to locate road.

SECTION.

2. Commissioners to meet on the first day of November, or afterwards, duty of.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That S. B. Olmsted, of Fort Gaines, David Gilman, of Sauk Rapids, and Joseph Brown of Big Lake, be, and they are hereby appointed commissioners to locate and mark a Territorial Road, commencing on Rum River, at a point where the St. Paul and Rum River Road terminates, and terminating at Crow Wing, on the most practicable route, by the way of Elk River, Big Lake, Sturgis', Sauk Rapids, Aitkin's, Little Falls and Fort Gaines.

Commissioners.

SEC. 2. That the said commissioners, or any two of them, shall meet at Antoine Roberts', on the first day of November next, or as soon thereafter as they conveniently can, for the purpose of proceeding to the discharge of their duties, and that they be and are hereby authorized to adjourn from time to time as a majority of them may deem proper, and the commissioners when assembled, shall proceed to lay out and mark said road according to the provisions of law in such cases made and provided.

Commissioner,
when to meet, etc.

Approved—October 27, 1849.

CHAPTER 10.

An Act granting a charter to Elam Greely, his heirs, &c., to construct and maintain a dam across Snake river near the outlet of Cross Lake.

Oct. 20, 1849.

SECTION.

1. Elam Greely authorized to build a dam and use the same, how long.
2. Dam to be built, in what manner.
3. Duty to sluice logs, in what time; penalty for failure.

SECTION.

4. Gates to be opened and shut, at what time.
5. Toll to be collected, amount of, etc.
6. Chute in dam, how built.
7. Sluices in dam to remain open, when.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Elam Greely, his heirs, executors, administrators and assigns, be, and hereby are authorized to build a dam across Snake river near the outlet of Cross lake, and to keep up and maintain the same for the term of twelve years: *Provided,* That nothing in this section contained, shall preclude the legislative assembly after the lapse of six years, from altering or repealing this act, whenever it shall be deemed consistent with the public interest to do so.

Authorized to
build a dam.

Dam, how high
to be built.

SEC. 2. That the said dam shall be sufficiently high to raise the surface of said Cross lake, at least five feet and six inches above low water mark. That the dam shall be provided with the necessary gates and sluices, and all the other appurtenances necessary for sluicing logs, and be ready to sluice logs on the first day of April, one thousand eight hundred and fifty.

Duties and liabilities of Greely.

SEC. 3. That the said Elam Greely, shall sluice all logs upon the requisition of the owner or owners thereof, commencing to sluice within five days after the logs have arrived in the boom belonging or attached to said dam; *Provided*, That the owner or owners of said logs, or their accredited agents, shall have tendered him the legal toll or security for the same; and for any violation of this section, the said Elam Greely shall be responsible to the owner or owners of said logs, for any damage sustained; to be recovered in any proper action or suit, in any court of competent jurisdiction.

Gates when to
be opened and shut

SEC. 4. That the said Elam Greely shall be bound in the like penal sum, to open all the gates of said dam, or such a number thereof, as shall be found to afford sufficient water to drive logs between the dam and the mouth of Snake river, upon the requisition of the owner or owners of such logs as have been sluiced, for and during at least four days after the last logs of the number that were intended to be sluiced at the same time, shall have passed the dam: *Provided*, That he shall reserve the right to shut the gates at sun down, raising them again one hour before sun rise.

Tolls how col-
lected.

SEC. 5. That the said Elam Greely shall be entitled to collect by law, a toll on all logs passing the dam: *Provided*, That such toll shall not exceed the sum of ten cents, for the first year, for every thousand feet of lumber in logs, and six and one-fourth cents per thousand thereafter, taking the scale in common use on the St. Croix river, as a guide; such toll, in case of default of payment, to be collected under an action for debt.

Chute in dam
how built.

SEC. 6. That said dam to be supplied with a chute, with such an inclination, that fish may pass freely up and down the river.

Sluices in dam
to remain open.

SEC. 7. That the sluices of said dam, shall remain open, (after all the logs to be sluiced that season, shall have been sluiced,) until such time as it may be found necessary to close them, in order to fill the dam preparatory to the next spring drive.

Approved Oct. 20, 1849.

CHAPTER 11.

Oct. 20, 1849.

An Act granting a divorce to Louis Laramie from Wa-kan-ye-ke-win, his wife.

Divorce of Louis
Laramie from his
wife.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Louis Laramie is hereby divorced from his wife, Wa-kan-ye-ke-win, his wife, as fully and effectually, as if the legal ceremony of marriage and its rites had never been solemnized.

Approved Oct. 20, 1849.

CHAPTER 12.

An Act to incorporate the St. Paul and St. Anthony Plank Road Company.

Nov. 1, 1849.

SECTION.

1. Commissioners appointed to open books; notice of, how given.
2. Capital stock; company, when organized.
3. Meeting of stockholders to elect officers; notice of, how given; meeting of, when.
4. Board of directors, how chosen; duties of.
5. Directors, nine to constitute a quorum; secretary, treasurer and engineers, how appointed, salaries, etc.
6. Road, how built; powers of directors; dividends, when declared.
7. Power to enter upon lands, compensation.
8. Damages, how assessed; valuation and payment of costs tendered, effect of; absence of owner, effect of.

SECTION.

9. Shares, personal property and liable to execution.
10. Toll gates erected and tolls collected, rates of; persons exempt.
11. Persons injuring road liable to damages in action of debt; subject to indictment fine and imprisonment.
12. Capital stock may be increased.
13. Road to be finished, when.
14. Legislature may grant charters to cross or intersect said road.
15. Process may be served on any officer of said company.
16. Repealing section.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Franklin Steele, Henry H. Sibley, Isaac Young, David Lambert, Louis Roberts, William Henry Forbes, William H. Randall, C. K. Smith, and M. S. Wilkinson, are hereby appointed commissioners, under the direction of a majority of whom, subscriptions may be received to the capital stock of the St. Paul and St. Anthony Plank Road Company, hereby incorporated; and they may cause books to be opened at such times and places as they may direct, for the purpose of receiving subscriptions to the capital stock of said company, first giving thirty days notice of the times and places of taking such subscriptions, by publishing the same in all the newspapers printed in this Territory.

Commissioners
appointed to open
books.

SEC. 2. The capital stock of said company shall be twenty-five thousand dollars, in shares of twenty-five dollars; and as soon as five thousand dollars of the capital stock shall be subscribed, and five dollars of each share shall have actually been paid in, the subscribers of such stock, with such other persons as shall associate with them for that purpose, their successors and assigns, shall be, and they are hereby declared and created a body corporate and politic, by name and style of "The St. Paul and St. Anthony Plank Road Company," with perpetual succession; and by that name shall have all the privileges, franchises and immunities incidental to a corporation: they shall be capable in law of purchasing, holding, selling, leasing and conveying estate, either real or personal or mixed, as shall be necessary for the use of said road, and in their corporate name, may sue and be sued, may have a common seal, which they may alter or renew at pleasure; and generally may do all and singular, the matters and things which they are authorized by law to do for the interest and well being of said company.

Capital stock.

SEC. 3. That the said commissioners or a majority of them, after the said one thousand shares of stock shall have been taken or subscribed for as aforesaid, shall give at least twenty days notice in the newspapers hereinbefore mentioned, of the time and place of a meeting of the stockholders for the purpose of electing thirteen

Organization.

directors, who shall elect one of their number president; and annually thereafter, the said stockholders shall meet on the first Monday in May, for the purpose of electing directors as aforesaid, upon a like previous notice to be given by a majority of the directors for the time being, in such newspapers as they may think proper: *Provided*, That previous to the first election, the commissioners hereinbefore named, shall elect one of their number president, and they shall perform all the duties and be invested with all the powers of directors: *Provided*, That if from any cause, an election shall not be held at the regular time specified therefor, the same may be held at any other time on notice as aforesaid; that until such election, the directors of the preceding year shall continue to act, and this charter shall not be forfeited by reason of the irregularity or want of such election; and in case of any vacancy in the board of directors, the same shall be filled by the other directors or a majority of them.

Board of directors.

SEC. 4. The affairs of said company shall be managed by a board of thirteen directors, who shall be stockholders, and be chosen annually by ballot by the stockholders of said company, the votes to be given in person or by proxy duly authorized, which directors shall appoint one of their number president, who shall serve until another is elected in his place. They shall make and establish such by-laws, rules, orders and regulations not inconsistent with the constitution and laws of the United States and Territory of Minnesota, as may be necessary for the well ordering of the affairs of said company; each share of stock shall be entitled to one vote, and in all cases of election for directors, the thirteen stockholders having the greater (*greatest*) number of votes shall be declared duly elected.

Duties of directors.

SEC. 5. Nine directors shall be a quorum for the transaction of business, who, in the absence of the president, may appoint a president *pro tem*. The said directors shall appoint a secretary, treasurer and such engineers and other officers as they may find necessary; shall fix their compensation, and may demand adequate security for the performance of their respective trusts; they shall have full power to decide the time and manner in which the said stockholders shall pay the money on their respective shares; and the stockholders shall forfeit to the use of the said company, the share or shares of every person or persons failing to pay any installment at a reasonable period, not less than thirty days after the time appointed for the payment thereof; they shall have power to regulate tolls, to make covenants, contracts and agreements with any person or persons or body politic whatsoever, as the execution and management of the road may require, and in general to superintend and direct all the operations, receipts, disbursements and other proceedings of the company. The commissioners, until directors are chosen, shall issue certificates to each stockholder for the number of shares he or she shall subscribe for, or hold in said corporation, signed by the president and countersigned by the secretary, subject to all the payments due and to become due thereon, which stock shall be transferrable in person or by attorney, executors, administrators, guardians, or trustees, under such regulations as may be provided by the by-laws of said company.

SEC. 6. The said company shall have power to locate and construct a single or double track plank road from such eligible point in the town of St. Paul, to such eligible point in the town of St.

Anthony, in the county of Ramsey, Minnesota Territory, as shall be determined upon by a vote of the stockholders having a majority of the stock of said company, and who shall be represented in person or by proxy, at a special meeting called for the purpose of fixing the location or termination of said road. And they shall have power to erect all such toll-houses, bridges and other works and appendages as may be necessary for the convenience of said company in the use of said road. The directors shall exercise all powers conferred on them by law, and meet at such times and places as they may prescribe in the by-laws to be enacted by them. They may appoint and remove all officers at pleasure, prescribe the meeting of the stockholders, and declare and pay the dividends, or so much of the surplus profits of the company as they shall deem advisable, which may accrue on the shares of the said stock to the stockholders of said company on the first Monday of May and the first Monday of November of each year.

SEC. 7. It shall be lawful for said company, their officers, engineers and agents, to enter upon any land for the purpose of exploring, surveying, and locating the route of said plank road, doing thereto no unnecessary damage, and when said route shall be determined by the said company, it shall be lawful for them, their agents, officers, engineers, contractors and servants, at any time to enter upon, take possession of, and use such lands, not exceeding four rods in width, along the line of said route, subject, however, to the payment of such compensation as the company may have agreed to pay therefor, or as shall be ascertained in the manner hereinafter directed and provided for.

Road how laid out.

SEC. 8. When the said Corporation cannot agree with the owner or owners of any land, gravel, stone or other material required for the construction of said road, for the purchase thereof, or the compensation to be paid therefor, or where by reason of the absence or legal incapacity of the owner or owners, no such agreement or purchase can be made, then in any such case it shall be lawful for any justice of the peace, in the county in which the property may be, to issue his warrant, directed to the sheriff or any constable of said county, not directly interested, requiring him to summon a jury of nine freeholders of said county not interested in said property, to meet at some convenient place, at or near the property to be valued, on a day in said warrant named, not less than five, nor more than ten days from the date of said warrant; and if at the time and place named, any of the persons so summoned, do not attend, the said sheriff or constable shall immediately summons as many as may be necessary with the persons in attendance as jurors, to furnish a pannel of nine jurors, and from them the said company, and the owner or owners of the property to be valued, their agent or attorney or either of them, and if they are not present in person or by attorney, the sheriff or constable shall, for him, her, or them, strike off each two of said jurors, and the remaining five shall act as a jury of inquest for damages, and before they act as such, the said sheriff or constable, shall administer to each of them an oath or affirmation that he will faithfully and impartially value the land or material required for such road, and all damages which the owner or owners shall sustain by reason of the construction of said road, taking into consideration the advantages the same will be to the owner or owners, according to the best of their skill and judgment; whereupon, the said jurors

Damages how assessed.

shall proceed to view the said land or material so required, and to hear the evidence of the respective parties, which the said jurors shall reduce to writing, which shall be signed by all, or a majority of said jurors, and by the sheriff or other officer in attendance, and the said officer within five days thereafter, shall transmit the same to the clerk of the district court of the proper county, who shall file the same. Such inquisition shall describe the property taken, or to be taken, or the boundaries of the land in question, and the value thereof as aforesaid, and such valuation when had, together with the costs of such inquisition, tendered to the owner or owners, or deposited with the said court, shall entitle the said company to the estate and interest in the same thus valued, as if it had been conveyed by the owner or owners thereof in fee simple: *Provided*, That it shall not be lawful for any such jury of inquest to proceed in the valuation of any such property or material in the absence of the owner or owners thereof, his, her, or their legal representatives, unless it be made appear by affidavit, that such owner or owners have had at least five days notice of the time and place of meeting for the purpose of making such valuation, or unless it shall in like manner be shown that such owner or owners are absent from the county; and if such owner or owners are under age or non compos mentis, the service of notice upon the guardian or trustee (if any there be) or their absence from the county, shall be required to be established by affidavit to the said jurors, before they proceed to make such valuation.

Shares personal property.

SEC. 9. The shares of the stock of the corporation shall be deemed personal property, and every person becoming a shareholder, by transfer, purchase, or otherwise, of shares of said stock, shall succeed to all the rights and liabilities of the prior holder of said share or shares, and the said share or shares shall be liable to be taken in execution for the payment of the debts of their owner.

Toll gates erected and tolls collected.

SEC. 10. The directors may erect toll gates, and exact toll from persons travelling on their road, whenever five consecutive miles are finished, or when the whole road is completed, not exceeding one and a half cent a mile, for every vehicle, sled, sleigh or carriage drawn by not more than two animals, and if drawn by more than two animals, one cent a mile for every additional animal; and for every vehicle, sled, sleigh, or carriage drawn by one animal, one cent a mile; and for every horse and rider or led animal, one cent a mile; for a score of sheep or swine, three cents a mile; and for every score of neat cattle, four cents a mile; *Provided*, That persons going to and from military parade at which they are required by law to attend, and persons going to and from funerals and public worship, shall be exempt from toll.

Injuring road, penalty for.

SEC. 11. If any person shall wilfully and knowingly obstruct, break, injure, or destroy the plank road to be so constructed by said company, or any part thereof, or any work, building, or fixture to be attached to or in use upon the same, belonging to the said company, such person or persons so offending, shall each of them, for every such offence, be liable to a civil suit for the recovery of damages by said company, by an action of debt in any court having competent jurisdiction, in the county wherein the offence shall have been committed, and shall also be subject to indictment, and upon conviction, shall be punished by fine and imprisonment, or either, at the discretion of the court.

SEC. 12. The directors of said company may at any annual or

special meeting of the stockholders, with the consent of a majority of amount in such stockholders, provide for such increase of the capital stock of said company as may be found necessary to complete such road, in such sections as may have been actually commenced, but remain in an unfinished state for want of means for completing the same.

Capital stock may be increased.

SEC. 13. Said company shall on or before the first day of January, 1851, have one third of said road completed, and shall have the entire road finished on or before the first day of January, 1852.

Road when finished.

SEC. 14. This charter shall not prevent the legislative assembly from granting a charter or charters to any other company or companies, for any road or roads, that may be necessary to cross or intersect the track of the aforesaid St. Paul and St. Anthony plank road company; and such company or companies as may be chartered, shall have the right to cross or intersect said road, at any point or points without charge: *Provided*, No damage shall be done to said road.

Legislature may charter roads to intersect or cross.

SEC. 15. When any suit or legal proceeding shall be instituted against said company, every process or notice shall be deemed to have been legally served, if the same shall have been served upon any officer or agent of said company.

Process may be served, by whom.

SEC. 16. The legislative assembly may at any time repeal or amend this act.

Repealing clause.

Approved Nov. 1, 1849.

CHAPTER 13.

An Act to dissolve the marriage contract between Stanislaus Bielanski and Mary Bielanski.

Oct. 11, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between Stanislaus Bielanski and Mary Bielanski, be, and the same is hereby dissolved; and the parties to the said contract are, by virtue of this act, restored to all the rights and privileges of unmarried persons.

Divorce of S. Bielanski and Mary Bielanski.

Approved Oct. 11, 1849.

CHAPTER 14.

An Act for the relief of Charles M. Berg.

Oct. 27, 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid to Charles M. Berg, out of the moneys appropriated by congress for legislative purposes, the sum of forty dollars, for drawing two maps of the county of St. Croix, and sixty dollars for a territorial map for the use of the legislative assembly; and that the secretary of the Territory be, and he is hereby authorized and required to pay the same to Charles M. Berg.

Money authorized to be paid.

Approved, Oct. 27, 1849.

CHAPTER 15.

Feb. 19, 1851.

An Act granting to Franklin Steele the right to establish and maintain a Ferry across the Mississippi River.

SECTION.

1. Grant to Steele of exclusive right to ferry for ten years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Island, may land on, and bridge to be built.

SECTION.

5. Recognizance to be filed, when and how conditioned.
6. Failure to comply with conditions of, Penalty for, how recovered
7. Suits on the bond may be instituted for injury to any person by neglect of said Steele, etc.
8. Legislature may amend or modify.

Grants ferry right
ten years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Franklin Steele, his heirs, executors, administrators, or assigns, shall have the exclusive right and privilege for the period of ten years, of keeping and maintaining a ferry across the Mississippi river in the county of Ramsey and territory of Minnesota, at or near the Falls of St. Anthony; and no other ferry shall be established within one half mile from and above the head of the upper rapids of the Falls of St. Anthony.

Conditions of the
grant.

SEC. 2 The said Franklin Steele, shall at all times keep a safe and good boat, or boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both at night or day, but persons wishing to cross at said ferry in the night, may be charged double the fare as hereinafter prescribed.

Ferry rates.

SEC. 3. The rates charged for crossing at the above ferry, shall not exceed the following:

For each foot passenger, - - - - -	10 cents.
" each horse, mare, or mule, with or without rider, - - - - -	15 "
" each two horse or two ox or two mule team, loaded or unloaded, with driver, - - - - -	25 "
" each single horse carriage, - - - - -	25 "
" each additional cow or ox, - - - - -	10 "
" each swine or sheep, - - - - -	2 "

All freight of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 3 cents per cwt. of all other articles.

Bridge to island
to be built for pub-
lic use.

SEC. 4. The said Franklin Steele shall have the privilege of landing passengers upon the island with which the dam above said falls is connected: *Provided*, That said Steele shall, within six months after the passage of this act, build a substantial bridge from said island, to the east shore; which shall be keep in a good and safe condition at all times, for the crossing of persons, with or without teams; but persons shall not be charged toll for crossing on said bridge.

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SEC. 5. The said Franklin Steele, shall within six months after the passage of this act, file, or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to the said board with two or more good and sufficient sureties, (to be approved by said board of county commissioners,) in the penal sum of five thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure or neglect so to do, shall forfeit all the benefits that might have accrued to him from its passage.

Bond to be given and filed.

SEC. 6. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said Franklin Steele, shall forfeit a sum not exceeding twenty dollars, to be recovered by an action of debt before any court having competent jurisdiction, and shall be further liable in an action on the case for all damages any person shall sustain by reason of the neglect of said Steele to fulfil any of the duties imposed upon him in this act.

Forfeiture for neglect.

SEC. 7. Any person who shall sustain any injury by the negligence or default of said Steele or of the ferryman in his employ, may have a remedy by an action upon the bond required in this act.

Remedy for damages.

SEC. 8. The legislature may at any time, alter, amend, or modify this act.

Legislature may amend or modify.

Approved Feb. 19, 1851.

CHAPTER 16.

An Act to incorporate the Minnesota Mutual Fire Insurance Company.

Nov. 1, 1848.

SECTION.

1. Corporation named and created a body corporate, to insure houses, shops, etc.
2. Directors; business of said corporation to be done in St. Paul.
3. May have a seal, hold real estate in such amount as the company may require.
4. Members of company, who, etc.
5. Directors, affairs to be managed by fifteen; vacancy, how filled.
6. Directors to hold office, how long; when elected, notice of, how holden.
7. Rates of insurance determined.
8. Promissory note deposited, amount paid, remainder how and when payable.
9. Property sold, policy void and deposit notes to be surrendered.
10. Losses and expenses, how paid; insured property pledged to company.

SECTION.

11. Collection of deposit notes may be by suit at law.
12. Directors after notice of fire, duty of; amount paid by each member, etc.
13. Dividend to those sustaining losses and assessment on members, etc.
14. Premiums not taxable.
15. Limitation statute not to apply in favor of company.
16. Capital stock.
17. Act in force, how long.
18. Officers of corporation, how and when chosen.
19. Officers of corporation, duties of, annual statement.
20. President and directors, duties and liabilities of.
21. Legislature may alter or repeal charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, Henry Jackson, Charles K. Smith, Franklin Steele, Alexander M. Mitchell, David Olmstead, William H. Forbes, Lorenzo

Corporation named and created a body corporate, to insure houses, etc.

A. Babcock, Morton S. Wilkinson, Joseph M. Marshall, Socrates Nelson, Alexander Wilkin, Charles F. Tracy, Augustus L. Freeman and William H. Randall, sen., and all other persons who may hereafter associate with them in the manner herein prescribed, shall be a corporation by the name of the "Minnesota Mutual Fire Insurance Company," for the purpose of insuring their respective dwelling-houses, stores, shops and other dwellings (*buildings*), household furniture, merchandize and other property, against loss or damage by fire, and for no other purpose.

Directors, business of said corporation to be done in St. Paul.

SEC. 2. The persons named in the first section of this act, shall be the first directors of the said corporation. The business of the said corporation shall be carried on and conducted at such place in the town of St. Paul, in Ramsey county, as shall be designated by a majority of the members thereof, present at any regular meeting.

Powers of corporation.

SEC. 3. Said corporation may make and use a common seal, for the transaction of their business, and may alter the same at pleasure; and may hold, purchase and convey, such real and personal estate as the legitimate purposes of the corporation shall require.

Members of company, who.

SEC. 4. All persons who shall insure with the said corporation, and also their heirs, executors, administrators and (their) assigns, continuing to be insured in said corporation, as herein provided, shall thereby become members thereof during the period they shall remain insured by said corporation, and no longer.

Directors, duty of.

SEC. 5. The affairs of said corporation shall be managed by a board of directors, consisting of fifteen members; all vacancies happening in said board, may be filled by the remaining directors, and five shall constitute a quorum for the transaction of business.

Directors, how chosen.

SEC. 6. That said directors shall continue in office for one year after the passage of this act, and until others shall be chosen in their places, which board of directors shall thereafter be elected in each year, at such time and place in the town of St. Paul, in the county of St. Croix, [Ramsey,] as the corporation in their by-laws shall appoint; of which election public notice shall be given in at least one of the public newspapers printed in said town, at least thirty days immediately preceding such election; such election shall be holden under the inspection of three members not being directors, to be appointed previous to every election by the board of directors; and such election shall be made by ballot, and by a plurality of the votes of the members, or their proxies then present; allowing to each member one vote for every hundred dollars insured in said company: *Provided*, That every member shall have at least one vote, although the amount insured by him may not amount to one hundred dollars.

Rates of insurance determined,

SEC. 7. The directors may determine the rates of insurance, the sum to be insured, and the sum to be deposited for any insurance.

Insurance, how effected.

SEC. 8. Every person who shall become a member of said corporation by effecting insurance therein, shall, before he receives his policy, deposit his promissory note for such a sum of money as shall be determined by the directors; a part, not exceeding five per cent. of said note, shall immediately be paid for the purpose of discharging the incidental expenses of the institution, and the remainder of the said deposit note, shall be payable in part or the whole, at any time when the directors shall deem the same requisite for the payment of losses by fire and such incidental expenses as shall be

necessary for transacting the business of said company; and at the expiration of the term of insurance, the said note, or such part of the same as shall remain unpaid, after deducting all losses and expenses occurring during said term, shall be relinquished and given up to the maker thereof.

Sec. 9. When any property insured with this corporation, shall be alienated by sale or otherwise, the policy shall thereupon be void, and be surrendered to the directors of said company to be cancelled; and upon such surrender, the insured shall be entitled to receive his deposit notes upon the payment of his proportion of all losses and expenses that have accrued prior to such surrender; but the grantee or alienee having the policy assigned to him, may have the same ratified and confirmed to him, for his own proper use and benefit, upon application to the directors, and with their consent, within thirty days next after such alienation, on giving proper security to the satisfaction of said directors, for such portion of the deposit or premium note as shall remain unpaid, and by such ratification and confirmation, the party causing such security to be given, shall be entitled to all the rights and privileges and be subjected to all the liabilities to which the original party to whom the policy issued was entitled and subjected under this act.

Property insured, liabilities of.

Sec. 10. Every member of said company shall be bound to pay for losses and such necessary expenses as aforesaid, accruing in and to said company, in proportion to the amount of his deposit note or notes; and all buildings insured by said company, together with the right, title and interest of the insured to the lands on which they stand, shall be and are hereby pledged to said company, and said company shall have a lien thereon in nature of a mortgage, to the amount of his deposit note; which shall continue during his policy, the lien to take effect whenever the said company shall file with the clerk and have entered in the book of mortgages kept by the clerk of the county where such property is situated, a memorandum of the name of the individual insured, and a description of the property, the amount of said deposit note, and the time during which said policy shall continue.

Losses and expenses, how paid.

Sec. 11. Suits at law may be maintained by said corporation against any of its members for the collection of said deposit notes or any assessment thereon, or for any other cause relating to the business of said corporation; also suits at law may be prosecuted and maintained by any member against said corporation for losses or damage by fire, if payment is withheld more than three months after the company are duly notified of such losses; and no member of the corporation not being in his individual capacity, a party to such suit, shall be incompetent as a witness in any such cause, on account of his being a member of said company.

Collection of deposit notes, how made.

Sec. 12. The directors shall after receiving notice of any loss or damage by fire, sustained by any member, and ascertaining the same, or after the rendition of any judgment as aforesaid, against said company for loss or damage, settle and determine the sums to be paid by the several members thereof, as their respective proportion of such loss, and publish the same in such manner as they shall see fit, or as the by-laws shall have prescribed, and the sum to be paid by each member, shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the treasurer, within thirty days next after the publication of said notice, and if any member shall, for the space of thirty days after

Duties of directors.

the publication of said notice, neglect or refuse to pay the sum assessed upon him as his proportion of any loss as aforesaid, in such case, the directors may sue for and recover the whole amount of his deposit note or notes with costs of suit; and the amount thus collected, shall remain in the treasury of said company subject to the payment of such losses and expenses, as have, or may thereafter accrue; and the balance if any remain, shall be returned to the party from whom it was collected, on demand after thirty days from the expiration of the term for which insurance was made.

Dividends, how paid.

SEC. 13. If the whole amount of deposit notes shall be insufficient to pay the loss occasioned by any fire or fires, in such cases, the sufferers insured by said company, shall receive towards making good their respective losses, a proportionate dividend of the whole amount of said notes according to the sums by them respectively insured, and in addition thereto, a sum to be assessed on all the members of said company on the same principles as regulate the amount of their respective deposit notes, not to exceed one dollar on every hundred dollars respectively insured by them; and no member shall ever be required to pay for any loss occasioned by fire, at any one time more than one dollar on every hundred dollars in said company, in addition to the amount of his deposit note, nor more than that amount for any such loss after his said note shall have been paid in and expended; but any member upon payment of the whole of his deposit note and surrendering his policy before any subsequent loss or expense has occurred, shall be discharged from said company.

Premiums not taxable.

SEC. 14. The premium on deposit notes of said company shall not be liable to taxation.

Limitation statute not to apply in favor of company.

SEC. 15. The statute of limitation shall not apply in favor of said company, to suits to be commenced against the same.

Capital stock.

SEC. 16. No policy shall be issued by said company until application shall be made for insurance for fifteen thousand dollars.

Act to remain in force 20 years.

SEC. 17. This act shall continue in force twenty years.

Officers, how elected.

SEC. 18. The board of directors shall annually choose a secretary and treasurer, in the same person or otherwise, and such other officers as the by-laws may provide for. The treasurer shall give bond to the directors in double the sum of the probable amount to be paid into the treasury during the term for which he shall be elected, and the directors shall be personally responsible for any losses that said company may sustain by the dishonesty or carelessness of said treasurer.

Duty of officers.

SEC. 19. Within thirty days after the annual meeting for the election of directors, it shall be the duty of the officers of the corporation to cause to be made and published, in at least one of the newspapers of the county in which the business of the company is transacted, a general statement of the affairs of the corporation, and shall also at the same time, cause to be struck a balance of the profit and loss account; and if there be a surplus after paying all losses and expenses incurred by the company for the year then next preceding, each member shall be credited with such proportion of such surplus as his deposit or payment may bear to the aggregate of deposits or payments.

Liabilities of directors.

SEC. 20. If said company shall have sustained losses to an amount equal to their capital stock actually paid in, and the president or directors, after knowing the same, shall make any new or further insurance, the estates of such of them as shall make such

insurance or consent thereto, shall be jointly and severally liable for the amount of any loss which shall take place under such insurance.

SEC. 21. The legislature may at any time, alter or repeal this act: *Provided*, That the rights of any person or persons who may have obtained insurance from said compauy, shall not be affected by such repeal.

Legislature may
alter or repeal
charter.

Approved Nov. 1, 1849.

CHAPTER 17.

An Act to incorporate the Mississippi Boom Company.

Feb. 13, 1851.

SECTION.

1. Corporate name and powers; how long to continue.
2. Capital stock, amount of; stockholders individually liable.
3. Books to be opened for subscription to stock, when, notice of, how given.
4. Amount necessary to organizing the company; how organized.
5. Board of directors, their duties; secretary and treasurer, how chosen, bond of.
6. Officers; their term of office, how chosen; vacancies, how filled.
7. President, his powers and duties.
8. Board of directors, their duties.

SECTION.

9. The secretary, his duties.
10. Manner of holding elections; each share entitled to one vote; majority of value to constitute a quorum.
11. Boom to be constructed, when, where, and how; logs, when to be delivered.
12. BERTING and rafting of logs.
13. Compensation, amount of.
14. Boom and scale charges, when due.
15. Passage of vessels and rafts not to be obstructed by boom.
16. Legislature may alter or amend, after five years.
17. Logs not rafted out.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Franklin Steele, Joseph K. Brown, and Daniel Stinchfield, and their associates, successors and assigns, be, and they are hereby constituted a body corporate, and politic, for the purposes hereinafter mentioned, by the name of the "Mississippi Boom Company," for the period of fifteen years, and by that name they and their successors shall be, and they are hereby made capable in law, to contract and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer and be answered, in any court of record, or elsewhere, and to purchase and hold any estate, real, personal or mixed, so far as the same may be necessary to carry on the legitimate business of said company hereinafter prescribed, or to secure the payments of any debts that may be owing thereto, and the same to grant, sell, lease, mortgage or otherwise dispose of, for the benefit of said company; to devise and keep a common seal, to make and enforce any by-laws not contrary to the constitution and laws of the United States, or of this Territory; and to enjoy all the privileges, franchises and immunities incident to a corporation.

Corporate name
and powers.

SEC. 2. The capital stock of said company shall be fifteen thou-

Capital stock.

and dollars, in shares of one hundred dollars each; and the board of directors shall have power at any time whenever a majority in value of the stockholders, shall deem the same advisable, to increase the number of shares, to an amount not exceeding in the whole, twenty-five thousand dollars. And the stockholders shall be individually liable for the debts of said company.

Books when to be opened.

SEC. 3. The individuals named in the first section of this act, or any two of them, shall cause books to be opened at St. Paul, in the county of Ramsey, for the purpose of receiving subscriptions to the capital stock of said company, on the third Monday in February, 1851, notice thereof being given in any two newspapers published in this Territory, two weeks previous to the time of opening such books.

Amount necessary to organizing company.

SEC. 4. Whenever five thousand dollars of the capital stock shall have been subscribed, and five dollars upon each share so subscribed for, shall have been actually paid in, any number of the subscribers who shall represent a majority of the then subscription to said stock, shall be authorized to call a meeting of the several subscribers thereto, by giving ten days notice of the time and place of such meeting in any two newspapers published in this Territory, and those of the subscribers who may be present at such meeting, so called, shall have the power and be authorized to elect a board of five directors from the stockholders of said company.

Board of directors, their duty.

SEC. 5. The board of directors thus chosen, shall proceed to elect one of their number as president of the said company, and shall choose one person secretary, who shall act both as treasurer and secretary of said company, and who shall give bonds to be approved by the president and directors, to the said president and directors, in the penal sum of five thousand dollars, conditioned for the faithful and correct discharge of his duty as treasurer and secretary, and at such first meeting, said president and directors shall prepare and adopt a code of by-laws for the regulation and government of the affairs of said company, which may be altered or amended at any subsequent meeting of said board of directors.

Officers, term of office.

SEC. 6. The said president, directors and secretary chosen according to the provisions of the two preceding sections, shall remain in their several offices until the Wednesday immediately preceding the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty-one, upon which said Wednesday, a meeting of said stockholders shall be held, and a board of five directors chosen, who shall remain in office for one year thereafter; and annually thereafter, on the Wednesday next preceding the twenty-fifth day of December, of each year, a meeting of the stockholders shall be held, and a board of five directors shall be chosen for the ensuing year: *Provided*, That if any vacancy shall be created in any office, by reason of resignation, death or otherwise, the board of directors shall have power to fill such vacancy for the remainder of the term: *Provided, also*, That the president of said company, shall be chosen from the five directors thereof, and a treasurer and secretary shall always be chosen by the said board of directors, according to the provisions of the fifth section of this act.

President, his powers and duties.

SEC. 7. The president of said company shall have power to call a meeting of the stockholders at any time, by giving twenty days notice of the time and place of said meeting, in any two newspapers published in this Territory; and any three of the board of

directors, or a majority in value of the stockholders, shall have the like power to call such meeting of the stockholders in like manner: *Provided*, That the duties and powers of the president, not in this act specifically set forth, shall be specified, and prescribed in the by-laws adopted by the board of directors, according to the provisions of the fifth section of this act.

Sec. 8. The board of directors shall meet at such times and places as they shall regulate by their by-laws; they shall fix the compensation of all officers of the company and define their duties; shall, by their by-laws regulate the government of all meetings of their own board, and of the stockholders; and generally, shall have power to do all acts for the benefit and purposes of the said company, not inconsistent with the provisions of this act.

Board of directors, duty of.

Sec. 9. The secretary shall attend all meetings of the board of directors and of the stockholders, and shall keep a just and true record of all the proceedings at such meetings, and as treasurer and secretary, shall perform such duties as the board of directors shall, by their by-laws, prescribe.

Secretary, duties of.

Sec. 10. Every share shall be entitled to one vote, which may be cast by proxy; and at any meeting for the choice of directors, the five stockholders having the highest number of votes, shall be elected directors; and at every meeting of the board of directors for choice of president, the director having the highest number of votes shall be elected president: *Provided*, That at any meeting of the stockholders, a majority in value shall constitute a quorum, with power to transact business, and at any meeting of the board of directors, any three of the board of directors shall constitute a quorum, with power to transact business.

Election of officers.

Sec. 11. The said company shall be, and are hereby authorized and empowered to construct, maintain and keep a boom or booms, upon the Mississippi river, at such points between the Falls of St. Anthony, so called, and the town of St. Paul, so called, as they may select; in which boom or booms, all logs and hewn timber coming down the said river, shall be gathered by the said company; and such logs or timber, shall not be retained in such boom by the said company, for a longer period than thirty days, unless otherwise agreed by and between the owner or owners of such logs or timber, and the said boom company; and the said company shall be held accountable for all neglect to keep said boom in good order and repair, and shall be accountable for all damages which may accrue by a failure so to do; and the said boom company shall be required to complete a good and sufficient boom or booms for securing all logs and hewn timber floating down said Mississippi river, as above provided, on or before the first day of May, A. D. 1852.

Boom to be built, how.

Sec. 12. The said company shall sort out the logs and timber according to their several marks; shall raft the same out of the said boom, sufficiently securely to run to the town of Point Douglas, and shall deliver the same to the several owners thereof, at or near the foot of said boom: *Provided*: That the said boom company shall not be obliged to retain any logs or timber at the foot of said boom for a longer period than five days after notice has been given to the owner or owners of such logs or timber, or his or their agent, that such logs or timber are ready for delivery.

Sorting and rafting logs.

Sec. 13. The said company shall demand and receive, and are hereby authorized by law, to collect the sum of fifty cents per thousand feet, for every thousand feet of logs or timber, sorted out

Compensation.

and rafted ready for delivery as aforesaid, at the foot of said boom exclusive of the charges for scalage of such logs or timber; but after the term of five years from the passage of this act, the price shall be reduced to forty cents, and for all logs sorted out, rafted and delivered as aforesaid, at any point below the foot of said boom, the said company are hereby authorized by law, to collect such additional sum per thousand feet, for every thousand feet of logs or timber so sorted, rafted and delivered as may be agreed upon by the said boom company and the owner or owners of any such logs or timber, so sorted, rafted and delivered: *Provided*, That if any logs or timber shall not be taken away from the foot of said boom within the five days in the preceding section mentioned, and the owner or owners of such logs or timber shall not direct the said boom company, within the said five days at what point the same are to be delivered, then the said boom company are authorized to secure such logs or timber at any convenient point on the Mississippi, above the upper mill in the town of Saint Paul, and to demand, receive, and collect therefor, such compensation as shall be just and reasonable: *Provided*, That rafts of sawed lumber or timber of any kind, which may by accident or otherwise, float into said boom, shall only be charged with such reasonable compensation as will indemnify the owners of said boom for the safe delivery thereof.

Boom and scale
charges.

SEC. 14. The charges for scalage and the boom charges aforesaid shall be deemed due, and shall be paid to the said company when the said logs are scaled and ready for delivery as aforesaid, and the said company shall be responsible to the surveyor for the scaling of such logs or timber.

Passage of rafts
and vessels.

SEC. 15. The said boom company shall always give passage, by or through their said boom, at any time, to any raft running down the said Mississippi river, and to all steamboats, keel boats, flat boats, or other water crafts running either up or down the said river, without any let, hindrance or delay, by reason or on account of said boom.

Legislature may
alter or amend.

SEC. 16. The legislature of this Territory shall have the right to alter or amend this act, at any time after the period of five years from the passage hereof.

Logs not rafted
out.

SEC. 17. All persons having logs in said boom or booms, or having logs or other timber floating down the Mississippi to said boom, may have the said logs or other timber turned out of said boom or booms, loose, without rafting the same, and the price of boomage in such case, shall not exceed one half the amount allowed under the provisions of this act for booming and rafting: *Provided*, That the said boom company shall not be held accountable for the loss of any logs or other timber, resulting from the so turning out of said logs or other timber.

Approved Feb. 13, 1851.

CHAPTER 18.

An Act to amend an act, entitled "An Act to incorporate the Mississippi Boom Company."

Feb. 27, 1853.

SECTION.

1. Right confirmed.
2. Boom to be constructed.
3. Stock.
4. Sorting and rafting of logs.
5. Boom and scale charges.
6. Duties of company.

SECTION.

7. Passage of rafts and vessels.
8. Scaleage.
9. Legislature may alter or amend.
10. Sections repealed.
11. When act to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That all the rights and privileges granted by the provisions of the act to which this is amendatory, are hereby confirmed, and there shall be no forfeiture thereof in consequence of the insufficiency of the notice given for the opening of books for subscription to the capital stock; nor in consequence of no election for directors having been held previous to the Wednesday immediately preceding the twenty-fifth day of December, A. D. 1851; and the president and directors now in office shall have power to adopt a code of by-laws as provided in said act, and shall continue to do and perform all the acts and duties prescribed and allowed by said act, to which this is amendatory, until their successors shall have been elected.

Rights confirmed.

Sec. 2. The said boom company shall be and are hereby authorized and empowered to construct, maintain, and keep a boom or booms upon the Mississippi river, at such points between the falls of St. Anthony, (so called) and the town of St. Paul, (so called) as they may select; which boom or booms shall be completed on or before the first day of May, A. D. 1853, and in which all logs and hewn timber coming down said river, shall be gathered by the said company, and such logs or timber shall not be retained in such boom, by the said company, for a longer period than thirty days, unless otherwise agreed by and between the owner of such logs or timber and the said boom company; and the said boom company shall be held accountable for all neglect to keep said boom in good order and repair, and for all damages which may accrue by a failure so to do, from and after the said first day of May, A. D. 1853, aforesaid: *Provided,* That this act shall not be so construed as to prevent any person or company from erecting or hanging any side or sheer boom to collect their logs or timber at any point above or below said boom or booms.

Boom to be constructed.

Sec. 3. The capital stock of said company shall be ten thousand dollars, in shares of one hundred dollars each; and the board of directors shall have power, at any time, whenever a majority in value of the stockholders, shall deem the same advisable to increase the number of shares, to any amount not exceeding in the whole, twenty-five thousand dollars, and each stockholder shall be individually liable for the debts of said company, in proportion to the amount of stock each one may own.

Stock.

Sec. 4. The said company shall sort out the logs and timber according to their several marks, and shall raft the same out of said

Sorting and rafting of logs.

boom, with lines and pins or with binders, as said company shall select, sufficiently secure to run to the town of Point Douglass, and shall deliver the same to the several owners thereof, at or near the foot of said boom: *Provided*, That the said boom company shall not be obliged to retain any logs or timber at the foot of said boom for a longer period than five days, after notice has been given to the owner or owners of such logs or timber, or his or their agents, that such logs or timber are ready for delivery: *And provided also*, That the said company may raft permanently the logs or other timber belonging to any person or persons for such compensation as may be agreed upon by the parties.

Boom and scale charges.

SEC. 5. The said company may demand and shall receive, and are hereby authorized to collect the sum of fifty cents per thousand feet, for every thousand feet of logs or timber sorted out and rafted ready for delivery as aforesaid, at or near the foot of said boom, exclusive of the charge for scaleage of such logs or timber, and for all logs sorted out, rafted and delivered as aforesaid, at any point between the foot of said boom and Point Douglass, as the owner or owners of said logs may direct. The said company are hereby authorized by law to collect such additional sum per thousand feet, for every thousand feet of logs or timber so rafted, sorted and delivered: *Provided*, That if any logs or timber shall not be taken away from the foot of said boom, within the five days in the preceding section mentioned, and the owner or owners of such logs or timber shall not direct the said boom company, within the said five days at what point the same are to be delivered; then the said boom company are authorized to secure such logs or timber at any convenient point on the Mississippi river, above the upper saw mill in the town of St. Paul, and to demand and receive, and to collect therefor such compensation as shall be just and reasonable: *Provided*, That rafts of sawed lumber of any kind, which may, by accident, float into said boom, shall only be charged with such reasonable compensation as will indemnify the said boom company for the safe delivery thereof.

Duties of company

SEC. 6. The said boom company may, at the request of the owner or owners of any logs or timber in said boom or booms, turn out such logs or timber loose without rafting, and for the boemage of such logs or timber so turned out, the said boom company shall receive, and are hereby authorized to collect twenty-five cents per thousand feet for every thousand feet so turned out, exclusive of scaleage: *Provided*, That the owner or owners of such logs shall request in writing, that said logs or timber be so turned out, and the said boom company shall not be held accountable for the loss of any logs or other timber, resulting from the so turning out of said logs or other timber.

Passage of rafts and vessels.

SEC. 7. The said boom company shall so construct the said boom or booms, as to give passage in the channel of the river to any raft running down the said Mississippi river, and to all boats or other water craft whatever, running either up or down the said river, without any let, hindrance or delay by reason or on account of said boom.

Scaleage.

SEC. 8. All logs or other timber passing through said boom, shall be scaled according to the pine scale, now used and known as the St. Croix pine scale, and the charges made according to said scale, and the said boom company shall have a lien on one fourth of

said logs or other timber, until the boom charges hereby authorized and the charge for scalage aforesaid are paid, or the payment thereof satisfactorily secured.

SEC. 9. The legislature of this Territory shall have the right to alter or amend this act at any time after the period of five years from and after the passage of this act.

Legislature may alter or amend.

SEC. 10. Sections two, eleven, twelve, thirteen, fifteen, sixteen and seventeen of the act, to which this is amendatory, are hereby repealed.

SEC. 11. This act shall take effect and be in force, from and after its passage.

Approved—Feb. 27, 1852.

CHAPTER 19.

An Act to incorporate the St. Paul Institute.

March 31, 1851.

SECTION.

1. School District No. 2, to be known as St. Paul Institute.
2. Six trustees to be chosen.
3. Trustees constituted body corporate.
4. Trustees divided into classes. Term of office.
5. Vacancies, how filled.
6. Primary department to be the free common school of the district.

SECTION.

7. Religious tests forbidden.
8. Powers of Trustees.
9. Charges for tuition in the higher departments.
10. Present board of Trustees to form body corporate.
11. Legislature may control or repeal this act.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That school district No. 2, in the county of Ramsey, and Territory of Minnesota, shall be known by the name and style of the Saint Paul Institute.

School district No. 2, to be Saint Institute.

SEC. 2. Said Institute shall be authorized to elect six trustees at the annual meeting of said school district.

Six trustees chosen

SEC. 3. Said trustees and their successors in office, shall constitute a body corporate, with the name and style of the trustees of the Saint Paul Institute, with the right as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure; and of holding a property to the amount of \$100,000.

Body corporate.

SEC. 4. The six trustees aforesaid, shall hold their offices respectively, as follows, to wit: The two persons receiving the highest number of votes, shall hold their offices three years; the two persons receiving the next highest number of votes, two years; the next, one year; and should there be a tie, it shall be determined by lot.

Trustees divided into classes. Their term of office.

SEC. 5. All vacancies in the board shall be filled by the board, except those occasioned by the expiration of the term for which a trustee may have been elected, and such shall be filled by electing two members annually, for the term of three years.

Vacancies, how filled.

The primary department the common school of district.

Religious tests forbidden.

Powers of trustees.

Charges for tuition in the higher departments.

Present board of Trustees to form body corporate.

Legislature may alter or repeal act.

SEC. 6. The primary department of the Institute shall be the common school of the district, for tuition in which, no charge shall be made; and from which pupils may be advanced to other departments, when in the judgment of the trustees and teachers, their qualifications will justify it.

SEC. 7. No religious tenets or opinions shall be required to entitle any person to admittance in said Institute as a pupil or teacher, or shall be taught therein.

SEC. 8. The trustees shall have the following powers:

1. To act in all respects as trustees of a school district:

2. To add a normal department, teaching the theory and practice of elementary instruction:

3. To add a department of literature, science and arts:

4. To appoint a secretary, treasurer and librarian, prescribe their duties and take such bonds for the performance thereof as the trustees may deem sufficient:

5. To employ teachers and professors, to fix the amount of their salaries, and dismiss any officer, teacher or professor, connected with the Institution, when in their judgment the interests of the Institution may require:

6. To enact laws for the government of the Institute, and in connection with the teachers and professors, to regulate the course of instruction, purchase the books and authorities to be used in the several departments; and also to confer such degrees, and grant such diplomas as are usually conferred and granted by colleges and universities:

7. To receive any donation which may be made to the Institute in lands or otherwise, from any source whatever.

SEC. 9. The charges for tuition in the higher departments shall at no time, be greater than may be necessary to prevent any deficit in the funds of said departments, and shall cease whenever such deficit shall be otherwise provided for.

SEC. 10. The present trustees of said school district, are hereby invested with the powers conferred upon trustees under this charter, until their successors are elected.

SEC. 11. The legislative assembly may at any time amend, alter, modify or repeal this act.

Approved—March 31, 1851.

CHAPTER 20.

March 6, 1852.

An Act to dissolve the marriage contract between James W. Brown and Lezette Brown,

Marriage contract dissolved.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between James W. Brown and Lezette Brown, be and the same is hereby dissolved, and the parties to said contract are hereby restored to all the rights and privileges of unmarried persons.

Approved—March 6, 1852.

CHAPTER 21.

An Act granting to Anson Northrop, Pierre Bottineau, Louis Roberts and Peter Poncin the right to establish and maintain a Ferry across the Mississippi river.

Feb 23, 1852.

SECTION.

1. Corporators, names and privileges of; time to continue.
2. To keep boats and cross all persons at all times
3. Rates of ferrage not to exceed a specified amount
4. Bond to be filed, conditions of; penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages, how brought.
6. Remedy for injuries sustained by negligence of owners or ferryman how recovered.
7. Legislature may alter, amend, or repeal charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Anson Northrop, Pierre Bottineau, Louis Roberts and Peter Poncin, their heirs, executors, administrators or assigns, shall have the exclusive right and privilege for the period of six years, of keeping and maintaining a ferry across the Mississippi river, in the county of Ramsey, and Territory of Minnesota, at a point about one mile and a half above the head of the upper rapids, at the Falls of St. Anthony; and no other ferry shall be established within one half mile of said ferry, either above or below.

Corporators.

SEC. 2. That said Anson Northrop, Pierre Bottineau, Louis Roberts and Peter Poncin shall at all times keep a safe and good boat or boats, in good repair, sufficient for the accommodation of persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours, both at night or day; but persons wishing to cross at said ferry after ten o'clock at night, may be charged double the fare as hereinafter prescribed.

To keep boats.

SEC. 3. The rates charged for crossing the above ferry shall not exceed the following:

Rates of ferrage.

For each foot passenger,	- - - - -	10 cents.
" each horse, mare or mule, with or without rider, -	- - - - -	15 "
" each two horse or two ox or two mule team,	- - - - -	
loaded or unloaded, with driver, - - - - -	- - - - -	25 "
" each single horse carriage, - - - - -	- - - - -	25 "
" each additional cow or ox, - - - - -	- - - - -	10 "
" each swine or sheep, - - - - -	- - - - -	2 "

All freight of lumber, merchandize, or other articles not in teams, at the rate of ten cents per barrel; fifty cents per M feet of lumber; and three cents per hundred weight of all other articles.

SEC. 4. That said Anson Northrop, Pierre Bottineau, Louis Roberts and Peter Poncin shall, within six months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to the said board, with two or more good and sufficient sureties, to be approved by said board, in the penal sum of two thousand dollars; conditioned that they will fulfil all the duties that are imposed upon them in the foregoing sections, and in case of their failure so

To give bond.

to do, they shall forfeit all the benefits that might have accrued to them from its passage.

Liab. for neg-
lect.

SEC. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and ready attendance, the said Anson Northrop, Pierre Bottineau, Louis Roberts and Peter Poncin, shall forfeit a sum not exceeding twenty-five dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action for all damages any person shall sustain by reason of the neglect of said Northrop, Bottineau, Roberts and Poncin, or either of them, to fulfil any of the duties imposed upon them by this act.

Remedy.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Northrop, Bottineau, Roberts, Poncin, or either of them, or of the ferryman in their employ, may have a remedy by an action upon the bond required in this act.

Repeal.

SEC. 7. The legislature may alter, amend or repeal this act at any time after its passage.

Approved Feb. 23. 1852.

CHAPTER 22.

Feb. 27, 1852.

An Act for the relief of S. B. Olmstead, Alden Bryant, Charles F. Tracy, B. W. Lott, and Taylor Dudley.

SECTION.

1. Sums appropriated to Olmstead and Bryant, for what.
2. Amount appropriated to Taylor and Lott and for what.

SECTION.

3. Amount to be paid to Dudley Taylor for copies of record, etc.
4. Secretary authorized to pay money out of treasury.

Sums appropri-
ated, for what.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid out of the sum appropriated by congress for defraying the expenses of the legislative assembly of this Territory, for the present year, to S. B. Olmstead, one hundred and fifteen dollars; to Alden Bryant, one hundred and fifteen dollars, for services rendered as commissioners, to the counties of Benton and Cass, in the contested case between Messrs. Lowry and Sturgis.

To Tracy and
Lott.

SEC. 2. That there be paid out of the sum appropriated by congress for defraying the expenses of the legislative assembly of this Territory, for the present year, to Charles F. Tracy, one hundred dollars; to B. W. Lott, one hundred dollars for services rendered as commissioners sent to Benton county, in the contested case between Messrs. Warren and Beatty.

To D. Taylor.

SEC. 3. That there be paid out of the fund appropriated by congress for defraying the expenses of the legislative assembly of this Territory, for the present year, to Taylor Dudley, six dollars and twelve cents for copies of record and papers furnished commissioners; and for copies of poll books for Swan River precinct, and returns of Crow Wing precinct.

SEC. 4. That the secretary of the Territory be, and is hereby authorized and required to pay the several amounts above named to the several persons above mentioned.

Secretary authorized to pay money.

Approved Feb. 27, 1852.

CHAPTER 23.

An Act to incorporate the St. Paul Division, No. 1, Sons of Temperance.

March 25, 1851.

SECTION.

1. Name of corporation; powers of; may have perpetual succession.

SECTION.

1. May sue and be sued; have a seal, make contracts, by-laws.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That from and after the passage of this act, Comfort Barnes, J. J. Dewey, J. R. Brown, Wm. H. Tinker, Geo. H. Oakes, C. P. V. Lull, W. P. Murray, A. R. French, Wm. Henry Forbes, B. F. Hoyt, and their associates of the county of Ramsey, town of St. Paul, and their successors be, and they are hereby constituted, ordained, and declared a body corporate and politic, under the name and style of "The St. Paul Division, No. 1, Sons of Temperance;" and by that name, they and their successors shall, and may have perpetual succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered, defending and being defended, in all courts of record whatever, and in all manner of suits, actions, complaints, matters and causes whatever; and that they and their successors, by the name of the St. Paul Division, No. 1, Sons of Temperance, shall be in law, capable of acquiring and holding, by purchase, gift, or otherwise, and of selling, conveying, or leasing, real, personal, or mixed estate, for the use of said corporation, not exceeding ten thousand dollars; and that they and their successors, shall have full power to make and enter into contracts, to make such rules and by-laws as they may deem necessary for the good government and prosperity of said institution: *Provided,* Such by-laws are not inconsistent with the constitution and laws of the United States or of the Territory.

Corporate name and powers,

Approved March 25, 1851.

CHAPTER 24.

An Act to dissolve the marriage contract existing between Thomas F. Morton and Mary Morton.

March 19, 1851.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between Thomas F. Morton and his wife, Mary Morton, be, and the same is hereby dissolved, and the parties to said contract are hereby restored to all the rights and privileges of unmarried persons.

Dissolution of marriage contract.

Approved March 19, 1851.

CHAPTER 25.

Feb. 13, 1851. *An Act to incorporate St. Paul Lodge, No. 2, of the Independent Order of Odd Fellows, of the Town of St. Paul..*

SECTION.

1. Corporate name and powers.
2. Powers and privileges; may have a seal.

SECTION.

3. Act to have immediate effect.

Corporate name
and powers.

*Be it enacted by the Legislative Assembly of the Territory of Minnesota, That B. W. Lott, B. W. Brunson, and R. M. Spencer, as Trustees, and their regular successors of St. Paul Lodge, Number Two, of the Independent Order of Odd Fellows, of the town of St. Paul, in the County of Ramsey, and Territory of Minnesota, be, and they are hereby created a body politic and corporate, by the name and style of Saint Paul Lodge, Number Two, of the Independent Order of Odd Fellows, of the Town of St. Paul, Ramsey County, Minnesota Territory; and by that name are hereby invested with full power and authority, to purchase, acquire, hold, possess, use, occupy and enjoy, real and personal estate, to the amount of ten thousand dollars, and to sell and convey, or otherwise dispose of the same, in such manner as may be prescribed by the constitution, by-laws, rules and regulations, of said Lodge: *Provided*, That such constitution, by-laws, rules and regulations, be not contrary to the organic act of this Territory, and the constitution and laws of the United States.*

May have seal.

SEC. 2. The said corporation, by its name aforesaid, shall be competent to contract and be contracted with, to sue and be sued, plead and be impleaded, defend and be defended, in all courts and places in this Territory, keep, have and use a common seal, and alter the same at the pleasure of the Lodge.

Act to take effect,
when.

SEC. 3. This act shall take effect from and after its passage.
Approved Feb. 13, 1851.

CHAPTER 26.

Feb. 21, 1852. *An Act to incorporate Minnesota Lodge No. 1, I. O. O. F.*

SECTION.

1. Corporate name and powers.
2. Powers and privileges; may have a seal.

SECTION.

3. Act to have immediate effect.

Corporate name
and powers.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Socrates Nelson, Sylvanus Trask, Henry L. Moss, Seth M. Sawyer and David B. Loomis as trustees, and their regular successors of Minnesota Lodge No. 1, of the Independent Order

of Odd Fellows of the town of Stillwater, in the county of Washington, and Territory of Minnesota, be and they are hereby created a body politic and corporate, by the name and style of Minnesota Lodge No. 1, of the Independent Order of Odd Fellows of the town of Stillwater, Washington county, Minnesota Territory; and by that name are hereby invested with full power and authority to purchase, acquire, hold, possess, use, occupy and enjoy real and personal estate to the amount of ten thousand dollars, and to sell and convey, or otherwise dispose of the same, in such manner as may be prescribed by the constitution, by-laws, rules and regulations of said lodge: *Provided*, That such constitution, by-laws, rules and regulations, be not contrary to the organic act of this Territory, and the constitution and laws of the United States.

SEC. 2. The said corporation, by its name aforesaid, shall be competent to contract and be contracted with, to sue and be sued, plead and be impleaded, defend and be defended, in all courts and places in this Territory, keep, have and use a common seal, and alter the same at the pleasure of the lodge.

May have a seal.

SEC. 3. This act shall take effect from and after its passage.

Act to have immediate effect.

Approved Feb. 21, 1852.

CHAPTER 27.

An Act to provide for laying out a Territorial Road from St. Anthony to the west bank of Lake St. Croix, opposite Willowriver.

Feb. 3, 1851.

SECTION.

1. Commissioners to locate and mark road, and route thereof.

SECTION.

2. Duty of commissioners, when and where to meet.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That John Morgan, C. D. Dorr, and Joseph M. Marshall, be and the same are hereby appointed commissioners to locate and mark a territorail road, commencing at the village of St. Anthony Falls; from thence on the most direct and feasible route, by John Morgan's Tavern, on the road leading from Stillwater to St. Paul, to the lower ferry on the west side of Lake St. Croix, opposite to the village of Willowriver, Wis.

Commissioners appointed.

SEC. 2. That the said commissioners, or any two of them meet at the store of W. R. and J. M. Marshall, at the Falls of St. Anthony, on the second Tuesday of April next, at ten o'clock, A. M., or as soon after as practicable, for the purpose of discharging their duties, and that they be, and are hereby authorized to adjourn from time to time, as a majority of them may deem proper; and the commissioners when assembled, shall proceed to lay out and mark said road, in accordance with the provisions of law in such cases made and provided.

Duty of commissioners.

Approved Feb. 3, 1851.

CHAPTER 28.

Feb. 19, 1851.

An Act granting to William A. Cheever the right to establish and maintain a Ferry across the Mississippi River.

SECTION.

1. Grant to Cheever of exclusive right to ferry for ten years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, when and how.

SECTION.

5. Failure to comply with conditions of, Penalty for, how recovered.
6. Suits on the bond may be instituted for injury to any person by neglect of said Cheever, etc.
7. Legislature may amend, alter, modify or repeal.

Grants ferry right
ten years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That William A. Cheever, his executors, administrators, or assigns, shall have the exclusive right and privilege for the period of ten years, of keeping and maintaining a ferry across the Mississippi river in the county of Ramsey and Territory of Minnesota, at the lower end of St. Anthony City, below the Falls of St. Anthony.

Conditions of the
grant.

SEC. 2 The said William A. Cheever, shall at all times keep a safe and good boat, or boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both at night or day, but persons wishing to cross at said ferry in the night, may be charged double the fare as hereinafter prescribed.

Ferry rates.

SEC. 3. The rates charged for crossing at the above ferry, shall not exceed the following:

For each foot passenger,	- - - - -	10 cents.
" each horse, mare, or mule, with or without rider,	- - - - -	15 "
" each two horse or two ox or two mule team,	- - - - -	
loaded or unloaded, with driver,	- - - - -	25 "
" each single horse carriage,	- - - - -	25 "
" each additional cow or ox,	- - - - -	10 "
" each swine or sheep,	- - - - -	2 "

All freight of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 3 cents per cwt. of all other articles.

Bond to be given
and filed.

SEC. 4. The said William A. Cheever, shall within six months after the passage of this act, file, or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to the said board with two or more good and sufficient sureties, (to be approved by said board of county commissioners,) in the penal sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure or neglect so to do, shall forfeit all the benefits that might have accrued to him from its passage.

Forfeiture for
neglect.

SEC. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said William A.

Cheever, shall forfeit a sum not exceeding twenty dollars, to be recovered by an action of debt before any court having competent jurisdiction, and shall be further liable in an action on the case for all damages any person shall sustain by reason of the neglect of said Cheever to fulfil any of the duties imposed upon him in this act.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Cheever or of the ferryman in his employ, may have a remedy by an action upon the bond required in this act.

SEC. 7. The legislature may at any time, alter, amend, modify or repeal this act.

Approved March, 19, 1851.

Remedy for damages.

Legislature may alter or repeal charter.

CHAPTER 29.

An Act to incorporate the St. Croix Boom Company.

Feb. 7, 1851.

SECTION.

1. Corporate name and powers; how long to continue.
2. Capital stock, amount of; stockholders individually liable.
3. Books to be opened for subscription to stock, when, notice of; how given.
4. Amount necessary to organizing the company; how organized.
5. Board of directors, their duties; secretary and treasurer, how chosen, bond of.
4. Officers, their term of office, how chosen; vacancies, how filled.
7. President, his powers and duties.
8. Board of directors, their duties.

SECTION.

9. The secretary, his duties.
10. Manner of holding elections; each share entitled to one vote; majority of value to constitute a quorum.
11. Boom to be constructed, when, where, and how; logs, when to be delivered.
12. Sorting and rafting of logs.
13. Compensation, amount of.
14. Boom and scale charges, when due.
15. Passage of vessels and rafts not to be obstructed by boom.
16. Legislature may alter or amend, after five years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Orange Walker, John McKusick, George B. Judd, Levi Churchill, Socrates Nelson, Daniel Mears, W. H. C. Folsom, William Kent, and their associates, successors and assigns, be, and they are hereby constituted a body corporate, and politic, for the purposes hereinafter mentioned, by the name of the "Saint Croix Boom Company," for the term of fifteen years, and by that name they and their successors shall be, and they are hereby made capable in law, to contract and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer and be answered, in any court of record, or elsewhere, and to purchase and hold any estate, real, personal or mixed, and the same to grant, sell, lease, mortgage or otherwise dispose of, for the benefit of said company; to devise and keep a common seal, to make and enforce any by-laws not contrary to the constitution and laws of the United States, or of this Territory; and to enjoy all the privileges, franchises and immunities incident to a corporation.

SEC. 2. The capital stock of said company shall be ten thou-

Corporate name and powers.

Capital stock.

sand dollars, in shares of one hundred dollars each; and the board of directors shall have power at any time, whenever a majority in value of the stockholders, shall deem the same advisable, to increase said capital stock to an amount not exceeding in the whole, twenty-five thousand dollars. And the stockholders shall be individually liable for the debts of said company.

Books when to be opened.

SEC. 3. Any three of the individuals named in the first section of this act, shall be authorized to cause books to be opened at Stillwater in the county of Washington, for the purpose of receiving subscriptions to the capital stock of said company, first giving twenty days' notice, in any two newspapers published in this Territory, of the time and place of opening such books.

Amount necessary to organizing company.

SEC. 4. Whenever five thousand dollars of the capital stock shall have been subscribed, and five dollars upon each share so subscribed for, shall have been actually paid in, any number of the subscribers who shall represent a majority of the then subscription to said stock, shall be authorized to call a meeting of the several subscribers thereunto, by giving ten days notice of the time and place of such meeting in any two newspapers published in this Territory, and those of the subscribers who may be present at such meeting, so called, shall have the power and be authorized to elect a board of five directors from the stockholders of said company.

Board of directors, their duty.

SEC. 5. The board of directors thus chosen, shall proceed to elect one of their number as president of the said company, and shall choose one person who shall act both as treasurer and secretary of said company, and who shall give bonds to be approved by the president and directors, to the said president and directors, in the penal sum of five thousand dollars, conditioned for the faithful and correct discharge of his duty as treasurer and secretary, and at such first meeting, said president and directors shall prepare and adopt a code of by-laws for the regulation and government of the affairs of said company, which may be altered or amended at any subsequent meeting of said board of directors.

Officers, term of office.

SEC. 6. The said president, directors and treasurer and secretary chosen according to the provisions of the two preceding sections, shall remain in their several offices until the Wednesday immediately preceding the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty-one, upon which said Wednesday, a meeting of said stockholders shall be held, and a board of five directors chosen, who shall remain in office for one year thereafter; and annually thereafter, on the Wednesday next preceding the twenty-fifth day of December, of each year, a meeting of the stockholders shall be held, and a board of five directors shall be chosen for the ensuing year: *Provided*, That if any vacancy shall be created in any office, by reason of resignation, death or otherwise, the board of directors shall have power to fill such vacancy for the remainder of the term: *Provided, also*, That the president of said company, shall be chosen from the five directors thereof, and a treasurer and secretary shall always be chosen by the said board of directors, according to the provisions of the fifth section of this act.

President, his powers and duties.

SEC. 7. The president of said company shall have power to call a meeting of the stockholders at any time, by giving twenty days notice of the time and place of said meeting, in any two newspapers published in this Territory; and any three of the board of directors, or a majority in value of the stockholders, shall have the

like power to call such meeting of the stockholders in like manner: *Provided*, That the duties and powers of the president, not in this act specifically set forth, shall be specified, and prescribed in the by-laws adopted by the board of directors, according to the provisions of the fifth section of this act.

SEC. 8. The board of directors shall meet at such times and places as they shall regulate by their by-laws; they shall fix the compensation of all officers of the company and define their duties; shall, by their by-laws regulate the government of all meetings of their own board, and of the stockholders, and generally, shall have power to do all acts for the benefit and purposes of the said company.

Board of directors, duty of.

SEC. 9. The secretary shall attend all meetings of the board of directors and of the stockholders, and shall keep a just and true record of all the proceedings at such meetings, and as treasurer and secretary, shall perform such duties as the board of directors shall, by their by-laws, prescribe.

Secretary, duties of.

SEC. 10. Every share shall be entitled to one vote, and at any meeting for the choice of directors, the five stockholders having the highest number of votes, shall be elected directors, and at every meeting of the board of directors for choice of president, the director having the highest number of votes shall be elected president: *Provided*, That at any meeting of the stockholders, a majority in value shall constitute a quorum, with power to transact business, and at any meeting of the board of directors, any three of the board of directors shall constitute a quorum, with power to transact business.

Election of officers.

SEC. 11. The said company shall be, and are hereby authorized and empowered to construct, maintain and keep a boom upon the River St. Croix, at such point between Osceola Mills, so called, and Rock Island, so called, as they may select; in which boom all logs and hewn timber coming down the said river, shall be gathered by the said company; and such logs or timber, shall not be retained in such boom by the said company, for a longer period than twenty days, unless otherwise agreed by and between the owner or owners of such logs or timber, and the said boom company; and the said company shall be held accountable for all neglect to keep said boom in good order and repair, and pay all damages which may occur on failure of the same.

Boom to be built, how.

SEC. 12. The said company shall sort out said logs and timber according to their several marks; shall raft the same out of the said boom, sufficiently securely to run to the head of Lake Saint Croix, so called, and shall deliver the same to the several owners thereof, at such points between the said boom and the said head of Lake St. Croix, as the said owner or owners of any particular mark or marks of logs or timber shall direct such logs or timber so marked, to be delivered: *Provided*: That the said boom company shall not be obliged to retain any logs or timber at the foot of said boom for a longer period than five days after notice has been [given] to the owner or owners of such logs or timber, or his or their agent, that such logs or timber are ready for delivery.

Sorting and rafting logs.

SEC. 13. The said company shall demand and receive, and are hereby authorized by law, to collect the sum of forty cents per thousand feet, for every thousand feet of logs or timber, sorted out and rafted ready for delivery as aforesaid, at the foot of said boom, exclusive of the charges for scalage of such logs or timber; and

Compensation.

for all logs sorted out, rafted and delivered as aforesaid, at any point between the foot of said boom and the said Lake Saint Croix, the said company shall demand and receive, and are hereby authorized by law, to collect the sum of fifty cents per thousand feet, for every thousand feet of logs or timber so sorted, rafted and delivered, exclusive of charges for scalage: *Provided*, That if any logs or timber shall not be taken away from the foot of said boom within the five days in the preceding section mentioned, and the owner or owners of such logs or timber shall not direct the said boom company, within the said five days at what point the same are to be delivered, then the said boom company are authorized to secure such logs or timber at any point above the head of Lake St. Croix, and to demand, receive, and collect therefor, the same compensation as is by this section provided for the delivery of logs or timber at any point between the foot of said boom and the said head of Lake St. Croix: *Provided*, That rafts of sawed lumber or timber of any kind, which may by accident or otherwise, float into said boom, shall only be charged with such reasonable compensation as will indemnify the owners of said boom for the safe delivery thereof.

Boom and scale charges.

SEC. 14. The charges for scalage and the boom charges aforesaid shall be deemed due, and shall be paid to the said company when the said logs are scaled and ready for delivery as aforesaid, and the said company shall be responsible to the surveyor for the scaling of such logs or timber.

Passage of rafts and vessels.

SEC. 15. The said boom company shall always give passage, by or through their said boom, at all times, to any raft running down the said River, St. Croix, and to all steamboats, keel boats, flat boats, or other water crafts running either up or down the said river, without any let, hindrance or delay, by reason or on account of said boom.

Legislature may alter or amend.

SEC. 16. The legislature of this Territory shall have the right to alter or amend this act, at any time after the period of ten years from the passage of this act.

Approved Feb. 7, 1851.

CHAPTER 30.

Oct. 11, 1849.

An Act for the relief of John Morgan.

Money to be paid, and for what.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid to John Morgan, sheriff of St. Croix county, the sum of five hundred dollars, being the amount due him for services rendered in taking the first census of the said Territory in pursuance of the instructions of the governor, and by authority of the organic act of said Territory, and that the said secretary of the Territory be, and he is hereby authorized and required to pay the same out of any money in the treasury not otherwise appropriated.

Approved Oct. 11, 1849.

CHAPTER 31.

An Act to incorporate the Cottage Grove Academy, at Cottage Grove, in the county of Washington.

March 4. 1852.

SECTION.

1. Corporation, name, powers, etc.
2. Object of corporation.
3. Donations, how disposed of.
4. Trustees to have control of funds, and to what purposes they may apply them.
5. Trustees; terms of office, how and when elected.
6. Powers and duties of trustees.
7. Meetings of trustees; majority to constitute a quorum.

SECTION.

8. Officers, their term of office.
9. President, duty of.
10. Secretary, duties of.
11. Treasurer, duties and liabilities of.
12. Treasurer to give bond.
13. No religious tests allowed or sectarian doctrine tolerated in said school.
14. First meeting of trustees, how called.
15. Legislature may alter, modify, etc.
16. Act, when to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be established at Cottage Grove, in this Territory, a literary institution, by the name of Cottage Grove Academy; and that Pierce P. Furber, David Cooper, James R. Lifford, Theodore Furber, Levi Hertzell, Martin Leavitt, Joseph W. Furber, Joseph Haskell, Edwin Bell, Richard Hall, William P. Boutwell, and Joseph Atkinson, and their successors in office, be a body corporate to be known by the name and style of "the Trustees of the Cottage Grove Academy," with the right, as such, of suing and being sued, of contracting and being contracted with, and of making and using a common seal, and altering the same at pleasure.

SEC. 2. The object of the institution shall be to provide the means of acquiring a knowledge of the various branches of literature, science and the arts.

SEC. 3. The proceeds of all donations, of whatever nature, and from whatever source, shall be and remain a perpetual fund, (except as hereinafter provided,) and called the Cottage Grove Academy fund, the interest of which shall be appropriated to the support of said academy. *Provided, however,* That when any donor, at the time of making his donation to said academy, shall designate the particular object for which he makes said donation, it shall be the duty of the trustees, to appropriate the same accordingly.

SEC. 4. The trustees are authorized to expend such portions of the funds as may come under their control, in the erection of suitable buildings, and in purchasing a site for the same; for the purchase of a library, mathematical, philosophical and chemical apparatus, as they may deem expedient, and the control of all funds, given or granted to said academy, are hereby vested in said board of trustees.

SEC. 5. At the first meeting legally called and holden, the trustees shall designate the time of their first and future annual meetings, which shall in no case be altered, except by a vote of two-thirds of the trustees. They may also choose all necessary officers, whose term of office shall expire at the first annual meeting. The trustees shall, at said first annual meeting, be divided by lot into four classes, of three each, numbered one, two, three and

Corporators.

Object of institution.

Donations.

Building, &c.

Terms of office.

four. Class numbered one shall hold their office one year; class numbered two, shall hold their office two years; class numbered three, shall hold their office three years; and class numbered four, shall hold their office four years, from the first annual meeting. After the first annual meeting, there shall be elected annually, three trustees, to supply the vacancies occasioned by the provisions of this section, who shall hold their office for the term of four years. All vacancies occasioned by death, resignation or removal from the Territory, or otherwise, as well as the vacancies occasioned by the expiration of the term of office, shall be filled by the board of trustees, and all vacancies, except those occasioned by the expiration of the term of office, may be supplied at any meeting called for that purpose.

Powers of trustees.

SEC. 6. The trustees shall have power, and it shall be their duty to enact laws for the government of the academy; to sell or purchase real or personal estate; to appoint a requisite number of teachers; to appoint such officers and committees as the management of the academy and its funds may require; to designate their duties, and determine the amount of their respective salaries.

Quorum.

SEC. 7. Meetings of the trustees may be called by the secretary on application of five members, at such time and place as they may deem expedient; and a majority of the board shall at all times constitute a quorum to transact business, but a less number may adjourn.

Officers.

SEC. 8. The officers of the board of trustees shall consist of a president, secretary and treasurer, and such other officers and committees, as the trustees may deem expedient. The president, secretary and treasurer, shall hold their offices for one year, or from the time of their election to the next annual meeting; all other officers and all committees shall hold their offices for such term as the board may deem proper.

President.

SEC. 9. It shall be the duty of the president to preside at all meetings of the board, but in his absence, the board may elect a president pro tem.

Secretary.

SEC. 10. It shall be the duty of the secretary to keep a fair record of all votes and proceedings of the meetings of the trustees; also to keep on file and preserve all papers belonging to said board of trustees.

Treasurer.

SEC. 11. It shall be the duty of the treasurer to collect all moneys due the academy, and pay out the same, by vote of the trustees, in such manner as they may direct; and all deeds, leases, bonds and evidences of debt, executed by the treasurer as such, and in pursuance of a vote of the trustees, shall be binding, and the funds and property of the academy shall be held for the just performance and payment of the same.

Bond of treasurer.

SEC. 12. The treasurer, before entering upon the duties of his office, shall give bonds satisfactory to the trustees for the faithful performance of his duties.

No religious test allowed.

SEC. 13. No religious tenets or opinions, shall be required to entitle any person to be admitted as a teacher or student, in said academy, and no sectarian doctrines shall be tolerated therein.

First meeting, how called.

SEC. 14. Any three members of the board of trustees named in this act, may call the first meeting of the trustees, by giving two weeks notice in some newspaper printed in this Territory.

Legislature may alter or amend.

SEC. 15. The legislature may, at any time, alter, modify, or amend this act.

SEC. 16. This act shall take effect, from and after its passage.

Approved March 4, 1852.

PRIVATE ACTS.

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CHAPTER 32.

An Act to incorporate the Mississippi Bridge Company.

March 4, 1852.

SECTION

1. Names of incorporators.
2. Capital stock; increase of, when.
3. Books when to be opened.
4. First meeting.
5. Officers elected.
6. Term of office.
7. Special meetings.
8. Directors, their duties.

SECTION.

9. Secretary, his duties.
10. Each share entitled to one vote.
11. Powers of company.
12. No other bridge to be established within one mile of said bridge.
13. Company to sell to county or town.
14. Proviso.
15. Rates of toll.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Franklin Steele, H. H. Sibley, Henry M. Rice, Robert Smith, Calvin A. Tuttle, Isaac Atwater, John H. Stevens, John George Lennon, John Rollins, Alfred E. Ames, D. E. Moulton, Buel G. Wheeler, and their associates, successors, and assigns be, and they are hereby constituted a body corporate and politic, for the purposes hereinafter mentioned, by the name of "the Mississippi Bridge Company," for the term of twenty years, and by that name they and their successors shall be, and they are hereby made capable, in law, to contract and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer and be answered, in any court of record, and elsewhere, and to purchase and hold any estate, real, personal or mixed, and the same to grant, sell, lease, mortgage, or otherwise dispose of, for the benefit of said company, to devise and keep a common seal, to make and enforce any by-laws, not contrary to the constitution and laws of the United States, or of this Territory, and to enjoy all the privileges, franchises, and immunities incident to a corporation.

Names of incorporators.

SEC. 2. The capital stock of said company, shall be twenty-five thousand dollars, in shares of one hundred dollars each; and the board of directors shall have power, at any time, whenever a majority in value of the stockholders, shall deem the same advisable, to increase the said capital stock, to an amount not exceeding in the whole, seventy-five thousand dollars.

Stock.

SEC. 3. Any three of the individuals named in the first section of this act, shall be authorized to cause books to be opened at Saint Anthony and Saint Paul, for the purpose of receiving subscriptions to the capital stock of said company, first giving three weeks notice in any two newspapers published in this Territory, of the time and place of opening such books.

Books opened.

SEC. 4. Whenever ten thousand dollars of capital stock, shall have been subscribed, and ten dollars upon each share, so subscribed for, shall have been actually paid in, any number of the said subscribers who shall represent a majority of the then subscription to said stock, shall be authorized to call a meeting of the several subscribers therunto, by giving twenty days notice of the time and place of such meeting, in any two newspapers published in this Territory; and those of the subscribers, who may be present at such meetings, so called, shall have the power, and be authorized to elect a board of seven directors from the stockholders of said company.

First meeting.

Officers elected. SEC. 5. The board of directors, thus chosen, shall proceed to elect one of their number as president of said company, and shall also choose one person to act as both treasurer and secretary of said company, and who shall give bonds to be approved by the president and directors, to the said president and directors, in such penal sum as they may require, conditioned for the faithful and correct discharge of his duty as treasurer and secretary; and at such first meeting, or as soon thereafter as practicable, said president and directors shall prepare and adopt a code of by-laws, for the regulation and government of the affairs of said company, which may be altered or amended at any subsequent meeting of said board of directors, by a majority thereof.

Term of office. SEC. 6. The said officers chosen according to the provisions of the two preceding sections, shall remain in their several offices, until the first Monday of January, 1853; upon which said Monday, a meeting of the said stockholders shall be held, and a board of seven directors chosen, who shall remain in office for one year thereafter, and until others are chosen in their stead; and annually thereafter, on the first Monday of January of each year, a meeting of the stockholders shall be held, and a board of seven directors shall be chosen for the ensuing year: *Provided*, That if any vacancy shall be created in any office, by reason of resignation, death or otherwise, the board of directors shall have power to fill such vacancy for the remainder of the term: *Provided also*, That the president of said company shall be chosen from the seven directors thereof, and a treasurer and secretary shall always be chosen by the said board of directors, according to the provisions of the fifth section of this act.

Special meetings. SEC. 7. The president of this company shall have power to call a meeting of the stockholders, at any time, by giving fifteen days notice of the time and place of such meeting, in any two newspapers published in this Territory; and any four of the board of directors, or a majority in value of the stockholders, shall have the like power to call such meeting of the stockholders, in like manner: *Provided*, That the duties and powers of the president not in this act specifically set forth, shall be specified and prescribed in the by-laws adopted by the board of directors, according to the provisions of the fifth section of this act.

Directors. SEC. 8. The board of directors shall meet at such times and places as they shall regulate by their by-laws. They shall fix the compensation of all officers of the company, and define their duties, and shall, by their by-laws, regulate the government of all meetings of their own board, and of the stockholders, and, generally, shall have power to do all acts for the benefit and purposes of the said company.

Secretary. SEC. 9. The secretary shall attend all meetings of the board of directors and of the stockholders, and shall keep a just and true record of all the proceedings at such meetings, and as treasurer and secretary, shall perform such duties as the board of directors shall by their by-laws prescribe.

Each share entitled to one vote. SEC. 10. Every share shall be entitled to one vote, and at any meeting for the choice of directors, the seven stockholders having the highest number of votes cast, shall be elected directors; and at every meeting of the board of directors for the choice of president, the director having the highest number of votes, shall be elected president: *Provided*, That at any meeting of the stockholders, a

majority in value shall constitute a quorum, with power to transact all business, and at any meeting of the board of directors, any four of the board of directors shall constitute a quorum, with power to transact business.

Sec. 11. The said company shall be, and are hereby authorized and empowered, to construct, maintain and keep a bridge across the Mississippi river, of such materials as the stockholders shall deem expedient, to be erected across said river, near the falls of St. Anthony, not lower than the south end of an island, known as "Spirit Island," and not higher above the falls, than the upper end of "Nicollet Island."

Powers of company.

Sec. 12. No other bridge shall be established within one mile of that erected by the "Mississippi Bridge Company," during the existence of this charter.

Sec. 13. The said company shall, after the period of fifteen years, sell to the county or counties, town or towns, in which said bridge may be located, by their paying to said "Mississippi Bridge Company," such compensation as the legislature shall express by law, to be just and equitable.

Company to sell.

Sec. 14. All the privileges granted by this act shall be forfeited unless the said bridge is commenced in two years, and completed in five years after the passage of this act: *And provided*, That nothing herein contained, shall be so construed, as to give said bridge company any color of right to any portion of the Sioux lands, or the "Military Reserve of Fort Snelling."

Proviso.

Sec. 15. The rates charged for crossing the said bridge, shall not exceed the following rates for the first seven years. For each foot passenger, ten cents; for each horse, mare or mule, with or without rider, fifteen cents; for each two horse, two mule, or two ox team, loaded or unloaded, with driver, twenty-five cents; for each single horse carriage, twenty-five cents; for each additional cow or ox, ten cents; for each swine or sheep, two cents.

Rates of toll.

Sec. 16. The legislature shall have the right of limiting the rates of toll, after the expiration of ten years.

Sec. 17. This act shall take effect, and be in force, from and after its passage.

Approved—March 4, 1852.

CHAPTER 33.

An Act to incorporate the Benton County Agricultural Society.

March 5, 1852.

SECTION.

1. Corporators; name of corporation; powers of; may have a seal, etc.
2. Objects of society.
3. First meeting, how called; future meetings, time and place of to be designated. Officers, election of; terms of office, etc.

SECTION.

4. Five members shall constitute a quorum to transact business.
5. Legislature may alter, modify or amend this act.
6. Act, when to take effect,

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That David Gilman, David Olmstead, Baldwin Olmstead, William Sturgis, Jeremiah Russell, James Beatty, O. H. Kelly,

- Corporators.** C. W. Hancock, John Depue and Allan Morrison, and their associates, be and are hereby constituted a body corporate, to be known by the name and style of the Benton County Agricultural Society, with the right as such of suing and being sued, and to hold any estate, real or personal, and the same to grant, sell, lease, mortgage, or otherwise dispose of for the benefit of the society, and to receive donations to be applied as the donor may direct; and to devise and keep a common seal, with the right of altering it at pleasure; and to make and enforce such by-laws, as they may choose, and which are not contrary to the constitution and laws of the United States, or of this Territory, and to enjoy all the privileges and franchises incident to a corporation.
- Object of society** SEC. 2. The objects of said society, shall be the collection and dissemination of agricultural knowledge, and the encouragement and advancement of agricultural pursuits.
- Officers elected.** SEC. 3. At the first meeting called and held by any five of the members of this society, the time and place of the first and future annual meetings shall be designated; and at the first annual meeting of the society, under such regulations as they may adopt, there shall be elected one president and two vice presidents, one secretary and one treasurer; said officers to hold their offices respectively until their successors are chosen, which shall be at the next annual meeting.
- Quorum.** SEC. 4. Five members of the society shall, at any meeting, constitute a quorum, to transact any business.
- Legislature may amend or modify.** SEC. 5. The legislature may at any time alter, modify or amend this act.
- SEC. 6. This act shall take effect from and after its passage.
- Approved March 5, 1852.

CHAPTER 34.

March 19, 1851. *An Act to dissolve the marriage contract between Marinas P. Bennet and Sarah A. Bennet.*

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| <p>SECTION.</p> <p>1. Dissolution of marriage contract between Marinas P. Bennet and Sarah A. Bennet.</p> | <p>SECTION.</p> <p>2. Mother to have care and control of the children.</p> |
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- Be it enacted by the Legislative Assembly of the Territory of Minnesota,* That the marriage contract heretofore existing between Marinas P. Bennet and Sarah A. Bennet, be, and the same is hereby dissolved; and the parties to said contract are, by virtue of this act, restored to all the rights and privileges of unmarried persons.
- Mother to have care of children.** SEC. 2. The control, care and education of the children of said Sarah A. Bennet, shall be, and the same is hereby given to their mother, the said Sarah A. Bennet, until they arrive at full lawful age.
- Approved March 19, 1851.

CHAPTER 35.

An Act granting to Daniel F. Brawley the right to establish and maintain a ferry across the Mississippi River at the upper landing of the town of St. Paul.

Feb. 27, 1852.

SECTION.

1. Grant to Brawley of exclusive right to ferry for ten years within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, condition of; penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages how brought.
6. Remedy for injuries sustained by negligence of owner or ferryman to be recovered by action on bond.
7. Legislature may alter, amend or repeal charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Daniel F. Brawley, his executors, administrators or assigns, shall have the exclusive right and privilege for the period of ten years, of keeping and maintaining a ferry across the Mississippi river, opposite to lot fourteen, block forty-six, in Rice and Irvine's addition to the town of St. Paul, in the county of Ramsey, and Territory of Minnesota, and no other ferry shall be established within one half mile of said ferry, either above, or nearer than the line of Rice and Irvine's addition to St. Paul below, said ferry.

Charter for ten years.

SEC. 2. That said Daniel F. Brawley shall at all times keep a good and safe boat or boats in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours of the night or day, but persons wishing to cross at said ferry after ten o'clock at night may be charged double the fare as hereinafter prescribed.

To keep boats.

SEC. 3. The rate charged for crossing the above ferry shall not exceed the following:

Rates.

For each foot passenger, - - - - -	10 cents.
" each horse, mare or mule, with or without rider, -	15 "
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - -	25 "
" each single horse carriage, - - - - -	25 "
" each additional cow or ox, - - - - -	10 "
" each swine or sheep, - - - - -	2 "

All freight of lumber, merchandise or other articles not in teams, at the rate of ten cents per barrel; fifty cents per M feet of lumber, and three cents per hundred weight of all other articles.

SEC. 4. The said Daniel F. Brawley, shall, within six months after the passage of this act, pay, or cause to be paid, into the treasury of the county of Ramsey, and annually thereafter, such sum, and upon such conditions, as is now required by the second section of an act of the legislative assembly of Minnesota, entitled "An act to authorize the establishment and regulation of ferries," and file or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to said board with

Bond.

two or more good and sufficient sureties, to be approved by said board, in the sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him, in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefit that might have accrued to him from its passage.

Forfeiture.

SEC. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and ready attendance, the said Daniel F. Brawley shall forfeit a sum, not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action, for all damages any person shall sustain by reason of the neglect of said Daniel F. Brawley to fulfil any of the duties imposed upon him by this act.

Remedy.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Brawley, or of the ferryman in his employ, may have remedy by an action upon the bond required by this act.

Legislature may alter or repeal act.

SEC. 7. The legislature may alter, amend or repeal this act at any time.

Approved Feb. 27, 1852.

CHAPTER 36.

March 4, 1852.

An Act to organize Pembina County.

SECTION.

1. County of Pembina detached from Benton and organized.
2. Commissioners appointed, powers and duties of.
3. Commissioners, when and where to meet, and what duties to perform.

SECTION.

4. Election of officers, their powers, duties salaries, etc.
5. Judge of probate, his powers and duties.
6. Judge of probate to be appointed; term of office.
7. Repealing clause.

Detached from Benton.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the county of Pembina is hereby detached from the county of Benton, for judicial purposes, and shall be organized with all the powers of separate county government, conferred upon any other of the organized counties of Minnesota Territory.

Commissioners appointed.

SEC. 2. That his excellency, the governor, shall appoint and commission three suitable persons, being qualified voters of the county of Pembina, to be a board of county commissioners for said county of Pembina, with full power and authority to do and perform all the acts and duties devolving upon the board of county commissioners of any organized county of this Territory, until their successors shall be duly elected and qualified, and that the said board of commissioners shall have power to appoint as their clerk any suitable person whom they may designate, to execute, fulfil and perform the duties devolving by law upon the register of deeds and clerk of the board of commissioners of any organized county, who shall hold said office until his successor is duly elected and qualified by law.

SEC. 3. The said board of commissioners shall meet at the house of Norman W. Kittson, in said county, on the second Monday in April, A. D., 1852, at ten o'clock, in the forenoon, and having so appointed as aforesaid, a clerk of the board, shall proceed to make out a list of the grand jurors, and petit jurors for the next term of the district court in said county, and the said board or a quorum thereof, may also call special courts and do any other acts that may be done by any other board of county commissioners, and make all necessary provisions for holding terms of the district court, and for publishing notices of the annual election, and for the establishment of election precincts, and for the appointment of judges of election, and all election returns in said county, now made returnable to the clerk of the board of county commissioners and register of deeds of Benton county, shall be returnable and returned to the clerk of the board of county commissioners and register of deeds of said county of Pembina, who shall canvass the poll-books and give certificates of election, in like manner, as is required of such officer in other organized counties.

Their duties.

SEC. 4. At the next annual election, the qualified electors of Pembina county shall elect all of the county and precinct officers for said county, that are elected in other organized counties, who shall in all respects, be subject to the same duties, powers, privileges, and pay, as is provided for by law in other organized counties.

Election

SEC. 5. There shall also be elected, as aforesaid, at the next annual election, in and for the said county of Pembina, a judge of probate, in and for the said county, with the same qualifications, and who shall exercise the same powers, conferred, upon the judge of probate of any other organized county of this Territory.

Judge of Probate.

SEC. 6. A court of probate is hereby established in said county, and the governor is hereby authorized to appoint a judge of probate for said court, with the same power which the judge of probate has in the county of Ramsey; the said judge so appointed, to hold his office until a successor is elected, at the next general election of said county of Pembina, and duly qualified according to law.

SEC. 7. Any acts, or parts of acts, contrary to the provisions of the foregoing act, are hereby repealed, and this act shall take effect from and after its passage.

Approved March 4, 1852.

CHAPTER 37.

An Act for the relief of B. W. Lott and P. P. Bishop.

Oct. 20. 1849.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid out of the sum appropriated by congress for defraying the expenses of the legislative assembly of this Territory for the present year: To B. W. Lott, forty-five dollars: to P. P. Bishop, forty-five dollars, for services rendered at Wabasha, as per resolution of this house, September sixth, one thousand eight hundred and forty-nine, in the contested case between Messrs. Wells and White: and that the secretary of the Territory be and he is hereby authorized and required to pay the same.

Sums appropriated, for what.

Approved Oct. 20, 1849.

CHAPTER 38.

March 5, 1853.

*An Act to incorporate the Town of Mendota in the County of Dakota.**Page 19 ch. 6*

SECTION.

1. Town limits defined, etc.
2. Inhabitants, meeting of electors, qualifications; election of officers, etc.
3. Elections, first and subsequent one, how conducted; clerk to give notice of election.
4. Oath of officers.
5. Body corporate created "Town of Mendota."
To have a common seal, first process against corporation served by copy left with Recorder six days before trial.
6. President and Recorder's duty, meetings of council, etc.
7. Vacancies filled, absence of president and recorder from meetings, etc.
8. By-laws, ordinances, etc.

SECTION.

9. Receipts and expenditures published annually.
10. Streets and alleys, width of, improvement of, market house, etc.
11. Taxes for corporation purposes not to exceed five mills on the dollar, etc.
12. Duplicate of taxes, etc.; recorder to make tax deeds, marshal's fees how paid.
13. President, his powers and duties, etc.
14. Marshal, powers and duties, jurisdiction in criminal matters, etc.
15. Jail, use of given for criminals convicted under the by-laws, etc.
16. Books, papers, etc., handed over to successors, etc.
17. When act in force.

Limits of corporation.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That so much land as is contained within the following limits, be, and the same is hereby created a body corporate by the name of the town of Mendota, viz: Beginning at a point on the south side of the Minnesota river where the line of the military reserve strikes said river, thence down said river three-fourths of a mile, thence south five-eighths of a mile, thence westerly to a point five-eighths of a mile south of the point of beginning, thence north to the place of beginning, being the land reserved for a town site by an act of congress entitled "An Act to reduce and define the boundaries of the Military Reserve at the St. Peter's river in the Territory of Minnesota, Approved August 27. 1852."

Election of town officers.

SEC. 2. That for the good order and government of said town, it shall be lawful for the male inhabitants thereof, having the qualifications of electors of members of Legislative Assembly of the Territory of Minnesota, to meet at the place of holding elections in said town on the first Monday of June next, and at the same time, annually thereafter, at such place in said town as the town council may direct, and then and there proceed by ballot, to elect one President, one Recorder and three trustees, being householders of said town, and having the qualifications of electors as aforesaid, who shall hold their offices one year and until their successors shall be elected and qualified, and such president, recorder and trustees being so elected and qualified, shall constitute the town council of said town, any three of whom shall constitute a quorum for the transaction of business pertaining to their duties.

Judges and clerk of election.

SEC. 3. At the first election to be holden under this act, there shall be chosen viva voce, by the electors present, two judges and a clerk of said election, who shall take an oath or affirmation faithfully to discharge the duties required of them by this act, and at all subsequent elections, the trustees or any two of them, shall be judges,

and the recorder, or in his absence, some person to be appointed by the judges, shall be clerk. The polls shall be opened between the hours of ten and eleven o'clock in the forenoon, and close at four in the afternoon of said day, and at the close of the polls the votes shall be counted, and a true statement thereof proclaimed to the voters present by one of the judges, and the clerk shall make a true record thereof, and within five days thereafter, he shall give notice to the persons so elected, of their election; and it shall be the duty of the said town council, at least ten days before each and every election, to give notice of the same by setting up advertisements at three of the most public places in said town.

SEC. 4. Each member of said town council before entering upon the duties of his office, shall take an oath or affirmation, to support the Constitution of the United States, and also an oath of office.

Oath of office.

SEC. 5. The President, Recorder and trustees of said town, shall be, and are hereby created a body corporate and politic, with perpetual succession, to be known and distinguished by the name and style of "The Town of Mendota," and shall be capable in law, by their corporate name aforesaid, to acquire property, real, personal and mixed, for the use of said town, and may sell and convey the same at pleasure. They may have a common seal, which they may break, alter or renew at pleasure; they may sue and be sued, plead and be impleaded, defend and be defended, in all manner of actions in all courts of law or equity; and when any suit shall be commenced against said corporation, the first process shall be served by an attested copy thereof left with the recorder or at his usual place of residence, at least six days previous to the return day of such process.

Power of town council.

SEC. 6. The president, and in his absence, the recorder, shall preside at all meetings of the town council; and the recorder shall attend all meetings of the town council, and make a fair and accurate record of all their proceedings, and of the by-laws, rules and ordinances made or passed by the common council aforesaid, and the same shall at all times be open for inspection of the electors of said town; but in case of the absence, or inability of the recorder, the trustees may appoint one of their own body clerk *pro tempore*.

Who shall preside.

SEC. 7. The town council shall have power to fill all vacancies which may happen in said board, from the householders who are qualified voters of said town, who shall hold their appointments until the next annual election, and until their successors shall be elected and qualified; and in the absence of the president and recorder from any meeting of the town council, the trustees shall have power to appoint any two of their number to perform the duties of president and recorder for the time being.

Vacancies, how filled.

SEC. 8. The said town council shall have power to make, ordain and establish by-laws, ordinances, rules and regulations for the government of said town; and the same to alter, amend or repeal at pleasure; to provide in such by-laws, for the appointment or election of a treasurer, town marshal and all the subordinate officers which they may think necessary for the good government and well being of said town; to prescribe their duties, and determine the period of their appointment, and the fees they shall be entitled to receive for their respective services, when the same is not otherwise provided for by this act, and to require of them to take an oath of office previous to entering upon the duties of their respective

By-laws, ordinances, etc.

offices, and may further require of them, a bond with security, conditioned for the faithful performance of their respective offices. The town council shall also have power to fix to the violation of the by-laws and ordinances of the corporation such reasonable fines and penalties: *Provided*, That such by-laws and ordinances be not inconsistent with the constitution and laws of the United States, or of this Territory. *And provided, also*, That no by-laws or ordinances of said corporation, shall take effect or be in force until the same shall have been posted up at least ten days in one of the most public places within said town, and the certificate of the recorder entered upon the record of said town council, shall be deemed and taken to be sufficient evidence of such publication.

Financial affairs.

SEC. 9. The town council shall at the expiration of each and every year, cause to be made out and posted up as aforesaid, the receipts and expenditures of the preceding year.

Town improvement.

SEC. 10. The town council shall have power to regulate and improve the streets and alleys, and determine the width of sidewalks in said town, to regulate the public grounds, to erect a market house and regulate the markets, to remove all nuisances and obstructions from the streets and commons of said town, and do all things which similar corporations have power to do, in order to provide for and secure health, cleanliness and good order in said town.

May assess taxes.

SEC. 11. For the purpose of more effectually enabling the said town council to carry into effect the provisions of this act, they are hereby authorized and empowered to assess a tax for corporation purposes, within the limits of said corporation, made taxable by the laws of this Territory, so that said tax shall not exceed in any year, five mills on the dollar of valuation, as the same may be found on the books of the county commissioners of the county of Dakota, at the time of assessing said tax. The town council shall also have power, if authorized to do so by a majority of all the electors in said town, at any meeting called for that purpose, to levy an additional tax as above specified, sufficient to organize and establish a fire company, and purchase an engine, hose and other necessary apparatus, for the extinguishment of fires in said town; public notice of which meeting and the object thereof, shall be given by posting up a written or printed notice thereof, in at least three of the most public places in said town, ten days before the time of such meeting.

Duty of Collector.

SEC. 12. When any tax is levied, it shall be the duty of the recorder to make out a duplicate of the taxes, charging each individual owning property, in said corporation with the amount assessed on each item of property, as found on the books of the county commissioners of said county, which duplicate shall be certified by the president and recorder, and one copy thereof shall be placed in the hands of the marshal, or such other person as shall be appointed collector, whose duty it shall be to collect said tax, in the same manner and under the same regulations as other county taxes are collected; and the said marshal, or such other person as may be appointed collector, shall immediately after collecting said tax, pay the same over to the treasurer of said corporation, and take his receipt therefor; and the said marshal or other collector, shall have the same power to sell both real and personal property for the non-payment of the corporation taxes, as is given to the county collector; and when necessary the recorder shall have power to make deeds

in the same manner that other sheriffs do, and the marshal or other collector, shall receive for his fees, such sum as the town council may direct, not exceeding six per centum on all moneys so by him collected, to be paid by the treasurer on the order of the recorder.

Sec. 13. The president of said town shall be a conservator of the peace within the limits of said corporation, and shall have and exercise all the ordinary powers of justice of the peace, within the limits of the said corporation, in all matters civil or criminal, arising under the laws of this Territory, he shall give bond and security as required of justices of the peace, except that the said bond shall be taken in the name of the town of Mendota; and appeals may be taken from his judgments in all civil cases and in all penal cases arising under the laws and ordinances of said town to the district court of the county of Dakota, in the same manner and within the same time as appeals are, or may be taken and perfected in ordinary cases before justices of the peace. Said president shall keep a docket, and a fair and true record of his proceedings, judgments and executions in all cases which may come before him, and shall be entitled to the same fees as are allowed to justices of the peace for similar services.

Powers of president.

Sec. 14. The marshal shall be principal ministerial officer of said town, and shall have the same powers therein, as constables have by law in their respective counties, and his jurisdiction in criminal cases shall be co-extensive with the county; he shall execute all processes issued by the president, and receive the same fees that constables are allowed in similar cases for like services.

Marshal.

Sec. 15. Said corporation shall be allowed the use of the jail of the county for the imprisonment of such persons as may be liable to imprisonment under the by-laws and ordinances of said corporation, and such persons shall be under the charge of the sheriff of said county as in other cases.

Jail.

Sec. 16. That the president, recorder, trustees, or other officers of said corporation, shall, on demand, deliver to their successors in office, all such books and other property, as appertain in any wise to said corporation.

Officers to deliver property.

Sec. 17. This act to take effect from and after its passage.

Approved March 5, 1853.

CHAPTER 39.

An Act to dissolve the marriage contract between Marcelle Couturier and his wife Margaret Couturier.

March 25, 1851.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between Marcelle Couturier and his wife, Margaret Couturier be, and the same is hereby dissolved; and that the said parties are hereby restored to all the rights and privileges of unmarried persons.

Marriage contract dissolved.

Approved March. 25, 1851.

CHAPTER 40.

March 4, 1852.

An Act granting to Charles T. Janson the right to establish and maintain a Ferry across the Mississippi River, at or near a point in Minnesota opposite Prairie La Crosse, Wis.

SECTION.

1. Grant to Janson of exclusive right to ferry for six years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, when and how.

SECTION.

5. Failure to comply with conditions of. Penalty for, how recovered
6. Suits on the bond may be instituted for injury to any person by neglect of said Janson, etc.
7. Legislature may amend, alter, modify or repeal.

Grants ferry right
six years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Charles T. Janson, his heirs, executors, administrators, or assigns, shall have the right and privilege for the period of six years, of keeping and maintaining a ferry across the Mississippi river in the county of Wabasha and Territory of Minnesota, at a convenient point to be selected by said Janson, opposite Prairie La Crosse, in Wisconsin, and within four miles thereof; and no other ferry shall be established within one mile of said ferry, either above or below the same.

Conditions of the
grant.

Sec. 2. Said Charles T. Janson, shall at all times keep good boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both at night or day; but persons crossing at said ferry after nine o'clock at night, may be charged double the fare as hereinafter prescribed.

Ferry rates.

Sec. 3. The rates charged for crossing at said ferry, shall not exceed the following:

For each foot passenger,	- - - - -	15 cents.
" each horse, mare, or mule, with or without rider,	- - - - -	50 "
" each ox or cow,	- - - - -	50 "
" each two horse or two ox or two mule team,	- - - - -	
loaded or unloaded, with driver,	- - - - -	1 00 "
" each single horse carriage,	- - - - -	75 "
" each additional horse, mule, ox or cow,	- - - - -	25 "
" each swine or sheep,	- - - - -	4 "

All freights of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 5 cents per cwt. of all other articles.

Bond to be given
and filed.

Sec. 4. The said Charles T. Janson, shall within six months after the passage of this act, file, or cause to be filed with the secretary of the Territory, a bond to the said secretary for the benefit of the county of Wabasha, with two or more sufficient sureties, (to be approved by said secretary,) in the penal sum of one thousand dollars, conditioned that he will fulfill all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from the passage of this act.

Sec. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said Charles T.

Janson, shall forfeit a sum not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action for all damages any person may sustain by reason of the neglect of said Janson to fulfill any of the duties imposed upon him by this act.

Liab. for neglect.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Janson or of the ferryman in his employ, may have a remedy by action upon the bond required in this act.

Remedy.

SEC. 7. The legislature may alter, amend, or repeal this act at any time.

Repeal.

Approved March, 4, 1852.

CHAPTER 41.

An Act to incorporate John G. Potts Lodge, No. 3, of the Independent Order of Odd Fellows, of the Town of St. Anthony Falls.

Feb. 27, 1852.

SECTION.

1. Corporate name and powers.
2. Powers and privileges; may have a seal.

SECTION.

3. Act to have immediate effect.

*Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Edward Patch, G. B. Dutton, Z. M. Brown, E. B. Randall and Robert Cummings, as Trustees, and their regular successors of John G. Potts Lodge, Number Three, of the Independent Order of Odd Fellows, of the town of St. Anthony Falls, in the County of Ramsey, and Territory of Minnesota, be, and they are hereby created a body politic and corporate, by the name and style of John G. Potts Lodge, Number Three, of the Independent Order of Odd Fellows, of the Town of St. Anthony Falls, Ramsey County, Minnesota Territory; and by that name are hereby invested with full power and authority, to purchase, acquire, hold, possess, use, occupy and enjoy, real and personal estate, to the amount of ten thousand dollars, and to sell and convey, or otherwise dispose of the same, in such manner as may be prescribed by the constitution, by-laws, rules and regulations of said Lodge: *Provided*, That such constitution, by-laws, rules and regulations, be not contrary to the organic act of this Territory, and the constitution and laws of the United States.*

Corporate name and powers.

SEC. 2. The said corporation, by its name aforesaid, shall be competent to contract and be contracted with, to sue and be sued, plead and be impleaded, defend and be defended, in all courts and places where judicial proceedings are, can, or may be had or allowed, to have, keep, and use a common seal, and alter the same at the pleasure of the Lodge.

May have seal.

SEC. 3. This act shall take effect from and after its passage.

Act to take effect, when.

Approved Feb. 27, 1852.

CHAPTER 42.

March 4, 1852.

An Act to incorporate the Rum River Boom Company.

SECTION.

1. Corporate name and powers; how long to continue.
2. Capital stock, amount of; stockholders individually liable.
3. Books to be opened for subscription to stock, when, notice of how given.
4. Amount necessary to organize the company; how organized.
5. Board of directors, their duties; secretary and treasurer, how chosen, bond of.
6. Officers, their term of office, how chosen; vacancies, how filled.
7. President, his powers and duties.

SECTION.

8. Board of directors, their duties.
9. The secretary, his duties.
10. Manner of holding elections; each share entitled to one vote; majority in value to constitute a quorum.
11. Boom to be constructed, when, where, and how; logs when to be delivered.
12. Sorting and rafting of logs.
13. Compensation, amount of.
14. Boom and scale charges, when due.
15. When boom shall be constructed.
16. Legislature may alter or amend.

Corporate name and powers.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Simon Bean, John Barney, S. W. Farnham, Joseph Libby, and their associates, successors and assigns be, and they hereby are constituted a body corporate and politic, for the purpose hereinafter mentioned, by the name of the "Rum River Boom Company," for the term of eight years, and by that name they and their successors shall be, and hereby are, made capable in law, to contract and be contracted with, sue and be sued, plead and impleaded, prosecute and defend, answer and be answered, in any court of record or elsewhere, and to purchase and hold any estate, real, personal or mixed, and the same to grant, sell, lease, mortgage, or otherwise dispose of for the benefit of said company, to devise and keep a common seal, to make and enforce any by-laws not contrary to the constitution and laws of the United States, or of this Territory, and to enjoy all the privileges, franchises and immunities incident to a corporation.

Capital stock.

SEC. 2. The capital stock of said company shall be two thousand dollars, in shares of one hundred dollars each; and the board of directors shall have power at any time, whenever a majority in value of the stockholders shall deem the same advisable, to increase the said capital stock to an amount not exceeding in the whole, four thousand dollars, and the stockholders shall be individually liable for the debts of said company, in proportion to the amount of stock owned by each.

Books when to be opened.

SEC. 3. Any three of the individuals named in the first section of this act, shall be authorized to cause books to be opened at St. Anthony, in the county of Ramsey, for the purpose of receiving subscriptions to the capital stock of said company, first giving ten days notice in any two newspapers published in this Territory, of the time and place of opening such books.

Organization of company.

SEC. 4. Whenever five hundred dollars of capital stock shall have been subscribed, and five dollars upon each share so subscribed for, shall have been actually paid in, any number of the subscribers who shall represent a majority of the then subscription to said stock, shall be authorized to call a meeting of the several subscribers thereunto, by giving five days notice of the time and place of such

meeting, in any two newspapers published in this Territory, and those of the subscribers who may be present at such meeting so called, shall have the power and be authorized to elect a board of three directors from the stockholders of said company.

SEC. 5. The board of directors thus chosen, shall proceed to elect one of their number as president of said company, and shall choose one person to act both as treasurer and secretary of said company, and who shall give bonds to be approved by the said president and directors, to the said president and directors, in the penal sum of one thousand dollars, conditioned for the faithful and correct discharge of his duty as treasurer and secretary, and at such first meeting, said president and directors shall prepare and adopt a code of by-laws for the regulation and government of the affairs of said company, which may be altered or amended at any subsequent meeting of said board of directors.

Board of directors, their duties.

SEC. 6. The said president, directors and treasurer and secretary, chosen according to the provisions of the two preceding sections, shall remain in their several offices until the Wednesday immediately preceding the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty-two, upon which said Wednesday, a meeting of the said stockholders shall be held, and a board of three directors chosen, who shall remain in office for one year thereafter; and annually thereafter on the Wednesday next preceeding the twenty-fifth day of December of each year, a meeting of the stockholders shall be held, and a board of three directors shall be chosen for the ensuing year: *Provided*, That if any vacancy shall be created in any office, by reason of resignation, death or otherwise, the board of directors shall have power to fill such vacancy for the remainder of the term: *Provided, also*, That the president of said company shall be chosen from the three directors thereof, and a treasurer and secretary shall always be chosen by said board of directors according to the provisions of the fifth section of this act.

Officers, their term of office.

SEC. 7. The president of said company shall have power to call a meeting of the stockholders at any time, by giving ten days notice of the time and place of said meeting in any two newspapers published in this Territory, and any two of the board of directors or a majority in value of the stockholders, shall have the like power to call such meetings of the stockholders, in like manner: *Provided*, That the duties and powers of the president, not in this act specifically set forth, shall be specified and prescribed in the by-laws adopted by the board of directors according to the provisions of the fifth section of this act.

President, his powers and duties.

SEC. 8. The board of directors shall meet at such times and places, as they shall regulate by their by-laws. They shall fix the compensation of all officers of the company and define their duties; and shall by their by-laws, regulate the government of all meetings of their own board, of the stockholders, and generally shall have power to do all acts for the benefit and purposes of the said company.

Board of directors, their duties.

SEC. 9. The secretary shall attend all meetings of the board of directors and of the stockholders, and shall keep a just and true record of all the proceedings at such meetings, and as treasurer and secretary, shall perform such duties as the board of directors shall by their by-laws prescribe.

The secretary, his duties.

SEC. 10. Every share shall be entitled to one vote, and at any

Each share entitled to one vote.

meeting for the choice of directors, the three stockholders having the highest number of votes cast, shall be elected directors; and at every meeting of the board of directors for the choice of president, the director having the highest number of votes cast shall be elected president: *Provided*, That at any meeting of the stockholders, a majority in value, shall constitute a quorum with power to transact all business, and at any meeting of the board of directors, any two of said board shall constitute a quorum with power to transact business.

Boom to be constructed.

SEC. 11. The said company shall be, and hereby are authorized and empowered, to construct, maintain and keep a boom upon Rum River, at such point on said river, between its mouth and six miles above, as they may select; in which boom, all logs and hewn timber coming down said river shall be gathered by the said company and retained in said boom for a period of not longer than twenty days, unless otherwise agreed by and between the owner or owners of such logs or timber and the said boom company; and the said boom company shall be held accountable for all neglect to keep said boom in good order and repair, and pay all damages which may accrue on failure of the same.

Duties of company.

SEC. 12. The said company shall turn out of said boom said logs and timber, in the same order in which they came in, the number of logs to be turned out each day to be determined by the request of a majority in value, of the log owners, which request shall be in writing, and shall be made one day previous to the day of turning out said logs, and after all said logs and timber shall have been turned out of said boom as above provided, the said company shall drive the same into the boom of the St. Anthony Mill Company: *Provided*, That nothing contained in this section, shall be so construed as to compel the said company to drive any logs or timber as aforesaid, in case the said company shall have followed the request above mentioned, and shall be prevented from driving the said logs and timber by want of sufficient water for driving the same.

Tolls.

SEC. 13. The said company shall demand and receive, and are hereby authorized by law, to collect the sum of six cents per thousand feet, for every thousand feet of logs or timber, gathered, turned out, and delivered as aforesaid.

SEC. 14. The boom charges aforesaid, shall be deemed due, and shall be paid to the said company, when the said logs or timber are turned out and driven as aforesaid.

SEC. 15. The said company shall construct the said boom and have the same in readiness for use, on or before the first day of May, 1853.

SEC. 16. The legislature may at any time, alter or amend this act.

SEC. 17. This act shall take effect from and after its passage.

Approved—March 4, 1852.

CHAPTER 43.

*An Act to incorporate the St. Anthony Boom Company.*March 28, 1861.

SECTION.

1. Corporate name and powers; how long to continue.
2. Capital stock, amount of; stockholders individually liable.
3. Books to be opened for subscription to stock, when.
4. Amount necessary to organizing the company; how organized.
5. Board of directors, their duties; secretary and treasurer, how chosen, bond of.
6. Officers; their term of office, how chosen; vacancies, how filled.
7. President, his powers and duties.
8. Board of directors, their duties.

SECTION.

9. The secretary, his duties.
10. Manner of holding elections; each share entitled to one vote; majority of value to constitute a quorum.
11. Boom to be constructed, when, where, and how; logs, when to be delivered.
12. Boom, where to be built.
13. Compensation, amount of.
14. Boom and scale charges, when due.
15. Passage of vessels and rafts not to be obstructed by boom.
16. Legislature may alter or amend, after five years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Washington Gitchell, Franklin Steele, J. G. Lennon, S. W. Farnham, Ard Godfrey, and Joseph Libbey, and their associates, successors and assigns, be, and they are hereby constituted a body corporate, and politic, for the purposes hereinafter mentioned, by the name of the "Saint Anthony Boom Company," for the period of fifteen years, and by that name they and their successors shall be, and they are hereby made capable in law, to contract and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer and be answered, in any court of record, or elsewhere, and to purchase and hold any estate, real, personal or mixed, and the same to grant, sell, lease, mortgage or otherwise dispose of, for the benefit of said company; to devise and keep a seal, to make and enforce any by-laws not contrary to the constitution and laws of the United States, or of this Territory; and to enjoy all the privileges, franchises and immunities incident to a corporation. *Provided,* That nothing herein contained, shall prevent the establishment of ferries at any time hereafter at any point within the limits of this charter when it may become necessary.

Corporate name
and powers.

SEC. 2. The capital stock of said company shall be fifteen thousand dollars, in shares of one hundred dollars each; and the board of directors shall have power at any time, whenever a majority in value of the stockholders, shall deem the same advisable, to increase the number of shares to an amount not exceeding in the whole, twenty-five thousand dollars. And the stockholders shall be individually liable for the debts of said company.

Capital stock.

SEC. 3. The individuals named in the first section of this act, or any three of them, shall cause books to be opened at St. Anthony Falls in the county of Ramsey, for the purpose of receiving subscriptions to the capital stock of said company on the first Monday of April, 1861.

Books when to
be opened.

Amount necessary to organizing company.

SEC. 4. Whenever five thousand dollars of the capital stock shall have been subscribed, and five dollars upon each share so subscribed for, shall have been actually paid in, any number of the subscribers who shall represent a majority of the then subscription to said stock, shall be authorized to call a meeting of the several subscribers thereunto, by giving ten days notice of the time and place of such meeting in any two newspapers published in this Territory, and those of the subscribers who may be present at such meeting, so called, shall have the power and be authorized to elect a board of five directors from the stockholders of said company.

Board of directors, their duty.

SEC. 5. The board of directors thus chosen, shall proceed to elect one of their number as president of the said company, and shall choose one person secretary, who shall act both as secretary and treasurer of said company, and who shall give bonds to be approved by the president and directors, to the said president and directors, in the penal sum of five thousand dollars, conditioned for the faithful and correct discharge of his duty as treasurer and secretary, and at such first meeting, said president and directors shall prepare and adopt a code of by-laws for the regulation and government of the affairs of said company, which may be altered or amended at any subsequent meeting of said board of directors.

Officers, term of office.

SEC. 6. The said president, directors and secretary chosen according to the provisions of the two preceding sections, shall remain in their several offices until the Wednesday immediately preceding the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty-one, upon which said Wednesday, a meeting of said stockholders shall be held, and a board of five directors chosen, who shall remain in office for one year thereafter; and annually thereafter, on the Wednesday next preceding the twenty-fifth day of December, of each year, a meeting of the stockholders shall be held, and a board of five directors shall be chosen for the ensuing year: *Provided*, That if any vacancy shall be created in any office, by reason of resignation, death or otherwise, the board of directors shall have power to fill such vacancy for the remainder of the term: *Provided, also*, That the president of said company, shall be chosen from the five directors thereof, and a treasurer and secretary shall always be chosen by the said board of directors, according to the provisions of the fifth section of this act.

President, his powers and duties.

SEC. 7. The president of said company shall have power to call a meeting of the stockholders at any time, by giving twenty days notice of the time and place of said meeting, in any two newspapers published in this Territory; and any three of the board of directors, or a majority in value of the stockholders, shall have the like power to call such meeting of the stockholders in like manner: *Provided*, That the duties and powers of the president, not in this act specifically set forth, shall be specified, and prescribed in the by-laws adopted by the board of directors, according to the provisions of the fifth section of this act.

Board of directors, duty of.

SEC. 8. The board of directors shall meet at such times and places as they shall regulate by their by-laws; they shall fix the compensation of all officers of the company and define their duties; shall, by their by-laws regulate the government of all meetings of their own board, and of the stockholders, and generally, shall have power to do all acts for the benefit and purposes of the said company, not inconsistent with the provisions of this act.

SEC. 9. The secretary shall attend all meetings of the board of directors and stockholders, and shall keep a just and true record of all the proceedings at such meetings, and as treasurer and secretary, shall perform such duties as the board of directors shall, by their by-laws, prescribe. Secretary, duties of

SEC. 10. Every share shall be entitled to one vote, which may be cast by proxy; and at any meeting for the choice of directors, the five stockholders having the highest number of votes, shall be elected directors, and at every meeting of the board of directors for choice of president, the director having the highest number of votes shall be elected president: *Provided*, That at any meeting of the stockholders, a majority in value shall constitute a quorum, with power to transact business, and at any meeting of the board of directors, any three of the board of directors shall constitute a quorum, with power to transact business. Election of officers.

SEC. 11. The said company shall be, and are hereby authorized and empowered to construct, maintain and keep a boom or booms, upon the Mississippi river, at such points between the Falls of St. Anthony, so called, and the mouth of Raccoon Creek, so called, as they may select: *Provided*, That nothing herein contained shall be so construed, as to authorize said company to erect any pier or piers, between the head of the small, or Bautineau Island, and the head of the next, or large island, or in anywise to obstruct the free passage of boats or other water crafts, through the channel between said islands, or the pond east of said islands, above a line running from the house now occupied by R. P. Russell, diagonally to the head of said large island; in which boom or booms, all logs and hewn timber coming down the said river, shall (if required so to do by the owners,) be gathered by the said company; and such logs or timber, as shall be agreed upon by and between the owner or owners thereof and the said company, shall be retained in said boom or booms, or turned into the pond above the mills, east side of the Mississippi river, as may be so agreed by the parties aforesaid; and the said company shall be held accountable for all neglect to keep said boom in good order and repair; and shall construct good and sufficient shore booms from the head of the island above the dam, to throw the logs drifting down said river, at least four hundred feet, out into the current of the river from the west side of said island; and shall be accountable for all damages which may accrue by a failure so to do: *Provided*, That the said company, shall not retain any logs or timber, unless at the request of the owner or owners thereof, for a longer period than five days; and shall not be compelled to retain any logs or hewn timber in said boom, for a longer period than twenty days. Boom to be built, how.

SEC. 12. The said company shall, within twelve months from the passage of this act, construct one or more good and sufficient booms at or above the mouth of Rice Creek, for the purpose of stopping, separating and retaining logs; and the said company shall be responsible for all logs or hewn timber coming down the said river, the owner or owners of which shall have requested any member of said company to have the same stopped in their boom, and shall pay to such owner or owners, all damages that may be sustained in consequence of not stopping the said logs; and the said company shall sort out the said logs and timber according to their several marks, and if required shall raft the same out of said boom, sufficiently secure to run to the mills at the Falls of St. Anthony, so Sorting and rafting logs.

called; and shall deliver the same to the several owners thereof, at or near the foot of said boom, or may turn into the pond east of the Mississippi and near said falls, all such logs or hewn timber as the owner or owners thereof shall request to be turned in: *Provided:* That nothing herein contained, shall be so construed as to require said company to turn into said pond any logs or hewn timber after said pond shall be sufficiently filled: *And provided,* That said company shall not be responsible for any logs turned into said boom or booms, after retaining the same for a period of thirty days; but for all logs or hewn timber turned into said pond, the said company shall not be entitled to any pay for rafting or running the same; and all logs delivered out of said pond, shall be delivered at the head of the large island above the said falls.

Compensation.

SEC. 13. The said company shall demand and receive, and are hereby authorized by law, to collect the sum of forty cents per thousand feet, for every thousand feet of logs or timber, sorted out and rafted ready for delivery as aforesaid, at the foot of said boom, exclusive of the charges for scalage of such logs or timber; and for all logs or timber turned into the said pond as aforesaid, the company are authorized to collect the sum of twenty-five cents for every thousand feet of logs or lumber so turned in, exclusive of the charges for scaleage; but no charge shall be made by said company for sorting and turning out logs or hewn timber, other than that which the owner or owners thereof shall have requested said company to retain, raft, or turn into the said pond, (as the case may be,) as above provided; and rafts of sawed lumber, or timber of any kind, which may by accident or otherwise, float into said boom, shall only be charged with such reasonable compensation as will indemnify the owners of said boom for the safe delivery thereof.

Boom and scale charges.

SEC. 14. The charges for scalage and the boom charges aforesaid shall be deemed due, and shall be paid to the said company when the said logs are scaled and ready for delivery as aforesaid, and the said company shall be responsible to the surveyor for the scaling of such logs or timber.

Passage of rafts and vessels.

SEC. 15. The said boom company shall always give passage, by or through their said boom, at all times, to any raft running down the said Mississippi river, and to all steamboats, keel boats, flat boats, or other water crafts running either up or down the said river, without any let, hindrance or delay, by reason or on account of said boom; and nothing herein contained, shall be so construed as to prevent any person from constructing side booms and fastening rafts at any place within the limits of this charter, excepting the grounds occupied by the booms of said company, and one mile of shore on the west bank of the river, below the foot of each boom which said company shall have for the purpose of rafting and fastening rafts.

Legislature may alter or amend.

SEC. 16. The legislature may at any time alter, amend or repeal this act.

Approved March 28, 1851.

CHAPTER 44. *ch 23**An Act to incorporate Hennepin Lodge No. 4, I. O. O. F.*

Feb. 12, 1853.

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SECTION.

1. Corporate name and powers.
2. Powers and privileges; may have a seal.

SECTION.

3. Act to have immediate effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Wm. L. Ames, W. M. Stees and Wm. E. Hunt, as trustees, and their regular successors in office, of Hennepin Lodge No. 4, of the Independent Order of Odd Fellows of the city of St. Paul, in the county of Ramsey, and Territory of Minnesota, be and they are hereby created a body politic and corporate, by the name and style of Hennepin Lodge No. 4, of the Independent Order of Odd Fellows, of the City of St. Paul, Ramsey county, Minnesota Territory; and by that name are hereby invested with full power and authority to purchase, acquire, hold, possess, use, occupy and enjoy real and personal estate to the amount of ten thousand dollars, and to sell and convey, or otherwise dispose of the same, in such manner as may be prescribed by the constitution, by-laws, rules and regulations of said lodge: *Provided,* That such constitution, by-laws, rules and regulations, be not contrary to the organic act of this Territory, and the constitution and laws of the United States.

Corporate name and powers.

Sec. 2. The said corporation, by its name aforesaid, shall be competent to contract and be contracted with, to sue and be sued, plead and be impleaded, defend and be defended, in all courts and places in this Territory, keep, have and use a common seal, and alter the same at the pleasure of the lodge.

May have seal.

Sec. 3. This act shall take effect from and after its passage, and may at any time be amended or repealed by the legislative assembly.

Legislature may repeal, etc.

Approved Feb. 12, 1853.

CHAPTER 45.

Nov. 1, 1849.

An Act to incorporate the St. Anthony Library Association.

SECTION.

1. Corporation made a body corporate.
2. Power to hold real and personal estate.

SECTION.

3. By-laws, to adopt and have a seal.

Corporate name and powers.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That J. J. Carlton, R. P. Russell, Ira Burrows, Eli F.

Lewis, Sumner Farnham, and their associates be, and they are hereby constituted a body corporate and politic, by the name of the "St. Anthony Library Association," for the purpose of establishing and preserving a library at St. Anthony Falls, and by that name shall enjoy all the privileges and franchises, and be subject to all the liabilities incident to a corporation.

May hold real estate.

SEC. 2. Said corporation may buy, sell and hold property, both real and personal, for the use and purposes of said library, to an amount not exceeding ten thousand dollars, and to receive donations, to be applied as the donor may direct.

May make by-laws, etc.

SEC. 3. Said corporation shall have power to make and enforce such by-laws as may be necessary to carry into effect the object contemplated by this act, and to adopt a common seal.

Approved Nov. 1, 1849.

CHAPTER 46.

March 4, 1852.

An Act granting to W. F. Corbitt and J. W. Bond, the right to establish and maintain a ferry across the Mississippi River, near the foot of Sauk Rapids, Benton County, Minnesota Territory.

SECTION.

1. Grant to Corbitt & Bond of exclusive right to ferry for six years.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, condition of; penalty for violation of.

SECTION:

5. Liability for neglect; suits for damages how brought.
6. Remedy for injuries sustained by negligence of owners or ferryman to be recovered by action on bond.
7. Legislature may alter, amend or repeal charter.

Charter for six years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That William F. Corbitt and John W. Bond, their heirs, executors, administrators or assigns, shall have the right and privilege for the period of six years, of keeping and maintaining a ferry across the Mississippi river, in the county of Benton and Territory of Minnesota, at or near the foot of Sauk Rapids; and no other ferry shall be established within one mile of said ferry, either above, or below the same.

To keep boats.

SEC. 2. Said William F. Corbitt and John W. Bond shall at all times keep good boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours both at night or day; but persons crossing at said ferry after nine o'clock at night may be charged double the fare as hereinafter prescribed.

Sec. 3. The rate charged for crossing at said ferry shall not exceed the following: Rates.

For each foot passenger, - - - - -	10 cents.
" each horse, mare or mule, with or without rider, -	25 "
" each ox or cow, - - - - -	25 "
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - - -	50 "
" each single horse carriage, - - - - -	35 "
" each additional horse, mule, ox or cow, - - - - -	15 "
" each swine or sheep, - - - - -	3 "

All freight of lumber, merchandise or other articles not in teams, at the rate of ten cents per barrel; fifty cents per M feet of lumber, and five cents per hundred pounds for all other articles.

Sec. 4. The said William F. Corbett and John W. Bond shall, within twelve months after the passage of this act, file or cause to be filed with the county commissioners of Benton county, a bond for the benefit of said county of Benton, with two or more sufficient sureties, to be approved by said county commissioners in the penal sum of five hundred dollars, conditioned that they will fulfil all the duties that are imposed upon them, in the foregoing sections, and in case of their failure so to do, they shall forfeit all the benefits that might have accrued to them from the passage of this act. Bond.

Sec. 5. For every neglect in keeping good and sufficient boats, on failure to give prompt and due attendance, the said William F. Corbett and John W. Bond shall forfeit a sum, not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in an action, on the case for all damages any person may sustain by reason of the neglect of said William F. Corbett and John W. Bond to fulfil any of the duties imposed upon them by this act. Forfeiture.

Sec. 6. Any person who shall sustain any injury by the negligence or default of the said William F. Corbett and John W. Bond, or of the ferryman in their employ, may have a remedy by an action upon the bond required in this act. Remedy.

Sec. 7. The legislature may alter, amend or repeal this act at any time. Legislature may alter or repeal act.

Approved March. 4, 1852.

CHAPTER 47.

An Act to dissolve the marriage contract between George Wells and Catharine Wells, his wife.

March 28, 1851.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between George Wells and his wife Catharine Wells, be and the same is hereby dissolved, and the said parties are hereby restored to all the rights and privileges of unmarried persons.

Dissolution of marriage contract.

Approved—March 28, 1851.

CHAPTER 48.

March 6, 1852.

An Act to establish the County of Hennepin.

SECTION.

1. Boundaries of county defined; county named,
2. Attached to Ramsey county for judicial purposes.

SECTION.

3. When to elect county officers; election, how held.
4. County, when organized.
5. Act, when to take effect.

Boundaries.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That so much of Dakota county, as lies north of Minnesota river, west of the Mississippi, and east of a line commencing at a place known as the Little Rapids, on said Minnesota river; thence in a direct line, north by west, to the forks of Crow river; thence down said river to its junction with the Mississippi, be and the same is hereby erected into a separate county, which shall be called the county of Hennepin.

Attached to Ramsey county for judicial purposes.

SEC. 2. The said county of Hennepin, is hereby attached to the county of Ramsey, for judicial purposes, until further provided for; but for election purposes, it shall remain as at present, in conjunction with Dakota county, so far as relates to the election of a councillor and two representatives, until the next apportionment of representation: *Provided, however,* That said county is established within the boundaries defined, as an unorganized county until the provisions of the following sections are fulfilled.

When to elect county officers.

SEC. 3. That when the treaty of Mendota, concluded with the Dakota Indians is ratified by the United States Senate, the aforesaid county of Hennepin will be entitled to elect at the next general election, subsequent to such ratification, such county and other officers as the organized counties are entitled to, or as the qualified voters of said county may think proper and expedient to elect for the permanent organization of said county of Hennepin; which shall qualify as directed by the statute, and enter upon the discharge of their duties within ten days after their election. The returns of said first general election to be made in the manner provided for by law, to the register of deeds of Ramsey county, who is hereby authorized to issue certificates of said returns, and perform all the duties prescribed by the statutes, in relation to election returns made from unorganized counties.

County, when organized.

SEC. 4. Upon the ratification of said treaty of Mendota, the said county of Hennepin will be considered to be organized for all the purposes herein specified, and invested with all and singular the rights and privileges and immunities to which all organized counties in this Territory, shall be and are by law entitled to: *Provided,* That the county commissioners so elected as herein provided, are authorized to establish the county seat of said county of Hennepin, temporarily until the same is permanently established by the legislature, or authorized votes of the qualified voters of said county.

Act, when to take effect.

SEC. 5. This act shall take effect from and after its passage.

Approved March 6, 1852.

CHAPTER 49.

An Act to incorporate the Historical Society of Minnesota.

Oct. 20, 1849.

SECTION.

1. Corporation, name, powers, and privileges of.

SECTION.

2. Officers, duties: regular meetings, when and where held.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That C. K. Smith, David Olmsted, H. H. Sibley, Aaron Goodrich, David Cooper, B. B. Meeker, A. M. Mitchell, T. R. Potts, J. C. Ramsey, H. M. Rice, F. Steele, Charles W. Borup, D. B. Loomis, M. S. Wilkinson, L. A. Babcock, Henry Jackson, W. D. Phillips, Wm. H. Forbes, Martin McLeod and their associates, be, and they are hereby constituted a body corporate and politic, by the name and style of the "Minnesota Historical Society;" and by that name, they and their successors shall be, and they are hereby made capable in law, to contract and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer and be answered in any court of record or elsewhere, and to hold any estate, real, personal or mixed, and the same to grant, sell, lease, mortgage or otherwise dispose of for the benefit of said society, and to receive donations to be applied as the donor may direct, and to devise and keep a common seal; and to make and enforce any by-laws not contrary to the constitution and laws of the United States or this Territory; and to enjoy all the privileges and franchises incident to a corporation, and that the property which the society may be allowed to hold shall not exceed five thousand dollars.

Corporate name and powers.

SEC. 2. *Be it further enacted,* That any five members may, at any meeting of said society, constitute a quorum to do business, and shall, within one year from and after the passage of this act, organize, and under such regulations as they may adopt, elect a president, two vice-presidents, a treasurer and a secretary, who shall record the proceedings, do the correspondence, and file all communications he may receive touching the object of the society; which said officers shall hold their offices respectively until their successors are elected, which may take place every three years. The regular meetings of said society shall take place on the second Monday succeeding the annual meeting of the legislative assembly of said Territory at the seat of government, and the object of said society shall be the collection and preservation of a library, mineralogical and geological specimens, Indian curiosities and other matters and things connected with, and calculated to illustrate and perpetuate the history and settlement of said Territory.

Officers elected, duties of, etc.

Approved Oct. 20, 1849.

CHAPTER 50.

March 6, 1852.

An Act to incorporate the Ramsey County Agricultural Society.

SECTION.

1. Corporators; name of corporation; powers of; may have a seal, etc.
2. Objects of society.
3. First meeting, how called; future meetings, time and place of to be designated. Officers, election of; terms of office, etc.

SECTION.

4. Seven members shall constitute a quorum to transact business.
5. Legislature may alter, modify or amend this act.
6. Act, when to take effect,

Corporators.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Alexander Ramsey, John Banfill, W. W. Wales, Eugene Larpenteur, William Buck, T. W. Wilson, B. F. Hoyt, J. W. Selby, Lyman Dayton, H. M. Rice, J. A. Ford, J. M. Goodhue, D. A. Robertson, J. P. Owens and C. W. Borup, and their associates and successors, be and are hereby constituted a body politic and corporate, to all intent and purposes, by the name of the Ramsey County Agricultural Society, and by that name may sue and be sued, plead and be impleaded, answer and be answered unto; may purchase, hold and convey both real and personal, property, to any amount not exceeding ten thousand dollars, and the same to grant, lease, mortgage, sell or otherwise dispose of for the benefit of the society, and to receive donations to be applied as the donor may direct; and to devise and keep a common seal, with the right of altering it at pleasure; and to make and enforce such by-laws, as they may choose, not repugnant to the laws of this Territory, or of the United States, and to enjoy all the privileges and franchises incident to a corporation.

Object of society

SEC. 2. The objects of said society, shall be the collection and dissemination of agricultural knowledge, and the encouragement and advancement of agricultural pursuits.

Officers elected.

SEC. 3. At the first meeting called and held by any five of the members of this society, the time and place of their first annual meeting shall be designated; and at such first annual meeting of the society, under such rules and regulations as they may adopt, there shall be elected one president, two vice-presidents, one secretary, and one treasurer; said officers to hold their offices respectively, until their successors are chosen, which shall be at the next annual meeting.

Quorum.

SEC. 4. Seven members of the society shall, at any meeting, constitute a quorum, to transact any business.

SEC. 5. The legislature may at any time alter, modify or amend this act.

Act to take effect, when.

SEC. 6. This act shall take effect from and after its passage.

Approved March 6, 1852.

CHAPTER 51.

*An Act to incorporate the St. Anthony Boom Company.*March 6, 1852.

SECTION.

1. Corporate name and powers; how long to continue.
2. Capital stock, amount of; stockholders individually liable.
3. Books to be opened for subscription to stock, when, notice of how given.
4. Amount necessary to organize the company; how organized.
5. Board of directors, their duties; secretary and treasurer, how chosen, bond of.
6. Officers, their term of office, how chosen; vacancies, how filled.
7. President, his powers and duties.

SECTION.

8. Board of directors, their duties.
9. The secretary, his duties.
10. Manner of holding elections; each share entitled to one vote; majority in value to constitute a quorum.
11. Boom to be constructed, when, where, and how; logs when to be delivered.
12. Sorting and rafting of logs.
13. Compensation, amount of.
14. Boom and scale charges, when due.
15. Liable for damages.
16. Passage of rafts and vessels.
17. Legislature may alter or amend.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That William Hanson, Joseph Libby, Franklin Steele and And Godfrey and their associates, successors and assigns be, and they are hereby constituted a body, corporate and politic, for the purpose hereinafter mentioned, by the name of the "St. Anthony Boom Company," for the period of ten years, and by that name, they and their successors shall be and they are hereby made capable in law to contract, and be contracted with, sue and be sued, plead and be impleaded, prosecute and defend, answer, and be answered, in any court of record or elsewhere, and to purchase and hold any estate, real, personal or mixed, and the same to grant, sell, lease or mortgage, or otherwise dispose of for the benefit of said company, to devise and to keep a common seal, to make and enforce any by-laws not contrary to the constitution and laws of the United States, or of this Territory, and to enjoy all the privileges, franchises and immunities incident to a corporation.

Corporate name and powers.

SEC. 2. The capital stock of said company shall be fifteen thousand dollars, in shares of one hundred dollars each, and the board of directors shall have power at any time, whenever a majority in value of the stockholders shall deem the same advisable, to increase the number of shares to the amount not exceeding in the whole, twenty-five thousand dollars, and the stockholders shall be individually liable for the debts of said company, in proportion to the amount invested by each stockholder.

Capital stock.

SEC. 3. The individuals named in the first section of this act, or any three of them, shall cause books to be opened at St. Anthony Falls, in the county of Ramsey, for the purpose of receiving subscriptions to the capital stock of said company on the first Monday in April, 1852.

Books when to be opened.

SEC. 4. Whenever five thousand dollars of capital stock shall have been subscribed, and five dollars on each share so subscribed for, shall have been actually paid in, any number of the subscribers who shall represent a majority of the then subscription to said stock, shall be authorized to call a meeting of the several subscribers

Organization of company.

thereto, by giving ten days notice of the time and place of such meeting, in any two newspapers published in this Territory, and those of the subscribers who may be present at such meetings so called, shall have the power and be authorized to elect a board of five directors from the stockholders of said company.

Board of directors, their duties.

Sec. 5. The board of directors thus chosen, shall proceed to select one of their number as president of said company, and shall choose one person secretary, who shall act both as secretary and treasurer of said company, and who shall give bonds to be approved by the president and directors, to the said president and directors, in the penal sum of five thousand dollars, conditioned for the faithful and correct discharge of his duties as treasurer and secretary, and at such first meeting, said president and directors shall prepare and adopt a code of by-laws for the regulation and government of the affairs of said company, which may be altered or amended at any subsequent meeting of said board of directors.

Officers, their term of office.

Sec. 6. The said president, directors and secretary, chosen according to the provisions of the two preceding sections, shall remain in the several offices until the Wednesday immediately preceding the twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty-two, upon which said Wednesday, a meeting of said stockholders shall be had, and a board of five directors chosen, who shall remain in office for one year thereafter, and annually thereafter on the Wednesday next preceding the twenty-fifth day of December of each year, a meeting of the stockholders shall be held, and a board of five directors shall be chosen for the ensuing year: *Provided*, That if any vacancy shall be created in any office, by reason of resignation, death or otherwise, the board of directors shall have power to fill such vacancy for the remainder of the term: *Provided*, also, That the president of said company shall be chosen from the five directors thereof, and a treasurer and secretary shall always be chosen by the said board of directors according to the provisions of the fifth section of this act.

President, his powers and duties.

Sec. 7. The president of said company shall have power to call a meeting of the stockholders at any time, by giving twenty days notice of the time and place of said meeting, in any two newspapers published in this Territory, and any three of the board of directors or a majority in value of the stockholders shall have the like power to call such meetings of the stockholders in like manner: *Provided*, That the duties and powers of the president, not in this act specifically set forth, shall be specified and prescribed in the by-laws adopted by the board of directors according to the provisions of the fifth section of this act.

Board of directors, their duties.

Sec. 8. The board of directors shall meet at such times and places, as they shall regulate by their by-laws. They shall fix the compensation of all officers of the company and define their duties; shall by their by-laws, regulate the government of all meetings of their own board and of the stockholders, and generally, shall have power to do all acts for the benefit and purposes of the said company, not inconsistent with the provisions of this act.

The secretary, his duties.

Sec. 9. The secretary shall attend all meetings of the board of directors and of the stockholders, and shall keep a just and true record of all the proceedings at such meetings, and as treasurer and secretary, shall perform such duties as the board of directors shall by their by-laws prescribe.

Sec. 10. Every share shall be entitled to one vote, which may

be cast by proxy; and at any meeting for the choice of directors, the five stockholders having the highest number of votes, shall be elected directors; and at every meeting of the board of directors for the choice of president, the director having the highest number of votes shall be elected president: *Provided*, At every meeting of the stockholders, a majority in value, shall constitute a quorum, with power to transact business, and at any meeting of the board of directors, any three of the board of directors shall constitute a quorum with power to transact business.

Each share entitled to one vote.

SEC. 11. The said company shall be, and are hereby authorized and empowered, to construct, maintain and keep a boom or booms upon the Mississippi river, at such point between the Falls of St. Anthony, so called, and four miles above said falls, extending from shore to shore, as they may select: *Provided*, That nothing herein contained, shall be so construed, as to authorize said company to erect any pier or piers, between the head of the small, or Boom Island, and at the head of the next, or large island, or in any wise to obstruct the free passage of boats or other water crafts through the channel between said islands, or the pond east of said island; opposite the store-house formerly occupied by R. P. Russell, running diagonally to the head of Nicollet Island, in which boom or booms, all logs and hewn timber, coming down the said river, may be gathered by the said company, and such logs or timber as shall be agreed upon, by and between the owner or owners thereof, and the said company, shall be retained in the said boom or booms, or turned into the pond above the mills, east side of the Mississippi river, as may be so agreed by the parties aforesaid, and said company shall be held accountable for all neglect to keep said boom in good order and repair, from the head of the island above the dam; and shall construct good and sufficient sheer-booms to throw the logs drifting down said river, to within one hundred feet of the west shore of said Mississippi river, and shall be accountable for all damages which may accrue by a failure so to do: *Provided*, That said company shall not be liable for any damages caused by an extraordinary rise of water or freshets: *Provided also*, That the said company shall not retain any logs or timber, unless at the request of the owner or owners thereof, for a longer period than five days, nor shall said company be compelled to retain any logs or timber over twelve hours without a previous understanding with the owner or owners of the logs or timber: *Provided, also*. That the said company may occupy the entire east shore of said pond, by obtaining the consent of the owners thereof.

Boom to be constructed.

SEC. 12. The said company shall sort the said logs and timber, according to their several marks, and if required, shall raft the same out of said boom, sufficiently secure, to run to the mills, at Saint Anthony, so called, and shall deliver the same to the owners thereof, at or near the foot of said boom, or may turn into said pond east of the Mississippi, all such logs or hewn timber, which the owner or owners thereof may request: *Provided*, That nothing herein contained, shall be so construed, as to require said company to turn into said pond, any logs or hewn timber, after said pond be sufficiently filled, or contrary to the wishes of the owner or owners of the shore of said pond.

Duties of company.

SEC. 13. The said company shall demand and receive, and are hereby authorized by law, to collect the sum of forty cents per thousand feet for every thousand feet of logs or timber, sorted out

Tolls.

and rafted, ready for delivery as aforesaid, at the foot of said boom, exclusive for the charges for scaleage of such logs or timber, and for all logs or timber turned into the said pond as aforesaid, the said company are authorized to collect the sum of twenty-five cents for every thousand feet of logs or timber so delivered, exclusive of the charges for scaleage, but no charge shall be made by said company for sorting or turning out logs or hewn timber, other than that which the owner or owners thereof shall have requested said company to retain, raft or turn into the said pond, (as the case may be,) as above provided, and rafts of sawed lumber or timber of any kind, which may by accident, or otherwise, float into said boom, shall only be charged such reasonable compensation as will indemnify the owners of said boom for the safe delivery thereof, and the said company shall receive four cents for each thousand feet of logs or timber of any kind, that passes over the Falls of St. Anthony, as compensation for sorting and running out of said boom.

Boom and scale charges.

SEC. 14. The charges for scaleage, and the boom charges aforesaid, shall be deemed due, and shall be paid to the said company, when the said logs are scaled and ready for delivery, as aforesaid, and said company shall be responsible to the surveyor for the scaleage of such logs or timber.

Liability.

SEC. 15. The said boom company shall pay to the owner or owners for all logs or timber, or may give other logs or timber of equal value in exchange for logs that may by accident pass through the boom and run over the Falls of St. Anthony, so called, that were intended to be run into the pond at St. Anthony, previous notice of such intention having been given to said company.

Passage of rafts and vessels.

SEC. 16. The said boom company shall always give passage by or through their said boom, at all times, to any raft running down the said Mississippi river, and to all steamboats, keel-boats, or flat-boats, or other water crafts running either up or down said river, without any let, hindrance, or delay, by reason or on account of said boom.

Repeal.

SEC. 17. The legislature of this Territory shall have the right to alter, or amend this act, at any time.

Approved—February 27, 1852.

CHAPTER 52.

March 4, 1852.

An Act for the Relief of Wm. G. Le Duc.

Sum appropriated.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid by the Secretary of the Territory, out of any moneys on hand, which may have been appropriated by Congress for defraying expenses of the legislative assembly, to W. G. Le Duc, for stationery, ink, paper, &c., as per bill, furnished to, and used by the legislative assembly of the territory of Minnesota, for the year of our Lord, one thousand eight hundred and fifty-one, the sum of six hundred and sixteen dollars.

Approved—March 6, 1852.

CHAPTER 53.

An Act granting to D. T. Sloan the right to establish and maintain a Ferry across the Mississippi River, at or near Aitkin's Crossing, Benton County, Minnesota Territory.

March 5, 1852.

SECTION.

1. Grant to Sloan of exclusive right to ferry for ten years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, when and how.

SECTION.

5. Failure to comply with conditions of, Penalty for, how recovered
6. Suits on the bond may be instituted for injury to any person by neglect of said Sloan, etc.
7. Legislature may amend, alter, modify or repeal.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That D. T. Sloan, his heirs, executors, administrators, or assigns, shall have the right and privilege for the period of ten years, of keeping and maintaining a ferry across the Mississippi river in the county of Benton, and Territory of Minnesota, at or near what is commonly called Aitkin's Crossing above the mouth of Swan river; the same being where the Long Prairie road crosses the Mississippi river; and no other ferry shall be established within one mile of said ferry, either below or above the same.

Grants ferry right ten years.

SEC. 2 Said D. T. Sloan, shall at all times keep good boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both at night or day; but persons crossing at said ferry after nine o'clock at night, may be charged double the fare as hereinafter prescribed.

Conditions of the grant.

SEC. 3. For each foot passenger, - - - - -	10 cents.
Each horse, mare, or mule, with or without rider, -	25 "
" cow or ox, - - - - -	25 "
" two horse, two ox or two mule team, loaded or unloaded, with driver, - - - - -	50 "
" single horse carriage, - - - - -	35 "
" additional horse, mule, ox or cow, - - - - -	15 "
" swine or sheep, - - - - -	3 "

Ferry rates.

All freight of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 5 cents per cwt. of all other articles.

SEC. 4. The said D. T. Sloan, shall within six months after the passage of this act, file, or cause to be filed with the clerk of the county commissioners of Benton county, a bond to the said commissioners, for the benefit of the county of Benton, with two or more sufficient sureties, (to be approved by said clerk of commissioners,) in the penal sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from the passage of this act.

Bond to be given and filed.

SEC. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said D. T.

Liab. for neglect.

Sloan, his heirs, executors, administrators, or assigns, shall forfeit a sum not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in an action, on the case, for all damages any person may sustain by reason of the neglect of said D. T. Sloan, to fulfill any of the duties imposed upon him by this act.

Remedy.

SEC. 6. Any person who shall sustain any injury by the negligence or default of the said D. T. Sloan or of the ferryman in his employ, may have a remedy by an action on the bond required in said act.

Repeal.

SEC. 7. The legislature may alter, amend, or repeal this act at any time.

Approved March, 5, 1852.

CHAPTER 54.

March 1, 1852.

An Act to provide for laying out a Territorial Road from the foot of Lake Pepin, or Reed's Landing, to some point on the Minnesota river between Flint Prairie and the mouth of Blue Earth river.

SECTION.

1. Commissioners appointed; road to be located, where.

SECTION.

2. Duties of commissioners; where and when to meet.

Commissioners appointed.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Chas. R. Reed, of Reed's Landing, Louis Rock, of Wabasha, and James Wells, of Wells' landing, on Lake Pepin, are hereby appointed commissioners to locate and mark a territorial road, commencing at Reed's landing, or the foot of Lake Pepin, from thence on the most feasible route on the high lands between the tributaries of the Waziojie river and those of the Mississippi and Cannon rivers, by Okaman Lake, to such point on the Minnesota river as may, in the opinion of said commissioners, be considered the most practicable for the termination of said road.

Duties of commissioners.

SEC. 2. That the said commissioners meet at the house of C. R. Reed, at Reed's Landing, on the first Tuesday of June next, at ten o'clock, A. M., or as soon thereafter as practicable: *Provided, however,* That in the absence of any one of the commissioners appointed by this act, the others may have power to supply said vacancy by appointing another commissioner, or may, in case a majority of them meet, proceed in discharging their duties, and that it shall be left discretionary with a majority of said commissioners, to adjourn from time to time, as they may deem proper; and the commissioners, when assembled, shall proceed to lay out and mark said road in accordance with the provisions of law, in such cases made and provided: *Provided* That this act shall not take effect unless the late Sioux treaty be ratified by Congress at its present session.

Approved March 1, 1852.

CHAPTER 55.

An Act to defray the expenses of the Legislative Assembly, and for other purposes.

March 6, 1862.

SECTION.

1. Money to be paid out of the sum appropriated by congress.
 C. W. Borup, rent; C. W. Borup, stoves for use of legislature.
 M. Curran & Co.; Rey & Farmer.
 Samuel H. Sergeant; George Riedorf.
 B. Jackson; W. G. Le Duc; Mrs. Agnes Patwell.
 T. H. Pendergraft; Firman Caseau; Lawther & Morrison; A. L. Larpenteur.
 W. M. Stees; J. McCloud Jr. & Co.
 John Wittle; J. Holland; Wm. P. Murray; John Farrington.
 E. B. Sloan; J. B. Newman; E. T. Parker; C. W. Babcock.
 B. W. Lott; Elfelt & Brothers.
 Bevans & Lansing; J. H. Stevens & Co.; Wm. Taylor.
 Pattison & Benson; P. J. Meagher.
 J. E. Whitney; Allen Pierce; James Baker.
 Hedges; E. Inman; F. S. Newell.
 Wm. S. Combs; Caroline Nelson.
 Joseph R. Brown; L. A. Babcock; Wm. H. Forbes.
 Joseph R. Brown; Henry L. Tilden.
 Sylvanus Traak; S. P. Folsom; Henry W. Tracy.
 John W. Cormack; D. M. Dunwell.
 P. Sturgeon; James Beatty.
 Allen Pierce; Edward Murphy; John M. Bart; F. N. Grouchy.
 George Farnibault; E. P. Miller.
 Rev. Mr. Hobart; Rev. Mr. Bradley.

SECTION.

Rev. Mr. Fullerton; Rev. Mr. Webber.
 Rev. Mr. Reihdaffer; Rev. M. Raveux.
 B. H. Randall; J. D. Ludden.
 Council chaplains: Rev. Mr. Hobart, Rev. Mr. Bradley, Rev. Mr. Ravoux, Rev. Mr. Reihdaffer, Rev. Mr. Neill, Rev. Mr. Fullerton, Rev. Mr. Myrick, Rev. Mr. Hoyt.
 Allen Pierce, for superintending publication of House Journal; etc.
 Sylvanus Traak, superintending publication Council Journal, etc.
 E. W. Lott, preparing for press House Journal, 1851.
 W. G. Le Duc; J. M. Goodhue,
 D. A. Robertson; J. W. Bass.
 J. M. Goodhue, incidental printing for session of 1852.
 J. M. Goodhue, incidental printing for session of 1851.
 J. M. Goodhue, for printing laws and journals of 1851.
 J. M. Goodhue, for printing revised statutes.
 J. M. Goodhue, for printing Council Journal, 1851.
 James McIntosh, binding laws of 1849.
 H. & J. Woodbury, for papers.
 Owens & Moore, for papers.
 Owens & Moore, for incidental printing, for 1852.
 James McIntosh, binding revised statutes.
 Angus M. A. Brown; W. H. Forbes.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid out of the sum appropriated by Congress for defraying the expenses of the legislative assembly of this Territory, for the year ending on the sixth day of March, one thousand eight hundred and fifty-two.

To C. W. Borup, for rent of the building for the use of the legislative assembly, four hundred dollars.

To C. W. Borup, for stoves, pipe, zinc, &c., one hundred and fifty-two dollars.

To M. Curran & Co., for carpets, curtains, &c., ninety-seven dollars and sixty cents.

To Rey & Farmer, for candles, mats, &c., thirteen dollars and thirty-five cents.

Appropriations.

To whom appropriated.

Appropriations,
to whom made.

To Samuel H. Sergent for crockery, eight dollars and forty cents.

To George Riesdorf, for wood, and hauling and cutting same, fifty-one dollars and seventy-five cents.

To R. Jackson, for wood and hauling same, twenty-seven dollars.

To W. G. Le Duc, stationery for library, nineteen dollars and twenty cents.

To Mrs. Agnes Patwell, making up carpet, six dollars.

To. T. H. Pendegrast, making carpet and curtains, seven dollars and fifty cents.

To Firman Cazeau, carpenter work for halls of legislative assembly, fifty-two dollars and twenty-five cents.

To Lawther & Morrison, repairing and painting desks, and furnishing locks, twenty-five dollars.

To A. L. Larpenteur, carpets, curtains, and mats, thirty-four dollars and thirty-eight cents.

To W. M. Stees, for chairs for legislative assembly, repairs and for desk and table, thirty-nine dollars and seventy-five cents.

To J. McCloud Jr. & Co., spittoons, tongs and shovels, twelve dollars and fifty cents.

To John Wittle, making and putting down carpets, and labor in halls of legislature, twenty-five dollars.

To J. Holland, painting the legislative hall, ten dollars.

To J. Holland, painting the library shelves, five dollars.

To Wm. P. Murray, for insurance of library, seventy-seven dollars.

To John Farrington, candles for library and sundries for secretary's office, thirty dollars and twenty cents.

To E. B. Sloan, fireman *pro tem.* of the house of representatives, six days, eighteen dollars.

To J. B. Newman, assistant clerk *pro tem.* of the house of representatives, six days, eighteen dollars.

To E. T. Parker, sergeant-at-arms of the house of representatives, six days, eighteen dollars.

To C. W. Babcock, messenger of the Council, two days, six dollars.

To B. W. Lott, chief clerk of the house of representatives, six days, eighteen dollars.

To Elfelt & Brothers, for carpeting, &c., eighty-four dollars and thirty-six cents.

To Bevans & Lansing, for stove pipe and Spittoons, thirty dollars and ninety cents.

To J. H. Stevens & Co., for clock, ten dollars.

To Wm. Taylor, for clock, six dollars.

To. Pattison & Benson, for sleigh and four horses one day, five dollars.

To P. J. Meagher, for sawing wood, seven dollars and seventy-five cents.

To J. E. Whitney, for rent of library for one year from July 1st. A. D. 1851, one hundred and seventy-five dollars.

To Allen Pierse, for assistant librarian, thirteen days during the session of the supreme court, thirty-nine dollars.

To James Baker, for sawing wood, six dollars.

To Hedges, for sawing wood, three dollars and twenty-five cents.

To E. Inman, for seventy-two days services as librarian and assistant librarian, two hundred and sixteen dollars.

Appropriations,
to whom made.

To F. S. Newell, for two water heaters, one dollar.

To Wm. S. Combs, for stationery for the use of the legislative assembly, two hundred and twenty-five dollars and fifty cents.

To Caroline Nelson, for four days work cleaning library, five dollars.

To Joseph R. Brown, for stationery for legislature, fifteen dollars and forty-five cents.

To L. A. Babcock, three days president *pro tem.*, council, at three dollars, nine dollars.

Wm. H. Forbes, fifty-seven days president of council, at three dollars, one hundred and seventy-one dollars.

Joseph R. Brown, three days secretary *pro tem.* of council, at three dollars, nine dollars.

Henry L. Tilden, five days secretary of council, fifteen dollars.

Sylvanus Trask, fifty-two days secretary of council, one hundred and fifty-six dollars.

S. P. Folsom, sixty days assistant secretary of council, one hundred and eighty dollars.

Henry W. Tracy, sixty days engrossing clerk of council, one hundred and eighty dollars.

John W. Cormack, sixty days sergeant-at-arms of council, one hundred and eighty dollars.

D. M. Dunwell, fifty-eight days messenger of council, one hundred and seventy-four dollars.

P. Sturgeon, fifty-eight days fireman of council, one hundred and seventy-four dollars.

James Beatty, for ten days services on the business of the house, for which he will not receive pay as a member of the house, at three dollars per day, thirty dollars.

To Allen Pierse, fifty-four days service as clerk, one hundred and sixty-two dollars.

To Edward Murphy, fifty-four days assistant clerk, one hundred and sixty-two dollars.

John M. Burt, fifty-four days service as engrossing and enrolling clerk, one hundred and sixty-two dollars.

F. N. Grouchy, fifty-four days service as sergeant-at-arms, one hundred and sixty-two dollars.

George Farribault, fifty-four days service as messenger, one hundred and sixty-two dollars.

R. P. Miller, fifty-four days services as fireman, one hundred and sixty-two dollars.

Rev. Mr. Hobart, twenty-three days services as chaplain, sixty-nine dollars.

Rev. Mr. Bradley, seven days service as chaplain, twenty-one dollars.

Rev. Mr. Fullerton, seven days services as chaplain, twenty-one dollars.

Rev. Mr. Webber, seven days services as chaplain, twenty-one dollars.

Rev. Mr. Riehldaffer, seven days services as chaplain, twenty-one dollars.

Rev. Mr. Ravoux, six days services as chaplain, eighteen dollars.

B. H. Randall, for two days services speaker of the house, *pro tem.* six dollars.

Appropriations,
to whom made.

J. D. Ludden, for fifty-eight days services as speaker of the house, one hundred and seventy-four dollars.

For services in council as chaplain:

To Rev. Mr. Hobart, three days at three dollars, nine dollars.

Rev. Mr. Bradley, eleven days at three dollars, thirty-three dollars.

Rev. Mr. Ravoux, seven days at three dollars, twenty-one dollars.

Rev. Mr. Riehldaffer, eleven days at three dollars, thirty-three dollars.

Rev. Mr. Neill, nine days at three dollars, twenty-seven dollars.

Rev. Mr. Fullerton, seven days at three dollars, twenty-one dollars.

Rev. Mr. Myrick, seven days at three dollars, twenty-one dollars.

Rev. Mr. Hoyt, one at three dollars, three dollars.

To Allen Pierse, chief clerk of the house of representatives, for preparing for the press and superintending the publication of the journal of the house, and affixing an index thereto; for transcribing the documents accompanying the message of the governor, or by him sent to the house, other than those entered on the journal, and the documents reported to the house during the present session, by any public officer of the territory, in pursuance of law, two hundred dollars.

To Sylvanus Trask, secretary of the council, for preparing for the press and superintending the publication of the journal of the council, and affixing an index thereto, for transcribing the documents accompanying the message of the governor, or by him sent to the council other than those entered on the journal, and the documents reported to the council during the present session, by any public officer of the territory, in pursuance of law, two hundred dollars.

To B. W. Lott, for preparing for the press and superintending the publication, and affixing the index to the journal of the house of representatives for the session ending March, A. D. 1851, three hundred dollars,

To W. G. Le Duc, for stationery furnished members legislature and its officers, six hundred and six dollars and eighteen cents.

To J. M. Goodhue, for papers for legislature and officers, two hundred and twenty-two dollars and eighteen cents.

To D. A. Robertson, for papers for legislature and officers, two hundred and eight dollars and sixty-one cents.

To J. W. Bass, for postage for legislature and officers, governor, secretary and librarian, one thousand and sixty-five dollars and thirty-one cents.

To J. M. Goodhue, for incidental printing for present session, as follows:

To J. M. Goodhue, one million seven hundred and twenty-four thousand five hundred and sixty-four ems composition, at one dollar, one thousand seven hundred and twenty-four dollars and fifty-six cents.

To J. M. Goodhue, one hundred and sixty-three tokens press work, at one dollar, one hundred and sixty-three dollars.

To J. M. Goodhue, eighty-two reams paper, at four dollars, three hundred and twenty-eight dollars.

To J. M. Goodhue, for incidental printing for session of eighteen hundred and fifty-one, six thousand nine hundred and thirty-eight dollars.

Appropriations,
to whom made.

To J. M. Goodhue, for printing the laws and journals for same session, one thousand three hundred and eighty-two dollars and sixteen cents.

To J. M. Goodhue, (at Minnesotian office) for printing revised statutes of the Territory of Minnesota for eighteen hundred and fifty-one, three million two hundred and fifty-five thousand eight hundred and thirty ems, at one dollar per thousand, three thousand two hundred and fifty-five dollars and eighty-three cents.

Seven hundred and fifty-two tokens press work, at one dollar per token, seven hundred and fifty-two dollars.

Two hundred and eighty reams book paper, at six dollars per ream, sixteen hundred and eighty dollars.

Five thousand six hundred and eighty-seven dollars and eighty-three cents.

For printing journal of legislative council of eighteen hundred and fifty-one, five hundred and three thousand four hundred and forty ems, at one dollar, five hundred and three dollars and forty-four cents.

One hundred and sixteen tokens press work, one dollar per token, one hundred and sixteen dollars.

Thirty reams book paper, at six dollars per ream, one hundred and ninety-two dollars.

Eight hundred and eleven dollars and forty-four cents.

To James McIntosh, for binding the laws of forty-nine, one hundred and twenty dollars.

To H. & J. Woodbury, for papers furnished present legislature and its officers, one hundred and forty-five dollars.

To Owens & Moore, for papers furnished the legislature and its officers, two hundred and forty-seven dollars and fifty cents.

To Owens & Moore, for incidental printing for present session as follows:

One million three hundred and seventy-two thousand ems of composition, at one dollar, thirteen hundred and seventy-two dollars.

One hundred and thirty-eight tokens press work, at one dollar, one hundred and thirty-eight dollars.

For sixty-nine reams of paper, at four dollars per ream, two hundred and seventy-six dollars.

Nineteen quires blanks for enrolling and engrossing committees, thirty-eight dollars.

To James McIntosh, for bill of binding revised statutes, &c., twenty-six hundred and twenty dollars.

To Angus M. A. Brown, one day as messenger, three dollars.

To Wm. H. Forbes, for sundries furnished the legislature, six dollars and seventy-five cents.

Approved March 6, 1852.

CHAPTER 56.

Feb. 27, 1852.

An Act granting to James M. Goodhue and Isaac N. Goodhue, the right to establish and maintain a ferry across the Mississippi river.

SECTION.

1. Grant to James M. & Isaac N. Goodhue of exclusive right to ferry for ten years.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, condition of; penalty, for violation of.

SECTION.

5. Liability for neglect; suits for damages how brought.
6. Remedy for injuries sustained by negligence of owners or ferryman to be recovered by action on bond.
7. Legislature may alter, amend or repeal charter.

Charter for ten years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That James M. Goodhue and Isaac N. Goodhue, their heirs, executors, administrators or assigns, shall have the exclusive right and privilege for the period of ten years, of keeping and maintaining a ferry across the Mississippi river, in the county of Ramsey and Territory of Minnesota; and no other ferry shall be established nearer than the line of Rice and Irvine's addition above said ferry, or nearer than the mouth of Trout Brook, below said ferry.

To keep boats.

SEC. 2. Said James M. Goodhue and Isaac N. Goodhue, shall at all times keep a safe and good boat or boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry, and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours both at night or day; but persons crossing at said ferry at night may be charged double the fare as hereinafter prescribed.

Rates.

SEC. 3. The rate charged for crossing the above ferry shall not exceed the following:

For each foot passenger,	- - - - -	10 cents.
“ each mare, horse or mule, with or without rider,	- - - - -	15 “
“ each two horse, two ox or two mule team,	- - - - -	25 “
“ loaded or unloaded, with driver,	- - - - -	25 “
“ each single horse carriage,	- - - - -	10 “
“ each additional horse, mule, ox or cow,	- - - - -	2 “
“ each swine or sheep,	- - - - -	

All freight of lumber, merchandise, or other articles not in teams, at the rate of ten cents per barrel; fifty cents per M feet of lumber, and three cents per hundred pounds for all other articles.

Bond.

SEC. 4. The said James M. Goodhue and Isaac N. Goodhue shall, within six months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to the said board, with two or more sufficient sureties, to be approved by said board, in the penal sum of one thousand dollars, conditioned that they will fulfil all the duties that are imposed upon them, in the foregoing sections, and in case of their failure so to do, they shall forfeit all the benefits that might have accrued to them from its passage.

Sec. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and due attendance, the said James M. Goodhue and Isaac N. Goodhue, shall forfeit a sum, not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action, for all damages any person may sustain by reason of the neglect of said James M. Goodhue and Isaac N. Goodhue, to fulfil any of the duties imposed upon them in this act.

Forfeiture. H

Sec. 6. Any person who shall sustain any injury by the negligence or default of said James M. Goodhue and Isaac N. Goodhue, or of the ferryman in their employ, may have a remedy by an action upon the bond required in this act.

Remedy.

Sec. 7. The legislature may alter, amend or repeal this act at all times.

Legislature may alter or repeal act.

Approved Feb. 27. 1852.

CHAPTER 57.

An Act granting to Henry G. Bailly, the right to establish and maintain a ferry across the Mississippi river, at or near Olive Grove, in the county of Wabasha.

March 6, 1852.

SECTION.

1. Grant of right to keep ferry; for how long a time.
2. To keep boats and cross all persons at all times
3. Rates of ferrage not to exceed a specified amount
4. Bond to be filed, conditions of; penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages, how brought.
6. Remedy for injuries sustained by negligence of owner or ferryman how recovered.
7. Legislature may alter, amend or repeal charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Henry G. Bailly, his heirs, executors, administrators or assigns, shall have the exclusive right and privilege for the period of six years, of keeping and maintaining a ferry across the Mississippi river, opposite to or near Olive Grove, in the county of Wabasha, Territory of Minnesota; and no other ferry shall be established within one half mile of said ferry, either above or below.

Grants ferry right for ten years.

Sec. 2. That said Henry G. Bailly, shall at all times keep a safe and good boat or boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours, of the night or day; but persons wishing to cross at said ferry after ten o'clock at night, may be charged double the fare as hereinafter prescribed.

To keep boats.

Rates of ferrage.

SEC. 3. The rates charged for crossing at said ferry shall not exceed the following:

For each foot passenger, - - - - -	10 cents.
" each horse, mare or mule, with or without rider, -	25 "
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - - -	50 "
" each single horse carriage, - - - - -	35 "
" each additional cow or ox, - - - - -	15 "
" each swine or sheep, - - - - -	3 "

All freight of lumber, merchandize, or other articles not in teams, at the rate of ten cents per barrel; fifty cents per M feet of lumber; and three cents per hundred weight of all other articles.

To give bond.

SEC. 4. The said Henry G. Bailly shall, within six months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of the county of Washington, a bond to the said board, with two or more good and sufficient sureties, to be approved by said board, in the penal sum of one thousand dollars; conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from its passage.

Forfeiture for neglect.

SEC. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and ready attendance, the said Henry G. Bailly, his heirs, executors, administrators or assigns, shall forfeit a sum not exceeding twenty dollars, to be recovered by a civil action, before any court having competent jurisdiction, and shall be further liable in a like action, for all damages any person shall sustain by reason of the neglect of said Henry G. Bailly, to fulfil any of the duties imposed upon him in this act.

Remedy for damages.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Bailly, or of the ferryman in his employ, may have a remedy by an action upon the bond required in this act.

Legislature may alter or repeal charter.

SEC. 7. The legislature may alter, amend or repeal this act at any time.

Approved March 6, 1852.

CHAPTER 58.

March 1, 1853.

An Act to dissolve the marriage contract between Tido S. Lottman and Rosa Lottman his wife.

Dissolution of marriage contract.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the marriage contract heretofore existing between Tido S. Lottman and Rosa Lottman, be, and the same is hereby dissolved; and that the said parties are hereby restored to all the rights and privileges of unmarried persons.

Approved March 6, 1852.

CHAPTER 59.

An Act to incorporate the Louisiana and Minnesota Railroad Company.

March 5, 1853.

Page 15 of 6

SECTION.

1. Corporators; object and name of corporation.
2. Capital stock; directors and other officers, how elected.
3. How road may be located; what land must be paid for.
4. Damaging or obstructing road, how punished.
5. Annual meetings; each stockholder entitled to one vote.
6. Duty of commissioners; directors, how elected.
7. Right of way.
8. Transportation; rules and by-laws.

SECTION.

9. Directors may increase capital stock.
10. Vacancies, how filled; elections, etc.
11. Lands of certain persons when to be paid for; value of how determined.
12. Highways, &c., how crossed.
13. Shall have power to unite with other roads, etc.
14. May borrow money and dispose of bonds.
15. Width of road.
16. Road to be commenced in four years and finished in six years from its commencement.
17. Act declared public.
18. Legislature may alter or amend.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Alexander Ramsey, Justus C. Ramsey, Henry M. Rice, Charles W. Borup, Charles H. Oakes, Alexander Wilkin, Geo. W. Farrington, John Farrington, William L. Ames, William G. Le Duc, William R. Marshall, John R. Irvine, Franklin Steele, Henry H. Sibley, A. M. Fridley, Caleb Dorr, Ard Godfrey, Charles King, Calvin A. Tuttle, Socrates Nelson, Samuel Burkleo, Horace K. McKinstry, and their associates, successors and assigns, are hereby created a body politic and corporate, under the name and style of the Louisiana and Minnesota Railroad Company of St. Paul, with perpetual succession, and by that name may be and are hereby made capable in law and in equity, to sue and be sued, plead and be impleaded, defend and be defended, in any court of law and equity in this Territory or any other place; to make, have and use a common seal, and the same to renew and alter at pleasure, and shall be vested with all the powers, privileges and immunities which may be necessary to carry into effect the objects of this act, as hereinafter set forth; and the said company are hereby authorized and empowered to locate, construct, and finally complete a railroad from the town of St. Paul to the southern boundary line of Minnesota. Said railroad to be on the west side of the Mississippi river, and to cross said river at St. Paul, and shall intersect with the Central Missouri and Iowa Railroad at the northern boundary line of Iowa; and for this purpose, said company are authorized upon the most eligible and direct route, to lay out their said road, wide enough for a double track through the whole length, to the said southern boundary line of Minnesota.

Sec. 2. The capital stock of said company shall consist of four millions of dollars, and may be increased, if necessary to five millions, to be divided into shares of one hundred dollars each. The immediate government and direction of said company shall be vested in eleven directors, who shall be chosen by the stockholders

Corporators.

Name and powers.

Objects of corporation.

Location of road.

Capital stock.

Directors and other officers. of said company in the manner hereinafter provided, who shall hold their office one year after their election, and until others shall be duly elected and qualified to take their place as directors; a majority of whom shall constitute a quorum for the transaction of business, [and said directors] shall elect one of their members to be president of the company; that said board of directors shall have power to appoint all necessary clerks, secretary and other officers necessary in the transaction of the business of the said company.

How road may be located. SEC. 3. The said corporation is hereby authorized, by their agents, surveyors, and engineers to cause such examinations and survey to be made of the ground and country in the most direct and advantageous route from St. Paul to the said northern boundary line of Iowa, in order to determine the course and location of the said road; and it shall be lawful for the said company to enter upon and take possession of and use all such lands and real estate as may be necessary for the construction of said road: *Provided*, That

What land must be paid for. all lands entered upon or taken possession of, or used by said company for the purpose of building the said road, shall be paid for by the said company (excepting lands donated to the said company for that purpose) at such price as may be mutually agreed upon by the said corporation and the owner or owners of such land; and in case of disagreement, the price shall be estimated, fixed and recovered in the manner provided for taking lands for the construction of public roads, canals or other public works, as provided by the act [of congress] concerning right of way, approved March 3, 1845.

Damaging or obstructing. SEC. 4. If any person shall wilfully, maliciously, or wantonly, and contrary to law, obstruct the passage of any car on said railroad or anything belonging thereto, or shall damage, break or destroy any part of said railroad, or implements, or buildings, he, she or they shall forfeit and pay to said company, for every such offence, treble the amount of damages that shall be proved before any competent court shall [to] have been sustained, and been sued for in the name and in behalf of said company; and such offenders shall be deemed guilty of a misdemeanor, and shall be liable to indictment in the same manner as other indictments are found, in any county or counties where such offence shall have been committed, and upon conviction every such offender shall be liable to a fine not exceeding five thousand dollars, for the use of the county where such indictments may have been found.

How punished.

Annual meetings.

SEC. 5. The time of holding the annual meeting of said company for the election of directors, shall be fixed and determined by the by-laws of said company; and at all meetings, each stockholder shall be entitled to a vote in person or by lawful proxy, one vote for each share of stock in said company.

Duty of commissioners.

SEC. 6. The persons named in the first section of this act, are, hereby appointed commissioners, who, or a majority of whom, are hereby authorized to open subscription books for said stock, at such places as they may deem proper, and shall keep such books open until at least the sum of fifty thousand dollars of said capital stock is subscribed. Said commissioners shall require each subscriber to pay five dollars on each share at the time of subscribing. When such amount shall have been subscribed, the said commissioners shall call a meeting of the stockholders by giving thirty days notice in one or more newspapers published in the town of St. Paul; and at such meeting it shall be lawful to elect the directors of said company, and when the directors of said company are chosen, the said

Directors, how elected.

commissioners shall deliver said subscription books with all sums of money received by them as commissioners, to said directors. No person shall be a director in said company except he be a stockholder.

SEC. 7. That the right of way, and the real estate purchased for the right of way by said company, whether by mutual agreement or otherwise, or which shall become the property of the company by operation of law, as in this act provided, shall, upon the payment of the amount of money belonging to the owner or owners of said lands as a compensation for the same, become the property of said company in fee simple.

Right of way.

SEC. 8. The said corporation may take and transport upon said railroad, any person or persons, merchandize or other property, by the force and power of steam or caloric, and may fix, establish, take and receive such rates of toll for all passengers and property transported upon the same, as the said directors shall from time to time establish; and the directors are hereby empowered and authorized to make all necessary rules, by-laws, regulations and ordinances that they may deem necessary and expedient to accomplish the designs and purposes, and to carry into effect the provisions of this act, and for the transfer and assignment of its stocks which is hereby declared personal property, and transferrable in such manner as shall be provided by the by-laws and ordinances of said company.

Transportation.

Rules and by-laws.

SEC. 9. The directors of said company, after the same is organized, shall have power to open books in the manner prescribed in the sixth section of this act; to fill up the balance of the capital stock, or any part thereof; and the amount the aforesaid company is authorized to increase the capital stock to, by the second section of this act, at such time as they may deem it for the interest of said company, and all the instalments required to be paid in the stock originally to be taken, and what may be taken, to increase said capital stock, shall be paid at such times and in such sums as said directors may prescribe.

Directors may increase capital stock.

SEC. 10. In case of the death, resignation, or removal of the president, vice-president, or any director at any time between the annual elections, such vacancy may be filled for the remainder of the year, whenever they may happen, by the board of directors; and in case of the absence of the president and vice-president the board of directors shall have power to appoint a president *pro tem.* who shall have and exercise the powers and functions as the by-laws of the corporation may provide. In case it should any time happen that an election shall not be made on any day on which, in pursuance of this act, it ought to have been made, that said corporation shall not for that cause be deemed dissolved, but such election shall be held at any other time directed by the by-laws of said company.

Vacancies how filled.

Elections.

SEC. 11. That when the lands of any married woman, persons under age, idiot, or out of the Territory, shall be taken in the construction of said railroad, as is provided by this act, the said corporation shall pay the amount that shall be awarded as due to the said last mentioned owners respectively, whenever the same shall be lawfully demanded, together with six per cent. per annum. That to ascertain the amount to be paid to the persons in this section for lands taken for the use of this corporation, it shall be the duty of the circuit judge of the court of the counties through which

Lands of certain persons when to be paid for.

Value of, how determined.

said road passes, upon notice given to him by the said corporation, to appoint three commissioners, persons who shall in no wise be interested in the matters to be determined by them, to determine the damages which the owner or owners of the land so entered upon by said corporation; and it shall be the duty of said commissioners to deliver to said corporation a written statement of the award or awards they shall make, with a description of the land so appraised to be recorded by the said corporation in the clerk's office in the county in which the land so appraised shall be, and then the said corporation shall be deemed to be seized and possessed of the fee simple of all such lands or real estate as shall have been appraised by the said commissioners.

Highways &c., how crossed.

SEC. 12. Whenever it shall be necessary for the construction of said road to intersect or cross a track of any other railroad, or any stream of water, or water course, or road, or highway, lying in the route of said road, it shall be lawful for the company to construct their railroad across the same: *Provided*, That the said company shall restore the railroad, stream of water, water course, road or highway thus intersected or crossed, to its former state or in a sufficient manner not materially to impair its usefulness.

Power to unite roads.

SEC. 13. Said company shall have the power to unite its railroad with any other railroad now constructed; or which may hereafter be constructed, in this Territory or adjoining States or Territory, upon such terms as may be mutually agreed between the companies so connecting, and for that purpose, full power is hereby given to said company to make and execute such contracts with any other company as will secure the objects of such connection, and the said corporation shall have power to consolidate its stock with any other company.

May borrow money and dispose of bonds.

SEC. 14. Said company is hereby authorized from time to time, to borrow such sum or sums of money as may be necessary for completing, furnishing, or operating their said road, and to dispose of their bonds in denominations of not less than five hundred dollars, for any amount so borrowed, and to mortgage their corporate property or franchises, or convey the same by deed of trust, to secure the payment of any debt contracted by the said company, for the purpose aforesaid. And the said directors of said company, may confer on any bondholder of any bond issued for money borrowed, the right to convert the principal due or owing thereon into stock of said company at any time not exceeding ten years from the date of the bond, under such regulations as the directors of said company may see fit to adopt.

Width of road.

SEC. 15. The width of said road shall be determined by the said corporation; within the limits prescribed in the first section of this act, and they are hereby authorized to commence work on any part of said railroad that may be considered most expedient.

Must be commenced.

SEC. 16. This act shall be in force as provided in first section; and said company shall commence work within four years, and complete the same in six years from the commencement of the work.

Act declared public.

SEC. 17. This act shall be deemed and taken as a public act, and shall be construed beneficially for all purposes herein set forth.

Legislature may alter or amend.

SEC. 18. The legislature may alter or amend this act at any time.

Approved March 5, 1853.

CHAPTER 60.

An Act granting to Paul H. Beaulieu the right to establish and maintain a Ferry across the Mississippi River, at Russell's Landing, Benton County, Minnesota Territory.

March 6, 1862.

SECTION.

1. Grant to Beaulieu of exclusive right to ferry for six years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, when and how.

SECTION.

5. Failure to comply with conditions of, Penalty for, how recovered
6. Suits on the bond may be instituted for injury to any person by neglect of said Beaulieu. etc.
7. Legislature may amend, alter, modify or repeal.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Paul H. Beaulieu, his heirs, executors, administrators, or assigns, shall have the right and privilege, for the period of six years, of keeping and maintaining a ferry across the Mississippi river in the county of Benton, Territory of Minnesota, at or near Russell's Landing; and no other ferry shall be established within one mile of said ferry, either above or below the same.

Grants ferry right six years.

SEC. 2 Said Paul H. Beaulieu shall at all times keep good boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both day and night; but persons crossing at said ferry after nine o'clock at night, may be charged double the fare as hereinafter prescribed.

Conditions of the grant.

SEC. 3. The rates charged for crossing at said ferry, shall not exceed the following:

Ferry rates.

For each foot passenger, - - - - -	10 cents.
" each horse, mare, or mule, with rider, - - -	25 "
" each single cow or ox, - - - - -	20 "
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - - -	50 "
" each single horse carriage, - - - - -	35 "
" each additional horse, mule, ox or cow, - - -	15 "
" each swine or sheep, - - - - -	3 "

All freight of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 3 cents per cwt. of all other articles.

SEC. 4. The said Paul H. Beaulieu shall, within six months after the passage of this act, file, or cause to be filed with the county commissioners of Benton county, a bond for the benefit of the said county, with two or more sufficient sureties, (to be approved of by the said county commissioners,) in the penal sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in the case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from the passage of this act.

Bond to be given and filed.

SEC. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attention, the said Paul H. Beaulieu, his heirs, executors, or assigns, shall forfeit a sum not exceed-

Liable for neglect.

ing twenty dollars, to be recovered by civil action before any court having competent jurisdiction, and shall be further liable in a civil action, for all damages any person may sustain by reason of the neglect of said Paul H. Beaulieu, to fulfil any of the duties imposed upon him by this act.

Remedy.

SEC. 6. Any person who shall sustain any injury by the negligence or default of the said Paul H. Beaulieu, or of the ferryman in his employ, may have a remedy by an action upon the bond required in this act.

Repeal.

SEC. 7. The legislature may alter, amend, or repeal this act at any time.

Approved March, 6, 1852.

CHAPTER 61.

Feb. 20, 1853.

An Act to incorporate the Hennepin County Agricultural Society.

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SECTION.

1. Corporators; name of corporation; powers of; may have a seal, etc.
2. Objects of society.
3. First meeting, how called; future meetings, time and place of to be designated. Officers, election of; terms of office, etc.

SECTION.

4. Seven members shall constitute a quorum to transact business.
5. Legislature may alter, modify or amend this act.
6. Act, when to take effect,

Corporators.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Emanuel Case, Joel B. Bassett, Alexander Moore, Warren Bristol, Hezekiah Fletcher, A. E. Ames, Jno. H. Stevens, P. Prescott, Joseph Dean and John S. Mann, and their associates and successors, be and hereby constituted a body politic and corporate, to all intents and purposes, by the name of the "Hennepin County Agricultural Society," and by that name may be sued plead and be impleaded, answer and be answered unto; may purchase, hold and convey both real and personal property, to any amount not exceeding ten thousand dollars; and the same to grant, lease, mortgage, sell or otherwise dispose of for the benefit of the society, and to receive donations to be applied as the donor may direct; and to devise and keep a common seal, with the right of altering it at pleasure; and to make and enforce such by-laws, as they may choose, not repugnant to the laws of this Territory, or of the United States, and to enjoy all the privileges and franchises incident to a corporation.

Object of society

SEC. 2. The objects of said society, shall be the collection and dissemination of agricultural knowledge, and the encouragement and advancement of agricultural pursuits.

Officers elected.

SEC. 3. At the first meeting called and held by any five of the members of this society, the time and place of their first annual meeting shall be designated; and at such first annual meeting of the society, under such rules and regulations as they may adopt, there shall be elected one president, one secretary, and one treas-

urer; said officers to hold their offices respectively, until their successors are chosen, which shall be at the next annual meeting.

Sec. 4. Seven members of the society shall, at any meeting, constitute a quorum, to transact any business.

Sec. 5. The legislature may at any time alter, modify or amend this act.

Sec. 6. This act shall take effect from and after its passage.

Approved Feb. 26, 1853.

Quorum.

Legislature may amend or modify.

Act to take effect, when.

CHAPTER 62.

An Act to incorporate the St. Paul Fire and Marine Insurance Company.

March 5, 1853.

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SECTION.

1. Corporators names; created a body corporate, name of.
2. Powers of corporation.
3. Corporate powers, in whom vested; officers of company, etc.
4. Vacancies, how filled; election how conducted; notice of, how given.
5. Members, how constituted; every member entitled to vote.
6. First board; books to be opened, etc.
7. Premiums, how paid.
8. Premium notes, company authorized to receive, etc.

SECTION.

9. Stock policies may be issued by company and to whom.
10. Company may invest funds in bonds and mortgages, how.
11. Fiscal statement to be made annually; certificates to bear interest, etc.
12. Annual statement to be published in one or more newspapers.
13. Suits at law may be prosecuted against corporation, how.
14. Office of company to be located in the city of St. Paul.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That from the time this act shall take effect, William G. Le Duc, John Farrington, Alexander Wilkin, John R. Irvine, Charles W. Borup, W. L. Ames, A. L. Larpenteur, Levi Sloan, H. M. Rice, W. P. Murray, C. D. Fillmore, and all other persons who may hereafter associate with them in the manner herein prescribed, shall be a body politic and corporate, by the name of the "St. Paul Mutual Insurance Company," and may sue and be sued, plead and be impleaded, defend and be defended, in any court of record, or other place whatever.

Corporators.

Name.

Powers.

Sec. 2. The corporation hereby created may become a party to suits at law, may make by-laws not inconsistent with any existing law, for the regulation of its affairs, have, and use, a common seal, and alter the same at pleasure, and in addition to these general powers, shall have authority by instrument under seal or otherwise:

1st. To make insurance on all descriptions of property against loss or damage by fire:

2nd. To make insurance on all descriptions of boats and vessels, the cargoes and freights thereof, and on bottomry and respondentia interests, against the perils of marine and inland navigation,

and to cause all policies to be paid for at the time of delivery, either by note or in cash.

Powers, in whom vested.

SEC. 3. All the corporate powers of the said company shall be exercised by a board of directors, consisting of ten persons, (all of whom shall be citizens of this Territory,) and such officers, clerks, and agents as the said board may appoint. The directors shall hold their office for two years, and until others are elected. They shall elect from their own body a president and vice-president, who shall each respectively hold office during the aforesaid term of two years, and until others are elected; but nothing herein shall be so construed as to prevent a director or other officer whose term has expired, or is about to expire, from being again eligible. Seven members of the board shall constitute a quorum for the transaction of business. The persons named in the first section of this act, shall constitute the first board of directors.

Vacancies.

SEC. 4. The board of directors shall have power to fill all vacancies that may occur in their own body, a plurality of votes constituting a choice. They shall also choose in the same manner, previous to the biennial election of directors, three inspectors of such election, whose duty it shall be to canvass the votes cast thereat, and declare the result; the said inspectors shall also be judges of the qualification of voters. Notice of such election shall be given by publication in one or more of the newspapers printed in St. Paul, at least two weeks previous thereto, over the signature of an officer of the said company.

Notice of election.

Members.

SEC. 5. Every person or firm taking a policy of insurance from the said company, shall thereupon become a member thereof, and shall at all elections of directors thereafter, be entitled to vote upon his or their dividend certificates issued as hereinafter provided, in the ratio of one vote for each twenty-five dollars of such certificates: *Provided*, That if any such election is held in accordance with the provisions of this act, previous to the first dividend of profits, each member of said company shall be entitled to vote thereat in the ratio of one vote to every fifty dollars of premium previously paid to the company: *And provided*, That in no case, shall any person or firm be entitled to more than fifty votes, except as provided in section eight of this act.

Elections.

First board.

SEC. 6. It shall be the duty of the incorporators named in the first section of this act, or any number of them not less than five, within one year after this act takes effect, to open books, to receive application for insurance to be effected by said company, and after the receipt of said applications to the amount of one hundred thousand dollars, the books may be closed and the said company organized.

Premiums.

SEC. 7. All premiums upon policies issued by said company shall be paid in cash, when the insurance is effected, (except as provided in section eight of this act,) and no premiums so paid shall be thereafter withdrawn, but shall remain liable for all losses and expenses incurred by the said company.

Premium notes.

SEC. 8. For the better security of policy holders, the said company may receive notes for premiums in advance, approved by the board of directors, from persons intending to receive its policies, and on such portion of said notes as shall exceed the amount of premiums that may have accrued on policies held by the signers thereof, at the successive periods when the company shall make up its annual statement as hereinafter provided, a compensation

may be allowed the signers thereof, in consideration of such guaranty, at a rate to be determined by the board of directors, but not to exceed twelve per cent. per annum; such note shall be entitled to representation at the election of directors in the same ratio as dividend certificates, and shall be liable for losses, whenever the cash premiums theretofor received are insufficient to pay the same; *Provided*, That assessments so made on such notes shall be reimbursed from the funds of the company before any dividend of the profits shall be made.

SEC. 9. It shall be lawful for the said company to issue stock policies (so called) to persons not desirous of participating in the profits or losses of the said company, and all gains or losses on such policies shall be passed to the account of profit and loss on the books of the company.

Stock policies.

SEC. 10. It shall be lawful for the said company to invest their funds in bonds and mortgages on unincumbered real estate, worth fifty per cent. more than the sum loaned thereon, and in any stock created by or under the laws of this Territory or the United States, and on bottomry and respondentia, or otherwise, at the discretion of the board of directors, and to change and re-invest the same.

Funds, how invested.

SEC. 11. By the first day of January, 1854, and annually thereafter, the officers of the company shall cause a true statement of its affairs to be made. They shall estimate the profits (if any) that have accrued on policies issued during the current year ending on the 31st day of December last preceding, and issue certificates thereof to the holders of such policies, in proportion to the amount of premium paid by each; such certificates shall bear an annual interest of seven per cent., and shall be redeemable whenever the accumulated profits exceed one hundred thousand dollars, so far and as fast as the same can be redeemed by such excess; certificates for the first year's profits taking priority, and so on thereafter in regular succession. Nevertheless each of such certificates shall contain a proviso that the sum therein named is liable for future losses at any time previous to its redemption, as provided in the seventh section of this act.

Fiscal statement.

Certificates.

SEC. 12. The annual statement as aforesaid, shall be full and complete, and shall be published in one or more of the newspapers of St. Paul, for two weeks immediately after the same shall have been made out, for the benefit of the public generally.

Publication.

SEC. 13. Suits at law may be prosecuted and maintained by any member against the said corporation, for losses and damages insured against by them, if payment is withheld by them for a longer period than sixty days after the same shall have been duly proven up, and any member of the company, not being in his individual capacity a party therein, shall be deemed a competent witness in any suit against the said company. All process against the said company may be served on the president or secretary.

Penalty if payment is withheld.

SEC. 14. The office of the said company shall be located and kept in the city of St. Paul.

Office.

Approved March 5, 1853.

CHAPTER 63.

March 5, 1853.

An Act to amend an act to incorporate the Saint Paul Fire and Marine Insurance Company,
passed February 18, 1853.

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SECTION.

1. Additional corporators, names of; addi-
tional section.

SECTION.

16. May issue policies; penalty if notes not
paid.

Additional cor-
porators.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the act to incorporate the St. Paul Fire and Marine Insurance Company, passed February the eighteenth, eighteen hundred and fifty-three, be and the same is hereby amended as follows: By adding after the name of "C. D. Fillmore," in section one, the names of Socrates Nelson, of Stillwater, D. B. Loomis, of Marine Mills, Isaac Atwater, of St. Anthony, Alex. Ramsey, Geo. W. Farrington and L. A. Babcock, of St. Paul. Add the following section:

May issue poli-
cies.

SEC. 16. The company may issue policies as soon as they have fifty thousand dollars of the capital stock to said company subscribed, but shall not issue policies to a greater amount than fifty thousand dollars until the whole amount of one hundred thousand dollars, as provided in section six, shall have been subscribed. In case of loss or damage by fire, the members of said company shall at twenty days notice pay to the Treasurer the proportionate assessment which may be made on their notes; and if any member shall, for the space of thirty days after such notice, neglect or refuse to pay the sum assessed as his portion of any loss as aforesaid, in such case, the directors may sue for and recover the whole amount of his deposit note or notes with costs of suit. The secretary and treasurer shall give bonds with sufficient sureties, as shall be approved of by the board of directors, for the faithful performance of their respective trusts.

Penalty if notes
not paid.

Approved March 5, 1853.

CHAPTER 64. - ch 28.

March 5, 1853.

An Act for the relief of F. E. Collins.

Page 61

Sum appropri-
ated, for what.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That the sum of twenty-five dollars be, and the same is hereby appropriated to F. E. Collins, enrolling clerk of the council, being the amount expended by him in the employment of extra clerical force, to complete the business of the council, the same to be paid out of the funds appropriated by congress to defray the expenses of the legislative assembly.

Approved March 5, 1853.

CHAPTER 65. - 12

An Act to incorporate the St. Paul and St. Anthony Railroad Company.

March 2, 1858.

SECTION.

1. Corporators; name of corporation; powers of, etc.
2. Location of road.
3. Stock; number of shares.
4. Books, when to be opened; elections how held.
5. What sum to be paid at the time of subscribing.
6. Act to become void, how.
7. Powers of directors to construct tracks, turnouts, branches, etc.
8. Right of way; power of company to enter upon lands; arbitrators, how appointed, duties of.

SECTION.

9. May connect with other roads.
10. Highways, water courses, etc., how to be crossed.
11. Compensation, company entitled to.
12. Duties of President and Treasurer.
13. Oath of office.
14. Powers of President and Directors.
15. Damages for obstructing or injuring road.
16. Instalments when to be paid; stock may be sold at auction.
17. May borrow money and issue bonds.
18. Act when to take effect.
19. Legislature may alter, amend or repeal.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That James W. Davis, Eli Kinney, Luke P. N. Smith, George Johnson, John Rollins, James Wells, C. Carli, Emanuel Case, William P. Murray, William L. Larned, R. P. Russell, R. M. Spencer, Alfred E. Ames and Edmund Rice, and those who may hereafter become stockholders in the manner hereinafter prescribed, their successors and assigns, be, and they are hereby created a body corporate, by the name and style of the St. Paul and St. Anthony Railroad Company, with perpetual succession, and by that name and style, shall be, and are hereby made capable in law to have, purchase, receive, possess, sell, convey and enjoy, real and personal estate, and retain to them, their successors and assigns, all such lands, tenements and hereditaments, as shall be requisite and necessary for their accommodation and convenience in the transaction of their business; to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in courts of record and elsewhere, and also to have, make, and use, a common seal, and to alter, renew, or change the same at their pleasure.

Corporate name
and powers

SEC. 2. That the said corporation is hereby vested with the right and authority to construct a railroad commencing in or near the town of St. Paul, in the county of Ramsey, and thence by such route as the directors may select, to or near the town of St. Anthony, in the county of Ramsey, as the directors may hereafter determine.

Location of road.

SEC. 3. That the capital stock of said company shall be four hundred thousand dollars, and shall be divided into shares of one hundred dollars each.

Capital stock.

SEC. 4. That the above named persons, or any two of them, are hereby authorized to order books for receiving subscriptions to the capital stock of said company, to be opened at such time or

Books when to
be opened.

- times, in the town of St. Paul, and at such place or places, as may be deemed expedient, under the direction of not less than two of the above named persons, having given not less than ten days' notice in a newspaper published in the county where books of subscription are to be opened, of the time and place of opening of said books, and as soon as five hundred shares of stock shall be subscribed, they shall give a like notice for a meeting of stockholders, to meet at such time and place as they may designate, to choose by ballot five directors, who shall continue in office for the term of one year, and until their successors are elected and qualified, and at all elections for directors, each share of the capital stock shall entitle the owner thereof to one vote, and may either be voted in person or by lawful proxies; two competent persons shall be selected inspectors of such elections, and they shall forthwith certify under their hands who are elected directors; and a new election shall be held annually at such time and place as the stockholders or directors may appoint, or as the by-laws of the corporation may require, and the directors shall, as soon as convenient, elect from their own number a president and a treasurer of the corporation.
- Elections.** SEC. 5. That upon every subscription there shall be paid at the time of subscribing, to the persons authorized to open books, the sum of twenty dollars, and the residue thereof shall be paid in such instalments and at such times as may be required by the president and directors of said company, to the treasurer thereof, and the said directors are authorized to take and receive from such persons, as shall purchase such stock as aforesaid, such bonds or notes for the residue of the purchase money of said stock as they may deem expedient.
- What sum to be paid.** SEC. 6. That if said company shall not organize within one year from the date of the passage of this act, and have the road completed in three years from the organization of said company, then this act shall be void.
- When act to become void.** SEC. 7. That the directors shall have power to determine and construct the number and kind of tracks, turnouts, branches, carriages, conveyances, storehouses, depots, engine shops, foundries and such other fixtures and machinery, and also to prescribe the mode of transportation, and also to have power to construct a double track railroad, if they deem it expedient.
- Powers of directors.** SEC. 8. That said company shall have the right to enter upon any land, to survey, locate, construct and lay down said road, and to take any materials necessary to the construction and repair of said work, and whenever any lands or materials shall be taken for the construction of said work, and the same shall not be given or granted to said company, and the owners thereof do not agree with said company as to the compensation to be paid therefor; or in case the owner or owners are under any disability to contract, or absent from the Territory, application may be made by said company to any judge of the district court, or any two justices of the peace in said county in which such lands and materials may be; and thereupon it shall be the duty of said judge or said justices of the peace, to issue his or their warrant to the marshal or to the sheriff of said county, commanding him to summon three disinterested freeholders of said county to arbitrate upon the compensation to be awarded to such person or persons, who shall be sworn and paid as arbitrators in other cases, and they or a majority of them, shall award as arbitrators between the parties, and render copies
- Right of way.**
- Arbitrators.**

of their award to each of the parties in writing, from which award either party may appeal within ten days thereafter, by giving bond and security to the opposite party, in such sum as the court may prescribe, to the district court for the said county in which said land or materials are situated, which appeal shall be proceeded in as in other cases of appeal, and in all cases where compensation shall in any manner be claimed, it shall be the duty of the arbitrators and the court to estimate and set off any advantage which the location and construction of said road may be to the claimant; and said company shall have the right to retain, own, hold and possess said materials, and to the use and occupation of said lands, as fully and absolutely as if the same had been granted and conveyed to said company by deed: *Provided*, That before said company shall enter upon any land for the purpose of constructing the said road, or for the purpose of procuring materials for the same, they shall pay or secure to the owner of such land or materials, payment for the same, as may be agreed or awarded by the provisions of this section.

Sec. 9. That if it shall be necessary in the selection of the route or construction of the road, to connect the same with, or use any other road, street or bridge made or erected by any company or persons incorporated or authorized by any law of this Territory, it shall be lawful for said company, and it is hereby authorized to contract and agree with any such corporation or persons for the right to use such road, street or bridge, or for the transfer of any of the corporate or other rights, or privileges of such corporation or persons, to the said president and directors of this corporation; and all such other corporations and persons incorporated by or acting under the laws of this Territory, are hereby authorized to make such an agreement, contract or transfer by and through the agency of their corporate officers, or such other persons, as by any law of this Territory, are intrusted with the direction and management of such road, street or bridge; and every transfer made in pursuance to the power hereby granted, when executed by the several parties under their respective seals, or otherwise legally authenticated, shall vest in this corporation all the rights and privileges vested in said corporation or persons, as shall be specified in the contract and agreement above referred to.

To connect road,
&c.

Sec. 10. Whenever it shall be necessary for the construction of the railroad to intersect or cross any stream of water, or water-course laying in or across the route of said road, it shall be lawful for the corporation to construct the said railroad across or upon the same, but the corporation shall restore the stream or water-course thus intersected, to its former state, or place it in such condition as not materially to impair its former usefulness; and in case the interest of said company shall require them to occupy or change any road or highway, said company shall so turn or change such road or highway and construct the same in as good a state as to render the same as useful and convenient as the former road or highway; and if said company, after having selected a route for said railroad, find any obstacles in continuing said location, either by the difficulty of constructing, or procuring the right of way, at a reasonable cost, or when a better or cheaper route can be had, it shall have the right to vary the route and change the location.

Highways, &c.,
how crossed.

Sec. 11. That said company may prescribe, demand and receive from all persons using or traveling upon said road, or for the trans-

Compensation.

portation of property, such rates of compensation as the said company may think reasonable, which rates prescribed by said company shall be posted up in suitable places in each of their depots.

Duty of President and Treasurer.

SEC. 12. That at the regular annual meeting of the stockholders of said company, it shall be the duty of the president and treasurer in office the year previous, to exhibit a clear and distinct statement of the affairs of the company to the stockholders. And the president and directors shall annually or semi-annually declare and make a dividend of the nett profits arising from the revenues of the company, deducting the necessary current and probable contingent expenses, and they shall divide the same among the stockholders in proportion to their respective shares.

Oath of office.

SEC. 13. That every president, director and treasurer of said company, before he acts as such, shall swear or affirm, as the case may be, that he will well and truly discharge the duties of his said office to the best of his skill and ability; and the arbitrators authorized by the eighth section of this act, before they proceed to estimate damages, shall severally take an oath or affirmation faithfully, impartially and honestly to discharge their duty as such arbitrators; and the said appraisors shall each receive two dollars per day, for each day they may be necessarily employed, which shall be paid by said company.

Powers of President and Directors.

SEC. 14. That the president and directors, or a majority of them, may appoint all such officers, engineers, agents, and servants, whatsoever, as they may deem necessary for the transaction of the business of the company, and may remove any of them at their pleasure: that they, or a majority of them shall have the power to determine by contract, the compensation of the engineers, officers, agents, or servants in the employ of said company, and to determine by their by-laws the manner of adjusting and settling all accounts against the said company; and also the form of the certificate of stock: the manner and evidence of transfers of stock in said company; and they or a majority of them shall have power to pass by-laws, which they may deem necessary and proper for exercising all the powers vested in the company hereby incorporated, and for carrying the objects of this act into effect: *Provided, only,* That said by-laws shall not be contrary to the laws of this Territory or of the United States.

Damages for obstructing.

SEC. 15. That if any person shall wilfully, by any means whatsoever, injure, impair or destroy any part of said railroad, in process of construction, or constructed by said company under this act, or any of the necessary work, buildings, cars, engine houses, foundries, or machinery of the said company, such person or persons so offending, shall each of them for every such offence, forfeit and pay to the said company three-fold the damages, which may be recovered in the name of the said company by a civil action with costs of suit, in any court having cognizance thereof, and shall also be subject to an indictment in any court having jurisdiction of crimes and offences; and such person may be committed, and upon conviction of such offence, shall be punished by fine not exceeding five hundred dollars, and imprisoned at the discretion of the court.

Instalments when to be paid.

SEC. 16. If any instalments remain unpaid for ninety days after the time of payment has elapsed, the directors may order them collected in the name of the company, by suit, or may sell the stock at public auction for the instalments then due, giving twenty

days notice of the time and place of sale, by advertisement in some newspaper of general circulation in the county, where such sale is to be made; and the residue of the money arising from such sale after paying such instalments and costs, shall be paid over to the former owner.

Sec. 17. That the said directors are hereby authorized to borrow any amount of money not exceeding two hundred thousand dollars, upon the faith and credit of said company, upon such terms and rates of interest as they may deem proper, and for that purpose they are authorized to issue their bonds in convenient amounts of not less than one hundred dollars each, and to make the principal and interest payable at such times and places as may be agreed upon between the parties, and to mortgage the road, franchises, equipments, buildings, engine shops, machinery, and fixtures of every kind whatsoever, for the payment of the same.

May borrow money, etc.

Sec. 18. This act shall take effect from and after its passage.

Sec. 19. The legislature may at any time alter, amend or repeal this act.

Legislature may alter, amend or repeal.

Approved March 2, 1853.

CHAPTER 66.

An Act to incorporate the Minnesota Western Railroad Company.

March 3, 1853.

SECTION.

1. Corporators; object and name of corporation.
2. Location of road.
3. Capital stock; amount of.
4. Books to be opened; notice of how given.
5. Directors, how elected; annual meetings.
6. Subscriptions to capital stock.
7. Rules, regulations and by-laws.
8. Highways, etc., how crossed.
9. Dividends, how paid.
10. Damaging or obstructing road, how punished.
11. Company to provide wagon ways, etc.

SECTION.

12. Capital stock may be increased.
13. Right of way, etc.; commissioner to be appointed; duty of; appeal from decision of how taken.
15. May borrow money and dispose of bonds.
16. Company to construct road, etc.
17. Power to unite with other roads.
18. Lands granted by congress.
19. May pass over other railroads.
20. When road must be commenced.
21. Act how construed.
22. Legislature may alter or amend act.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, Robert J. Walker, A. Hyatt Smith, Joseph B. Doe, Otis Hoyt, Benjamin Allen, H. M. Rice, Franklin Steele, Socrates Nelson, H. Z. Hayner, Martin McLeod, Alexander Wilkin, M. S. Wilkinson and N. Greene Wilcox, together with such other persons as may hereafter become associated with them in the manner hereinafter prescribed, their successors and assigns, are hereby created a body corporate, by the name of the Minnesota Western Railroad Company, and by that name shall be and are hereby made

Corporators.

- Object and name of corporation. capable in law, to purchase, hold and enjoy and retain to them and their successors, lands, tenements and hereditaments so far as may be necessary for the purpose of said Railroad, and the same to sell, grant, rent, or in any manner dispose of, to contract and be contracted with, to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, and also to make, have and use a common seal, the same to alter, break or renew at their pleasure; and if either of the persons named in this section shall die, refuse, or neglect to execute the powers and discharge the duties hereby created, it shall be the duty of the remaining persons hereinbefore named, or a majority of them, to appoint a suitable person or persons, to fill such vacancy or vacancies, so often as the same shall occur.
- Location of road. SEC. 2. The said corporation are empowered to cause such examination or surveys to be made as shall be necessary to ascertain the most advantageous route whereon to construct a Railroad, and shall cause an estimate to be made of the probable cost thereof. And the said corporation shall be, and they are hereby invested with the right to construct a railroad, with one or more railways or tracks, from some convenient point to be selected on Lake Saint Croix, or Saint Croix River, thence running to the town of Saint Paul and the Falls of Saint Anthony, on the Mississippi River; thence across said river, by the most feasible route, to the western boundary of said Territory, at such point as shall be deemed most expedient by said company, with a branch to the Red River, to a point to be selected on said river, and also a branch running to a point to be selected on the St. Louis River, if deemed advisable by said company.
- Capital stock. SEC. 3. The capital stock of said corporation shall be Two Million of Dollars, and shall be divided into shares of one hundred dollars each, and five dollars on each share shall be paid at the time of subscribing.
- Books to be opened SEC. 4. The above named persons, or a majority of them, are authorized to open books for receiving subscriptions to the capital stock of said company, and shall prescribe the form of such subscription, which books shall be opened at such place or places as they may deem expedient, by giving thirty days notice in some newspaper printed in the Territory of Minnesota, and in such other place or places as may be thought advisable, of the time and place, or times and places of opening; said books to be kept open thirty days.
- Directors, how elected. SEC. 5. So soon as said stock, or one hundred thousand dollars thereof, shall have been subscribed, the above named persons, or the same number thereof as shall have given the notice above required, shall give like notice for the meeting of the stockholders, to choose directors at some time at least thirty days thereafter, and at some place within said Territory of Minnesota. And if at such time and place the holders of one half or more of said stock subscribed, shall attend either in person or by lawful proxy, they shall proceed to choose from the stockholders, by ballot, nine directors, each share of capital stock entitling the owner to one vote, and at such election, the persons named in the first section of this act, or those appointed by its provisions to fill vacancies which may have occurred, or any three of them, if no more be present, shall be inspectors of such election, and shall certify in writing, signed by them, or a majority of them, what persons are elected directors, and if two or more have an equal number of votes, such inspectors

shall determine by lot which of them shall be directors, to complete the number required, and shall certify the same in like manner; and such inspectors shall appoint the time and place of holding the first meeting of directors, at which meeting, five shall form a board competent to transact all business of the company, and thereafter a new election of directors shall be made annually, at such time and places as the stockholders at their first meeting shall appoint, and if the stockholders at their first meeting shall fail to appoint the day of such election, then it shall be holden in the succeeding year, on the same day of the same month on which said first election was holden, unless the same shall be on the first day of the week, in which case, it shall be holden on the day next succeeding; and if no election be made on the day appointed, said company shall not be dissolved; but said election may be made at any time appointed by the by-laws of said company; the said directors shall elect one of their number president, and shall appoint a secretary, treasurer, such engineers and other officers as they may find necessary, shall fix their compensation, and may require adequate security for the performance of their respective trusts.

Annual meetings.

SEC. 6. The directors may receive payment to the subscriptions to the capital stock at such time, in such proportion, not exceeding twenty-five per cent. at any one instalment, under such conditions as they shall deem fit, under the penalty of forfeiture of all previous payments thereon, or otherwise: *Provided*, They shall never require the payment to be made at any place out of the counties through which said road shall pass. And such directors shall, at least thirty days previous to the appointed time of such required payment, give notice thereof in the manner required in the fourth section of this act for giving notice of the opening of the books of subscription for the stock of said company.

Subscriptions to capital stock.

SEC. 7. The directors of said company shall have power to make from time to time, all needful rules, regulations and by-laws touching the business of said company, and to determine the number of tracks and railways upon such road, and the width thereof, and the description of carriages which may be used thereon, to regulate the amount of tolls and the manner of collecting the same for such transportation, and to fix penalties for the breach of any such rules, regulations or by-laws, and to direct the mode and condition of transferring the stock of said company; and penalties provided for by the said by-laws, may be sued for by any person authorized thereby, in the name of said company, and recover in a civil action before any court having jurisdiction of the amount, and the said company may erect and maintain toll houses and such other buildings and fixtures as the accommodation of those using said road may require.

Rules and by-laws.

SEC. 8. The said company may construct the said railroad across any public or private road, highway, stream of water, or water course, if the same shall be necessary; but the said company shall restore such road, highway, stream of water or water course, to its former state, or in a sufficient manner not to impair its usefulness to the owner or to the public.

Highways, &c., how crossed.

SEC. 9. So soon as the amount of tolls accruing and received from the use of said road or part thereof, according to the provisions of this act, shall exceed six per cent. on the amount of said capital stock paid in, after deducting therefrom the expenses and liabilities of said company, the directors of said company shall

Dividends.

make a dividend of such nett profits among the stockholders, in proportion to their respective shares, and no accumulative fund exceeding one per cent. of the profits of said company shall remain undivided for more than six months.

Damaging or obstructing.

SEC. 10. If any person or persons shall wilfully obstruct or in any way spoil, injure or destroy said road or any of its depots, cars, store houses, buildings, machine shops or other fixtures, or anything belonging or incidental thereto, or any materials to be used in the construction thereof, or any building, fixture or carriage erected or constructed for the use and convenience thereof, such person or persons shall each be liable for every such offence to treble the damages sustained thereby, to be recovered in a civil action in any court having jurisdiction of the amount.

Duty of company.

SEC. 11. Whenever it shall become necessary in the location or construction of said road to pass through the land of any individual, it shall be the duty of said company to provide for said individual proper wagon ways, and all necessary roads and passages across the track of said railroad, or otherwise the company shall be liable to such individual in treble the amount of damages occasioned by such neglect.

Capital stock may be increased.

SEC. 12. Said company shall have power to increase its capital stock six millions of dollars.

Directors, number, etc.

SEC. 13. Said company shall have power to increase its number of directors to any number not exceeding fifteen.

Right of way.

SEC. 14. The said company shall have the right to enter upon any lands, to survey and lay down said road, not exceeding one hundred and thirty feet in width, except where it is necessary to leave room for turn-outs, sites for water, buildings, conduits and tank sites, for depots and store-houses, machine and other shops, and the extra tracks necessary therefor, and whenever it is necessary to have such lands, they shall have the right to enter upon, take, hold and occupy such lands, and also to enter upon any lands adjoining said road, and obtain therefrom sand, gravel, stone and other materials as may be necessary for the construction of said road, and whenever any lands or materials shall be required for the construction of said road, and the same shall not be given or granted to said company, the compensation to be paid therefor by said company shall be ascertained in the manner following, to wit: Said company shall apply to the judge of the district court of the Territory of Minnesota, for the appointment of three commissioners, whose duty it shall be at the earliest practicable time after their appointment, to proceed to examine and assess the damages which may be sustained by the several owners or claimants of the lands through which the road of said company is located, and the said commissioners in assessing said damages shall deduct therefrom the benefit which said lands receive by the construction of said road. It shall be the duty of said company to give thirty days' notice of their application for the appointment of said commissioners in one or more newspapers published in each of the counties through which said road is laid out, and in case no newspaper is published in any one of said counties, then by posting up such notice on the door of the court house in said county, thirty days before the time of making such application, and it shall be the duty of said commissioners to cause ten days notice of their meeting to appraise the damages of any lands through which said road may run, to be given to the owner or claimant thereof, and in case said owner or claim-

Duty of commissioners.

ant shall be a minor, insane person or unmarried woman, then such notice shall be given to the guardian, committee or husband of such minor, insane person or unmarried woman. Either party feeling himself aggrieved by the decision of said commissioners, may appeal to the district court of the county in which said lands may be situated, and said appeal shall be tried in the same manner as any suit commenced therein. *Provided*, that said company shall not in any manner be delayed in the construction of their road by any such appeal, but may proceed immediately with such construction on paying into the office of the clerk of said court the amount of moneys awarded to the owner or owners of such lands, and filing a bond with said clerk, to said owner or owners, binding said company to pay such further sum as may finally be awarded against said company. The notice to be given by the commissioners to the owners of lands required for the railroad shall be in writing, and delivered to said owner or owners, or left at their usual place of residence, if residents of this Territory, or if non-residents, then said notice to be given in a newspaper published in the county in which said land is situated, at least four weeks before making said appraisalment.

Appeal from decision of commissioners.

SEC. 15. Said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its appendages, and to issue bonds for the payment thereof in the usual form; such bonds not to exceed in the aggregate at the period of the completion of said road three-fourths of the whole amount actually expended on said road and its appendages aforesaid; and may make and execute in the corporate name of said company all necessary mortgages, writings, notes, bonds, or other papers, for any liability that it may incur in the construction or equipment of said road.

May borrow money and dispose of bonds.

SEC. 16. The said company is hereby authorized and empowered to construct their said railroad and its branches in sections as fast as they may obtain the means for so doing; and the franchise of the portions so completed and put in operation, shall vest in said company the same as though the whole was completed.

May build road in sections, etc.

SEC. 17. Said company is authorized and empowered to connect its road with the road of any railroad company or companies in the Territory of Minnesota; or to become part owner or lessee of any railroad in said Territory, and any railroad company in said Territory of Minnesota, duly organized under the laws of said Territory, may connect its road with the road of said company, and may in like manner, with the consent of said company, become part owner or lessee of the road of said company, or of any of its branches, or any portion thereof, situated in this Territory.

Power to unite roads.

SEC. 18. The fee simple of all lands granted, along the line of said road or otherwise by the Congress of the United States for the purpose of aiding in the construction of said road, may be directly granted to said company, and shall be vested in or transferred to said company; and said company is hereby authorized to receive the title thereto, and is hereby empowered to transfer just and proper proportionate parts of said lands from time to time, and to convey in fee simple or otherwise, as soon and as often as five miles of said road shall be constructed and completed, and the track thereof shall be put in running order, and this grant shall not become void, nor this company be dissolved by the non-completion of the entire extent of said road, but shall be good and valid, to all intents and

Lands granted by congress.

purposes, for the parts or portions of said road, completed, and said company shall continue and survive to that extent.

May pass over
other railroads.

SEC. 19. This company shall have power to enter upon and pass over the railroad of any other company whose railroad connects with that of this company with their cars and engines, and any other company shall have like power to enter upon this railroad, whose railroad connects with this railroad, and pass over the same with their cars and engines; and such reciprocal use of said respective railroads, shall be upon terms to be agreed upon by the officers of the respective companies, and in case such terms cannot be agreed upon by said officers, then an application may be made by either party to the supreme court of this Territory, whose duty it shall be to fix such terms for the respective parties as the equity of the case may demand.

Must be com-
menced.

SEC. 20. The said Minnesota Western Railroad Company shall commence and complete their said road from the St. Croix Lake or St. Croix River to St. Paul, within six years from the passage of this Act.

SEC. 21. This act shall be favorably construed in all legal and equitable proceedings for the accomplishment of the objects intended by this Act.

Legislature may
alter or amend.

SEC. 22. The Legislature may at any time amend or alter this act.

Approved March 3, 1853.

CHAPTER 67. — *ch 27*

Feb. 26, 1853.

An Act to change the time of holding the General Election in the several precincts in the County of Pembina.

Page 61

SECTION.

1. Time of election changed to second Tues-
day Sept.

SECTION.

2. Act when to take effect.

Election when
held.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That it shall hereafter be lawful for the electors at the several precincts in the county of Pembina, to hold their general elections on the second Tuesday in September: in each and every year, and the votes so polled and returned according to the provisions of law, shall be as valid to all intents and purposes as if polled and returned on the day designated by law for holding the general elections, any law to the contrary notwithstanding.

Act when to take
effect.

SEC. 2. This act shall take effect from and after its passage.

Approved February 26, 1853.

CHAPTER 68.

An Act granting to Richard Arnold the right to establish and maintain a ferry across the St. Croix river, between the falls of St. Croix and Taylor's Falls, Chisago county.

March 6, 1852.

SECTION.

1. Grant to Richard Arnold of exclusive right to ferry for six years.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, condition of; penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages how brought.
6. Remedy for injuries sustained by negligence of owner or ferryman to be recovered by action on bond.
7. Legislature may alter, amend or repeal charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Richard Arnold, his heirs, executors, administrators or assigns, shall have the exclusive right and privilege for the period of six years, of keeping and maintaining a ferry across the Saint Croix river, between the falls of Saint Croix and Taylor's Falls, Chisago county.

Charter for six years.

SEC. 2. Said Richard Arnold, shall at all times keep good boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours both at night or day; but persons crossing at said ferry after nine o'clock at night, may be charged double the fare as hereinafter prescribed.

To keep boats.

SEC. 3. The rate charged for crossing at said ferry shall not exceed the following:

Rates.

For each foot passenger, - - - - -	10 cents.
" each horse, mare or mule, with or without rider, -	25 "
" each cow or ox, - - - - -	25 "
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - -	50 "
" each single horse carriage, - - - - -	50 "
" each additional horse, mule, ox or cow, - - -	15 "
" each swine or sheep, - - - - -	3 "

All freight of lumber, merchandise or other articles not in teams, at the rate of five cents per barrel, fifty cents per M feet of lumber, and three cents per hundred pounds for all other articles.

SEC. 4. The said Richard Arnold shall, within twelve months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of Chisago county, a bond to the said county commissioners, for the benefit of the said Chisago county, with two or more sufficient sureties, to be approved of by said board of county commissioners, in the penal sum of five hundred dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from the passage of this act.

Bond.

Forfeiture.

SEC. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said Richard Arnold, his heirs, executors, administrators, or assigns, shall forfeit a sum, not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a civil action, for all damages any person may sustain by reason of the neglect of the said Richard Arnold to fulfil any of the duties imposed upon them by this act.

Remedy.

SEC. 6. Any person who shall sustain any injury by the negligence or default of the said Richard Arnold, or of the ferryman in his employ, may have a remedy by an action on the bond required in this act.

Legislature may alter or repeal act.

SEC. 7. The legislature may alter, amend or repeal this act at any time.

Approved March. 6. 1852.

CHAPTER 69.

March 27, 1851.

An Act granting to John Banfill the right to establish and maintain a ferry across the Mississippi river.

SECTION.

1. Grant of right to keep ferry; for how long a time.
2. To keep boats and cross all persons at all times.
3. Rates of ferriage not to exceed a specified amount
4. Bond to be filed, conditions of; penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages, how brought.
6. Remedy for injuries sustained by negligence of owner or ferryman how recovered.
7. Legislature may alter, amend or repeal charter.

Grants ferry right for ten years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That John Banfill, his heirs, executors, administrators or assigns, shall have the exclusive right and privilege for the period of ten years, of keeping and maintaining a ferry across the Mississippi river, in the county of Ramsey, and Territory of Minnesota, at or near the mouth of Rice creek; and no other ferry shall be established within one half mile of said creek.

To keep boats.

SEC. 2. Said John Banfill shall at all times keep a safe and good boat, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours, both at night or day; but persons crossing at said ferry at night, may be charged double the fare as hereinafter prescribed.

SEC. 3. The rates charged for crossing at said ferry shall not exceed the following:

For each foot passenger, - - - - -	10 cents.	Rates of ferrage.
each horse, mare or mule, with or without rider, -	15 "	
each two horse, two ox or two mule team,		
loaded or unloaded, with driver, - - - -	25 "	
each single horse carriage, - - - - -	25 "	
each additional horse, mule, ox or cow, - - -	10 "	
each swine or sheep, - - - - -	2 "	

All freight of lumber, merchandize, or other articles not in teams, at the rate of ten cents per barrel, fifty cents per M feet of lumber, and three cents per hundred weight of all other articles.

Sec. 4. The said John Banfill shall, within six months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to the said board, with two or more good and sufficient sureties, to be approved by said board, in the penal sum of one thousand dollars; conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from its passage.

To give bond;

Sec. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and due attendance, the said John Banfill shall forfeit a sum not exceeding twenty dollars, to be recovered by an action of debt, before any court having competent jurisdiction, and shall be further liable in an action on the case, for all damages any person shall sustain by reason of the neglect of said Banfill to fulfil any of the duties imposed upon him in this act.

Forfeiture for neglect.

Sec. 6. Any person who shall sustain any injury by the negligence or default of said Banfill, or of the ferryman in his employ, may have a remedy by an action upon the bond required in this act.

Sec. 7. The legislature may alter, amend or repeal this act at all times.

Remedy for damages.

Approved March 27, 1851.

Legislature may alter or repeal charter.

CHAPTER 70.

An Act granting to Samuel Groff the right to, establish and maintain a ferry across Lake St. Croix, and for other purposes.

March 6, 1852.

SECTION.

1. Grant to Groff of exclusive right to ferry for six years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, when and how.
5. Failure to comply with conditions of. Penalty for, how recovered

SECTION.

6. Suits on the bond may be instituted for injury to any person by neglect of said Groff, etc.
7. Act granting to John Morgan the right to ferry repealed.
8. Legislature may amend, alter, modify or repeal.
9. Act when to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Samuel Groff, his heirs, executors, administrators, or

Grants ferry right
six years.

assigns, shall have the exclusive right and privilege, for the period of six years, of keeping and maintaining a ferry across Lake St. Croix, at or near the town of Stillwater, in the county of Washington; and no other ferry shall be established within one mile of said ferry.

Conditions of the
grant.

SEC. 2. Said Samuel Groff shall at all times keep a safe and good boat or boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both at night or day; but persons crossing at said ferry, after nine o'clock at night, may be charged double the fare as hereinafter prescribed.

Ferry rates.

SEC. 3. The rates charged for crossing at said ferry, shall not exceed the following:

For each foot passenger, - - - - -	15 cents.
“ each horse, mare, or mule, with or without rider, - - - - -	20 “
“ each two horse, two ox or two mule team, loaded or unloaded, - - - - -	30 “
“ each single horse carriage, - - - - -	30 “
“ each additional horse, mule, ox or cow, - - - - -	15 “
“ each swine or sheep, - - - - -	3 “

All freight of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 8 cents per cwt. of all other articles.

Bond to be given
and filed.

SEC. 4. The said Samuel Groff shall, within six months after the passage of this act, file, or cause to be filed with the clerk of the board of county commissioners of the county of Washington, a bond to the said board, with two or more good and sufficient sureties, to be approved by said board, in the penal sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from its passage.

Liable for neglect.

SEC. 5. For every neglect in keeping a good and sufficient boat or boats, or failure to give prompt and due attendance, the said Samuel Groff, his heirs, executors, administrators or assigns, shall forfeit a sum not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action, for all damages any person shall sustain by reason of the neglect of said Groff, to fulfil any of the duties imposed upon him in this act.

Remedy.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Groff, or of the ferryman in his employ, may have a remedy by an action on the bond required in this act.

Repeal.

SEC. 7. That an act of the late territory of Wisconsin, granting to John Morgan the right to establish and maintain a ferry across Lake St. Croix, be and the same is hereby repealed.

Legislature may
alter, amend or re-
peal.

SEC. 8. The legislature may at any time, alter, amend, or repeal this act.

SEC. 9. This act shall take effect from and after its passage.

Approved March, 6, 1852.

CHAPTER 71.

An Act to defray the expenses of the Legislative Assembly, and for other purposes.

March 5, 1853.

SECTION.

1. Appropriations made and for what purpose.

Le Duc & Rohrer, stationery; W. S. Combs, do.; A. T. Chamblin, do.; C. E. Shafer, do.; John Farrington, do.; S. H. Sargent, do.

Pattison & Benson, for use of team.

C. W. Berup, rent of rooms.

Joseph Le May, for translating governor's message.

O. F. V. Lull, for making capboard, etc.

C. E. Shafer, N. E. Tyson, J. McCloud Jr. & Co., R. P. Marvin, and John Farrington, sundries furnished.

F. S. Newell, stove, etc.; John Schroder, wood.

Lewdards & Trower, Stees & Hunt, and F. Cazeau, work done.

John Farrington, for clock.

Thos. Wall, and Jas. Baker, labor.

John Holland, painting; Curran & Lawler, carpets; Agnes Patwell, labor.

A. L. Larpentour and Elfelt & Brother, carpets, etc.

J. W. Eam, postage.

Salaries; J. B. White, J. S. Chamberlin, L. A. Babcock, D. B. Loomis, M. McLeod, S. Traak, S. P. Folson, Norris Hobart, A. H. Cathcart, J. McShane, Abden Bryant, Perkins, F. E. Collins, J. W. Cormack, A. T. C. Pierson, S. H. Randall, Joseph E. Brown, Henry Jackson, Starkey, E. F. Parker, David Day, M. W.

SECTION.

Getchell, I. Van Duzen, W. H. Morse, J. C. Bowers.

Joseph E. Brown, transcribing journal last day, furnishing copy to printer, etc.

Joseph R. Brown, translating governor's message into German.

Joseph R. Brown, for papers.

Joseph E. Brown, for incidental printing for H. of R.

Rev. Mr. Fullerton, chaplain; Rev. Mr. Mehldeffer, do.

A. T. C. Pierson, transcribing council journal, furnishing copy to printer, etc.

Estate of J. M. Goodhue, publishing council journal, 1852.

Estate of J. M. Goodhue, publishing session laws, 1852.

Estate of J. M. Goodhue, for incidental printing.

Estate of J. M. Goodhue, for papers.

James Beatty, contesting seat.

James Wells, contesting seat.

W. W. Hitchcox.

Dahl & Deul, stationery.

D. A. Robertson, for papers.

James McIntosh, public binder.

George D. Bowman, for papers.

Owens & Moore, incidental printing.

Owens & Moore, for papers.

Owens & Moore, for printing amendments to revised statutes, journal, etc.

John Farrington, on clock.

Le Duc & Rohrer, stationery.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be paid out of the moneys appropriated to defray the expenses of the legislative assembly, the following sums, viz:

To Le Duc & Rohrer, for stationery for members and officers of the legislative assembly, five hundred and five dollars and seventy-five cents.

To W. S. Combs, for stationery for members and officers of the legislative assembly, three hundred and fifty-eight dollars and eighty-five cents.

To A. T. Chamblin, for stationery for members of the legislative assembly, four dollars.

To C. E. Shafer, for stationery for members of legislative assembly, two dollars.

Appropriations.

To whom appropriated.

Appropriations,
to whom made.

To John Farrington, for stationery for officers of the legislative assembly, seven dollars and eighty-five cents.

To S. H. Sergeant, for stationery for members of the legislative assembly, fifteen dollars and eighty-five cents.

To Pattison & Benson, for team for the committee to visit public buildings, twenty-two dollars.

To C. W. Borup, for rent of rooms for meeting of the legislative assembly, three hundred dollars.

To Joseph LeMay, for translating the governor's message into the French language, one hundred dollars.

To C. P. V. Lull, for making cupboard and fixing windows and locks, fourteen dollars.

To C. E. Shafer, for carpet bag, two dollars.

To N. E. Tyson, for candles, seven dollars.

To J. McCloud, Jr. & Co., for candle-sticks and spittoons, nineteen dollars and eighty-five cents.

To R. P. Marvin, for two pitchers, one dollar and seventy cents.

To Jno. Farrington, for candles, buckets and tumblers, twenty dollars and five cents.

To F. S. Newell, for putting up stove, and furnishing pipe, fifteen dollars.

To John Schroder, for furnishing seventeen cords wood for library and legislative assembly, sixty-two dollars and sixty-two cents.

To Lowderdale & Trower, for making seventeen desks, one hundred dollars.

To Stees & Hunt, for making eleven desks, one hundred and two dollars and ninety-eight cents.

To Stees & Hunt, for making one stand and six arm chairs, fourteen dollars and fifty cents.

To F. Cazeau, for carpenter work in legislative hall, thirty-seven dollars.

To John Farrington, for clock, five dollars.

To Thomas Wall, for sawing seventeen and one quarter cords of wood, seventeen dollars and twenty-five cents.

To James Baker, for sawing twelve cords of wood for library, twelve dollars.

To John Holland, for painting desks and railing, and furnishing four chairs and window curtains, twenty-six dollars.

To Curran & Lawler, for curtains and table cover, ten dollars and thirty cents.

To Agnes Patwell, for making carpets, eight dollars.

To A. L. Larpenteur, for thirty-eight yards carpet and two mats, thirty-one dollars and fifty cents.

To Elfelt & Brother, for forty-seven yards carpet, thirty dollars and fifty-five cents.

To J. W. Bass, for postage of the legislative assembly, nine hundred and thirty-five dollars and eighty cents.

To W. B. White, salary as librarian, six hundred dollars.

To Rev. J. S. Chamberlin, for sixty days services as chaplain, one hundred and eighty dollars.

To L. A. Babcock, for services as president *pro tem.* of the council twenty days, sixty dollars.

To D. B. Loomis for services as president *pro tem.* of the council, eleven days, thirty three dollars.

To M. McLeod, for services as president of the council twenty-nine days, eighty-seven dollars. Appropriations, to whom made.

To S. Trask, for services as secretary *pro tem.* of the council, thirteen days, thirty-nine dollars.

To S. P. Folsom, for services as assistant secretary of the council, sixty days, one hundred and eighty dollars.

To Norris Hobart, for services as sergeant-at-arms, *pro tem.* of the council, thirteen days, thirty-nine dollars.

To A. H. Cathcart, for services as messenger of the council, sixty days, one hundred and eighty dollars.

To J. McShane, for services as fireman *pro tem.* of the council, thirteen days, thirty-nine dollars.

To Alden Bryant, for services as enrolling clerk, *pro tem.* of the council, thirteen days, thirty-nine dollars.

Perkins, for services as fireman of the council, forty-seven days, one hundred and forty-one dollars.

To F. E. Collins, for services as enrolling clerk of the council, forty seven days, one hundred and forty-one dollars.

To J. W. Cormack, for services as sergeant-at-arms of the council, forty-seven days, one hundred and forty-one dollars.

To A. T. C. Pierson, for services as secretary of the council, forty-seven days, one hundred and forty-one dollars.

To B. H. Randall, for services as speaker *pro tem.* of the house of representatives, twenty-one days, sixty-three dollars.

To Joseph R. Brown, for services as chief clerk of the house of representatives, sixty days, one hundred and eighty dollars.

To Henry Jackson, for services as assistant clerk, *pro tem.* of the house of representatives, twenty-one days, sixty-three dollars.

Starkey, for services as enrolling clerk, *pro tem.* of the house of representatives, twenty-one days, sixty-three dollars.

To E. F. Parker, for services as sergeant-at-arms of the house of representatives, sixty days, one hundred and eighty dollars.

To David Day, for per diem as speaker of the house of representatives, thirty-nine days, one hundred and seventeen dollars.

To M. W. Getchell, for services as messenger *pro tem.* of the house of representatives, twenty-one days, sixty-three dollars.

To F. N. Grouchy, for services as fireman *pro tem.* of the house of representatives, twenty-one days, sixty-three dollars.

To I. Van Duzen, for services as fireman of the house of representatives, thirty-nine days, one hundred and seventeen dollars.

To W. H. Morse, for services as enrolling clerk of the house of representatives, thirty-nine days, one hundred and seventeen dollars.

To J. C. Bowers, for services as messenger of the house of representatives, thirty-nine days, one hundred and seventeen dollars.

To Joseph R. Brown, for five days services after the adjournment in bringing up and transcribing the journal of the last day, filing books and papers, &c. with the secretary, fifteen dollars.

To Joseph R. Brown, for furnishing copy of journal to the printer, superintending the printing thereof, and affixing an index to the same, according to law, two hundred dollars.

Appropriations,
to whom made.

To J. R. Brown for translation of the message of the governor into the German language, one hundred dollars.

To J. R. Brown, for Minnesota Pioneer furnished members and officers of the legislative assembly, sixty-seven dollars and fifty cents.

To J. R. Brown, for incidental printing of the house of representatives from February seventh, eighteen hundred and fifty-three, to close of the session, including the governor's message in German, as per bill ordered and filed by the house, one thousand eight hundred and forty-five dollars and eighty-five cents.

To Rev. Mr. Fullerton, two days service as chaplain to the council, six dollars.

To Rev. Mr. Reihldaffer, for services as chaplain to the council, forty-eight days, one hundred and forty-four dollars.

To A. T. C. Pierson, for five days services after the adjournment of the legislature in bringing up and transcribing the journal of the last day, filing papers and books with the secretary, fifteen dollars.

To A. T. C. Pierson, for furnishing copy of the journal to the printer, superintending the printing thereof and affixing an index to the same in pursuance to law, two hundred dollars.

To estate of J. M. Goodhue, for publishing the council journal of last session in pamphlet form, eight hundred and twenty-two dollars and eighty-nine cents.

To estate of J. M. Goodhue, for publishing the session laws passed at the last session in pamphlet form, three hundred and thirty-three dollars and sixty-nine cents.

To estate of J. M. Goodhue, for incidental printing of the house of representatives of the present session, from the commencement of the session to February sixth, eighteen hundred and fifty-three, nine hundred and forty-seven dollars and nine cents.

To estate of J. M. Goodhue, for Minnesota Pioneer furnished the members and officers of the assembly during the present session, sixty-seven dollars and fifty cents.

To James Beatty for per diem for ten days during the session of A. D. eighteen hundred and fifty-two, while engaged in procuring testimony in the matters of the contest of W. W. Warren, which amount was not paid the said Beatty for the year A. D. eighteen hundred and fifty-two, thirty dollars.

To James Wells, for per diem while contesting seat in legislature during the session of A. D. eighteen hundred and fifty-two, twenty days, sixty dollars, and eighty miles mileage, sixteen dollars.

To W. W. Hichcox, for gum Arabic furnished sergeant-at-arms, two dollars and forty cents.

To Dahl and Doul, for stationery furnished secretary for members of the legislative assembly, forty-three dollars and thirty-five cents.

To D. A. Robertson, for copies of the Minnesota Democrat furnished members of the legislative assembly, one hundred and forty-one dollars and forty-eight cents.

To James McIntosh, public binder, for preparing, folding, stitching and binding in pamphlet form, two thousand messages with accompanying documents at eight cents, one hundred and sixty dollars; pressing, stitching, folding and trimming one thou-

Appropriations
to whom made.

sand messages without covers for the council at two cents, twenty dollars. Pressing, folding, stitching, covering and trimming fifteen hundred messages for the house of representatives at three cents, forty-five dollars; pressing, folding, stitching superintendent common school report, five hundred copies at two cents, ten dollars; folding, stitching and trimming one hundred reports building commissioners, at three cents, three dollars; pressing, folding, stitching and trimming one hundred copies auditor's report at two cents, two dollars; pressing, folding, stitching and trimming one hundred copies report librarian, at two cents, two dollars. Pressing, folding, stitching and trimming one hundred copies report of the board of regents, at two cents, two dollars; pressing, folding and stitching one hundred reports joint committee on public buildings, at two cents, two dollars. Pressing, folding and stitching two hundred and fifty copies of petitions, &c., liquor law bill, at three cents, six dollars and ninety cents. Pressing, folding, stitching, covering and trimming seventy-five rules of the council, at three cents, two dollars and twenty-five cents. Pressing, folding, stitching, covering and trimming one hundred and twenty-five copies rules of the house and council together, at four cents, five dollars. Pressing and stitching eleven hundred and seventy-one house and council bills, five dollars. Pressing, folding and trimming report adjutant general, one hundred copies, one dollar and fifty cents. For full binding fifty volumes journals of the house and council of last session as authorized by statute, fifty dollars. Pressing, folding, and trimming one hundred copies the report prison superintendent, one dollar and fifty cents. Pressing, folding and trimming five hundred governor's messages in French language, fifteen dollars. Pressing, folding and trimming two hundred copies message for governor, at three cents, six dollars.

To George D. Bowmah, for newspapers furnished members of legislative assembly, one hundred and forty-two dollars and thirty-four cents.

To Owens & Moore, for incidental printing executed by order of the council, one thousand nine hundred and seventeen dollars and two cents.

To Owens & Moore, for twenty-five hundred and twenty-nine copies of the Minnesotian furnished to the members and officers of the legislature, one hundred and fifty-seven dollars and ninety-five cents.

To Owens & Moore, for printing amendments to the revised statutes, (bound with the R. S.) and journals of the house of representatives of eighteen hundred and fifty-two, as per bill rendered to the secretary of the Territory, twelve hundred and forty-one dollars and forty-four cents.

To John Farrington, additional on clock, fifteen dollars.

To Le Duc & Rohrer, for stationery furnished members and officers of the council, twenty-five dollars for secretary of the council.

Approved March 5, 1853.

CHAPTER 72.

Page 158.

March 5, 1853. *An Act to incorporate the Grand Lodge of Ancient Free and Accepted Masons of Minnesota.*

SECTION.

1. Corporators; name of corporation; may have a common seal, etc.
2. Powers and privileges of corporation;
3. Cataract Lodge, No. 2, of St. Anthony.
4. St. Paul Lodge, No. 3, of St. Paul.

SECTION.

5. St. John's Lodge, No. 1, of Stillwater.
6. Charter of subordinate Lodges, how obtained.
7. Act, when to take effect.

Corporators.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Alfred E. Ames, the present Grand Master, Aaron Goodrich, Deputy Grand Master, Daniel F. Brawley, Senior Grand Warden, and Abram Van Vorhes, Junior Grand Warden of Ancient, Free and Accepted Masons, of Minnesota, and D. B. Loomis, J. C. Ramsey, E. Case and A. T. C. Pierson, as trustees, and their successors in office, be, and they are hereby declared to be, a body politic and corporate, by the name and style of "The Grand Lodge of Minnesota;" may have and keep a common seal, and the same alter, change or renew at pleasure; and by their corporate name may sue and be sued, plead and be impleaded, in all courts, either of law or equity, and shall have perpetual succession.

Powers and privileges.

SEC. 2. Said Grand Lodge shall be established in St. Paul, and in their corporate name may contract and be contracted with, may receive by gift or purchase, and may hold and convey real and personal estate to the amount of fifty thousand dollars, and may make such by-laws, rules and regulations as they may deem best: *Provided,* That such by-laws, rules and regulations be not contrary to the constitution of the United States, or of the organic act of this Territory.

Cataract Lodge.

SEC. 3. That Alfred E. Ames, the present W. Master, D. M. Coolbaugh, Senior Warden, and C. T. Stearns, Junior Warden of Cataract Lodge No. 2, of Ancient, Free and Accepted Masons, and their successors, be and they are hereby declared to be a body politic and corporate by the name and style of "Cataract Lodge No. 2, of St. Anthony," and by such name may have and possess all the rights and privileges given the Grand Lodge in the first and second sections of this act.

St. Paul Lodge.

SEC. 4. That Daniel F. Brawley, the present W. Master, D. W. C. Dunwell, Senior Warden, and Lott Moffett Junior Warden, of St. Paul Lodge, No. 3, of Ancient, Free and Accepted Masons, and their successors, be and they are hereby declared to be a body politic and corporate by the name and style of "St. Paul Lodge, No. 3, of St. Paul," and by such name may have and possess all the rights and privileges given the Grand Lodge in the first and second sections of this act.

St. John's Lodge.

SEC. 5. That F. K. Bartlett, the present W. Master, H. N. Setzer, Senior Warden, and Wm. Holcombe, Junior Warden of St. John's Lodge, No. 1, of Ancient Free and Accepted Masons,

and their successors, be and they are hereby declared to be a body politic and corporate by the name and style of "St. John's Lodge, No. 1, of Stillwater," and by such name may have and possess all the rights and privileges given the Grand Lodge in the first and second sections of this act.

SEC. 6. That whenever said Grand Lodge shall authorize or charter subordinate lodges in any part of Minnesota, the Masters and Wardens of each such subordinate Lodges upon filing with the clerk of any court of record in the county where such Lodge is established, or in the county to which the same is attached for judicial purposes, a certificate signed by the Master and Wardens then constituting the Lodge, setting forth therein the name of the Lodge, the county and the place where the Lodge is to meet, shall have and possess all the rights and privileges given the Grand Lodge in the first and second sections of this act, in the name specified in said certificate; and that said clerk shall have a fee of one dollar for filing and recording every such certificate, which he is hereby required to do upon the payment of such fee.

Charter of Subordinate Lodges.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved March 5, 1853.

CHAPTER 73. —

Page 46

An Act to incorporate the Mississippi and Lake Superior Railroad Company.

March 5, 1853.

SECTION.

1. Corporators; object and name of corporation.
2. Location of road.
3. Capital stock; amount of.
4. Books to be opened; notice of how given.
5. Directors, how elected; annual meetings.
6. Subscriptions to capital stock.
7. Rules, regulations and by-laws.

SECTION.

8. Right of way, etc.
9. Highways, etc., how crossed.
10. Dividends, how paid.
11. Damaging or obstructing road, how punished.
12. Company to provide wagon ways, etc.
13. When road must be commenced.
14. Legislature may alter or amend act.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Alexander Ramsay, H. M. Rice, Franklin Steele, Charles H. Oakes, Alexander Wilkin, Lyman Dayton, H. H. Sibley, J. R. Irvine, W. G. Le Due, C. D. Fillmore, John G. Lennon, W. R. Marshall, R. R. Nelson, C. W. Borup, W. L. Ames, W. H. C. Folsom, Orange Walker, Christopher Carl, John McKusick, Elias McKain, J. W. North, Emanuel Case, R. P. Russell, D. B. Loomis, and their associates, are hereby constituted a body politic and corporate to all intents and purposes, by the name of the Mississippi and Lake Superior Railroad Company, with the power of perpetual succession, and by that name shall be, and are hereby made capable in law, to purchase, hold, enjoy, and

Corporators.

Name.

Powers.

retain to them and their successors, lands, tenements and hereditaments so far as may be necessary for the purpose of said railroad; and the same to sell, grant, rent, or in any manner dispose of; to contract and be contracted with, to sue and be sued, to implead and be impleaded, answer and be answered, defend and be defended; and also to make, have and use a common seal, the same to alter, break or renew at their pleasure; and if either of the persons named in this section shall die, refuse, or neglect to execute the powers or discharge the duties hereby created, it shall be the duty of the remaining persons hereinbefore mentioned, or a majority of them, to appoint a suitable person or persons, to fill such vacancy or vacancies, as often as the same shall occur.

Location of road.

SEC. 2. The said corporation is hereby empowered to cause such examination or survey to be made as shall be necessary to ascertain the most advantageous route whereon to construct a railroad, and shall cause an estimate to be made of the probable cost thereof for each mile separately; and the said corporation shall be, and they are hereby invested with the right to construct a railroad, with one or more railways or tracks, from some convenient point in the city of St. Paul, to some convenient point at or near the falls of the St. Louis river, or anywhere between the falls and the mouth of said river, or at any eligible point upon Lake Superior near the mouth of the said river: *Provided*, That if it be found necessary to cross any portion of Wisconsin, the necessary consent and permission of the legislature of that State be first obtained.

Capital stock.

SEC. 3. The capital stock of said corporation shall be three millions of dollars, which may be increased to five millions of dollars, if necessary, and shall be divided into shares of one hundred each, and five dollars on each share shall be paid at the time of subscribing.

Books to be opened

SEC. 4. The above named persons, or a majority of them, are authorized to open books for receiving subscriptions to the capital stock of said company, and shall prescribe the form of such subscriptions, which books shall be opened on or before the first of August, A. D. 1853, at such place or places as they may deem expedient, by giving sixty days notice in some newspaper printed in St. Paul, and in such other place or places as may be thought advisable, of the time and place, or times and places, of opening said books; and said books to be kept open thirty days, or until one hundred thousand dollars is subscribed.

Meeting of Stockholders.

SEC. 5. So soon as one hundred thousand dollars thereof, shall have been subscribed, the above named persons, or the same number thereof as shall have given the notice above required, shall give like notice for a meeting of the stockholders, at some time at least thirty days thereafter, and at some place within the city of St. Paul, and if at such time and place the holders of one-half or more of said stock subscribed, shall attend either in person or by lawful proxy, they shall proceed to choose from the stockholders, by ballot, nine directors, each share of the capital stock entitling the owner thereof to one vote, and at such election, the persons named in the first section of this act, or those appointed by its provisions to fill vacancies which may have occurred, or any three of them, if no more be present, shall be inspectors of such election, and shall certify in writing, signed by them, or a majority of them, what persons are elected directors; and if two or more have an equal number of votes, such inspectors shall determine by lot,

Each share entitled to one vote.

which of them shall be directors, to complete the number required, and shall certify the same in like manner; and such inspectors shall appoint the time and place of holding the first meeting of directors, at which meeting, five shall form a board competent to transact all business of the company, and thereafter a new election shall be made annually, at such time and place as the stockholders at their first meeting shall appoint, and if the first meeting shall fail to appoint a day of election, then the directors shall have power to appoint such time and place of election in the by-laws of the company as shall be agreed upon by them. And if no election be held at the time appointed, said company shall not be dissolved; but such election may be had at any time appointed by the by-laws of the said company. The said directors shall elect one of their number president, and shall appoint a secretary, treasurer, such engineers and other officers as they may find necessary, shall fix their compensation, and may require adequate security for the performance of their respective trusts.

Officers elected.

Sec. 6. The directors may receive payment of the subscriptions to the capital stock at such times, and in such proportion, not exceeding twenty per cent. at any one instalment, under such conditions as they may deem fit, under the penalty of the forfeiture of all the previous payments, or otherwise: *Provided*, They shall give notice thereof at least sixty days before the time of such payment, in at least one newspaper published at the place of payment.

Subscriptions to capital stock.

Sec. 7. The directors of said company shall have power to make from time to time, all needful rules, regulations and by-laws touching the business of said company, and to determine the number of tracks and railways upon said road, and the width thereof, and the description of carriages which may be used thereon, to regulate the amount of tolls and the manner of collecting the same; and to direct the mode and condition of transferring the stock of said company; and the said company may erect toll-houses and such other fixtures, and buildings as the accommodation of those using the road may require.

Rules and by-laws.

Sec. 8. The said Company shall have the right to enter upon any lands, to survey and lay down said road, not exceeding one hundred feet in width; and whenever any lands or materials shall be required for the construction of the said road, and the same shall not be given or granted to the company, as to the compensation to be paid therefor, the person or persons claiming compensation as aforesaid, if the owner or owners thereof are minors, or insane persons, the guardian or guardians of such minors, or insane persons may select for themselves an arbitrator, and the company shall select an arbitrator, and the two thus selected, shall take to themselves a third, who shall be sworn and paid by said company, as arbitrators between the parties; and render copies of award to each of the parties in writing; from which award, either of the parties may appeal to the court of proper jurisdiction for the county in which such land or materials may have been situate; and in all cases in which compensation shall in any manner be claimed for lands or materials, it shall be the duty of the arbitrators and court to take into consideration the advantages as well as the disadvantages of the road, and to award a fair compensation for said lands and materials; and appeals in all such cases, shall, when taken, be in all respects proceeded in as appeals in other cases in said court; and brought into said court by filing the award with the clerk of

Right of way.

Duty of arbitrators.

Appeal, how taken.

said court, whose duty it shall be to enter the same on the docket of the said court, setting down the claimant or claimants as plaintiff and the said company as defendants, and valuation so ascertained, shall be paid or tendered by the said company; said company shall have the right to hold and possess the said land and materials, as fully and absolutely as if the same had been granted and conveyed to the said company, by deed, as long as the same shall be used for the purposes of the said road: *Provided*, That none of the said arbitrators so chosen, shall be of kin to any of the parties, or be in anywise interested on either side.

Highways, &c., how crossed.

Sec. 9. The said company may construct the said railroad across any public or private road, highway, stream of water, or water course, if the same shall be necessary; but the said company shall restore such road, highway, stream of water or water course, to its former state, or in a sufficient manner not to impair the usefulness of said road, highway, or stream of water or water course, to the owner or to the public.

Dividends.

Sec. 10. So soon as the net profits accruing and received from the use of said road or part thereof, according to the provisions of this act, shall exceed six per cent. upon the amount of the capital stock paid in, the directors of said company shall make a dividend of such net profits among the stockholders, in proportion to their respective shares, and no accumulation fund exceeding one per cent. of the profits of said company shall remain undivided for more than six months.

Damaging or obstructing.

Sec. 11. If any person or persons shall wilfully obstruct or in any way injure or destroy said road or anything belonging or incident thereto, or any materials to be used in the construction thereof, or any building, fixture or carriage erected or constructed for the use or convenience thereof, such person or persons shall each be liable for every such offence for treble the damages sustained thereby, to be recovered in a civil action in any court having jurisdiction of the amount.

Duty of company.

Sec. 12. Whenever it shall become necessary in the location or construction of said road to pass through the land of any individual, it shall be the duty of said company to provide for said individual proper wagon ways, and said company shall be liable to such individual in treble the amount of damages occasioned by such neglect.

Must be commenced.

Sec. 13. The said company are hereby required to commence said road within three years, and to complete the same within ten years from the passage of this act.

Legislature may alter, amend or repeal.

Sec. 14. This act shall be favorably construed to effect the purposes thereby intended, and may be altered, or amended or repealed at any time by the legislature of this Territory.

Approved March 5, 1853.

CHAPTER 74. *Page 44**An Act to incorporate the Baldwin School in the City of St. Paul.*

Feb. 26, 1858.

SECTION.

1. Corporators, name of.
2. Object of institution.
3. Proceeds of donations to remain a perpetual fund, etc.
4. Trustees authorized to erect buildings, purchase library, etc.; to control all funds.
5. Proceedings at annual meetings; elections; vacancies how to be filled.
6. Powers of trustees.
7. Secretary to call meetings of trustees; majority to constitute a quorum.

SECTION.

8. Who are to be officers; officers to hold office for one year, etc.
9. President, duty of.
10. Secretary, duties of.
11. Treasurer, duties of.
12. Treasurer to give bonds.
13. Corporators to constitute first board; manner of calling first meeting.
14. Legislature may amend.
15. When to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That there be established at St. Paul, in this Territory, an institution by the name of the Baldwin School, and that Edward D. Neill, J. C. Whitney, J. G. Reihaldaffer, Gideon H. Pond, Alexander Ramsey, Wm. R. Marshall, Henry L. Moss, Henry F. Masterson and Alpheus G. Fuller, and their associates and successors in office be a body corporate, to be known by the name and style of the Trustees of the Baldwin School, with the right as such and by such name of suing and being sued, of contracting and being contracted with, of purchasing and holding land, and of making and using a common seal and altering the same at pleasure.

SEC. 2. The object of this institution shall be to promote the education of youth.

SEC. 3. The proceeds of all donations of whatever nature and from whatever source, shall be and remain a perpetual fund (except as hereinafter provided) and called the Baldwin School Fund, the interest of which shall be appropriated for the support of said school: *Provided, however,* that when a donor at the time of making his donation to said school shall designate the particular object for which he makes said donation, it shall be appropriated and expended accordingly.

SEC. 4. The said trustees are authorized and empowered to expend such portions of the funds as may come under their control in the erection of suitable buildings and in purchasing a site for the same, and for the purchase of a library, mathematical, philosophical and chemical apparatus, such as they may deem expedient for the object of said institution, and the control of all funds and property of whatever nature given or granted to said school or corporation, is hereby vested in said trustees and their successors in office.

SEC. 5. At the first meeting legally called and holden the trustees shall designate the time of their first and future annual meetings, which shall in no case be altered except by a vote of two-

Corporators.

Object of corporation.

Donations.

Trustees to erect buildings.

Annual meetings.

- thirds of the trustees. They may also choose all necessary officers, whose term of office shall expire at the first annual meeting. The trustees shall at said first annual meeting be divided by lot into three classes of three each, numbered one, two and three; class numbered one shall hold their office one year; class numbered two shall hold their office two years; class numbered three shall hold their office three years from the said first annual meeting, and until their successors are elected. After the first annual meeting, there shall be elected annually at the regular annual meetings, three trustees to supply the vacancies occasioned by the provisions of this section, who shall hold their office for the term of three years and until their successors are elected. All vacancies occasioned by death, resignation, removal from the Territory or in any other manner, as well as the vacancies occasioned by the expiration of the term of office, shall be filled by the board of trustees, and all vacancies except those occasioned by the expiration of the term of office, may be supplied at any meeting called for the purpose.
- Elections.** SEC. 6. The said trustees shall have power to purchase, hold, and sell real or personal estate, to enact by-laws for the government and regulation of said school, to appoint and employ teachers, to appoint such officers and committees as the management of the school and its funds may require, to define their duties, and to determine the amount of their respective salaries.
- Vacancies, how filled.** SEC. 7. Meetings of the trustees may be called by the Secretary, on application of three members, at such time and place as they may deem expedient, and a majority of the board shall at all times constitute a quorum to transact business, but a less number may adjourn from time to time.
- Duty of trustees.** SEC. 8. The officers of the board of trustees shall consist of a President, Secretary, and Treasurer, and such other officers and committees as the trustees may deem expedient. The President, Secretary, and Treasurer, shall hold their offices for one year, or from the time of their election to the next annual meeting, and until their successors shall be elected. All other officers and all committees shall hold their offices for such term as the board may deem proper.
- Meeting of trustees.** SEC. 9. It shall be the duty of the President to preside at all meetings of the board; but in his absence the board may elect a President *pro tem*.
- Officers.** SEC. 10. It shall be the duty of the secretary to keep a fair record of all the votes and proceedings of the meetings of the trustees, and also to keep on file and preserve all papers belonging to said board of trustees, and said institution, and to discharge such other duties pertaining to his office as said board of trustees shall direct.
- President.** SEC. 11. It shall be the duty of the treasurer to collect and receive all moneys due to said Baldwin School, or which may be given or granted to the same, and to pay out such moneys as the trustees shall by vote direct, and in such manner as they shall direct, and to discharge such other duties pertaining to his office as said trustees shall direct.
- Secretary.** SEC. 12. The treasurer before entering upon the duties of his office shall give bonds in the sum of two thousand dollars with such sureties as the board of trustees shall by vote approve, conditioned for the faithful performance of his duties, and the delivery to his successor, at the expiration of his office, all funds and other property and papers in his possession belonging to said school.
- Treasurer.**
- Treasurer to give bond.**

SEC. 13. The corporators in this act named, shall constitute the first board of trustees, and any three of them may call the first meeting of the trustees by giving one week's notice of the time and place in some newspaper printed in this Territory.

First board.

SEC. 14. The legislature may at any time modify or amend this act.

Legislature may alter or amend.

SEC. 15. This act shall take effect from and after its passage.

Approved Feb. 26, 1853.

CHAPTER 75. - *en. 16.*

Page 50

An Act to incorporate the Lake Superior, Puget's Sound and Pacific Railroad Company.

March 5, 1853.

SECTION.

1. Corporators; object and name of corporation.
2. How road may be located.
3. Capital stock; amount of; capital stock may be increased.
4. Commissioners, names of; books to be opened; notice of meeting to choose directors.
5. Directors, how to be elected; commissioners to appoint time and place of first meeting of directors.
6. Directors, powers of; may serve one year; may call meetings of stockholders, etc.

SECTION.

7. Directors to appoint officers, etc.
8. Directors may receive subscriptions to capital stock, etc.
9. Directors to make rule and by-laws; audit and settle accounts; make dividends; etc.
10. Right of way.
11. Highways, &c., how crossed.
12. Road, damage for obstructing.
13. Company may purchase lands, etc.
14. Company, powers of.
15. Company to organize within one year and road to be finished within ten years.
16. Legislature may alter or amend.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Abbott Lawrence, M. H. Grinnell, J. R. King, R. J. Walker, C. B. Curtis, C. G. Trowbridge, L. B. May, L. B. McKinnon, S. Draper, Geo. Reed, James D. Doty, J. L. Schoolcraft, S. Blossom, W. W. Snow, J. White, J. B. Martin, J. Striker, S. Dyer, H. H. Sibley, Alex. Ramsey, Alex. Wilkin, Chas. W. Borup, Franklin Steele, Geo. W. Farrington, C. H. Oakes, H. M. Rice, and N. W. Kittson, D. B. Loomis and L. A. Babcock, together with such persons as may hereafter become associated with them in the manner hereinafter prescribed, their successors and assigns, be, and they are hereby created a body corporate, by the name of the "Lake Superior, Puget Sound and Pacific Railroad Company," and by that name shall be and hereby are made capable in law to purchase, hold and enjoy, sell and convey lands, tenements and hereditaments, so far as may be necessary for the purpose of said railroad, to grant, lease, or in any manner dispose of the same; to contract and be contracted with, to sue and be sued, and to make, have and use a common seal.

Corporators.

Corporate name and powers

SEC. 2. The said corporation are hereby authorized to cause such examination and survey to be made as shall be necessary to

Location of road.

ascertain the most advantageous route for a railroad from the head of Lake Superior to the Pacific ocean, and to construct a railroad from the head of Lake Superior to such point on the shore of the Pacific ocean, or on any of its bays, upon such route as they shall find most eligible for that purpose.

Capital stock.

SEC. 3. The capital stock of said company shall be fifty millions of dollars, and divided into shares of one hundred dollars each, which shall be deemed personal property and transferable in such manner as shall be provided in the by-laws of said corporation, after all assessments thereon shall have been paid; and the stockholders of said company may increase its capital stock to any sum not exceeding one hundred millions, whenever they shall deem it necessary for the construction or completion of said road or for the interest of said company.

Books when to be opened.

SEC. 4. Henry H. Sibley at St. Paul, George Reed at Manitowoc, James D. Doty at Menasha, John B. Macy at Fond du Lac, Levi Blossom at Milwaukee, Charles C. Trowbridge at Detroit, Julius White at Chicago, John L. Schoolcraft of Albany, and Simeon Draper of the city of New York, are appointed commissioners, and authorized to open books, and receive subscriptions at each of the above named places, to the capital stock of said company at such time or times as they may deem expedient, giving thirty days previous notice thereof in newspapers printed in Saint Paul, Milwaukee, Chicago and New York, and so soon as one million of dollars or more of said stock is subscribed, the above named persons, or a majority of them shall meet at such place in the city of New York, as they may designate, and apportion the said stock to the subscribers therefor, and give notice for a meeting of the stockholders, to choose directors within sixty days thereafter, at some place in the city of Milwaukee.

Directors, how elected.

SEC. 5. If at such time and place the holders of one half or more of said stock subscribed and apportioned, shall attend in person or by proxy, they shall proceed to choose from the stockholders by ballot, nine directors, each share of said stock entitling the owner to one vote; the said commissioners or any three of them, shall be inspectors of said election, and shall certify in writing what persons are elected directors, and appoint the time and place of the first meeting of the directors.

Powers of directors.

SEC. 6. At a meeting of the directors five shall form a board competent to transact all business of the company, and thereafter a new election of directors shall be held annually at such time and place as the stockholders shall appoint or be prescribed by the by-laws. The directors shall serve one year, and until others shall be chosen in their stead, unless they shall be removed by the stockholders; may call meetings of the stockholders, due notice being given to each stockholder, whenever they may deem it necessary for the interest of the company, or such meetings may be called by the owners of one-fifth of said stock subscribed, and if no election be had on the day appointed, said company shall not be dissolved for such failure.

Officers.

SEC. 7. The directors shall elect one of their number president, and appoint a secretary, treasurer, and such engineers and other officers and assistants as they may find necessary, shall fix their compensation and may require adequate security for the performance of their trusts, or discharge them from the employment of said company at pleasure.

Sec. 8. The directors may require and receive payment of the subscriptions to the capital stock at such time, and in such proportion, not exceeding twenty-five per cent. at any one instalment, under such conditions as they shall deem fit, and to declare said stock forfeited, and all payments thereon, or otherwise, on a failure to make payment as required: *Provided*, they shall first have given thirty days notice of such requisition.

Subscriptions to capital stock.

Sec. 9. The directors of said company shall have power to make all needful rules, regulations and by-laws touching the business of said company, the duties of its officers and servants, the construction and number of tracks on said road, the description of carriages and regulate the amount of toll, not exceeding four cents per mile, and the manner of collecting the same, to audit and settle all accounts against, and give and receive all evidences of debt required in the transaction of their business, and to direct the mode and conditions of transferring the stock of said company; they shall make dividends annually or oftener, of the net profits of said road to the stockholders, and the said company may erect and maintain such depots, buildings, and fixtures as the accommodation of those using said road may require.

Rules and by laws.

Sec. 10. The said company shall have the right to enter by its agents upon any lands, or cross any stream to lay down said road, not exceeding two hundred feet in width, and whenever any lands or materials shall be required for the construction of the said road and the same shall not be given or granted to the said company for a compensation to be agreed on, or otherwise, the value thereof shall be ascertained by a jury of twelve men to be summoned and sworn by a justice of the peace of the county in which they are situated, and when the valuation so ascertained shall be paid or tendered to the owner or claimant, or his agent, said company shall have the same right to take, own and possess said lands and material, as fully and absolutely as if the same had been granted and conveyed to said company by deed.

Right of way.

Sec. 11. The said company may construct the said railway across any public or private road, highway, stream or water course, if necessary, but the said company shall restore such road, highway, stream or water-course to its former state, or in a manner not to impair their usefulness to the public.

Highways &c., how crossed.

Sec. 12. If any person shall wilfully obstruct or in any way spoil, injure, or destroy said road, or anything belonging thereto, or any materials to be used in the construction thereof, or any building, fixture, carriage or car erected or constructed for the use of said road, such person shall be guilty of a misdemeanor and punishable accordingly, and also be liable for every such offence to treble the damages occasioned thereby, to be recovered by action of debt in any court having jurisdiction of the amount.

Damaging or obstructing.

Sec. 13. The said company may purchase lands in the vicinity of said road for the purpose of erecting depots, or of procuring earth, gravel, or other material, for embankments and structures necessary to the construction, repairs or use of said road and buildings, and whenever such lands shall be no longer needed for the purposes aforesaid, the said company are authorized to sell and convey the same.

Company may purchase lands.

Sec. 14. The said company is authorized to accept, and hold to its use, any grant, gift, loan, or power of franchise which may be granted to or conferred upon said company, by the laws of any state

May accept any grant, etc.

or of the United States, or by any person or persons, upon such terms and conditions as may be annexed or imposed, upon the grant thereof, and may make, construct, use and enjoy any part of said road which may be constructed through any State or Territory; and also to purchase, rent, hold and use, or become part owner or lessee of any road constructed by any other company or person, which may connect with, or extend the road hereby authorized to be constructed.

Must be commenced.

Sec. 15. If said company shall not organize within one year and actually commence the building of the road within three years from the passage of this act, and have the same completed within ten years from the organization of said company, then this act shall be null and void.

Legislature may alter, amend or repeal.

Sec. 16. The legislature may at any time alter, amend or repeal this act.

Approved March 5. 1853.

CHAPTER 76. — *Ch 21*
Page 56

Feb. 18, 1853.

An Act for the relief of Joseph R. Brown.

SECTION.

1. Money, amount paid; services rendered.

SECTION.

2. Money to be paid out of funds of Secretary.

Sum appropriated, for what.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, The Secretary of the Territory is hereby authorized and required to pay to Joseph R Brown:

For furnishing the printer with the copy, superintending the printing and affixing an index to the journal of the Council, during the first session of the first Council -	\$200 00
For furnishing the printer with the copy, superintending the printing, and affixing an index to the Journal of the Council, during the second session of the first Council -	300 00
For five days services after the adjournment of the second session of the first Council, bringing up the Journal, filing papers, and depositing the books, papers, &c., with the Secretary of the Territory, as provided by law	15 00

Secretary to pay money.

Sec. 2. The amount of five hundred and fifteen dollars above appropriated, to be paid out of any moneys in the hands of the Secretary of the Territory, which has heretofore been appropriated by Congress to defray the expenses of the Legislative Assembly of the Territory of Minnesota.

Approved Feb. 18, 1853.

CHAPTER 77.

An Act granting to R. P. Miller, the right to establish and maintain a Ferry across the Mississippi River.

March 6, 1852.

SECTION.

1. Grant to R. P. Miller of exclusive right to ferry for six years.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, condition of penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages new brought.
6. Remedy for injuries sustained by negligence of owner or ferryman to be recovered by action on bond.
7. Legislature may alter, amend or repeal charter.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That R. P. Miller, his heirs, executors, administrators or assigns, shall have the exclusive right and privilege for the period of six years, of keeping and maintaining a ferry across the Mississippi river, in the county of Benton, and Territory of Minnesota, at a point near the mouth of Crow river, and no other ferry shall be established within one half mile of said ferry, either above or below.

Charter for six years.

Sec. 2. That said R. P. Miller, shall at all times keep a safe and good boat or boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams, on all occasions, and at all hours both at night or day; but persons wishing to cross at said ferry in the night, may be charged double the fare as hereinafter prescribed.

To keep boats.

Sec. 3. The rate charged for crossing at the above ferry shall not exceed the following:

Rates.

For each foot passenger, - - - - -	10 cents.
" each horse, mare or mule, with or without rider, -	25 "
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - -	50 "
" each single horse carriage, - - - - -	35 "
" each additional cow or ox, - - - - -	15 "
" each swine or sheep, - - - - -	2 "

All freight of lumber, merchandise or other articles not in teams, at the rate of ten cents per barrel, fifty cents per M feet of lumber, and three cents per hundred weight for all other articles.

Sec. 4. The said R. P. Miller, shall, within six months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of the county of Benton, a bond to the said board, with two or more good and sufficient sureties, to be approved by said board, in the penal sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from its passage.

Bond.

Forfeiture.

Sec. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and ready attendance, the said R. P. Miller, his heirs, executors, administrators, or assigns, shall forfeit a sum, not exceeding twenty-five dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action, for all damages any person shall sustain by reason of the neglect of said Miller, to fulfil any of the duties imposed upon him by this act.

Remedy.

Sec. 6. Any person who shall sustain any injury by the negligence or default of said Miller, or of the ferryman in his employ, may have a remedy by an action upon the bond required in this act.

Legislature may alter or repeal act.

Sec. 7. The legislature may alter, amend or repeal this act at any time after its passage.

Approved March 6, 1852.

CHAPTER 78.

March 6, 1852.

An Act granting to Emanuel Case, the right to establish and maintain a ferry across the Mississippi river.

SECTION.

1. Grant of right to keep ferry; for how long a time.
2. To keep boats and cross all persons at all times.
3. Rates of ferrage not to exceed a specified amount
4. Bond to be filed, conditions of; penalty for violation of.

SECTION.

5. Liability for neglect; suits for damages, how brought.
6. Remedy for injuries sustained by negligence of owner or ferryman how recovered.
7. Legislature may alter, amend or repeal charter.

Grants ferry right for six years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota; That Emanuel Case, his heirs, executors, administrators, or assigns, shall have the exclusive right and privilege for the period of six years, of keeping and maintaining a ferry across the Mississippi river, opposite to lots one and two, in block thirty-two, in Bottineau's addition to the town of St. Anthony, in the county of Ramsey, and Territory of Minnesota; and no other ferry shall be established within one half mile of said lots.

To keep boats.

Sec. 2. Said Emanuel Case, shall at all times keep a safe and good boat, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry and shall give prompt and ready attendance on passengers and teams, on all occasions, and at all hours, both at night or day; but persons crossing at said ferry at night, may be charged double the fare as hereinafter prescribed.

Sec. 3. The rates charged for crossing at said ferry shall not exceed the following:

For each foot passenger, - - - - -	10 cents.	Rate.
" each horse, mare or mule, with or without rider, -	15 "	
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - -	25 "	
" each single horse carriage, - - - - -	25 "	
" each additional horse, mule, ox or cow, - - -	10 "	
" each swine or sheep, - - - - -	2 "	

All freight of lumber, merchandize, or other articles not in teams, at the rate of ten cents per barrel, fifty cents per M feet of lumber, and three cents per hundred weight of all other articles.

SEC. 4. The said Emanuel Case shall, within six months after the passage of this act, file or cause to be filed with the clerk of the board of county commissioners of the county of Ramsey, a bond to the said board, with two or more sufficient sureties to be approved by said board, in the penal sum of one thousand dollars; conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from its passage.

Bond to be given and filed.

SEC. 5. For every neglect in keeping a good and sufficient boat, or failure to give prompt and due attendance, the said Emanuel Case, shall forfeit a sum not exceeding twenty dollars, to be recovered by an action of debt, before any court having competent jurisdiction, and shall be further liable in an action on the case, for all damages any person may sustain by reason of the neglect of said Case to fulfil any of the duties imposed upon him by this act.

Liability for neglect.

SEC. 6. Any person who shall sustain any injury by the negligence or default of said Case, or of the ferryman in his employ, may have a remedy by an action on the bond required in this act.

Remedy.

SEC. 7. The legislature may alter, amend or repeal this act at all times.

Approved March 6, 1852.

CHAPTER 79.

An Act to provide for laying out a Territorial Road from the Falls of St. Anthony to the western boundary of Sibley county.

March 4, 1853.

SECTION.

1. Commissioners appointed; road to be located, where.

SECTION.

2. Duties of commissioners; where and when to meet.

Commissioners.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Emanuel Case, David Gorham and Calvin A. Tuttle, of Hennepin county, are hereby appointed commissioners to locate and mark a territorial road, commencing at the Falls of Saint Anthony, from thence on the most feasible route, via Stevens' Mills, on Falls Creek, to the western boundary of Sibley county.

Duty of commissioners.

Sec. 2. That the said commissioners meet at the house of Col. John H. Stevens, in Hennepin county, on the first Monday in May next, at 10 o'clock, A. M., or as soon as practicable thereafter: *Provided, however,* That in the absence of any one of the commissioners appointed by this act, the others may have power to supply said vacancy, by appointing another commissioner; or may, in case a majority of them meet, proceed in discharging their duties, and that it shall be left discretionary with a majority of said commissioners to adjourn from time to time, as they may deem proper, and the commissioners when assembled, shall proceed to lay out and mark said road, and the necessary expense incurred for laying out said road shall be paid from the territorial treasury: *Provided,* That the whole amount so paid shall not exceed one hundred dollars.

Approved March 4, 1853.

CHAPTER 80.

March 1, 1852.

An Act granting to Fordyce S. Richards, the right to establish and maintain a Ferry across the Mississippi river, near the foot of Lake Pepin, Minnesota Territory.

SECTION.

1. Grant to Richards of exclusive right to ferry for six years, within certain bounds.
2. Boat or boats to be kept in good order, and persons passed at all hours.
3. Rates of toll charged not to exceed a specified amount.
4. Bond to be filed, when and how.

SECTION.

5. Failure to comply with conditions of, Penalty for, how recovered
6. Suits on the bond may be instituted for injury to any person by neglect of said Richards, etc.
7. Legislature may amend, alter, modify or repeal.

Grants ferry right six years.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Fordyce S. Richards his heirs, executors, administrators, or assigns, shall have the right and privilege, for the period of six years, of keeping and maintaining a ferry across the Mississippi river, in the county of Wabasha and Territory of Minnesota, at or near the foot of Lake Pepin; and no other ferry shall be established within one mile of said ferry, either above or below.

Duties.

Sec. 2. Said Fordyce S. Richards shall at all times keep good boats, in good repair, sufficient for the accommodation of all persons wishing to cross at said ferry; and shall give prompt and ready attendance on passengers or teams on all occasions, and at all hours, both at night or day; but persons crossing at said ferry after nine o'clock at night, may be charged double the fare as hereinafter prescribed.

Sec. 3. The rates charged for crossing at said ferry, shall not exceed the following:

For each foot passenger, - - - - -	15 cents.	Rates of ferrriage.
" each horse, mare, or mule, with or without rider, - - - - -	50 "	
" each single ox or cow, - - - - -	50 "	
" each two horse, two ox or two mule team, loaded or unloaded, with driver, - - - - -	1 00 "	
" each single horse and carriage, - - - - -	75 "	
" each additional horse, mule, ox or cow, - - - - -	25 "	
" each swine or sheep, - - - - -	4 "	

All freight of lumber, merchandize, or other articles not in teams, at the rate of 10 cents per bbl., 50 cents per M feet of lumber, and 5 cents per hundred pounds of all other articles.

SEC. 4. The said Fordyce S. Richards shall, within six months after the passage of this act, file, or cause to be filed with the secretary of the Territory, a bond to the said secretary, for the benefit of the county of Wabasha, with two or more sufficient sureties, to be approved by said secretary, in the penal sum of one thousand dollars, conditioned that he will fulfil all the duties that are imposed upon him in the foregoing sections, and in case of his failure so to do, he shall forfeit all the benefits that might have accrued to him from the passage of this act. To give bond.

SEC. 5. For every neglect in keeping good and sufficient boats, or failure to give prompt and due attendance, the said Fordyce S. Richards shall forfeit a sum not exceeding twenty dollars, to be recovered by a civil action before any court having competent jurisdiction, and shall be further liable in a like action, for all damages any person may sustain by reason of the neglect of said Richards to fulfil any of the duties imposed upon him by this act. Forfeiture for neglect.

SEC. 6. Any person who shall sustain any injury by the negligence or default of the said Richards or of the ferryman in his employ, may have a remedy by an action on the bond required in this act. Remedy for damages.

SEC. 7. The legislature may alter, amend, or repeal this act at any time. Legislature may alter or repeal charter.

Approved March, 1, 1852.

CHAPTER 81. *20*

An Act to provide for laying out a Territorial Road from Saint Anthony to Taylor's Falls.

March 1, 1852.

SECTION.

1. Commissioners appointed, and roads to be located, where.

SECTION.

2. Commissioners, when and where to meet; expenses, by whom paid.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Joshua L. Taylor, John Rollins, James Meredith, Charles R. Conway and Joseph LeBonne be, and the same are hereby appointed commissioners to locate and mark a territorial

Commissioners.

road from St. Anthony, by way of Chisago lake, to Taylor's Falls, or to some point on the military road leading from Point Douglas to the St. Louis River, south of Taylor's Falls. Also, to locate and mark a road from St. Paul, by way of Little Canada, to intersect the above road, between St. Anthony and Taylor's Falls, at the nearest practical point to Little Canada.

Duty of commissioners.

Sec. 2. That the said commissioners, or any three of them, shall meet at the Chisago House, at Taylor's Falls on or before the first Monday of May next, and proceed to lay out and mark said road by the most direct route practicable. The expense of the same to be paid by the counties through which the above described roads may pass. The above named commissioners shall decide the proportion and amount of such expense to be paid by each county through which the roads may be located, and notify the commissioners of each of said counties of the same.

Approved March 5, 1853.

CHAPTER 82. - *ch 29*

March 5, 1853.

An Act to provide for the location of the St. Paul and Point Douglas Road.

Page 62

SECTION.

1. Commissioners, name of; location of road may be changed, etc.

SECTION.

2. Commissioners to meet; time and place of meeting.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Charles R. Conway, John A. Ford, and Wm. Altenburgh, be, and the same are hereby appointed commissioners to examine that portion of the Point Douglas and St. Paul road lying between St. Paul and the dwelling-house of Wm. R. Brown, and in their opinion an alteration in the location of the same is advisable, the said commissioners are hereby authorized to make such alteration in the location of the same as they may deem advisable. And if any alterations are made in the location of said road, the commissioners above named shall distinctly mark the same, and cause an accurate survey of the same to be made as located and marked by said commissioners, a plat of which survey shall be deposited in the office of the Register of Deeds of the county in which the alterations are made: *Provided*, That no work herein authorized shall be at the expense of the Territory.

Duty of.

Sec. 2. The commissioners above named shall meet at the dwelling-house of John A. Ford, on the second Monday of April next, and if necessary adjourn from time to time.

Approved March 5, 1853.

CHAPTER 83. - *ch 26*

An Act to amend an Act entitled "An Act to provide for laying out a Territorial Road from St. Anthony to the west side of Lake St. Croix, opposite Willowriver." March 5, 1853.

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SECTION.

1. Commissioners, name of; powers, etc.

SECTION.

2. Commissioners, duties of.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That John Rollins, Caleb D. Dorr and Benjamin F. Hoyt, be, and they are hereby appointed commissioners to examine the western portion of the St. Anthony and Willowriver road, so called; and if upon such examination a better route can be selected, the said commissioners are hereby authorized to re-locate the same: *Provided,* It be done without additional cost or charge to the Territory.

Commissioners.

SEC. 2. The commissioners above named shall meet at the store of R. P. Russell, on or before the first Monday of April next, and if necessary to adjourn from time to time.

Duty of.

Approved March 5, 1853.

CHAPTER 84.

An Act to amend an act entitled "An act to authorize William Noble to keep and maintain a ferry across Lake St. Croix, at the mouth of Willow river."

March 6, 1852.

SECTION.

1. So much of act as grants to Nobles the exclusive right to ferry within two miles, above or below, repealed.

SECTION.

2. Grant of right for ferry for one-fourth of a mile above or below.
3. Act, when to take effect.

Be it enacted by the Legislative Assembly of the Territory of Minnesota, That so much of an act entitled "An act to authorize William Noble to keep and maintain a ferry across Lake St. Croix, at the mouth of Willow river in St. Croix county," passed by the legislature of Wisconsin, and approved March the eleventh. A. D. 1848, as provides that no ferry shall be established within two miles of the same, be, and the same is hereby repealed.

Repeal.

SEC. 2. The said William Noble, his heirs, administrators, or assigns, shall have the exclusive right as provided for in the act to which this amendatory, of landing for the distance of one fourth of a mile each way, from a point on the west bank of Lake St. Croix known as Fisher's ravine; the said ravine being the terminus of the St. Anthony and Willow river road.

Right to ferry.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved March 6, 1852.

1. *Chlorophyll a* (Chl *a*)

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HOLLINSHEAD'S REPORTS.

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JUDGES
OF THE
SUPREME COURT,
OF THE
TERRITORY OF MINNESOTA.

HON. AARON GOODRICH—CHIEF JUSTICE.

HON. DAVID COOPER,
HON. BRADLEY B. MEEKER. } ASSOCIATE JUSTICES.

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THE
JUDICIAL
OFFICIALS
OF THE
TERRITORY OF MINNESOTA.

HON. AARON GOODRICH—Chief Justice.
HON. BRADLEY B. MEYER, }
HON. DAVID COOPER, } Associate Justices.

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CASES
ARGUED AND DETERMINED,
IN THE
SUPREME COURT OF MINNESOTA TERRITORY,
IN JULY TERM, 1851.

STEPHEN DESNOYER, Plaintiff in Error, vs. TIMOTHY L. HEREUX,
Defendant in Error.

Where the Court undertakes to instruct the Jury as to the law arising from a view of all the facts before them—*all those* facts, as detailed by each witness, should be incorporated in the Bill of exceptions, whenever the ruling of the Court is excepted to.

The term "pleadings," has a technical and well defined meaning. They are the written allegations of what is affirmed on the one side, or denied on the other, disclosing to the Court or Jury having to try the cause, the real matter in dispute between the parties.

Such pleadings must be filed under the 7th Sec. of the 4th Art. of the Act of this Territory, "concerning Justices," when required by the plaintiff, or defendant, or the Justice.

It is an error in a Judge, to instruct a jury that they may disregard the declaration, if the evidence were such as to warrant a recovery; and that the right of the plaintiff could not be affected by the declaration on file.

RICE, HOLLINSHEAD & BECKER, for plaintiff, in Error.

JACOB J. NOAH, for defendant, in Error.

BY THE COURT.—**MEEKER, J.** This cause originated in a Justice's Court, where the plaintiff, (who is defendant in error,) on the return of process against

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the defendant. (the plaintiff in error,) appeared and filed his declaration in covenant. The Justice tried the cause, and gave a judgment against the defendant for \$50. From this judgment the defendant appealed to the District Court of Ramsey county, into which the Justice returned a transcript of all the proceedings had before him; and at the September term of 1850, the cause was tried before the Hon. Aaron Goodrich, and the jury, after having been charged by the Court, returned with their verdict in favor of the plaintiff; upon which judgment was rendered for \$40; and now this judgment is brought by Desnoyer, before this Court by writ of error, for review and reversal.

The Bill of Exceptions, which must be our chief guide in forming our conclusions as to the correctness or errors in the proceedings in the Court below, is singularly barren as the record of the evidence adduced at the trial, and upon which the Judge must have based his instructions.

Indeed, if it contains any portion of the testimony that went to the jury besides mere declarations and inferences, it is altogether irrelevant and immaterial. Without undertaking to lay down any rule that would apply in all circumstances, it is thought proper here, to state, that in cases where, as in the one now under consideration, the Court undertakes to instruct the jury as to the law arising from a view of all the facts before them—all *those* facts, as detailed by each witness, should be incorporated in the bill, whenever the ruling of the Court is excepted to. For *otherwise*, if the instructions themselves are abstractedly correct, a Court of Review will presume they were properly given; and that there was sufficient evidence to base them upon, although, by neglect or carelessness, it is not to be found in the record before them. Following this view of the case, it is obvious, that the judgment of the District court must be affirmed, unless there are errors that might have misled the jury apparent on the face of the instructions in the Bill of Exceptions.

We shall pass by those asked for by the counsel for the defendant, because if they were not properly refused, the law arising thereon is less important, (involving no principle not already familiar,) and proceed at once to the consideration of some of those given by the court, and which must have had a controlling influence on the minds of the jury in the formation of their verdict; as, from the view we have taken of *these*, the cause will have to be reversed and remanded. They are the following:

"If the evidence offered by the plaintiff, would warrant a recovery, they would find for the plaintiff, without reference to the declaration."

"That his right could not be affected by the declaration on file in this case."

These two instructions will be treated as forming but one proposition, and will involve to some extent, the construction of the 7th section of the 4th Art. of the Act of this Territory, "Concerning Justices."

That act requires that "pleadings," shall be put in before such magistrates, when required by them, or, the opposite party.

The term "*pleadings*," has a technical and well defined meaning; and when it occurs in our laws, the profession are at no loss to comprehend its purport.

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They are the written allegations of what is affirmed on the one side, or denied on the other; disclosing to the Court or Jury, who have to try the cause, the real matters in dispute between the parties.

Now, although the practice before Justices, should be liberal, and proceedings had before them viewed with indulgence by superior courts, yet, when they require the parties to plead on the return of process, or when this is required by the plaintiff or defendant, as allowed by the statute, it would be strange indeed, if issue thus made up in writing, could be departed from or abandoned, at pleasure. Such a liberal practice before Justices, would admit evidence of trespass *vi et armis*, or, assault and battery, under an issue in writing showing a claim of debt or covenant.

In the 13th Art. and 5th Sec. of the same act, in its provisions to regulate appeals from Justices' Courts, it provides; that the "Issue before the Justice shall be tried before the court above, (District Court,) without other or further new declaration or pleadings, except, in such cases as shall be otherwise directed by the Court."

The mode of proceeding with appeals from Justices Courts, in the District Courts, is thus made very plain. They *shall* be tried without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the Court, or, in other words, they *shall* be tried there on the same declaration or pleadings on which the cause was tried before the Justice, unless the Court directs new or additional ones. The statute appears to be imperative in requiring the District Courts to try the cause upon the same pleadings, where they have not been altered or supplied by others. When the Court, however, with a view to perfect or change the pleadings, directs, or permits, the declaration filed before the Justice to be amended, or a new one to be substituted, or pleas to be filed, as was done in the District Court of Ramsey in this case, the Court, Jury, and parties are just as much restrained by the declaration, and other pleadings, thus new-moulded and created, as they would be in any suit originally commenced in the District Court. The parties must comply with the written issue in their proof, as in other cases. See 3 *Monroe*, p. 382. *Davis vs. Young*.

The instructions, therefore, of the Judge, that the Jury might disregard the declaration in this cause if the evidence were such as to warrant a recovery, and, that his right could not be affected by the declaration on file in this cause, were erroneous.

It is, therefor, considered by the Court, that the judgment be reversed, and the verdict set aside—the cause remanded to the District Court of Ramsey, with directions to award a *venire facias de novo*, which is ordered to be certified accordingly.

GOODRICH, Chief Justice, dissenting.

This case was brought to the District Court for the County of Ramsey from the judgment of a Justice of the Peace. The Jury in the District Court, after

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hearing the evidence and the charge of the Court, found for the plaintiff below a verdict of \$40; for the reversal of which, this cause is brought to this Court on Error.

The Court charged the Jury: "That plaintiff must prove performance of the contract on his part; or that he was ready and willing to do so. Or that he was prevented by the defendant from such performance. That if plaintiff had failed in his declaration to aver an excuse for the non-performance of the contract on his part, he might set up such excuse in evidence before the Jury. That if plaintiff had failed to assign as a breach of the covenant on the part of the defendant, the bad quality of the lumber furnished by defendant, he might introduce evidence to shew the bad quality of such lumber. That this was an appeal from a Justice of the Peace—that declarations need not be filed in Justices Courts.

That if the evidence offered by plaintiff, would warrant a recovery, they would find for the plaintiff, without reference to the declaration.

That if plaintiff, had failed to *prove* material facts touching his right to recover, he *must fail*. That his right could not be affected by the declaration now on file in this cause.

The Judge, who presided in the Court below on the trial of this cause, felt a deep solicitude that a *liberal* practice should obtain on the trial of all causes before Justices of the Peace; and that whenever such causes came to the District Court, the attainment of justice should be regarded as *paramount* to a strict adherence to the rigid technicalities of Courts of Record. The finding of the Jury was *fully sustained by the evidence offered on the trial below*.

Is there error in the charge of the Court?

I think not.

The Supreme Court of the State of New York, has uniformly held, that "The same nicety and precision is not required in pleadings joined in a Justice's Court, which are required in Courts of Record; and evidence will be received under pleadings joined in the former, which would not be received under pleadings joined in the latter. *Mosier vs. Trumbour*, 5 *Wendell*, 274.

Technical nicety, or legal precision, is not required in pleadings in Justices Courts.

Whenever the Supreme Court can possibly intend that the merits have been fairly tried, they will not examine or test, by technical rules, the formality of the pleadings; and if it clearly appear that the plaintiff had no right to recover, the Court will reverse a judgment, though a jury find a verdict for the plaintiff. *Stuart vs. Close*, 1 *Wendell*, 434.

Special pleading in a Justice's Court is to be discountenanced. *Cline vs. Husted*, 3, *Cai. Reports*, 275.

Many cases similar to those above cited, may be found in the reports of the State of New York. These decisions were made under statutes less liberal than those governing similar proceedings in our own Territory. The Legislature of New York, declared that the pleadings in the Common Pleas shall be the same

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which were had before the Justice—that they shall be liberally construed, without regard to established forms or technical rules of pleadings, and with a view to substantial justice between the parties.

The 6th Section of the 13th Article, chapter 6, of the laws of Minnesota declares, that the issue before the Justice shall be tried by the court above, without other or further new declaration or pleadings, except in such cases as shall be otherwise directed by the Court.

And in the 4th, 7th and 8th sections of chapter 50, of the laws of Minnesota, I find the following liberal enactments, which *are in full force and effect*, and, to which I invoke the attention of this Court.

“After judgment rendered in any cause, any defect or imperfection in matter of form, contained in the record, pleadings, proofs, entries, returns, or other proceedings in such cause, may be rectified and amended by the Court in affirmance of the judgment, so that such judgment shall not be reversed or annulled; and any variance in the record from any process, pleadings or proceedings had in such cause, shall be reformed and amended according to such original process, pleading, or proceeding.”

“For the want of any allegation or averment, on account of which omission a special demurrer could have been maintained.”

“For omitting any allegation on account of any matter, without proving which, the Jury ought not to have given such verdict. For the want of right venue, if the cause was tried by a jury of the proper county. The omissions, imperfections, defects and variances, in the preceding section enumerated, and all others of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties on the trial, shall be supplied and amended by the Court into which such judgment shall be removed by Writ of Error.”

In view of the *liberal* stand taken by the last Legislative Assembly of this Territory, and of the *important* reforms in our system of pleading and practice, which will be in force in a few weeks from this time; and of the manifest *hardships* which must result from a rigid and harsh construction of our statutes, I feel constrained to dissent from the opinion of the Court in this case.

This, I exceedingly regret. Yet when I reflect that Minnesota is now in its infancy; that its jurisprudence may be seriously affected by the *strict* construction and rigid adherence to ancient forms and technicalities recognized by this Court, and in view of the *great legal reforms* going on in Europe and America, I am admonished by evidence not to be mistaken, that the time has arrived in which laws are to be made and administered for the furtherance of *substantial* justice.

It is now too late for the defendant below, to object to the declaration. He has pleaded to the merits, thereby waving such defects as might have been reached by demurrer. As the finding of the Jury is fully sustained by the evidence, it is the duty of this Court to affirm the judgment of the Court below.

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PIERRE CHOUTEAU, JR., and others, Appellants, vs. HENRY M.
RICE and others, Appellees.

An interlocutory decree, is one which is made pending the cause, and before a final hearing on the merits.

A final decree is one which disposes of the cause, either sending it out of Court before a hearing is had upon the merits, or, after a hearing is had upon the merits, decreeing, either in favor of, or against the prayer in the bill.

A decree dissolving an injunction, is an interlocutory decree, and not properly the subject of appeal.

Under the Organic Law and the Statutes of Minnesota, appeals will only lie from final decrees.

This was an appeal from a decree of the District Court of Washington County, allowing the plea filed by the appellees, and dissolving the injunction.

The appellees moved to dismiss the appeal:

1. Because the decrees appealed from are interlocutory, and not final.
2. Because the dissolution of an injunction is a matter resting entirely in the discretion of the Judge making the order, and therefore, not properly the subject of appeal.

A. WILKIN and HOLLINSHEAD, for the motion.

The fair construction of the statute is, that only such orders and decrees as are a determination of the cause below, are appealable. In other words, that *final*, and not *interlocutory* decrees, are intended to be the subject of review.

To construe the statute in any other way would be to make *any* order or decree, of whatever character, appealable, and thus work infinite mischief, and delay justice. *Marcy, J. 2 Wendell, 230. 3 Dan., Ch. Pr. 1606. Owen vs. Griffith, 1 Ves., 350.*

The dissolution of an injunction rests in the sound discretion of the Court. *3 Dan. Ch. Pr.*, and note. *Robertson v. Bingley, 1 McCord, Ch. 351.* An order which does not put a final end to the cause, is interlocutory. *3 Dan. Ch. Pr., 1606.* An appeal will not lie from a decree dissolving an injunction. *McCullum vs. Eager, 2 Howard, 61. Barnard & Hawley, vs. Gibson, 7 Howard, 650. Forgy vs. Conrad, 6 Howard, 201.*

R. R. NELSON and WILKINSON, for Appellants.

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The Organic Act, Sec. 9, provides that the jurisdiction of the Supreme Court shall be as limited by law. The statutes of Minnesota define the powers and jurisdiction of the Supreme Court, and give it a jurisdiction which shall extend to all matters of appeal from the decisions, judgment and decrees, of any District Court, in all matters, whether at law or in equity.

The act relating to the Court of Chancery provides, that any party may appeal from any order or decree of the Court of Chancery to the Supreme Court. *Stat. Minn.*, p. 64. The language of the statutes is unmistakable. Not only is an appeal given by the Organic Law, but the statutes say that any order or decree can be appealed from.

In New York, before the Revised Statutes of 1830, the right was given to all persons aggrieved by any sentence, judgment, decree, or order of the Court of Chancery. Under this statute, appeals have been taken and sustained from orders granting, dissolving, and refusing to dissolve injunctions. 1 *New York B. L.* p. 134, sec. 8. 1 *Moullon, Ch. Pr.*, p. 55, 14 *Johns, B.* 63. 3 *Cowen*, 714. *McVickan vs. Walkott*, 4 *Johns, R.* 510, 528. *Beach vs. Fulton Bank*. 2 *Wend.* p. 239, 230, 235. An appeal lies from an order for costs only. 12 *Johns*, 510, *Spencer, J.* An appeal lies from interlocutory orders. 4 *Paige*, 273, 457, 473, 5 *Paige*, 296, 309. 6 *Paige*, 273, 379. 3 *Johns, R.* p. 566. Courts of appellate jurisdiction will interfere and relieve, when a discretionary power has been used unjustly. *Taylor & Delancy*, 2 *Caines*, 142. See also, 2 *Wend.* 235.

An appeal lies from an interlocutory order, overruling a motion to dissolve an injunction. *Lindsay & Jackson*, 2 *Paige*, 581, *ibid.* 164.

An appeal lies from an order dissolving an injunction. 3 *Paige*, 381, 26th *Wend.* 115. 4 *Equity Dig. (No. 11, 12, 13.)* p. 479. 6 *Paige*, 379, 6 *Wend.* 11.

BY THE COURT.—COOPER, J. This cause came to this Court on appeal from the U. S. District Court of the Second Judicial District.

The appellees interpose a motion to dismiss this appeal for the reasons:

That the decrees sought to be corrected are interlocutory and not final decrees, and therefore, not the subject of appeal.

That the dissolution of an injunction is a matter resting entirely in the discretion of the Judge making the order, and therefore, not appealable.

In order to understand, and have a just and full appreciation of the questions arising out of this motion, it will be necessary to give a succinct history of this cause.

The cause was commenced by filing a bill of complaint, alledging the existence of a partnership between the complainants and defendants, stating that a sum of money was due from the defendants—charging, that the defendants had in their possession a large amount of partnership effects, and that they were wrongfully appropriating them to their own use, and fraudulently refusing to account for them. The bill prayed that a decree might be made dissolving the partnership—another appointing a receiver—another granting an injunction to restrain defendants from disposing, either of their individual property, or that of the company,

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and another ordering a subpoena to issue, together, for such other and further decrees, as might be necessary in the cause. A receiver was appointed. He accepted, and gave bonds. The injunction was granted—the subpoena issued, and service was had upon the parties defendant.

Subsequently, the defendants came into Court, and plead in bar an agreement executed by the parties to this suit, which purports to settle all matters of variance between them.

The plea is *allowed*. This is the first error complained of. Upon the *allowance* of the plea, an order is made dissolving the injunction. This constitutes the second error; and from these two decrees this appeal is taken.

Are these interlocutory, or are they final decrees? What is an interlocutory, and what a final decree? An interlocutory order or decree, is one which is made pending the cause, and before a final hearing on the merits. A final decree, is one which disposes of the cause, either sending it out of Court before a hearing is had upon the merits, or, after a hearing upon the merits, decreeing either in favor of, or against the prayer in the bill. Either of which puts an end to the cause.

A final order may sometimes be made upon an interlocutory proceeding; but not the converse. There is much difficulty in defining, so clearly as we could wish, the exact line which is to distinguish interlocutory from final decrees; but I think that the rule first laid down is the proper one, and that no order or decree which does not preclude further proceedings in the case in the Court below, should be considered final.

In the case before us, no obstacle has been presented to prevent a further and final hearing; and we therefore think, that these orders are entirely and purely of an interlocutory character, and not the subject of appeal.

There is no doubt of the propriety of a rigid adherence to this rule, where the statute does not alter or extend it.

Does the statute alter or extend it?

We think not. The Legislature of this Territory did nothing more than to prescribe the manner in which appeals should be taken, and evidently intended to carry out, by its provisions, the salutary rule indicated in the 9th Section of the Act organizing the Territorial Government.

That act provides, that "Writs of Error, Bills of Exceptions and Appeals in "Chancery causes, shall be allowed in all cases, from the final decisions of said "District Courts, to the Supreme Court, under such regulations as may be pre-"scribed by law."

This provision needs no judicial construction. Its intention is manifest, and its language plain. But it is held that the statutes of Minnesota, regulating appeals from the Courts of Chancery, confer the right of appeal from *any* order or decree of such Court.

Sec. 54, provides that "Any party may appeal from any order or decree, to "the Supreme Court."

This is a plain provision, and if unqualified by the succeeding sections of that

act, would undoubtedly give the right of appeal from interlocutory, as well as final decrees. But in the construction of statutes, we must look at the whole act relating to the particular subject under consideration, and not merely to detached sentences, taken from any particular section of such act. One of the subsequent sections, provides, that upon the taking of an appeal, the appellant shall give such security as one of the judges shall direct, conditioned to abide the final decision or order of the Supreme Court, and to pay the costs of appeal, in case the *final decree* of the Court below is affirmed. What meaning can be attached to this provision, other than that the appeal must be from a final order or decree? If appeals had been allowed from *interlocutory* orders or decrees, would the Legislature have enacted that on such appeal, the party appellant, should give security to pay all costs on an appeal from a *final decree*? Such a construction would be monstrous. Would they anticipate an order, and make one party liable for the acts of another? Never!

But the act does not stop even here; it goes further and provides, "That if the final decree of the Court below be affirmed, the Supreme Court shall have power to award damages, not exceeding fifteen per cent. on the amount awarded by the decree below." Can this amount awarded by the decree below mean anything but a final decree? It cannot. Money or property, is only awarded by final decrees, unless it is under the provision of statute.

Here, we have no such statutes, and if this act means anything by naming these orders or decrees, it means such orders and decrees as are allowed under the general rules regulating the practice in Courts of Chancery. A decree awarding money or property, in dispute in the bill of complaint, and under the general pleadings, must be a final decree.

And why? For the reason that it goes to the vitality of the issue—it touches the merits of the cause.

From a thorough investigation of this question, we are entirely convinced, that the construction of the statutes given, is the proper and only one, and that appeals will only lie from final decrees. To adopt a different rule, where there is no statutory prohibition, would be almost equivalent to closing the doors of justice. This rule has been sanctioned by experience, is one which commends itself to every rational mind. Manifest wrong—manifest delay—and manifest injustice, would most indubitably be the result of allowing appeals from every decree of a Court of Chancery. We must establish some rule, and, if not the one herein announced, where are we to stop? It is extremely dubious, if a contrary rule were adopted, whether there be a man amongst us, who would live to see the end of this, or any other cause, now pending in the Courts of Chancery of this Territory.

Nor can hardship or irreparable injury accrue to any party from the adoption of this rule. The Courts of Chancery are always open, and relief will be granted whenever, and wherever, the proper application is made, and a proper cause shown upon the merit of the application.

The appeal is dismissed with costs.

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GOODRICH, Chief Justice, dissenting.

It appears, from the record in this cause, that complainants, P. Chouteau, Jr., and others, in the month of October, 1849, filed their original bill in the District Court, at Stillwater, against Henry M. Rice and others, charging that said Rice and others, had entered into partnership with complainants for the purpose of trading with certain Indian tribes in Minnesota. That complainants furnished a large amount of goods, money, &c., for such trade, a portion of which was still in the possession of Rice. That Chouteau resided in the city of St. Louis, Mo. That Rice assumed the management of the business at St. Paul, and was charged with its conduct in accordance with certain articles of partnership, which are made a part of complainants bill. That Rice, departing from, and disregarding said articles of partnership, fraudulently diverted the capital so furnished by complainants, from its legitimate object—embarked in wild and visionary speculations in lands, town lots, buildings, &c., &c.—that by this conduct on the part of Rice, complainants had sustained a loss of \$30,000.

They pray that Rice and others, with whom they alledge he has combined and confederated for the purpose of defrauding them, be made parties defendants to this bill—that Rice be enjoined from the further management of the affairs of the firm—that he and his confederates, be restrained from conveying or disposing of such property of the firm as he may have in his possession, or that held in his own right—that an account be taken and the partnership dissolved—upon which an injunction issued. The bill was subsequently taken *pro confesso*; after which, and at the October term, 1850, Rice and others pleaded a settlement and release of all matters in controversy of a date subsequent to the filing of complainants bill—and, by counsel, moved the Court that the injunction be dissolved and the bill dismissed. The cause was continued for advisement, and on the 1st of July, 1851, the opinion of the Court was filed.

The *pro confesso* was set aside on the 12th of February, 1851. On the 3d of March, 1851, respondents pleaded said settlement and release more *formally*.

At the May term of said Court, 1851, and *previous* to any further steps having been taken in the cause, complainants exhibited to the Court their supplemental bill against respondents; charging that said settlement and release, set up by respondents in said plea, had been obtained by, and through the false and fraudulent conduct and misrepresentations of Rice; and, by petition and affidavit, moved the Court that the same be filed and made part of the original bill.

This motion was heard by the Court. *Subsequent* to which, and on the 26th day of May, 1851, the following order was made in the cause:

“This cause came on to be heard on an *ex parte* application, on the part
“of the complainants to file a supplemental bill—a plea having been pleaded
“and a motion filed on the part of defendants, to dissolve the injunction had
“in said case enjoining said defendants; and the application having been
“argued by counsel, it is hereby ordered that the plea pleaded be allowed.

"And it is further ordered that the injunction in this case be dissolved. And "it is further ordered that the supplemental bill be filed of record in this "case, and that the prayer of said complainants for a subpœna be granted."

"And it is further ordered that said subpœna be issued accordingly, and "made returnable on the 25th of June, 1851."

"And it is further ordered that the said defendants plead or answer to the "said supplemental bill, filed as the same may require, or demur thereto, "within twenty days after the return of the subpœna ordered and allowed— "and that, in default of so doing, the said bill and supplement be taken as "confessed."

By which complainants rights seem to have been placed in jeopardy, and from which order they appealed to this Court.

And respondents move this Court to dismiss said appeal:

1st. Because the decree appealed from its interlocutory and not final.

2d. Because the dissolution of an injunction rests entirely in the discretion of the Judges, and cannot properly be made the subject of appeal.

And this motion is *sustained* by a majority of this Court, and from which opinion I feel constrained to dissent.

In the disposition of this question, we are bound by no *precedent* of our own.

The injunction in this case was the first ever granted in this Territory; therefore, the investigation and disposition of this question, must turn upon its own peculiar merits, governed by the established usages of Courts of Chancery.

Congress has clothed the members of this Court with all the equity powers of the English Court of Chancery. The equity jurisdiction of the Courts of the United States, is independent of the local law of any State, and is the same in nature and extent, as the equity jurisdiction of England, from which it is derived. *See 2 Sumner, C. C. R. 401.*

The 9th section of the Organic Act, provides, that "the appellate jurisdiction "of the Supreme Court, shall be as limited by law." By what law? By such laws as govern the English Court of Chancery, and as may be *rightfully* enacted by the local legislature.

By said act it is provided that Writs of Error, Bills of Exception and Appeals shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law.

In the above cases of *final* decrees, &c., appeals, &c., shall be allowed. In what other cases may not appeals be allowed? *In all cases where justice shall require them.* Would an appeal lie from an order, similar to the one made in this cause, in the English Court of Chancery? I am clearly of opinion that it would.

By the laws of Minnesota, page 64, sec. 54, it is enacted, that "any party may appeal from *any decree or order of the Court of Chancery*, to the Supreme Court. *Provided, That within thirty days after the rendition of such order or*

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decree, he shall serve notice of such intended appeal upon the opposite party or his solicitor—one on the clerk of the court where such decree or order was made and entered.”

It appears from the record that complainants have done all that can be required of them under the statute to entitle them to the benefits of an appeal.

Our Territorial Legislature was not restrained by the Organic Act, from permitting appeals from orders and decrees *not final*. Courts of Chancery have always held this power, and will continue to exercise it on all proper occasions. And it is the duty of such Courts, to *allow* and *sustain* appeals from any and all interlocutory orders and decrees *prejudicial* to the *rights* of either party *independent* of any legislative aid upon the subject. Courts of Chancery have been established for the purpose of preventing fraud, and of affording relief against it, not for the infliction of injuries. I find this question clearly settled in the case of *Beach vs. Fulton Bank*. 2 *Wend.* 226. Here the Chancellor denied an application, made by appellants, to open the proofs taken in a cause in which the respondents were complainants, and the appellants were defendants, for the purpose of re-examining a witness produced on the part of the respondents. The motion was denied with costs. It appeared, that since the examination of the witness in Chancery, he had been called to testify in a cause tried in the Superior Court of the City of New York, and on that occasion, disclosed facts which the appellants alleged were material and pertinent to their defence in the cause depending in Chancery, and which the witness had not disclosed on his examination in Chancery. From this order, the defendants appealed, and a motion was made as in the present case, to dismiss the appeal.

After a thorough examination of the subject, the Court *unanimously* denied the motion.

If it shall be contended, that the Legislature has not the power to authorize the granting of appeals from orders *not final*, most certainly this Court has, and will exercise that right.

Suppose an order to be entered in the District Court, in a cause which must be decisive of the rights of the parties, and which may work serious injury to one of them. Shall he not be allowed an appeal to this Court, where such order may be examined?

Most certainly he shall.

It is contended, that the order made in this case dissolving the injunction, was made in the exercise of discretionary power, and that therefore an appeal does not lie. The same ground was taken in support of the motion to dismiss the appeal in the case of *Beach vs. Fulton Bank*, above referred to, and to which case I shall make frequent reference, and from the opinion of the Court therein delivered, many extracts.

If, by discretion, is meant *arbitrary power*, I contend that it does not belong to this Court. It would involve the essence of tyranny.

That discretion which pertains to a Court of Chancery, is a *sound legal discretion*, regulated by the principles of enlightened equity, and it is legitimate for

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this Court, sitting as a Court of Appeal, to review *any order* made in the exercise of such discretion. Why should the exercise of discretion not be examined as well as the making of a *final* decree?

The chancellor has no other guide in the making these orders, than an enlightened conscience, regulated by the settled principles of equity.

A discretion, exercised contrary to such principles, will not be recognized by this Court. Had the Court below refused to set aside the *pro confesso* heretofore taken in *this cause*, upon the application of respondents, founded upon an affidavit setting up a meritorious defence, Rice would, like complainants, have been forced to an *appeal* or the abandonment of his suit.

Submission on his part, to such an order, or refusal, should have been conclusive of his rights. But suppose he *did appeal*, and this Court should have held, as in the present case, that the order was interlocutory and not final, or that such refusal or order was made in the exercise of *discretionary power*, and could not, consequently, be made the *subject of appeal*. In this event, respondents would have been where complainants appear to be—at the mercy of their adversaries, in so far as the subject matter of this suit is concerned, and without relief; a result utterly at war with the pure and enlightened principles which have continued to govern the action of chancellors in England and America for centuries past.

The real case of complainants, and the supposed case of respondents, appear to me to be in direct opposition to the well established usages of Courts of Chancery, and if carried out, must amount to a *denial* of justice to the parties.

If this appeal be dismissed on the ground that the retention of it might establish a practice burdensome to the Court, I must be permitted to remark that we are not likely to be greatly oppressed by appeals from questionable orders. A thorough examination of the history of Courts of Chancery, on both sides of the Atlantic, will warrant the assertion that this Court will never be burdened by appeals from doubtful orders or decrees.

In the case referred to, in 2 *Wend.* 225, Mr. Justice Spencer said he was against dismissing the appeal; and he disposed of the question as to the order being one from which an appeal would not lie, by the general declaration, that the right was given by statute, and when the appeal was interposed the order from which it was brought was an existing one. In 4th *Johnson's Reports*, 510, the Supreme Court of New York decided, that an appeal lies from an order of the Court of Chancery *refusing* to dissolve an injunction, and decreeing costs against the defendants.

Mr. chancellor Kent, in his opinion in the case of *Beach vs. Fulton Bank*, says:

"The same question, as to the distinction between orders from which appeals would or would not lie, that had arisen in the preceeding cases, and which the court had declined to decide any further than became strictly necessary for the disposition of the cause before them, met them again in this case, and found them as unprepared, and as much embarrassed, with the difficulties attending it, as they had been on any former occasion."

The learned judge, when he delivered the opinion of the court, expressly de-

clined drawing the line of distinction. He merely decides that the refusal to dissolve an injunction, directing it to be retained and awarding costs to be paid by the party making the application, is an order within the terms of the statute. That in the case of *Buel vs. Street*, *Spencer J.*, declared, that an appeal would lie where the order affected the rights of the parties or imposed a grievance, and not on a mere *practical* order.

In the case of *Train vs. Waters*, where this question came again under consideration, *Platt, J.*, observed, that he was not prepared to say that an appeal would not lie in any case for *costs only*. *Spencer, J.*, intimates an opinion, that an appeal would lie in such a case under our statute.

I will here remark, that the statute of New York allowing appeals from orders, &c., in chancery, is not so broad as the statute regulating such appeals in Minnesota. See 2 *Wend.* 234.

Kent, C. J., continues to remark as follows:

"I believe I have allowed to most, if not all, of the cases wherein the court have had occasion to consider the distinction between orders, with regard to the question, whether appeals may or may not be brought on them, and I have attempted to draw from them a general rule to mark the two classes; but I must confess, that I have closed the examination of them with the same conviction which others have expressed—that it is exceedingly difficult if not impracticable to arrive at any satisfactory result.

"Each case, it seems to me, has been decided in a great degree with reference to its own characteristics, and without regard to the application of any principle classifying these orders. If this court shall now attempt to extract from the various positions laid down in these cases, a general rule for the government of their proceedings, it is a matter of duty that they should not forget that they are fixing limits to a highly prized and valuable right; and that an unnecessary restriction upon its exercise may and most probably would interfere in an essential manner with the administration of justice.

"On the argument of the rule laid down by the chancellor in the case of *Closen vs. Shotwell*, relative to Writs of Error, and much urged upon our consideration, there is an evident distinction between Writs of Error and Appeals. If it had not been long established by unquestionable authority, the court would at once see the necessity of recognizing it. The discretionary powers confided to Courts of Common Law, are few and unimportant, compared with the immense mass of them which surrounds—and perhaps I might say, constitutes the very being of a Court of Equity.

"The power of issuing injunctions and attachments is, so to speak, the right arm of the Court of Chancery, and the exercise of it in almost every instance, is conceded to be a matter existing in discretion.

"To put every act of this power be its consequences to parties ever so serious, entirely beyond a review by the court of the last resort, would in many instances, be a denial of justice, and the surrender of a long used and necessary portion of the jurisdiction of this court.

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"In the case of *Taylor vs. Delancy*, presenting as nearly as any one could, "the abstract question of the exercise of discretionary power, it was strongly intimated, that this Court would interfere and relieve where the discretion had "been exercised in an unjust manner.

"In the case of a temporary injunction to stay the party from proceeding to "trial at law, one of the ablest Judges that ever had a seat in this court, was in "favor of sustaining the appeal from the order granting it. The question, "whether an appeal would or would not lie on an order dissolving or refusing to "dissolve an injunction—a matter certainly resting as much in discretion as any "that can come before the chancellor—has been twice raised here. In the one "case, the court declined the question, and in the other, it decided that an appeal would lie on an order refusing to dissolve an injunction, and allowing costs "for resisting the application. It is a familiar principle, that questions of costs "are confined to the discretion of the chancellor; yet it has been decisively intimated, that an appeal would be sustained here on an order relating solely to "costs. Enough has been shown it appears to me, without going more at large "into this matter, to satisfy us that if we should adopt the broad rule, that no "appeal can be entertained here, from an order made by the Court of Chancery, "in the exercise of its discretionary powers, we should come in conflict with "several of the former decisions of this court, and depart from the settled construction of the statute securing the right of appeal.

"Being unable to dispose of the motion before us by applying to it any general "rule, it becomes necessary to consider the general character of the order on "which the appeal is brought; and the object of the application denied by the "court below, so far, at least, as to determine whether this court ought to sustain "the appeal. We ought not to send the appellants out of court unheard on the "merits of their appeal, without being fully satisfied that they could have no relief here. In case they should show their situation to be such as they represented it, we are then, for the purpose of deciding this motion, to assume that the "witness, in order to whose re-examination the defendants applied to the chancellor "to have the proofs opened, had been cross-examined in a proper manner to "draw out the facts which they now wish to prove by him; that since publication "passed in the cause below, he has disclosed under oath, in a suit at law, facts "which he did not disclose on his examination in chancery, material and pertinent to the defence of the appellants; and that a seasonable application was "made for his further examination. This is the case that the appellants declare "they shall present to us on the appeal, and until we investigate its merits, we "cannot say that it is not what they represent it to be.

"I cannot doubt, that an order refusing such an application, would be a decision affecting the merits of the cause in which it should be made, and a matter "of serious grievance to the party against whom it might be entered. If such "a case exists, why shall not the aggrieved party find relief in this Court?

"Not merely because the granting or refusing of the application to the Court "below was confided to its discretion; because we have seen that this Court, in

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"repeated instances, has refused to restrict itself by this consideration, and in "several cases, has sustained appeals on orders emanating from the discretionary "powers of the Courts in which they were made.

"Was the application below to the favor of the Court? This is denied by the "appellant, and on the assumption which this motion requires us to make, may "well be denied.

"I regard it as a matter of right, that a party shall have the full benefit of any "defence he may have in a Court of Equity, which he has not waived by his "acts or forfeited by his negligence; and if from the peculiar circumstances of "the case, the rules of proceeding adopted for ordinary cases, stand in the way "of making such defence, the party I think, may claim of the Court that it should "conform its proceedings to the peculiar circumstances of the case. I do not, "I am confident, undervalue the importance of having established modes of pro- "ceeding in all Courts of law and equity, and of enforcing an observance of "them; but to withhold right by an undue regard to the forms by which it is "obtained in common cases, is making the end subservient to the means, and "and would seem to be, in a Court of Equity, a renunciation of one of the ac- "knowledgeed objects of its original institution; that of qualifying and tempering "the rigor and sharpness of the common law in special cases, and of supplying "that which is defective, and controlling that which is unintentionally harsh in the "application of a general rule to a particular case."

"I am, therefore, for denying this motion, and hearing the appeal on its "merits.

"*Sutherland, J.* Where the party is aggrieved or may be aggrieved by an "order made in Chancery, he has the right to appeal. To deny the right, where "the order is founded upon the exercise of the discretionary powers of the Court, "would be to abrogate appeals in most cases of interlocutory orders. He was "of opinion that the appeal should be heard, and that the motion of the respond- "ents ought to be denied."

"Whereupon the motion was *unanimously* denied."

I feel confident, that the Court, in the above case, clearly defined the duty of Appellate Courts in *all* cases of appeals from orders and decrees not final; and I much regret that this Court has, at the commencement of its judicial duties, departed so widely from the course laid down by the mighty intellects engaged in the investigation of the case above referred to. In proceedings in *Chancery*, let us adhere to long established usages. "Remove not the ancient land marks which thy forefathers have set."

The Supplemental Bill, like the original, charges *fraud in the most positive terms*. With these charges resting upon respondents, it was clearly erroneous to dissolve the injunction.

I am of opinion that this motion should be denied, and the appeal heard upon its merits.

NOTE. As the case of *Chouteau vs. Rice*, is not yet fully determined, and as the facts and charges alleged against the defendants, are set forth somewhat elaborately in the foregoing report, propriety and justice seem to require, that it should be stated, that Mr. Rice denies the existence of all facts, and just charges, imputing culpability to him; and avers the observance of entire good faith on his part in his transactions with the complainants. The decree *pro confesso*, was obtained because the defendants relied upon the settlement made immediately after the filing of the original bill, and afterwards pleaded in bar of the suit and held to be sufficient. The decree was promptly set aside, on the existence of the settlement being made known to the Court.

The Supplemental Bill filed by complainants, has been dismissed to for insufficiency.—*THE P.*

JOHN SNOW and ALDEN BRYANT, Plaintiffs in Error, vs. Ros-
WELL B. JOHNSON, Defendant in Error.

Error to the District Court of Washington County.

The facts in controversy, and the point ruled in this case, appear sufficiently from the opinion of the Court.

RICE, HOLLINSHEAD & BECKER, for Plaintiffs in Error.

M. S. WILKINSON and NELSON, for Defendants in Error.

BY THE COURT.—GOODRICH, Chief Justice. This is an action of *assumpsit*, brought in the Court below by the defendant in Error, against the plaintiffs in Error, upon a verbal contract, in and by which it is alleged that the plaintiffs in Error, agreed to pay one half of the expense of constructing a certain wharf in the town of Stillwater. To which the defendants below pleaded *non assumpsit*.

The cause was submitted to a Jury under the charge of the Court, who on the 12th day of February, 1850, found for the plaintiff a verdict for \$32,50 and costs; for the reversal of which, this Writ of Error is brought. It appears from the evidence, that about the 1st of August, 1848, Johnson contracted with one Perry Edwards for the construction of a wharf, at, and for, the sum of \$200. That Edwards was prosecuting the work which he afterwards abandoned at Johnson's request. It further appears, that while the work was in progress, Snow and Bryant agreed to pay one half of the expense of its construction. That afterwards, and during the month of August, Johnson paid Edwards \$65, to recover one half of which, this suit was brought. On the trial in the Court below, defendants offered to prove by Socrates Nelson, that the work was not worth the amount paid Edwards by Johnson. The Court overruled this offer, and rejected the evidence of Nelson; to which ruling of the Court, defendants excepted. We think that, in this, the Court erred, and that this exception was well taken.

If defendants are to be compelled to bear a part of Johnson's debt to Edwards, it would be oppressive not to permit them to show what amount was justly due, or paid to, Edwards. When the contract was abandoned, the *amount* of work done by Edwards, and its *value*, was clearly the subject of proof, and had Johnson refused to pay Edwards, he would have resorted to the law, and recovered upon his proof. Johnson would have had an undoubted right to adduce evidence tending to reduce the amount of Edwards' claim; and, if Snow & Bryant are to be brought into contribution, they must be permitted to protect themselves against collusion between Johnson and Edwards.

Give them the control of this matter; close the door against Snow & Bryant, and they are at the mercy of Johnson and Edwards, who may mulct them in any

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amount they choose. Such a proceeding cannot be sanctioned by this Court. It matters not what amount Johnson paid to Edwards.

The legitimate inquiry is, what amount did Johnson *rightfully* pay Edwards?

This Court will not lay down the rule that, when a party is sued for money, he shall not be allowed, by way of defence, to prove that the amount demanded, is unjust and extortionate.

The judgment of the Court below is reversed with costs; and this cause remanded where a new trial may be had.

PASCHAL ST. MARTIN, Plaintiff in Error, vs. STEPHEN DESNOYER,
Defendant in Error.

Under the statute of Minnesota, regulating proceedings in *certiorari*, the District Judge only affirms or reverses, in whole or in part, the judgment of the justice. The act does not confer upon the District Court, authority to disregard all formal requirements in the proceedings before the justice, and settle finally the rights of the parties as the very right of the matter might appear.

The action of replevin before justices, is a proceeding *in rem*, where the *thing replevied alone*, gives the magistrate authority to try replevins.

The statute of Minnesota has made no provision for the trial of actions of replevin before justices, until the property is found and *replevied*.

Error to the District Court of Ramsey County.

The facts of this case are fully set forth in the opinion of the Court.

ATWATER, for Plaintiff in Error.

RICE, HOLLINSHEAD & BECKER, for Defendant in Error.

BY THE COURT.—MEEKER, J. On the 11th of December, 1850, Paschal St. Martin sued out a writ of replevin against Stephen Desnoyer, from before Ira Kingsley, Esq., a justice of the peace for the county of Ramsey, directed to any constable of said county, commanding him that he cause a certain "Body-belt" to be *replevied*, and if the said St. Martin should give security as required by law, to deliver said Belt to him—also, to summon the said Desnoyer to appear before him on the 18th of the same month, to answer the complaint of the plaintiff. This writ was returned before the justice, as he states, on, or before, the return day mentioned, endorsed "*Properly not found! summons served on the defendant.*" On the 18th, the parties by their attorneys, appeared, and the plaintiff

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filed his declaration in *replevin*; to which, the defendant pleaded '*non cepit*;' when the cause was, by consent, adjourned to the 31st; at which time, the parties, by their attorneys, again appeared, when the counsel for the defendant moved to quash the suit on the ground that *the goods had not been replevied*. The justice overruled the motion—heard the cause—and gave judgment for the plaintiff.

The defendant, then took the case to Ramsey District Court, where the Judge reversed the judgment of the justice, and *that* judgment of reversal is brought before us by Writ of Error.

At the very threshold, a question of no trifling importance is presented, which to at least one member of this court, is of no easy solution. The question arises from a difficulty that is found in settling the proper construction of the 11th Sec. of the 14th Art. of the Act of this Territory, concerning justices. This article in the act mentioned, regulates proceedings in *certiorari*, and, in the section in question, undertakes to prescribe the duties of the District Judge, on the justice's return before him.

"He shall proceed and give judgment in the cause, as the right of the matter may appear, without regarding technical omissions, imperfections, or defects, "in the proceedings before the justice, which did not effect the merits; and may "affirm, or reverse, in whole, or in part, and may issue executions, as upon other "judgments rendered by him."

The language *seems* to be broad and comprehensive, and, to confer upon the District Court, the undoubted authority to disregard all formal requirements in the proceedings before the justice, and to settle, finally, the rights of the parties, as the very right of the matter might appear, and, to issue execution as upon other judgments rendered by him—all of which expressions are unmeaning, and worse than superfluous, if they do not look to some final and definite action upon the *merits*. But, says the statute, he shall affirm, or reverse, the judgment, in whole, or in part. This he would certainly do, *in effect*, if he disposed of the cause as the right of the matter appeared. If he should be of opinion with the justice, he might render final judgment, and issue execution, as in other cases; and this would be a practical affirmation.

If he should be of opinion that a party was not entitled to any thing where the justice had given him a judgment, he could so decide; and this would be a virtual reversal, though the judge's decision concluded the controversy.

Again, if the judge's judgment exceeded, or fell below, the one that is brought before him, what would the legal effect be but an affirmance in part, or a reversal in part? And can the statute mean more or less, especially, as the District Judge is required to give judgment in the cause as the right of the matter might appear? Such a construction would seem best calculated to harmonize the apparently contradictory and inconsistent language with which the section under consideration was framed, as it is certainly, most conducive to a speedy administration of justice.

But the highest Courts of New York have interpreted differently, a similar statute, of which ours is but a transcript; and, that interpretation of the law in

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the States West and Northwest where it has been re-enacted, has been uniformly followed, if not approved. See *Phillips vs. Geesland*, 1 *Chandler's Wisconsin Reports*, p. 59.

By these authorities, the District Judge only affirms or reverses, or reverses in part; and from these authorities we do not feel ourselves at liberty to depart. As the reversal of the District Court, was no departure from the well established mode of procedure under the section in question, there is in that act no error, unless indeed, the proceedings had before the justice, as they appear on the return of that officer, were in conformity with the statute by which he is empowered to try actions of replevin.

The object of this action at common law, was the replevin or restoration in specie, of goods wrongfully taken or detained. Originally it was framed to try the legality of a distress; but it was subsequently allowed in any case where goods were illegally taken. The action, formerly, was said to be of two sorts, namely: in 'the *detinet*,' or '*detinetis*;' the former, where the goods are still detained by the person who took them, to recover the value thereof and damages; and the latter as the word imports, where the goods have been *delivered* to the party. But the former is now obsolete; and there does not appear in any of the books, any proceeding in replevin, which was not commenced by writ, requiring the proper officer to cause the goods to be replevied to him, or by plaint in the Sheriff's Court, the immediate process upon which is a precept to replevy the goods of the party levying the plaint; both of which proceedings are *in rem*, that is, to have the goods again. See title *Replevin*, page 162, vol. 1, *Chilly's Pleadings*.

For this purpose, and no other, it seems to us, the Legislature of Minnesota conferred upon Justices of the Peace, the power and jurisdiction to try actions in replevin.

Throughout article 10th of the act concerning justices, it is treated as a proceeding *in rem* where the thing replevied alone, gives them authority to try replevins, the summons or citation being merely incidental thereto. The mandate of the writ, the form of which is given by the statute, is, that the officer executing it cause the same goods and chattels to be replevied.

The 6th section of the same article, lays down the mode of trial after the mandate of this writ has been executed, thus: "If the plaintiff discontinue, become 'non suited, or if he should otherwise fail to prosecute his suit to final judgment, 'then, and in each of these cases, it shall be lawful, and it is hereby made the 'duty of the Justice when required by the defendant, to empanel and swear a 'jury, to enquire and assess the value of the goods and chattels replevied, 'together with adequate damages for the caption and detention thereof; or if, on 'the trial of the issue joined, the Jury shall find for the defendant, then the 'value of such goods and chattels, (goods and chattels replevied,) together with 'adequate damages, shall be assessed by such Jury; and the Justice shall 'thereupon render judgment in favor of the defendant, for the value and damages 'so found in either of the foregoing cases."

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It is most obvious, that the value of such goods and chattels as were actually replevied by the officer in the execution of the writ, is all the time intended; and this view is further demonstrated by the last clause of the same section; which provides that adequate damages shall be assessed for the plaintiff, for detention of the goods, if the property is found to be his. Why only give him damages for the detention of his goods, unless they were in fact replevied or delivered to him? Surely, if they remained at the trial, with the defendant, or if he had destroyed or converted them, the plaintiff would be entitled to the value of the goods, as well as damages for their detention.

The statute has therefore, made no provision for the trial of actions in replevin before Justices, until the property is found and replevied; and, as at common law, they had no jurisdiction to try actions in replevin, nor indeed, any other actions in tort, the District Court properly reversed the judgment of the Justice, who proceeded to try this cause before the property was replevied, or the writ properly executed, and who, for this cause, should have quashed the suit.

Judgment affirmed, with costs.

**BENJAMIN GERVAIS, Plaintiff in Error, vs. SIMON POWERS and
AMHERST WILLOUGHBY, Defendants in Error.**

A Justice of the Peace in his return to a writ of *certiorari*, should not confine himself to the affidavit of the party suing out the writ; he should make a complete return of all the proceedings, and his rulings at the trial, and the District Court, in its affirmance or reversal of the judgment, should be guided by what appears on his return.

In an action of trespass, *quare clausum fregit et. de. bon. a.* for taking away a cow that had been taken up as an estray, evidence of the cost of advertising under the statute, and the value of pasturage, was admitted.

Held to be error.

Error to the District Court of Ramsey County.

This was an action of trespass *quare clausum fregit et. de. bon. a.* originally instituted before Justice Wakefield, by the plaintiff, against the defendants in error, to recover the sum of \$25, the value of a cow, alleged to have been driven from the close of the plaintiff by the defendants.

From the return of the Justice, it appeared that it was proven on the trial, that some time about the 1st of December, 1849, the defendants came to the premises of the plaintiff, at Little Canada, and drove away a cow. That the

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cow was worth \$15 or \$20, That the plaintiff had possession of her during the whole of the summer of 1849, and had fed her for six weeks before she was driven away. That it was worth \$2 per week to feed her, and that the plaintiff had become liable for advertising her as an estray. The Justice gave judgment in favor of the plaintiff for \$10. The defendants, who did not appear on the trial, sued out a writ of *certiorari*, and stated as error in their affidavit, that the justice had no jurisdiction over their persons, they being summoned to appear before him on the 22d of January, 1850, whereas the plaintiff appeared on the 21st, and filed his declaration and had the cause adjourned until the 28th of January, when the judgment was rendered. The judgment of the Justice was reversed by the District Court, whereupon the plaintiff took a writ of error.

M. S. WILKINSON and L. A. BABCOCK, for Plaintiff in Error.

There was sufficient evidence to justify the judgment of the Justice.

The Court below erred in giving judgment of reversal upon a mere question of fact.

A. WILKIN and WILLIAM D. PHILLIPS, for Defendants in Error.

The testimony admitted by the Justice was illegal; the plaintiff, not having proceeded under the act relating to estrays, could not properly prove items of charge or expense under that act. The value of the cow was illegally proven.

BY THE COURT.—MEEKER, J. This is an action of trespass '*quare clausum fregit*,' brought by the plaintiff on the 10th of January, 1850, when process was sued out returnable on the 21st of the same month, at which time, the plaintiff, by his counsel, filed a formal declaration in trespass complaining of the defendants that they had, with force and arms, broken and entered his close, and then and there took away goods and chattels, &c. On the return day, the defendants not appearing, the cause was adjourned to the 28th, when the Justice, rendered judgment for the plaintiff for \$10, and \$5 50 costs.

The evidence, as appears from the Justice's return was that the defendants drove from the premises of the plaintiff a cow, which he was keeping as an estray, that he had pastured her some six weeks, which was proven to be worth \$2 per week, and that the plaintiff had agreed to pay James M. Goodhue \$2, for advertising her, as an estray, in his paper. The plaintiff also introduced evidence, conducing to show by the confession of one of the defendants, that the cow was theirs.

There was no testimony introduced for the defendants, nor were they in attendance. This is substantially all the evidence in the cause. The judgment was taken by *certiorari* to the District Court of Ramsey, where the Judge reversed the judgment, and from that Court to this, by writ of error.

In the defendant's affidavit for a *certiorari* none of the testimony appears, and, but a single error is complained of, which is, that the Justice had no jurisdic-

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tion of the persons of the defendants as they were summoned to appear before him on the 22d of January, 1850.

To this the Justice in his first return replied, they were summoned to appear on the 21st, and not on the 22d of January, as averred in the affidavit.

It is alleged that the District Court erred in reversing the judgment because the error complained of in the affidavit did not appear upon the return of the Justice, &c. The consideration of this proposition will necessarily involve the inquiry as to what extent it is made the duty of a Justice to respond to the complaint and errors, set forth in the affidavit of the party aggrieved, and whether his return should contain any matters beyond them. If the Justice were to confine his return only to the averments in the affidavit of a party suing out a certiorari, a merely partial and imperfect view might be had, and it would be impossible for a Judge to determine correctly, either the law or the merits of the case. Such a practice would be a strong temptation to perjury, and to a false and distorted view of what transpired on the trial before the Justice. We think the Justice should make a complete return of all the proceedings and his rulings at the trial, and the District Court, in its affirmance or reversal of the judgment, should be guided by what appears on his return.

We do not deem it necessary, in the disposition of this cause, to determine judicially, whether a person keeping an estray, can maintain an action like this, either against the owner or any one else, for taking it away. For, if he cannot, the District Court was certainly correct in reversing the Justice's judgment, and if he can, the District Court was equally correct in reversing a judgment which, from the Justice's return must have been rendered, principally, on evidence altogether irrelevant and inadmissible in an action of trespass *quare clausum fregit*, foreign alike to the cause of action suggested in the summons, or set forth in the declaration.

Surprise and injustice must be the legitimate fruit of such a practice, and this might be illustrated in the very case now under consideration.

The defendants, having been informed by the summons, that they were sued in an action of trespass, might have felt that no such action could be maintained against them, and therefore have neglected to appear and defend; whereas, had they been sued in assumpsit on account or any other money demanded for pasturage, and advertising an estray, their conduct might have been quite otherwise.

The judgment of reversal rendered by the District Court is affirmed with costs.

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JOHN SNOW and ALDEN BRYANT, Plaintiffs in Error, vs. Ros-
WELL B. JOHNSON, Defendant in Error.

A declaration in covenant must aver a demand for the specific articles named in the covenants, and it is error to receive evidence of a demand for specific articles when only a demand for money is averred.

Where covenants between parties are independent, or where it is evident from the articles of agreement that the act to be done by one, was to precede the act to be done by the other, then, upon a failure of him who was to do the first act, the other would have a right to recover upon a general averment of performance. But where the covenants are mutual and concurrent, the act of the one, dependent upon the act of the other, not only a readiness, and willingness, to perform must be averred; but an actual tender, both averred and proved.

J. covenanted to sell and convey to S. & B. by good and sufficient deed of conveyance.

S. & B. covenanted to pay \$400, in groceries, liquors and provisions, one half in the month of April then next, and the remainder when called for. Held, that the covenants were concurrent, and that performance or tender of performance must be averred and proved.

Error to the District Court of Washington County.

The Plaintiffs in error were the defendants below.

This was an action of covenant instituted in the District Court for the Second Judicial District, upon an agreement in writing, under the hands and seals of the parties, plaintiff and defendant, dated September 4, 1848, whereby Johnson agreed to sell and convey by a good and sufficient deed of conveyance, to Snow & Bryant, certain real estate in the town of Stillwater, for which Snow & Bryant agreed to pay \$200 in groceries, liquors, and provisions when called for, and \$200, in groceries, liquors, and provisions during the month of April, then next, the groceries and provisions to be at 25 per cent. above cost, and the liquors at 30 per cent. above cost.

The plaintiff averred in his declaration, that he called upon the defendants for the first instalment, to wit: on the 27th day of October, 1848, which was then due from the said defendants to the said plaintiff, to wit: a large sum of money, to wit: the sum of \$200. And in the second count, he averred that on the 1st of May, 1849, the whole of said purchase money, to wit: the sum of \$400, became due and owing to plaintiff, and concluded with the averment of general breach by defendants, and general performance by plaintiff.

The defendants pleaded *non est factum* and gave notice that they would prove:

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1st. A tender and acceptance of the specific articles to the value of \$400, in full satisfaction of the plaintiff's claim.

2d. That the plaintiff did not surrender possession of the premises at the time stipulated.

The case came on for trial before Judge Cooper on the 15th of May, 1850, and resulted in a verdict for plaintiff of \$137 49.

Numerous exceptions were taken to the ruling of the Judge upon the trial.

RICE, HOLLINGSHEAD & BECKER, for Plaintiffs in Error.

The covenants mentioned in the pleadings are concurrent. *Parker vs. Parmele*, 20. *Johnson*, 130. *Robb v. Montgomery*, *ibid* 15. *McCoy v. Bixlee*, 6 *Ohio Rep.*, 312. 2 *Step. N. P.* 1070. 4 *Wash. C. C. R.* 714. 2 *Selwyn's N. P.* 443, 510. 11 *Wend.* 72. *Bank Columbia v. Hager*, 1 *Peters*, 464.

The averments as to demand and performance on part of plaintiff, are insufficient in both counts. *Gould's Pleading*, 170-7-8-15-16. 1 *Selwyn's N. P.* 111, 513, 109. 1 *Stephen's N. P.* 381-2. 2 *Greenleaf's Ev.* 237. 1 *Chitty's Pl.* 322-8-4-9-30. 1 *Saund. Pl. and Ev.*, 133-5. *Parker v. Parmele*, 20. *John* 130. *Lobbell vs. Hopkins*, 5 *Coven*, 518. *Rice vs. Churchill*, 2. *Denio* 145. *Wilmouth v. Patton*, 2. *Bibb's Kentucky R.* 230.

The averment of a demand in the first count was contradicted by the proof, and the variance was fatal. *Briston v. Wright*, 2. *Smith's Leading Cases. Part* 1, 2, *Coven & Hill's Notes to Phillip's Ev.* 524. 1 *Saund. Pl. & Ev.* 128, 131, 148. 4 *Amer. Com. Law and cases there cited*, 73. The verdict was contrary to law and evidence.

M. S. WILKINSON and NELSON, for Defendant in Error.

The covenants are independent. 6 *Durnf. & E.* 570. *Term. Rep.* 1. *Coven's Treatise*, p. 53. The covenants have been executed in part and are not concurrent. 11 *Wend.* 70.

A general averment of performance was sufficient. 6 *Wend.* 296.

If the words stated under the form of a *videlicet*, are repugnant they are not to be regarded, and may be stricken out as surplusage. *Gould's Pleading*, p. 69. *Jacob's L. D. Title Scilicet*. 1 *Smith's Leading Cases*, p. 447.

BY THE COURT.—COOPER, J. This is an action in covenant brought for the recovery of \$100 worth of groceries, &c., the consideration of sale of a house and lot in Stillwater.

Johnson covenanted to sell and convey (by a good and sufficient deed of conveyance) a house and lot to Snow and Bryant: Provided always, that Snow and Bryant pay, or cause to be paid to the said Johnson, the sum of \$400, in groceries, liquors and provisions, at twenty per cent. above purchase price, &c., in manner following, to wit: \$200 worth when called for by the plaintiff, the remainder in the month of April, then next, and further, that Snow & Bryant were to have immediate possession of the premises sold.

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There was a judgment in the Court below in favor of Johnson, the plaintiff below, for \$437 39; and, to reverse that judgment, this writ of error was sued out.

The first error complained of by the plaintiff in error, is, that the declaration did not aver a demand and refusal of the specific articles due upon demand; but avers merely "that the said plaintiff called upon the said defendants for the first instalment, to wit: on the 27th day of October, 1848, which was then due, from the said defendants to the said plaintiff; to wit: a large sum of money, to wit: the sum of \$200, became due and owing; yet the said defendants refused and have not paid the same, &c."

This exception is well taken. The declaration should have averred a demand for the specific articles named in the covenant, and we cannot presume the word "instalment" to mean groceries, liquors, and provisions, when the *scilicet*, which is used to explain the amount, says, the demand is, for a large sum of *money*, to wit: the sum of \$200. Under this averment, the court received evidence of a demand for groceries. In this there was evident error. The variance between the declaration and proof is too palpable to overlook. The rule is well settled that the proof must conform to the averment in the declaration. Were a different one to obtain, it would be productive of the greatest injustice. The defendant looks to the declaration in order to prepare his defence. Would it not therefore be misleading him, to permit the plaintiff to prove a demand for wood, under an averment for a demand of a horse: It would be monstrous, and the evils resulting from such a course would be illimitable.

We think the court below likewise erred in the charge to the jury, in instructing them "that though it is necessary to aver a demand and refusal, yet it is not necessary, to entitle the plaintiff to recover, that he should aver and prove a tender of a deed."

Where the covenants between the parties are independent, or where it is evident from the articles of agreement, that the act to be done by one, was to precede the act to be done by the other, then, upon a failure of him who was to do the first act, the other would have the right to recover upon a general averment of performance. But where the covenants are mutual and concurrent, the act of the one dependent upon the act of the other, not only a readiness and willingness to perform must be averred, but an actual tender, both averred and proved.

Concurrent covenants are those, where mutual conditions are to be performed at the same time; and in covenants of this character, if the one party is ready, and offers to perform his part of the covenant, and the other refuses or neglects to perform his part, the party who was ready has fulfilled his engagement, and may maintain his action for the breach or default of the other; although it is uncertain which is obliged to do the first act. But to entitle him to recover, he must aver and prove such offer to perform.

How was it in this case? Were the covenants independent or were they concurrent?

Johnson covenants to sell and convey to Snow & Bryant, by a good and sufficient deed of conveyance. Snow & Bryant covenant to pay \$400. No time is

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mentioned when Johnson is to convey; nor does Snow & Bryant covenant to pay before Johnson conveys. And do the words "provided always that Snow & Bryant pay or cause to be paid the sum of \$400," alter the character of the covenant?

We think not.

Suppose the amount of groceries, due on demand, had not been demanded until the month of April, when the remainder was to become due, would Snow & Bryant have been obliged to pay before Johnson was ready to convey? Certainly not. Then, if not, could Johnson alter the effect of the agreement by making a demand at an earlier period? Had he, in other words, the power to make the covenants independent or concurrent, according to his will, without any concurrent power on the part of the defendants below, by his construction of the covenant?

Suppose A agrees to sell and convey to B, and B covenants to pay A \$1,000, which must do the first act?

Not B, certainly, because he is not obliged to part with his money before he receives his conveyance. Nor is A obliged to part with his title until he receives his money. Here are mutual covenants, and to enable either to recover, he must tender a performance on his part, and aver such tender and prove it. Would it alter the case if B had covenanted to pay A \$1,000 in the manner following: \$500 on demand and \$500 in six months? Certainly not. Neither has covenanted to do the first act, and in order still to recover on the one part or the other, an offer to perform must be proved. Nor would it alter the case, were it further stipulated, that B, was to have immediate possession. For A would have the means, at any time, of making his demand and thus indemnifying himself. But suppose A was entitled to his action without a tender, and it appeared afterwards that he had no title, in what situation would it leave B? It may be answered, he would have his remedy on the covenant. But would not this work manifest hardship on B, to compel him to pay his money before he was aware of the fact of whether A had a title or not, where he had not plainly and distinctly covenanted to pay A, and take the risks of the title afterwards? It unquestionably would. Then wherein is the difference between the case supposed and that now under consideration? There is none. The case of *Parker vs. Parmele*, in 20 John Rep. 138, which is very analagous to this one, ruled the same principle, and determined, that in order to enable the plaintiff to recover the purchase money, he must aver and prove a tender of conveyance. A long train of authorities establish this rule beyond all question, and we think they are right.

We are clearly of opinion that the court below erred, in admitting evidence of a demand for groceries, &c., under an averment for money, and also, that it was error to instruct the jury that the plaintiff need not, in order to entitle him to recover the amount due on demand, aver and prove a tender of a good and sufficient deed of conveyance.

The judgment is therefore reversed, with costs, and a *venire de novo* awarded.

HUBBARD VS. WILLIAMS.

WILLIAM H. HUBBARD, Plaintiff in Error, vs. AARON WILLIAMS,
Defendant in Error.

Negotiable paper is not such "property, money or effects" as the statute contemplates in describing what species of property may be made the subject of garnishment.

Property, money, or effects, to be attachable under the statute, must be in the possession, or under the control, or *due*, from, the person summoned as garnishee. It must be due to the defendant in the judgment or decree which forms the basis of the writ, at the time when the writ is served upon him.

Error to the District Court of Ramsey County.

The facts of this case appear sufficiently from the opinion of the Court.

ATWATER, for Plaintiff in Error.

RICE, HOLLINSHEAD & BECKER, for Defendant in Error.

BY THE COURT.—COOPER, J. This was an action in assumpsit, instituted before a justice of the peace, October 29th, 1850, to recover the amount of a promissory note, made by Hubbard, the defendant below, payable to one Reuben Bean or order, at thirty days, for \$15, and dated September 23d, 1850. On October 2d, 1850, Bean passed this note to Edmund Rice, and, October 11th, Rice passed it to Williams, the plaintiff below, and defendant in error in this cause. Upon the trial of the cause before the justice, the defendant, Hubbard, pleaded a former recovery on the same note, and produced in evidence a judgment obtained by Steele against Bean, the original payee of the note; and also a judgment against himself as garnishee of Bean. The process of garnishment was issued October 2d, 1850, and served on the same day upon Hubbard. He appeared and answered that he had, September 23d, 1850, made his promissory note for \$15, at thirty days, payable to Bean or his order; and, upon this answer, at a subsequent day, a judgment in default of his appearance, was entered against him for \$15, the amount of the said note.

The justice, in the trial of the cause now under consideration, disregarded this judgment against the defendant below as garnishee of Bean, and gave judgment in favor of Williams for \$15 36, and costs. To reverse that judgment, the cause was taken by *certiorari* to the District Court. The District Court affirmed the judgment; and it is now brought into this court for review. We think, the judge who ruled the case below was right.

This was a negotiable note and the maker was garnisheed before the maturity of that note. Negotiable paper is not such "property," "money," or "effects" as

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the statute contemplates, in describing what species of property or effects may be made the subject of garnishment. And *these* must be in the hand or possession, or under the control, or *due* from the person garnished to the defendant in the judgment or decree, which forms the basis of the writ at the time the writ is served upon him. Is it possible for the maker of a negotiable note, or any one else, except the holder, to tell to whom he is liable at any given hour during the period of that note's currency? It is not.

For such paper may, and in commercial communities, often does pass through scores of hands in a single day. Can the maker, therefore, be said to be indebted to the original payee before the maturity of such paper? We apprehend not. As well might he be said to be indebted to each one of the various persons through whose hands that note had passed; and as well and plausibly might he be garnished to answer under process of garnishment for the debt of each, or any, or all of them. But if negotiable paper, before its maturity, were the subject of garnishment, not only the maker of the note would be often made to suffer, but the innocent holder, as in the case now before us. Here, it is not alleged or pretended that Williams had any notice of such process having been issued, at the time he took the note. It is alleged that Rice knew it. How? That he had heard so! Even if he had heard such a rumor, would that have prevented his recovery if he had retained the note? We apprehend not. But the question of notice does not arise in this cause; and even if it did, I think it would not alter the case. Williams had no notice; he had received the note for a valuable consideration, and was unquestionably entitled to recover.

The case before us illustrates the impracticability of making negotiable paper before its maturity, the subject of attachment or garnishment.

Here, either an innocent holder must lose his money, or a maker must be made to pay twice. This is a hardship. Indeed, it establishes the necessity of the rule.

The statute of Wisconsin, regulating the assignment and negotiability of paper, provides "That such paper shall be negotiable in like manner as inland bills of exchange, according to the custom of merchants."

Thus instead of restricting the *lex mercatoria*, it extends it; and shall we, in the face of this statute, and the adjudications under it by the Supreme Court of the State of Wisconsin, as well as the thousands of adjudications of other States, lay down and establish a new principle? Shall we alter a principle of law induced by necessity—founded upon reason—sanctioned by the use of ages, and approved by the best and wisest jurists, both of this country and Europe?

We think the judgment of the District Court should be affirmed.

Judgment affirmed, with costs, and execution awarded.

BREWSTER VS. LEITH.

JOHN H. BREWSTER, Plaintiff in Error, vs. WILLIAM LEITH,
Defendant in Error.

C. & A. were indebted to various persons. Their personal property had been attached for their debts. B. one of the creditors, obtained a transfer of the property to him in trust for the payment of himself and other creditors. He also procured releases from the plaintiffs in the several suits in attachment. *Held*, that B. having taken the property to market and sold it for cash funds, was liable for the indebtedness of C. & A., at the suit of one of the attaching creditors.

Forbearance to use legal means, by one party to secure himself, at the request of another, and consequent loss, is sufficient consideration to support a contract.

Taking a party in the sight of a raft of logs and declaring them to be his property and marking them at his instance, held to be sufficient delivery.

R. R. NELSON, for Plaintiff in Error.

RICE, HOLLINSHEAD & BECKER, for Defendant in Error.

BY THE COURT.—MEEKER, J. This was an action of assumpsit brought by Leith against Brewster, before Horace K. McKinstry, Esq., a Justice of the Peace, in and for the county of Washington. Process was issued on the 26th of November, 1850, and made returnable on the 2d of December following, when the parties appeared, and the plaintiff, by his attorney, filed his declaration, to which the defendant pleaded the general issue.

It appears in evidence, that an article of agreement, or deed of assignment, was executed by Cummings & Arnold, partners in business, who were in debt to John H. Brewster, William Leith, and others named therein, in certain sums of money. The article stipulates that they owe \$80 49 to Leith, and purports to transfer to Brewster, "251,000 feet of pine saw logs, now lying and being in the "River St. Croix, a short distance above Lake St. Croix, and being the same "logs heretofore attached by Jesse Taylor, Esq., Sheriff, and William C. Penny, "Deputy Sheriff, at the suits of the above named parties, estimated and valued "at four dollars per thousand feet, log measure," in trust for Brewster, Leith, and the other creditors therein mentioned. Brewster was to sell the logs, and to pay the debt specified. No date is affixed to the agreement, but it is disclosed in evidence, that the transaction took place in the summer previous to the institution of this suit—perhaps in June, the date when the value of the logs was estimated. It further appears that Brewster was present at the time of the agreement, and the draftsman says he delivered it to him. There is also evi-

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dence showing that Leith, previous to this, had commenced a suit for his demand on Cummings & Arnold, and the writ placed in the hands of the Sheriff to seize the logs in question, and whilst he was proceeding to execute the same, he was informed by the counsel of the parties, that the matter had been adjusted.

In pursuance of the arrangement above alluded to, it sufficiently appears, that Brewster proceeded to take control of the logs by a formal delivery of the attaching creditors of the firm, or at least some of them, stating in reference to the plaintiff's interest therein, that he had bought it.

It was also proved that Brewster paid or settled, by giving his note therefor, the costs of the suit of Leith against Cummings & Arnold. The logs were taken to St. Louis and sold for paper which was converted into cash whilst Brewster was there. It does not appear that he took them down or that he superintended the sale. He had returned when this suit was brought, as appears from the process served upon him, and as shown by the testimony of Ames, was to pay the men after he had sold the logs at St. Louis, and returned with the money.

This, we think, is a correct embodiment and analysis of the evidence, to portions of which, various exceptions were taken during the progress of the cause before the Justice; but, as there appears to be no material errors in his rulings, we do not deem it necessary to make any further comment upon them.

Upon this evidence, the Justice gave a judgment for the plaintiff for \$80 49, and costs of suit, to reverse which a *certiorari* was prosecuted, and the cause taken to the District Court of Washington county, where his judgment was affirmed; which judgment of affirmance, it is now sought to reverse.

Passing by the many exceptions and errors complained of, we think there are but two points involved that deserve our consideration. The first is, has the plaintiff established a sufficient and legal assumpsit as against Brewster?

And secondly, if he has, had the right of action accrued when Leith commenced this suit? Ames, the draftsman, and attesting witness to the article above named, stated, in connection with the proof of its execution, that he understood from Brewster, that the latter was to pay the men as soon as he received the money for the sale of the logs and had returned with it. Daniel McLean deposed that the defendant informed him, as he was delivering the logs by marking them, that he, (Brewster,) had bought the logs of plaintiff; Cummings being there at the same time, consenting to the delivery.

Besides this, there is evidence strongly conducing to show that Brewster received the logs against which Leith had previously sued out a writ of attachment and was to pay the demand the latter had against Cummings & Arnold, upon his releasing to the former the lien which he had, or was about to secure upon them.

If, to use the unprofessional language of a plain witness, like McLean, in reference to Leith's interest in the logs which he had, or was about to acquire, Brewster had "purchased" it from Leith, or if there was a release to Brewster by Leith of a legal advantage—whether, in short, it was an absolute purchase, or a relinquishment of some right or property in them that Leith was obtaining

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by virtue of a suit then pending, we think the consideration sufficient and the promise to pay the debt due to Leith well sustained.

Forbearance to use legal means by one party, to secure himself, at the request of another, and consequent loss, is sufficient consideration to support a contract. *See Lemaster vs. Burkhart*, 2 *Bibb*, 30.

Benefit to one, or trouble or prejudice to another, is a sufficient consideration. *See 1 Marshall*, 538. 4 *Munroe*, 532.

If then the promise is backed by a sufficient consideration, and Brewster legally undertook to pay the debt of Leith when it became due by the terms of the assumpsit, had Leith a right to sue by these terms when this action was brought?

There can be no doubt, we think, of the delivery of the logs to Brewster. McLean, one of the attaching creditors, named in the article, (although in no way interested in the event of this suit,) states that he, (McLean,) took possession of the logs by the direction of the Sheriff, and, from his evidence in the cause, we think it should be inferred that he delivered them in pursuance of the general arrangement spoken of, and he adds that Leith requested him to deliver his interest at the same time. He further states that Brewster obtained a boat and man and went upon the raft—that Cummings & Arnold delivered the raft to satisfy the debts of the men—and this, we think, McLean might be well informed of, as he is named in the assignment, and held a claim against the same firm. He states that he took an axe and marked the logs in each string when he so delivered them to Brewster—that Brewster received three strings as his property from Cummings, who was present and consenting at the same time. We cannot well conceive of a more perfect delivery of such heavy and ponderous property. Nor do we see any reason or propriety in exacting more than was here done to effect a transfer of such property. The logs were taken to St. Louis and sold for paper which was converted into money.

It does not explicitly appear that they were sold under his direction or by his orders, but it does appear that he was there at the time.

And, in the absence of all proof, as to what had become of the logs after they were delivered to him, we do not consider the most positive proof, on this head, at all necessary.

What excites a strong suspicion that the sale was under his control, is the credit endorsed on the back of the article and proven to be in his hand writing, though signed by Stinson, one of the attaching creditors named in the assignment. It is for the sum of \$228 70, the full amount due him as appears in the deed. It is dated St. Louis, September 23d, 1850. Why pay that to Stinson, if Brewster did not receive the money for the logs? And is it reasonable to suppose he paid Stinson without securing his own claim? These are strong circumstances in favor of the recovery in this case, especially as they are not, nor are they attempted to be explained.

We think, from all the facts in the case, that Brewster's liability to pay Leith's demand was fixed and that the suit was not prematurely brought.

The judgment of the District Court is therefore affirmed with costs.

 LEE, FRANCIS, CASE OF.

Ex parte—FRANCIS LEE, Lieutenant Colonel of the 6th Infantry, and brevet Colonel in the Army of the United States.

Judges of Probate are not invested with any powers which authorize them to issue writs of Habeas Corpus.

The act of the Legislative Assembly establishing the Court of Probate, created a new tribunal—a Court of Record with new powers and duties. That act is not a supplement to the act of the Legislative Assembly of Wisconsin Territory. It supersedes and repeals the statute of Wisconsin relative to Judges of Probate.

Prohibition issued to restrain a Judge of Probate from proceeding under Habeas Corpus issued by him.

On the 15th day of July, 1851, Colonel Francis Lee presented the following petition to the Supreme Court.

"To the Honorable, the Supreme Court, of the Territory of Minnesota:

"The petition of Francis Lee, Lieutenant Colonel of the 6th Infantry and brevet Colonel in the Army of the United States, respectfully represents unto your Honors, that your petitioner is now in command of the Garrison at Fort Snelling in said Territory.

"That on the 17th day of June, 1851, Henry Shafer, John McCarthy, John G. Weible, John W. Lynch, John O'Connell, William Gallinbeck, Thomas Cronghin, Company D, 1st Dragoons; Augustus Jenks, John Bigtold, George W. Clarkson, Patrick Powers, Frederick Stoll, Nicholas Seiter, Francis Dwyre, William Peters, Thomas H. Weigley, Bryan Feeley, John Myers, Companies K and C, 6th Infantry, soldiers enlisted in the Army of the United States, and stationed at Fort Snelling, aforesaid, by William H. Hubbard, an Attorney in their behalf, presented a petition to the Judge of Probate of Ramsey County, in said Territory, which office is, as your petitioner is informed, now held by one Henry A. Lambert; setting forth that they were restrained of their liberty by your petitioner, and praying the said Judge of Probate to grant a writ of Habeas Corpus directed to your petitioner, requiring him to bring before the said Judge of Probate, the bodies of the men before named; a copy of which petition is hereunto annexed, marked "A," and your petitioner prays that the same may be regarded as part of this application.

"That on the 18th day of June, 1851, the said Henry A. Lambert, Judge of Probate of Ramsey County, in the Territory of Minnesota, aforesaid, issued a writ of Habeas Corpus, so called, directed to your petitioner, commanding him to have the bodies of the men before named before him, the said Henry A. Lam-

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bert, Judge of Probate, immediately after the receipt of the said writ, a copy of which writ of Habeas Corpus is hereunto annexed marked "B," and your petitioner prays that the same may be taken as part of this petition.

"That your petitioner being advised by his counsel, and by the District Attorney of the United States for the Territory of Minnesota, that the said Judge of Probate had no authority to issue the said writ of Habeas Corpus, and that the service of the same upon land reserved by the Government of the United States for military purposes, and for the purpose of discharging soldiers from the Army of the United States was entirely illegal, refused to obey the command in said writ contained, and refused to have the bodies of the men before named, before the said Henry A. Lambert, Judge of Probate, as required.

"That on the 23d day of June, 1851, the said Henry A. Lambert, Judge of Probate of Ramsey County, issued a writ of Attachment addressed to the Marshal of the Territory of Minnesota, commanding him to attach the body of your petitioner for disobedience of the said writ of Habeas Corpus, a copy of which writ of attachment is hereunto annexed marked "C," and your petitioner asks that the same may be made a part of this, his petition.

"That Henry L. Tilden, Marshal of the Territory of Minnesota, by his deputy, C. P. V. Lull, arrested your petitioner pursuant to the command of the said writ of Attachment.

"That your petitioner was, on the 25th day of June, 1851, discharged from the custody of the said Marshal, by order of the Hon. Aaron Goodrich, Chief Justice of the Supreme Court of the Territory of Minnesota.

"That on the 2d day of July, 1851, the said Henry A. Lambert, Judge of Probate, issued an *alias* writ of Attachment, directed to the Marshal of the Territory of Minnesota, commanding him again to attach the body of your petitioner; pursuant to which *alias* writ, your petitioner has been again arrested; that a copy of the said *alias* writ of Attachment is hereto annexed marked "D," and your petitioner prays that the same may be taken as part of this, his petition.

"That since the issuing of the writ of Habeas Corpus aforesaid, and notwithstanding your petitioner's disobedience of the same, the said Henry A. Lambert, Judge of Probate, has, by a process which he calls a "*precept*," professedly issued under, and in execution of, the said writ of Habeas Corpus, brought before him nine of the men before named, and discharged them from their contract of enlistment as soldiers in the Army of the United States.

"And your petitioner further represents unto your Honors, that the said Henry A. Lambert, Judge of Probate, has, both verbally and in writing, avowed his intention and determination to continue to issue "*precepts*," and will, of course, discharge the men under the command of your petitioner as heretofore. That said "*precepts*" are issued avowedly in furtherance of the purposes of the said writ of Habeas Corpus, and are intended to be based thereon.

"And your petitioner further represents unto your Honors, that the assumption of authority to issue writs of Habeas Corpus, and to discharge the men stationed at Fort Snelling from their contract of enlistment, by the said Henry A. Lam-

LEE, FRANCIS, CASE OF.

bert, Judge of Probate, has awakened discontent and insubordination in that portion of the Army under the command of your petitioner, and that it has extended to such a degree that the men improve every opportunity to escape to the office of the said Henry A. Lambert, Judge of Probate, for the purpose of obtaining a discharge.

"And your petitioner believes that the continuance of the proceedings under the said writ of Habeas Corpus, and the issue of said "*precepts*," will work serious injury to the military service and materially impair the usefulness of the garrison under the command of your petitioner.

"Wherefore, and for the reason that the said Henry A. Lambert, Judge of Probate, has exceeded his jurisdiction in issuing and executing the said writ of Habeas Corpus and the said attachment and *alias* attachment, and the said "*precepts*," and is continuing to exceed his jurisdiction by sending process into territory exclusively subject to the control of the Congress of the United States, for the purpose of discharging men enlisted in the Army of the United States.

"Your petitioner prays your Honors to grant a *Writ of Prohibition*, issuing out of, and under the seal of this Honorable Court, to be directed to the said Henry A. Lambert, Judge of Probate, and the said William H. Hubbard, Attorney for the men before named, and to the said men, commanding them to desist and refrain from any further proceedings in the matter of the said Habeas Corpus, and the said attachment and *alias* attachment, and the said precepts, until such time as may be fixed by your Honors, and inserted in said writ, and until the further order of this Honorable Court therein; and then to show cause why they should not be absolutely restrained from any further proceedings in the said matter.

"And your petitioner will ever pray, &c.

"FRANCIS LEE,

"Lt. Col. 6th Inf., Bt. Col. U. S. A."

RICE, HOLLINSHEAD & BECKER, Attorneys for Petitioner.

Territory of Minnesota, ss.

Personally appeared before me, Francis Lee, the petitioner above named, who being first duly sworn, did depose and say that the facts set forth in the foregoing petition, so far as they are stated upon his own knowledge are true, and so far as they are stated upon information from others, he verily believes them to be true.

FRANCIS LEE,

Lt. Col. 6th Inf., Bt. Col. U. S. A.

Sworn and subscribed this 14th day of July, 1851.

JAMES K. HUMPHREY, }
Clerk Supreme Court. }

On the 16th day of July, the Court granted the following rule:

LEE, FRANCIS, CASE OF.

"This day came the said Francis Lee by his Attorney, and moves the Court that a Writ of Prohibition issue against the said Henry A. Lambert, a Judge of Probate within and for the County of Ramsey, to restrain proceedings upon certain writs of Habeas Corpus issued by the said Henry A. Lambert, and also commanding the said Henry A. Lambert to refrain from issuing other writs of Habeas Corpus directed to the officers or soldiers of the Garrison at Fort Snelling, for reasons on file.

"Whereupon it is ordered that the said Henry A. Lambert, Judge of Probate, appear before this Court on Saturday next, the 19th day of July, A. D. 1851, at ten o'clock A. M., and show cause why a writ of Prohibition should not issue restraining him from the proceedings complained of in the petition of the said Col. Francis Lee, on file in this Court.

"And it is further ordered that a copy of this rule be served upon the said Henry A. Lambert, by the Marshal."

On the 19th, Lambert appeared by counsel and filed the following answer.

*"To the Honorable, the Judges of the Supreme Court of the
United States, for the Territory of Minnesota:*

"The answer of Henry A. Lambert, Judge of Probate of the County of Ramsey, and ex-officio Supreme Court Commissioner, to the petition of Col. Francis Lee, praying for a writ of Prohibition against this respondent, in the matter of a Habeas Corpus heretofore issued by this respondent, upon application of William H. Hubbard, in behalf of Augustus Jenks, et. al. and the proceedings had therein.

"This respondent respectfully represents to your Honors, that he ought not to be prohibited from further proceeding in said matter of Habeas Corpus and attachment, because he says that he, is an officer of the United States for this Territory, is authorized by the Organic Act and the laws of the Territory of Wisconsin, in force in this Territory, to issue the writ of Habeas Corpus throughout the entire county of Ramsey aforesaid, and the entire county of Dakota aforesaid, (it being attached to the county of Ramsey for judicial purposes, and there being no officer residing in the county of Dakota authorized to issue said writs.

"He denies that the so called military reserve at Fort Snelling, is under any other or different jurisdiction than that to which the balance of this Territory is subject.

"He admits the issuing of said writs of Habeas Corpus and Attachment as the officer aforesaid has in said petition set forth; and also the discharge of the persons therein, in said petition mentioned, on the return of the precept, upon cause shown, from the custody of said petitioner.

"That the first writ of attachment, in said petition mentioned, was returned by the deputy Marshal, in the manner following: "Served the within on the within named Lee, and he was discharged from Judge of the District Court, June 25th, 1851." That, considering said return insufficient, he upon demand of

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counsel, issued an alias writ of attachment, as set forth in said petition, to which last mentioned writ there has as yet been no return, and respondent cannot say whether said Lee is in custody under said writ or not.

"Of all other matters set forth in said petition, not hereinbefore admitted, this respondent is ignorant and asks proof of the same; and having shown fully why the said writ of prohibition should not issue against this respondent, as Judge of Probate aforesaid, as prayed for in said petition, he asks to be discharged with his reasonable costs, &c.

"HENRY A. LAMBERT.

"Judge of Probate of Ramsey co., M. T., ex-officio Supreme Court Com."

Sworn to and subscribed before me, this 19th day of July, 1851.

CHARLES R. CONWAY,

Notary Public, Ramsey Co., M. T.

HOLLINSHEAD for the rule.

A Writ of Prohibition is a writ issued by a Superior Court directed to the Judge and parties of a suit in an Inferior Court, commanding them to cease from the prosecution of the same upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction but to the cognizance of some other Court.

The reason of prohibitions in general, is, that they preserve the rights of the Courts and of individuals. The wisdom and policy of the law suppose both best preserved when every thing runs in its right channel; as, if one might be allowed to encroach, another might, and thus confusion be produced in the administration of Justice, 3 *Black. Com.* 112. *Com, D. h. t. Bac. Abr. h. t. Saun. Index h. t. Vin. Abr. h. t. 2 Scil. Pr.* 303. 2 *Hen. Be.* 533. 2 *Hill*, 368. *Jacobs' Law Dic. title Prohibition. People vs. Works*, 7 *Wend.* 487-8.

The Supreme Court has a discretion to grant or deny this writ. *Burrill's Pr.* 182. The 2d section of the 22d chap. *Laws of Minnesota*, on page 55, authorizes the Supreme Court to issue writs of Prohibition.

Lambert claims jurisdiction because he says he is acting as Supreme Court Commissioner.

Supreme Court Commissioners only possessed the chamber jurisdiction of a Judge of the Supreme Court of Wisconsin Territory. Under the Constitution of the United States and the decisions of the Supreme Court of the United States, Territorial officers have no authority over districts purchased by the General Government for military purposes. Sheriffs and Constables cannot be allowed to obstruct national operations. Petty magistrates should not be encouraged in disbanding the Army—arresting its officers, and exposing the frontier, defenceless, to danger. See the reasoning of Chief Justice Kent in the case of *Jeremiah Ferguson*, 9 *John's* 239, also of *Nicholson*, C. J. 2 *Hall's Law J.* 192; case of *Emanuel Roberts*, *Husted's case*, 1, J. C. 136. *Story's conflict of Laws*, p. 30,

910. The case of Carlton (7 Cowen, 471,) was controlled by the act of the Legislature of New York ceding West Point to the United States, and if it were not it is not in point. West Point belonged to the State of New York. The State jurisdiction having once attached, and not having been surrendered remains. Here the case is wholly different.

A Judge of probate in Minnesota has no right to issue the writ of Habeas Corpus at all, for whatever purpose or wherever served. The statute of Wisconsin vesting the powers of Supreme Court Commissioner in a Judge of Probate has been repealed and supplied by the statute of Minnesota establishing Courts of Probate, and the power of issuing writs of Habeas Corpus is not enumerated as among the items of jurisdiction vested in the Court of Probate. No such officer, as a Judge of Probate of Wisconsin Territory, exists in Minnesota. Where the powers and duties of a Court are defined by statute, and no reference is made to former enactments—it is manifestly improper to infer a jurisdiction entirely different, and give to the Court a power belonging to another tribunal.

The proceedings of the Judge of Probate are illegal, even if he has power to issue writs of Habeas Corpus, because the military reservation, on which Fort Snelling is situated, is entirely and exclusively under the jurisdiction of the Federal Government, and Territorial officers have no authority there, whatever. 16th clause of 8th sec. Cons. U. S. *Cherokee Nation vs. State of Georgia*, 5 Peters, 1. 1 Kent's Com. p. 429-30. *Com. vs. Clary*, 8 Mass. R. 73. *Comth. vs. Young*, 1 Hall's Jour. Juris. 53. *Opinion of the Judges*, 1 Metcalf's R. 580.

MR. LAFAYETTE EMMETT, contra.

Congress has unlimited and exclusive jurisdiction over every part of the Territory. The military reserve is under no other jurisdiction than that to which the rest of the Territory is subject. There is no division of powers between the United States and the Territory; but every official act is done in the name and by the authority of the United States. 3 Story's Com. 193, et seq. 1 Kent, 183, et. seq. *Kendall vs. U. S.* 12 Peters, 524, 619.

The Court of Probate being created by the Organic Act, the Probate Judge is not a mere Territorial officer, but an officer of the United States; as much so as are the Judges of the Supreme and District Courts. *Wise vs. Withers*, 1 Cond. 552. (3 Cranch.)

When the office of Supreme Court Commissioner was abolished, all the power and duties of that office were conferred upon the Judge of Probate, (except the allowance of writs of injunction.) The Supreme Court Commissioner was especially empowered to issue writs of Habeas Corpus. The Supreme Court Commissioner was authorized by the laws of Wisconsin Territory, in force here, to do any act which a Judge of the Supreme or District Court could do out of Court, and none doubted their authority to serve a writ of Habeas Corpus over the reserve.

Neither Congress nor the Territorial Legislature has ever made or recognized any distinction between the reserve and the rest of the Territory, but they have always been treated as equally under the exclusive jurisdiction of the United States.

The county of Dakota being attached to Ramsey county for judicial purposes, and the whole of the reserve lying within these counties, Judge Lambert, as an officer of the United States, has jurisdiction over every part of it.

The law of 1849 is not repugnant to and does not, without a repealing clause, repeal the act of Wisconsin Territory; but is cumulative or auxiliary, and merely defines the duties of a Probate Judge in testamentary and administration matters. *Beals vs. Hall*, 4 *Howard*, 37. *Wood vs. the United States*, 16 *Peters*, 342. *Davis vs. Fairlairn*, 3 *Howard*, 636.

BY THE COURT.—COOPER, J. The object of this application was to obtain a writ of Prohibition to restrain the Judge of Probate from issuing writs of Habeas Corpus, directed to the Commandant at Fort Snelling, a United States military garrison—commanding and requiring him to have before said Judge of Probate, certain soldiers under his command, regularly enlisted in, and belonging to, the United States Army.

The relator raised, for the consideration of the Court, two questions, both going to the jurisdiction of the Probate Judge.

First. That the Judge of Probate has no power or authority to issue writs of Habeas Corpus in any case.

Second. That even does he possess such power, being a mere Territorial officer, he cannot enforce the execution of his precepts on the military reservation at Fort Snelling, such territory being under the exclusive jurisdiction of Congress.

We find it necessary to rule the first proposition only, that going to the gist of the application. It is the unanimous opinion of the Court that Judges of Probate are invested with no powers, which authorize them to issue writs of Habeas Corpus. The Judge of Probate, in the present case, assumes to derive his authority from an act of the Territory of Wisconsin. The Legislative Assembly of that Territory created an officer, known as a *Supreme Court Commissioner*, and invested him (how properly, it is unnecessary for us to say) with all the powers, which a Territorial Judge might exercise at chambers.

Subsequently, however, that officer was abolished, and the powers he exercised, conferred on the Judges of Probate of the several counties.

To be entirely intelligible, it is proper here to state that the act of Congress organizing this Territory, provides "That the laws in force in the Territory of Wisconsin, at the date of the admission of the State of Wisconsin, shall be valid and operative therein so far as the same be not incompatible with the provisions of this act, subject, nevertheless to be altered, modified, or repealed by the Governor and Legislative Assembly,"

Under the provisions of the laws of Wisconsin, as they existed at the date of

 LEE, FRANCIS, CASE OF.

the organization of this Territory, if not incompatible with any Federal law, the Judges of Probate would have possessed unquestioned authority to issue writs of Habeas Corpus; and to have done all the other chamber business of a U. S. District Judge. But at the first session of the Legislature of this Territory, an act was passed, which, settling this question, took from the Judges of Probate these powers. That act *created* a new Court—a Court of Record with new powers and duties—a Court which entirely superseded in its powers and duties, all the functions of the Judges of Probate under the laws of Wisconsin. This act created a Court of Probate. It defined its powers. It prescribed its duties. It covered the whole ground of the duties of a Probate Court. It gave it exclusive jurisdiction over the estates of decedents, minors, lunatics and habitual drunkards. It went, however, no further. It gave no power to issue writs of Habeas Corpus.

That act recited *verbatim et literatim* many of the sections and provisions of the act of Wisconsin. Why was this, if this act of the Territory of Minnesota was only intended as a supplement to the act of Wisconsin regulating the duties of Judges of Probate? Why recite section after section—why recapitulate in the same words, duty after duty prescribed by the laws of Wisconsin, if this act was not intended to supersede and repeal the other?

There is no reason. There could be no reason for such a course; and we are satisfied that our own act did repeal and supersede the act of Wisconsin; and that the duties assigned to a Supreme Court Commissioner do not exist in the Judges of Probate here.

But there is another reason for taking this view, and one which is unanswerable.

That is the distinction made in the *creation* of our Courts of Probate.

The act of Minnesota regulating the duties of Courts of Record, *creates*, by express and appropriate terms, a *Court of Probate*, which shall be a *Court of Record*. The Court of Probate of Wisconsin, was a *ministerial* office—its Judge a ministerial officer. Can we, therefore, by mere implication, confer upon a distinct and different tribunal powers and duties which belonged to another tribunal, and not legitimately within the purview of its duties, or the object of its creation.

This question can be answered but one way. No! It is not necessary that an actual repealing clause should be used to discontinue or supersede an existing enactment. The creation of a new Court, as in the present case, with new duties and powers, but at the same time embracing all the powers and duties theretofore exercised by an inferior tribunal, is equivalent to a repeal—it is a substitution of one for another tribunal.

In this case the office of the Judge of Probate, as it existed under the laws of Wisconsin, was in effect abolished, by the creation of a new Court organized upon entirely different principles; its duties covering the ground of the legitimate object of a Court of Probate. But there is no necessity to extend this reasoning further. Our Court of Probate was created by our own statute. When it came

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into existence, its predecessor expired. Before that time, neither here nor in Wisconsin, did such a tribunal exist. And being the creature of our own peculiar statute—the offspring of our own Legislative body, cannot claim prerogatives or powers drawn from any other paternity, without express legislation, conferring such powers and prerogatives.

The writ of Prohibition is allowed.

ATWATER'S REPORTS.

JUDGES
OF THE
SUPREME COURT,
OF THE
TERRITORY OF MINNESOTA.

JEROME FULLER—CHIEF JUSTICE.

HON. DAVID COOPER,
HON. BRADLEY B. MEEKER. } ASSOCIATE JUSTICES.

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CASES
ARGUED AND DETERMINED,
IN THE
SUPREME COURT OF MINNESOTA TERRITORY,
JULY TERM, 1852.

CASTNER ET. AL. vs. Steamboat Dr. Franklin.

Where counsel request the Court to charge the Jury on a number of propositions collectively, and the Court refuse to charge as requested, if any one of the propositions is not correct, error will not lie for such refusal. **Per FULLER, J.**

Counsel must state the precise point which he wishes decided, and if the decision is against him, he must except to it specifically.

The Mississippi river is a navigable stream, and the principles apply in regard to its navigation as to streams navigable at common law. **Per MEEKER, J.**

Error to this District Court of Ramsey County.

The plaintiffs proceeded by attachment against the Steamboat Dr. Franklin, for damages done to logs of the plaintiffs, by the said boat, in a slough near the upper landing in St. Paul. The cause was tried at the September term of the said Court, 1851, and a verdict rendered in favor of the plaintiffs for \$150 and costs.

The defendants sued out a Writ of Error from this Court. The facts sufficiently appear in the opinion of the Court.

RICE, HOLLINSHEAD & BECKER, for the Plaintiffs in Error.

BABCOCK & WILKINSON, for Defendants in Error.

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MEEKER, J. This is a special proceeding pursuant to the act entitled "an act to provide for the collection of demands against boats and vessels, found in the Revised Statutes, Laws of Wisconsin Territory, pages 168-9-70. On the 4th of August, 1851, the plaintiffs below obtained a warrant for the seizure of the boat, which was executed on that day, being based upon a complaint verified by Castner, one of said plaintiffs. It set forth that the plaintiffs were partners, doing business under the name of John M. Castner & Co., that they were lawfully possessed of 48 saw logs, of the value of \$160, lying in a slough near what is commonly called the upper landing in St. Paul; that they were not in the channel of the Mississippi river, but were lawfully boomed and secured. On the 2d of June, 1851, the said boat being under the management of the captain, officers and pilot, unlawfully ran into the said slough, and unlawfully ran against the boom by which the said logs were confined, and thereby greatly broke damaged and injured the said boom, and thereby the said logs of the plaintiffs were lost, floated away and destroyed. Further: at and before the time aforesaid the plaintiffs were lawfully possessed of a quantity of hard wood saw logs, of the value of \$160, then lawfully lying at or near a saw mill, known as the upper saw mill, in St. Paul; which logs were lawfully secured by a boom around them, made for that purpose, and were out of the main channel of the Mississippi river. Yet the said boat being under the management of the master, and through his management unlawfully ran into the said slough and unlawfully broke and damaged the boom, and thereby said logs, to wit: 48 hard wood saw logs, of the value of \$160, floated away, and thereby by reason of the unlawful breaking of the said boom as aforesaid, the plaintiffs suffered great loss and damage, to wit: \$260. This is the substance and language of their complaint. To this the defendants, the owners of the boat, answered and pleaded as follows: That the said steamboat, Doctor Franklin, did not commit the acts and injuries in manner and form as the plaintiffs have above thereof complained, nor any nor either of them. That if said logs in said boom mentioned, were lying and being, at the place therein set forth, they were unlawfully obstructions to the free navigation of the Mississippi river, were in said river, and subject to be removed and abated as public nuisances, and that the course and direction of the said steamboat Doctor Franklin, at the time and place in the said complaint mentioned, were on and in a public highway, free of passage to all boats and vessels of every citizen of the United States; and that the said steamboat, Doctor Franklin, could not in any other manner, or by taking any other course or direction, land her passengers and freight at the upper landing, &c.

The cause was tried at the September term, 1851, and a verdict and judgment for \$150 and costs, were rendered for plaintiffs. This judgment is impeached in the assignment of errors, on the ground that the judge who tried the cause misdirected the jury, and refused to give the instructions as asked by the counsel for the defendants.

The first question of any moment that arises on the record before us, and that upon which the defence mainly is made to depend, is whether the Mississippi is,

in the legal acceptance of the term, a navigable river; for if it be not, then the right, privilege and exemption relied on by the defendants are seriously abridged and modified. If it be such a navigable stream, *then* the rights of the plaintiffs in this cause are favored and fortified by the rights that result to the public. By the common law, that was a navigable stream only in which the tide ebbed and flowed, and to the extent only of such ebb and flow. The soil under the river navigable in this sense of the word, does not belong to the Riparian proprietors, but to the public. The adjustment of controversies between individuals and the public in England and America, has been by ascertaining the extent of the flowing of the tide where such controversies arose on rivers thus defined to be navigable. This contracted view of the subject, afforded by the common law, proceeds from the fact, that that system arose by the almost imperceptible progress of ages in a country of limited extent, which contains but two rivers, the Thames and Severn, of any use to the public for navigable purposes, up both of which the tide ebbs and flows. As England had but these, it was natural for the law of that country to prescribe the ebb and flow of the tide as one of the essential qualities of a navigable river. In the early settlement of the United States, the colonists brought along with them the common law which was the birth right of Englishmen, and adopted as their rule of right, action and propriety, qualified only so far as their new condition and home rendered certain provisions of it inapplicable or unnecessary. In this manner the definition of a navigable stream gained currency among the colonists by tacit consent, at a time when steam propellers were unknown, and our rivers little used by other craft. Thus before art and internal trade and commerce of our country had developed the value of our majestic water courses, an arbitrary rule had excluded many of them from the dignity and character of navigable waters, *eo nomine*—attended with all the legal consequences and inconveniences, not to say absurdities, resulting to the public and to individuals, from such a construction. Under the application of this authority, the public have been incommoded by the successful assertion of the technical legal rights of Riparian proprietors. The navigation of large streams has been embarrassed and impeded by individual ownerships and improvements. Lands bounded by navigable rivers, have carried as incidents of this circumstance, the exclusive right to the soil to the middle of the stream, and where they were united in the same person on both sides of the river, such person has exercised the exclusive control of the entire channel adjacent. Such is the origin, progress and operation of this principle of the common law.

We do not think that the ordinance of 1787, so far at least as the Mississippi is concerned, has worked any change of the law upon this subject, and are of opinion, that if this river is navigable, in that sense that will secure to the public all the rights, privileges and immunities incident to streams navigable at common law, it must be so from other reasons and different authority than that celebrated law. The language of the ordinance above alluded to is that, "The navigable waters leading into the Mississippi and the St. Lawrence, and the carrying places between the same, shall be common highways, and forever free as well to the in-

habitants of said territory as to the citizens of the United States, and those of any other state that may be admitted into the confederacy, without any tax, impost, or duty therefor." There was obviously no intention on the part of Congress to constitute these vast rivers, two of the largest in the world, mere highways for travel and commerce, for that would have been to declare them something less than navigable rivers, by leaving the rights of Riparian owners the same with owners of land bordering on public roads and ways, restricting the privileges of navigators and craftsmen to low water mark, and in derogation of some of the most important rights, essential to the public use, and which are always implied and enjoyed with impunity, on streams that are navigable in the legal meaning of that term. Besides, at the time of the passage of the ordinance in question, the mouth of the Mississippi and of the St. Lawrence, were within the dominions of foreign powers, and under their exclusive control. Spain commanded the mouth of the Mississippi, and Great Britain, the St. Lawrence; so that the United States had no authority by a new declaratory act to impart to those rivers, any such quality or any higher or lower one. But we think the language of the ordinance is not susceptible of such a construction, and as already stated, does not embrace the Mississippi. Does then the common law apply arbitrarily in reference to this subject, and are we to be bound by it in the decision of this case? Or shall we assume that, owing to the conceded navigability of the Mississippi, and the palpable absurdity of considering it a private stream, that in this respect, the common law is not applicable to our local situation? This has been the course of the Supreme Courts of the States of Pennsylvania and South Carolina, and perhaps some others. See *Carson vs. Bl*, 2 Bim. Rep. 475, *Shunk vs. Schuylkill Navigation Co.*, 14 S. & Rawle, p. 71 *Cates vs. Waddington*, 1 McCord Rep. 580. See also 3 *Devereux*, (N. C.) Rep. 79. From the view however, we have taken of the law in this case, we have not deemed it necessary to declare judicially, that the principle of the common law we have been discussing is not applicable to our situation.

We think from the policy of our government, evinced in the administration of its public land system, and the repeated Legislative recognitions thereof, the National Legislature has clearly enough controled and limited the common law rule in regard to this subject. In the disposition of the public domain, it has from the beginning, reserved the Mississippi and the soil it flows over from its surveys and grants. The surveyors in its employ, have always bounded their plats by the meanders of its banks, and its patents have been issued to individuals only to the same extent. It is obvious that what has not been so let to and vested in individuals, still remains in the government for the use of the public, which that Government represents. The conclusion then we have come to is, that the Mississippi is in law, as in fact, a navigable river—and that all navigators and craftsmen of whatever description thereon, enjoy the same rights and are entitled to the same exemptions, that they would have had on rivers navigable at common law, among which is the right to land freight and passengers and to receive the same on its banks, and this privilege extends to high water mark.

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This is, however, a right subject to some qualifications, or, rather it being a privilege in derogation of private rights, should for that reason, be strictly confined to the purposes and objects for which it was designed. It is a right too, which like all others however absolute, must be so exercised as not to interfere with the legal rights of individuals—in other words, the privilege must not be abused.

In this case it is contended by the counsel for the defendants that the slough in which the logs were boomed, is a part of the channel of the Mississippi proper, and that therefore navigators and boatmen enjoy the same rights and exemptions on it, to which they may be entitled on navigable rivers. We do not think the proof justifies this conclusion. The most that can be conceded and argued is, that there is an inlet above and an outlet below, in the rear of the warehouses on the main bank of the river, and that a portion of the season the entire bottom from the base of the bluff to, and including the main bank, overflows during high water and freshets sufficiently to admit steamboats, and rendering it convenient to land freight and passengers at Elfelt's ware house, near the foot of the bluff. Nevertheless, this whole bottom is now comprised within, and constitutes a portion of the town of St. Paul, being laid out in streets and lots more or less valuable as town property. We do not therefore consider it as completely condemned to the purposes of navigation as the channel or the bank near the two warehouses. Nor do we think the proprietors thereof should be considered guilty of erecting a public nuisance, if they were to use it for booming logs, erecting buildings, or making any other improvements thereon, conforming to and respecting the plat of St. Paul when the streets are opened, though it be used sometimes during the high water, or freshets, for a steamboat landing. And even if it were indeed a part of the Mississippi proper, as counsel would contend, it is by no means certain, that the logs in question, which do not appear in the evidence to have been moored there for any permanent purpose, may not, for ought that appears, have been confined there temporarily, or until the owners could find a market for them or raft them for the lower country. In this latter view of the case, we are of the opinion the owners had the same right to use the navigable waters of the Mississippi, as the owners of a steamboat, and we will add, the same right to protection from injury and exemption from invasion.

In regard to the ruling of the Court below, we are inclined to the opinion that, there is no such error in it as should be cause of reversal in this case. The instructions that were asked by the counsel for the defendants and which the Judge refused to give, we are all of the opinion after a careful examination should have been rejected; and the directions to the jury which were submitted, though loose and incoherent propositions, yet as they appear relevant, and when taken together, seem to cover the law of the case, so far as appears in the evidence presented in the bill of exceptions, which, it will be noticed, contains no averment that it was all *the testimony heard at the trial*, upon which the instructions must be presumed to have been based, we think on the whole, the judgment should be affirmed with ten per cent. damages exclusive of interest and costs, which is ordered accordingly.

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FULLER, J. The plaintiff in error, who was defendant below, relies for a reversal of the judgment against him, upon the refusal of the Judge at the trial to charge the jury as requested by his counsel.

The defendants counsel, submitted to the Judge in a body, eight propositions numbered consecutively, some of them involving several subordinate propositions, and all together covering more than two sides of a sheet of foolscap, closely written, and containing abstract rules of law, as well as principles applicable to the case in hand; and asked to have the whole administered to the jury as a charge.

If there was any thing erroneous in any one of the propositions, the judge did right to reject the whole. He was not bound to sift and hunt through such a mass to see whether he could find some proposition or part of a proposition, which it would be proper to give as a rule of law for their guidance, to the jury; and his neglect or refusal to do so, is not error, although it might have been if the same proposition or part of a proposition had been submitted to him separately, with a request that he should charge the jury in accordance with it; and his refusal had been specially excepted to. A Judge is not to be trapped by being called upon in the hurry of a trial, to analyze a mass of legal maxims and solve a long series of problems, and find the true result, on pain of having his decision set aside if he errs. He is bound to look into them so far only, as to see that they contain anything improper for a charge, and if they do, may refuse the whole. The counsel, himself must put his finger on the precise point which he wishes decided, and take good care that his request is not too large, or his proposition too broad. And if the decision is against him, he must except to it specifically. When a general objection is made to the decision of a Court on the trial of a cause, and on a review thereof it appears that the decision, if erroneous at all, is only in part, such objection will not be available, from the want of precision in its statement at the trial. *McAllister vs. Read*, 4 Wend. 483. *Read vs. McAllister*, 8 Wend. 109. The same rule is applicable to the charge actually given. A general exception to his charge, does not bring up any particular remark made by the Judge, or any omission in such charge, unless his attention was directed to the point at the time. *Camden and Amboy R. R. and T. Co. vs. Belknap*, 21 Wend. 354. Wholesale exceptions are not allowed. The error, if any, must be particularly pointed out. The rule is more strict in the Appellate Court, when the case comes up on error, than on a motion for a new trial in the Court below. *Archer vs. Hubbell*, 4 Wend. 514.

In the case under consideration, but one general exception was taken, both to the refusal of the Judge to charge as requested by the counsel for the defendant, and to the charge which he did deliver to the jury. The exception is manifestly too broad, and covers too much. Portions of the eight propositions submitted by the counsel, are little more than abstract rules of law, and other portions are otherwise objectionable. His request was not that the Judge should submit any particular portion of them, but that he should give the whole to the jury as a charge. No particular portions of the charge delivered was excepted to, but the

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whole of it. It was not all wrong, although much of it was harmlessly irrelevant.

The 5th proposition submitted by the defendants' counsel, "That if the steamboat Doctor Franklin was prevented from passing up the public street to the ordinary landing in high water, by the log rail or other obstruction extending from the steam mill, that then the said boat might lawfully pass over the water on the land adjacent, notwithstanding a boom for securing logs might be removed thereby," can hardly be maintained upon any established principle of law. There is no pretence that the street in question was ever opened, worked or used as such by the public. And if it were, streets are not designed for navigation by steamboats. That is not one of the public uses or easements, with which the fee of the land is burdened.

The substance of the seventh proposition is, that the Doctor Franklin committed the injury complained of, in abating a nuisance which obstructed the passage of a street, never opened or used as such, and at the time under water. This is a far fetched and untenable defence. There were other objectionable matters in the defendants propositions, but these are enough for examples. And the exception covered these, as well as that part of the charge made, in which the Judge in effect charged against the first proposition, and instructed the jury, that if they believed the public interests could have been subserved, by landing any where else, then the boat was bound to land there.

If error was committed by the Judge in his charge, or in his refusal to charge, the defendant does not come to this Court in a situation to take advantage of it. We must presume that the Judge would have complied with a lawful request, and that if any particular part of his charge was wrong, he would have corrected it, if that portion had been excepted to.

Concurring for the most part, in the reasoning of my learned associate, I have by another way arrived at the same conclusion—that the judgment of the Court below should be affirmed.

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The proof required to issue a writ of attachment must be legal proof, or such species of evidence as would be received in the ordinary course of judicial proceedings.

Heresay and belief are not the "circumstances" required by law, to authorize the issuing a writ of attachment.

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This being an extraordinary remedy, should not be resorted to, except in cases clearly within the provisions of the statute.

This was an action of assumpsit commenced in the District Court of Ramsey country, for the recovery of the sum of two hundred and sixty-two dollars and a half. A writ of attachment was issued in the suit based on the following affidavit:

Territory of Minnesota, }
Ramsey County. } ss.

Allan Pierse being duly sworn says, that Charles K. Smith (now in said county) is indebted to him on account, for work and labor performed for him the said Smith at his instance and request, as per bill of particulars annexed, in the sum of two hundred and sixty-two dollars and fifty cents, (subject to a credit of twenty dollars, amount of two bills, for ten dollars each, if he yet has them, which affiant gave said Smith)—that the demand is one sounding in contract. And further, that he verily believes the said Smith is about to depart from this Territory with intent to abscond. The circumstances upon which this belief is founded are these:

It is known here to the said Smith, as well as others, that petitions have recently been sent to the President of the United States, praying that he be removed from the office of Secretary of this Territory; and there can be no doubt from the gravity of the charges against him and the authenticity of the testimonials substantiating them, which have accompanied these petitions, that the President will remove him. There are numerous creditors of the Government, in and about St. Paul, having claims, which should be paid out of the money appropriated at the session of Congress before the last, to pay the expenses of the Legislative Assembly of the Territory of Minnesota for the session of said Assembly, which has recently terminated. Some twenty-four thousand dollars were appropriated, and from the amount the said Smith is known to have received last fall, and the amount of drafts he is said to have exhibited lately, he must have received the whole appropriation.

After the adjournment of the session he was dilatory in paying the expenses of it, giving various frivolous excuses for not doing so, the principal of which, was, that he had no cash, but had government drafts. After a while, he went down to Galena, to get these drafts cashed as he avowed. After his return he suspended payments, declaring to some creditors, that he wanted ten, to others fifteen days to ascertain how his accounts stood at Washington, before he paid out any more money; and he is to this moment withholding from the creditors their money. These things affiant has been told by Government creditors, who have demanded payment of him, and he believes them to be true—and this too, when he must have, and affiant verily believes he has—ten or twelve thousand dollars of Government money in his possession, appropriated and sent to him for the express purpose of paying these very creditors who he is thus trifling with, and depriving

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of their just dues. Affiant cannot believe, that an individual, who feels any responsibility to the community, or who intends to remain in it, would thus act; and he believes that the motion of ten or fifteen days, was a mere pretence to get a respite to make preparations to abscond, as soon as he hears of his removal from office, and carry off the money in his possession and not pay the Government creditors. These ten or fifteen days are now about expiring, and information of his removal is expected soon.

Affiant prays that a writ of Attachment issue, and that the said Smith's property be attached according to law.

A. PIERSE.

Sworn and subscribed before me, this 6, May, 1851.

A. GOODRICH, C. J.

A motion was made, on the part of the defendant, at the Fall Term of the Court, 1851, to quash the writ of Attachment granted on the above, chiefly on the ground of the insufficiency of the affidavit. After argument the motion was granted, and the writ set aside. From this order the plaintiff sued out a writ of Error to this Court.

A. PIERSE, in person, for Plaintiff.

RICE, HOLLINSHEAD & BECKER, for Defendant.

FULLER, C. J. The laws of Wisconsin, under which this suit was commenced, after specifying the cases in which a suit may be commenced by attachment (*see Laws of Minnesota, 1849, p. 155, Sec. 3.*) provided, that "the facts necessary to entitle a party to a writ of attachment should be proven to the satisfaction of a District Judge, or Supreme Court Commissioner, by the affidavit of the plaintiff or some credible witness, stating therein the circumstances upon which the belief of such facts was founded."

Proof, in the sense in which it is used in this act, means legal evidence, or such species of evidence as would be received in the ordinary course of judicial proceeding. 9 J. R. 75. It is not sufficient for the affidavit to detail mere hearsay or belief. These are not "circumstances" within the meaning of the law, which are competent proof of the facts necessary to entitle the party to the writ. The circumstances upon which the belief of the plaintiff or a "credible witness" are founded must be proved otherwise than by swearing to information derived from others. *Tallman vs. Bigelow, 10 Wend, 420. Smith vs. Luce, 14 Wend. 237.*

The application for an attachment, is not addressed to the whim or caprice of the Judge. In granting or refusing it, he acts judicially, and is bound to exercise a sound discretion. He must have evidence before him upon which to exercise it. He has no right to be satisfied, unless circumstances are sworn to in the affidavit sufficient to prove the requisite facts, so as to satisfy a reasonable man

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in the exercise of a sound judgment, of their truth. *Loder vs. Phelps*, 13 Wend. 46. For the law on this subject, see 5 Taunt. 520. 1 Tynch. 287. 1 Crompt. and Jew. 401. 1 Marsh. 267. 6 Taunt. 460; 4 ib. 156. 1 Com. R. 40. 2 Wils. 385.

The proceeding by attachment is an extraordinary remedy, highly beneficial when properly guarded, but not to be resorted to, except in cases clearly within the provisions of the law. It is summary in its nature, granted in the first instance *ex parte*, and liable to abuse. Its effect may be disastrous to the defendant. It should not therefore be resorted to without good cause. It is proper that he should be protected against its improper use, and to that end, the facts necessary to entitle a party to a writ of attachment are required to be proved to the satisfaction of the Judge before it issues.

Tested by these principles, the affidavit on which the attachment was granted in this case, will be found defective. The writ was applied for on the ground that Smith, the defendant, was about to abscond. The circumstances sworn to, to prove this, are: that petitions had been sent to the President for his removal from the office of Secretary of the Territory, which was known to Smith; the inference of the plaintiff from the gravity of the charges against him, and the authenticity of the testimonials, that the removal would be made; that there were at the time numerous creditors of the government in and about St. Paul, having claims which should be paid out of the moneys appropriated by Congress for legislative expenses; that twenty-four thousand dollars were appropriated, and from the amount Smith was known to have received the fall before, and the amount of drafts he was said to have received lately, he must have received the whole appropriation; that the plaintiff was told by government creditors, who had demanded payment of him, that he was dilatory in paying the expenses of the legislature, making various frivolous excuses, the principal of which was that he had no cash, but had government drafts; and that after awhile, he went to Galena to get them cashed, as he avowed, and after his return suspended payment, declaring to some creditors, that he wanted ten, to others, fifteen days, to ascertain how his accounts stood at Washington, before he paid out any more money, when he was withholding from the creditors their money. The rest of the affidavit is made up of the reasonings, inferences and belief of the plaintiff.

What was told him, must be disregarded, and also his inference as to the amount of the appropriation, which had been received. Leaving out that there is nothing left but the circumstance that an effort was being made to remove Smith from office on grave charges, well authenticated, and that there were creditors of the government who ought to be paid out of the appropriation. To infer from these that the defendant was about to abscond, was to draw a conclusion not warranted by the premises. And if the whole affidavit were admissible as legal proof, such a deduction from it would still be very far fetched, and quite unsatisfactory to any discreet judge. On the argument, the plaintiff laid some stress upon the fact, that Smith had since left the Territory. We cannot look

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beyond the affidavit, nor take judicial notice of a fact not proved, nor could the court below.

There is no error in the judgment of the District Court of Ramsey County, dismissing the suit for the insufficiency of the affidavit on which the attachment was granted, and it is therefore affirmed with costs.

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In pleading a judgment record, a variance between the declaration and the record as set forth therein, in the amount declared on, or names of parties, will be fatal.

Error to the District Court of Ramsey County.

This was an action of debt, founded on a judgment, obtained in a court in Illinois. The cause was tried by consent of parties by the Court without a jury. A judgment was rendered for the plaintiff.

PIERSE & MURRAY, Attorneys for the Plaintiff.

AMES & NELSON, for the Defendant.

COOPER, J. This is an action of debt, founded on a judgment for \$400, damages and costs of suit; obtained by W. B. Lawrence, the defendant in error here, in the County Court of Jo Davis County, in the State of Illinois, against Amherst Willoughby the plaintiff in error, and one N. W. Finn.

The errors complained of and assigned for correction in this court are:

First. That there is a variance between the declaration and the transcript of the judgment declared upon, in stating the amount of said judgment and costs.

Second. There is a variance between the declaration and the transcript of the judgment record, declared on in stating the parties to said judgment.

The judgment obtained in the Court of Illinois, was for \$400 damages and the costs of suit. The declaration was, that it was for \$400 damages and costs of suit, which costs amount to \$150. The record shows this averment to be incorrect, and the variance is fatal.

Again the declaration alleged that the judgment was obtained against Amherst Willoughby; whereas the transcript of the record shows that it was obtained against Willoughby and one Finn. This variance is also fatal.

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In averring matters of record great particularity should always be observed. Any misstatement in the description of a record in pleading is, as a general rule, fatal to such pleading. The reason of this is too obvious to admit of a doubt of its propriety. Did a different rule obtain, the evils growing out of it would be incalculable, and the objects of pleading defeated entirely. The defendant is entitled to notice of the cause of action upon which he is sued. To afford him such notice, and properly apprise him of the matters against which he is called upon to defend, is one of the main objects of pleading.

The averments therefore in a declaration, and the proof of the matters averred, must be identical. The allegations and proofs, must correspond. Here it cannot be pretended that such was the case. The judgment declared upon, and the transcript offered in evidence, and received to sustain the allegations in the declaration, were different both in the amount of the judgment, and the parties to it. A more palpable case could not be supposed, neither amount nor parties being the same; who could say it was the identical judgment declared upon? It might just as well have named any other party, and the variance would not have been greater. The declaration and proof therefore not corresponding, it was bad, and being so, the judgment must be reversed with costs.

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In an action under the statute of forcible Entry and Detainer the complaint must *particularly* describe the premises detained.

The statute requiring these actions to be brought before two Justices, an adjournment when only one is present is irregular.

This was an action commenced by the defendants in error, for a wrongful detention of certain real property, before B. W. Lott and O. Simons, Justices of the Peace for Ramsey county.

The facts appear in the opinion of the Court.

RICE, HOLLINSHEAD & BECKER, for Plaintiffs in Error.

AMES & NELSON, for Defendant in Error.

MEEKER J. On the 5th of July, 1851, complaint was filed for Franklin Steele and Ard Godfrey, known by the style and firm of the St. Anthony Mill Company, setting forth that Eli F. Lewis held over the lands, tenements and other possessions of the complainants, on Hennepin Island, so called, at the Falls of

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St. Anthony in the county of Ramsey, after the termination of the time for which they were let him. And also, that the said Lewis held and continued in the possession of the house and premises on Hennepin Island, so called, at the Falls of St. Anthony, in the county aforesaid, let to him by the complainants contrary to the conditions of the lease or arrangement under which he held. And also that the said Lewis had neglected to pay the rent of the house and premises let to him by the complainants on said island for more than ten days after the same became due; that the agent of the complainants more than ten days previous thereto made demand in writing of the said Lewis that he deliver up possession of the said house and premises held as aforesaid, but the said Lewis, disregarding the said notice and demand, continued to hold and occupy the said house and premises, wrongfully and against the rights of the complainants.

Upon the complaint sworn to by one of the counsel of Steele and Godfrey, Bushrod W. Lott and Orlando Simons, Esqrs., two Justices of the Peace for Ramsey county, issued on the same day a summons, citing Lewis to appear before them on the 15th day of the same month to "answer and defend against the complaint aforesaid." On the 15th, in obedience to the summons, Lewis was present, but Simons, one of the Justices, was not; when, on motion for the plaintiffs, *a single Justice adjourned the cause to the 23d*, on which day they rendered judgment of restitution and costs, against Lewis who was not in attendance.

Lewis then sued out a writ of *certiorari*, and took the cause to the District Court of Ramsey County, where the judgment of the Justice was affirmed with costs. To reverse this latter judgment he has brought it before this Court. This statement of the progress of the steps of the controversy as they chronologically arose, seems all that is necessary to dispose of the errors assigned, which will now be considered in the order in which they are made.

The first error assigned is the insufficiency of the complaint. There does not appear to be much in the objection that it does not set forth, in terms, that there was a lease, or that the relation of landlord and tenant existed between the complainants and Lewis, as a lease, and that relation is necessarily implied in the language of the complaint. But the last clause of this assignment, points to a defect not so easily answered—the vague and imperfect description of the premises sought to be recovered. It is not because this summary remedy is in the nature of a criminal or penal proceeding that some degree of strictness and particularity are required, in the complaint; for the matter complained of is not with us, indictable, nor is it in any just and appropriate sense a penal offence, since our statute imposes no fine, but simply because the law expressly demands that the complaint should "*particularly describe the premises so entered and detained.*" The propriety of this requirement will suggest itself at once. It is necessary as a guide to the Justices whose duty it is made, to lay before the jury the *cause* of complaint, and to issue to the proper officer final process of restitution in the event of a verdict for the complainants. Such an officer has no other guide but the precept placed in his hands, and if that be vague and indefinite, to

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whom shall he go for information, or how is he to know with any certainty what the premises are, which he is to deliver to the party entitled? Surely no one will contend that he should go beyond, or without the execution for his direction. In the case before us the first description is, lands, tenements, and other possessions of the complainants, on Hennepin Island, so called, at the Falls of St. Anthony. How much of said Island is here meant? And are the lands, tenements and other possessions referred to, on the lower or upper end of said Island? If either, how much? Or can this description be intended to mean the *entire* Island? The second and third descriptions are equally uncertain and insufficient.

The second error assigned is that the venire was issued by the Justices at a time different from that when the summons was issued, contrary to the statute. Perhaps this seeming departure from the letter of the statute should not be deemed sufficient cause, by itself, of reversal, and should be considered directory only, and not imperative upon the Justices. But be this as it may, the 3d error relied on, is conclusive against the complainants. It is in substance, that the adjournment, by one Justice, in the absence of the other, to the 22d, when a jury was empaneled, was wholly unauthorized and void. In ordinary matters of trust and confidence, and as between individuals, merely, a power and special authority conferred upon two or more can not be executed by a less number than the whole. *Cokes Litt.* 113. *Powell on devices*, 294, 304, and the authorities there cited. But here is a class of cases that no one Justice of the Peace is empowered to try, but the law reposes that trust and confidence in *two*, by constituting them a Court to issue process, to lay the matter of complaint before the jury, to render judgment, and issue execution thereon. How much more important that the rule of law above cited, should apply where, as in this case, judicial power affecting the rights and property of many, is delegated to, and vested in the discretion of *two* officers of limited jurisdiction! Lewis having been summoned therefore to appear before the Justices on the 15th, and defend at the inquest, and but one justice being then in attendance, who had no authority to do an act which the law required two to do, the process was on that day *spent* and the trial on the 22d null and void.

The cause is therefore reversed with costs but without prejudice to proceedings *de novo*.

HARTSHORN VS. JAS. GREEN'S Administrators.

Evidence tending to show the ownership of a promissory note which is the cause of action in another than the plaintiff is admissible.

HARTSHORN VS. GREEN'S ADMINISTRATORS.

A Court sitting as a Court of Law, cannot at the same time exercise Chancery jurisdiction.

This was an action brought in the District Court of Ramsey county, for the recovery of an amount claimed to be due the plaintiff from the defendants on a promissory note made by said Green, payable to Hartshorn or bearer. A verdict was found for the plaintiff, and the defendant sued out a writ of Error from this Court.

AMES, WILKINSON & BABCOCK, Plaintiff's Attorneys.

RICE, HOLLINSHEAD & BECKER, Defendants' Attorney.

COOPER J. This was an action of *assumpsit* brought by W. Hartshorn to recover the amount of a promissory note made to him by James Green, for the sum of \$840.98.

The administrators of Green pleaded *non assumpsit*, and gave notice of set off. The defence set up under this plea and notice was, first: That the plaintiff has no title to the note, having assigned it for a valuable consideration to W. H. Randall in trust for the benefit of his, (Hartshorn's) creditors. This assignment took place in August, 1847. A further defence was, that the said plaintiff had been enjoined at the suit of Randall from proceeding to collect any claims due to him, which injunction was still in full force and remaining upon the record, to which the Court was referred. The District Judge, upon the last allegation being made, stayed, for the time being, the suit at law; entered upon his duties as Chancellor upon the Equity side of the Court, and made an order in the case of Randall against Hartshorn the plaintiff below in this suit, that this suit be proceeded in to final judgment, and that the amount recovered, if anything, be paid to the receiver in the other suit named.

The defendant then offered in evidence the deed of assignment from Hartshorn to Randall for the purpose of showing the title to the note sued upon to be in the latter; to be followed by proof, that the note had been in Hartshorn's possession, or under his control, from the time of the assignment to the time of trial; that he had refused to deliver it to the assignee; and that the defendants as administrators of Green had had notice from the assignee, not to pay the note, unless to him.

The counsel for the plaintiff objected to the admission of the deed of assignment and the subsequent oral testimony proposed, because this particular note was not specified in said deed of assignment. The Court sustained the objection and overruled the offer.

The language of the deed is this: "The said W. Hartshorn hath granted, bargained, sold, assigned, transferred and conveyed, and these presents does grant, bargain, &c., all goods, stock in trade, merchandize, skins, furs, debts due from the Indians; all assets, book accounts, claims and demands of every nature and

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description whatsoever, due, belonging to, or to become due, owing or belonging to the said Wm. Hartshorn, &c." Thus no note, book account or other demand was specified.

But this made no difference. The fact of title made no difference as to the overruling of this offer. It was legitimate testimony. The Court could not know how far it would go to sustain the fact of title in Randall, until it was received, and he therefore erred in refusing it. But really the title was the gist of the defence, and the order of the Court, saying that the cause should proceed to final judgment in the face of all these circumstances, was also irregular, as it was greatly calculated to mislead the jury in regard to the legal effect of the proof admitted. It was a matter of no consequence in whom the title to the note was, if it was not in the plaintiff below; for under such a state of facts he could not recover.

Another error complained of but amounting in principle to the same thing, was that the Court charged the jury as follows: "That the question of title to the said note, or whether it belonged to the plaintiff or not, was a question not to be considered by them, as the Court had disposed of that matter by the order made on the Chancery case of Randall vs. Hartshorn, during the progress of the trial."

In this the Court likewise erred. Even had it possessed the power to create the happy union of the Court of Law and Equity, sitting as the same Court, in the trial of the same suit at law, the Court erred. For if the order disposed of the question of title to the note at all, it vested it in the Receiver, and the proof offered was legitimate to sustain such defence.

As before remarked the whole gist of the defence, was in the title to the note, and anything going to show that the title was not in the plaintiff was admissible. Under the plea this defence was perfectly available. Then in the first place the deed of assignment was improperly rejected; and in the second, the charge of the Court to the jury, was manifestly wrong.

The judgment is therefore reversed with costs, and a *venire facias de novo* awarded.

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A cause cannot be transferred from one Justice to another in the same county, on an affidavit of prejudice and partiality.

An action cannot be sustained on a note given to secure the payment of money to become due on the election of a candidate to a certain office. Such notes are void as being against public policy.

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This was an action commenced before H. K. McKinstry, Esq., Justice of the Peace for Washington county, by the plaintiff in error, against the defendant in error. The plaintiff declares on a promissory note made by defendant, for the sum of \$380, claiming a balance due of \$98 36. Two other persons were named as defendants in the summons, but Brewster was the only one summoned. Brewster appeared and plead the general issue, and gave notice of a set off of the following promissory note:

\$100.

For value received I promise to pay to L. Buford or bearer, one hundred dollars when H. H. Sibley is elected representative in Congress from Minnesota Territory.

J. O. COOPER.

Stillwater, August 9, 1850.

The defendant alleged a transfer of the said note on a good consideration to him, and that he was owner of the same.

At the trial, the plaintiff having proved his complaint, the defendant offered in evidence the note mentioned in his notice of set off, together with proof of the fact, and date of the election referred to in the note. The plaintiff objected, and the Justice refused to receive the note in evidence.

The defendant then applied for a transfer of the cause to some other Justice on an affidavit of prejudice and partiality. The Justice refused to make the transfer. The jury returned a verdict for the plaintiff for \$98 36 and costs.

The defendant removed the cause to the District Court of the 2d Judicial District, from whence it was transferred to the 1st District, and by that Court the judgment of the Justice was reversed. The plaintiff removed the cause by writ of error to the Supreme Court.

RICE, HOLLINSHEAD & BECKER, for Plaintiff in Error.

AMES & NELSON, for Defendant in Error.

FULLER, C. J. This action was commenced before a Justice of the Peace, by the plaintiff against John H. Brewster, and two other defendants, who were not served with process nor did they appear. The plaintiff declared upon a joint promissory note against the three. Brewster pleaded *non assumpsit* and gave notice of set off. Upon the trial, the defendant offered in evidence as a set off a note for one hundred dollars made by Cooper, the plaintiff, and payable to one Buford, or bearer, "when H. H. Sibley should be elected delegate to Congress," and purporting upon its face, to have been given for value received. This evidence was objected to by the plaintiff, and excluded by the Justice. The defendants' attorney then offered to make oath that he believed the Justice would not hear and decide the case impartially, on account of prejudice and other causes, and moved that it be transferred to some other Justice of the county

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having jurisdiction. The Justice refused to entertain the motion. Judgment was rendered in favor of the plaintiff for the balance due upon the note given by the defendants. Brewster removed the cause to the District Court of Ramsey county, which reversed the judgment of the Justice, and thereupon the plaintiff sued out a writ of error from this Court.

The Justice was clearly right in not entertaining the motion to transfer the cause. There was no warrant for such a proceeding. The laws of 1849, under which the suit was commenced, page 19, authorizes such a transfer only where the defendant makes an affidavit before issue joined, that the Justice is a material witness for him, without whose testimony he cannot safely proceed to trial; or where it is "proved that he is near of kin to the plaintiff." For errors committed through partiality or prejudice, the remedy is by appeal or *certiorari*.

The note offered in evidence by the defendant was not negotiable. It was, payable only upon the happening of a contingency, and not absolutely. *Story on promissory notes* 1 and 24. Not being negotiable its mere possession and production by Brewster on the trial was not evidence of title to it in him, much less in all of the defendants. *Prescott vs. Hall*, 17 J. R. 292. *Perkins vs. Parker* 17 Mass. R. No evidence of a transfer by Buford the payee to the defendants was offered. And unless it belonged to all of them jointly, it could not be set off against the plaintiff's demand. *Laws of 1849, page 18, Sec. 1, Sub. 6.*

And had the note belonged to the defendants, it was void as being against public policy. It was in effect a wager upon an election. It was given for value received. If Sibley was defeated, then Cooper retained that value without compensation, and Buford lost it. If Sibley was elected, then Buford was to receive, and Cooper to part with one hundred dollars. Each of the parties thus acquired a pecuniary interest in the event of the election, and a motive to cast his own vote, and procure others to cast theirs, for his private benefit without regard to the public good. Such a contract should not be upheld. It is against public morals, and tends directly to destroy the purity of elections. No man should be permitted to convert the elective franchise into a device for gambling. It is a sacred trust confided to him by his country, which he is bound to exercise in such a way only, as in his judgment will contribute most to his country's welfare. Accordingly all wagers on the result of an election are held to be illegal and void. *Lansing vs. Lansing*, 8 J. R. 454. *Rush vs. Gott*, 6 Owen 169, *Brush vs. Keeler*, 5 Wend, 256, 12 J. R. 376. The rule would have been established to little purpose, however, if contracts like the one under consideration should be adjudged valid. The evasion of the law, would then be easy and secure. The Justice was right in excluding the evidence. The District Court erred in reversing the judgment rendered by him.

The judgment of the District Court of Ramsey county is therefore reversed with costs, and the judgment of the Justice affirmed.

(COOPER, Justice, being brother of the plaintiff, took no part in the decision.)

TOWN OF ST. PAUL VS. STEAMBOAT DR. FRANKLIN.

Town of St. PAUL vs. Steamboat DR. FRANKLIN.

The District Court cannot review upon *certiorari* proceedings had before the President of the Town of St. Paul, in cases arising under the laws and ordinances of said town.

This was an action commenced before the President of the Town of St. Paul, to recover of the defendant a sum claimed to be due the plaintiff for wharfage, under the ordinances of the Town of St. Paul. Judgment was rendered by the President of said town, in favor of the plaintiff for the sum of ten dollars and costs. On the application of the defendant a writ of *certiorari* issued from the District Court of Ramsey County to the President, to remove the proceedings to that Court. The District Court reversed the judgment of the President, whereupon the plaintiff sued out a writ of error from the Supreme Court.

L. EMMETT, Attorney for Plaintiff in Error.

RICE, HOLLINSHEAD & BECKER, for Defendant in Error.

COOPER, J. This was a suit instituted before the President of the Town of St. Paul to recover a tax, imposed by an ordinance of said town, upon steamboats landing at the wharves within the limits of said borough. Judgment was rendered by said President against the Dr. Franklin for ten dollars and costs. A writ of *certiorari* issued to the President of the Council, from the District Court of Ramsey County, and the judgment and proceedings had in the matter were certified to said Court.

By an act of the Territorial Legislature of 1849, the town of St. Paul was incorporated; and the power to make rules and regulations for the governance of said incorporation, conferred upon the President and Council authorized by it. An ordinance was made taxing steamboats one dollar for every arrival and departure. Under this ordinance suit was brought against the Franklin, and judgment recovered against her.

The District Court reversed this judgment; and this is the error assigned. The grounds are that an appeal only, and not a *certiorari*, will lie under the 13th Sec. of the Act of Nov. 1, 1849, incorporating the town of St. Paul. The section referred to is in these words:

"The President of said town shall be a conservator of the peace, within the limits of said corporation, and shall have and exercise all the ordinary powers of Justice of the Peace, within the limits of said corporation, in all matters civil and criminal arising under the laws of this Territory; he shall give bond and security as required of Justices of the Peace, except that the said bond shall be taken in

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the name of the Town of St. Paul; and appeals may be taken from his judgment in all civil cases and in all penal cases arising under the laws and ordinances of said town to the District Court of the county of Ramsey, in the same manner and within the same time as appeals are or may be taken and perfected in ordinary cases before Justices of the Peace. Said President shall keep a docket and true record of his proceedings, judgments and executions in all cases, which may come before him, and shall be allowed the same fees as are allowed to Justices of the Peace for similar services "

There is some difficulty in giving a proper construction to this section; as taken in connection with the 9th Section of the Organic Law of the Territory which provides "that the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts and in Justices of the Peace;" there is much doubt of its force and effect. The section of the Organic Act referred to, states in whom and in what tribunals judicial power shall be vested; and limits it to these. Yet the Legislature has conferred those restricted powers and functions on the President of the town of St. Paul.

We think, however, that as far as it properly regards this question, the right of bringing up a case from the judgment of the President by writ of *certiorari*, the act is capable of but one construction. It is true it tries to confer upon the President the ordinary powers of a Justice of the Peace, but it does not make him a Justice of the Peace. The act is intended only to *limit, describe, and regulate*, his duties. This is manifest from every line of it. Appeals, for instance, shall be from his judgment, not as a Justice, but in the *same manner* and within a like period. Thus it is plain that the act did not regard him as a Justice, and the reference to the powers of a Justice, and the mode of appeal, went to the *manner* alone, and *not* to the matter. It was merely descriptive and directory. And unless the limits were regarded and the directions followed, the party was sure to err. By the section quoted appeal is the only means allowed by which the President's judgment could be reviewed and corrected. This is a special proceeding, wholly statutory, and must be strictly followed. The allowance of the *certiorari*, and reversal of the President's judgment is therefore reversed with costs.

Board of COMMISSIONERS of Washington County vs. MOSES J. McCoy.

In a Justices Court, where adjournments, subsequent to the first, are called for, to procure material testimony, the facts showing that due diligence has been

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used to obtain such testimony must be set forth by the party making the affidavit for that purpose.

Error to the District Court of Washington County.

This cause was commenced before Albert Harris, Esq., a Justice of the Peace for said county. The facts appear in the opinion of the Court.

F. K. BARTLETT, for Plaintiff in Error.

AMES & NELSON, for Defendant in Error.

COOPER, J. This case originated in a Justice's Court, and was removed thence to the District Court. The facts in the case were these.

The suit was commenced Jan. 8th, 1851, by issuing a summons made returnable on the 15th. On the return day the parties appeared; the declaration was filed; the plea put in: issue was joined, and the cause adjourned at the instance of the plaintiffs, till the 22nd. On the 22nd the parties again appeared. In the mean time the plaintiffs had taken the deposition of Samuel Burkleo, and offered to read it; but it was excluded for insufficiency of notice to the defendant of the time and place of taking it. The plaintiff's counsel thereupon moved for a second adjournment to enable him to retake the deposition. The motion was granted, and a further adjournment was had till the 27th. Notice was then given, in open Court, to the defendant, that the deposition of Samuel Burkleo, would be taken at 8 o'clock, A. M. of the day to which the cause had been adjourned, at the town of Stillwater. On the 27th, the parties again appeared, but having failed to procure Burkleo's testimony, the plaintiffs's counsel moved for a still further adjournment. This motion was based upon an affidavit, which set forth that Samuel Burkleo was a material witness, that he was a member of the Legislative Assembly, and consequently not obliged to obey the process of subpoena; that the Legislature was then in session; that he was in the habit of visiting his home and family at Stillwater every Saturday, and of returning to St. Paul to resume his duties each succeeding Monday; that deponent believed he would visit his home on the Saturday last past, (25th,) but he had failed to do so; and further, that deponent had used all due diligence to procure his presence or testimony, but was unable to do either.

The Justice refused to adjourn, and, no evidence having been adduced a judgment for costs was rendered against the plaintiffs. The refusal to adjourn was the error complained of in the Court below. The District Court affirmed the judgment. This affirmance, it is alleged, is error, and it is now brought into this Court by writ of error for correction.

We think the District Court did right in affirming the judgment. The affidavit upon which the adjournment was asked, was manifestly insufficient. It shows no act which gives evidence of the diligence alleged to have been used. On the contrary, the inference is, from the whole tenor of the affidavit, that the

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plaintiffs relied wholly and exclusively upon the chance of Burkleo visiting his family, as was usually his custom. This he did not happen to do, and the plaintiffs for that reason, claimed a further adjournment. No act appears to have been done to secure his attendance. No reason or excuse whatever is assigned why his deposition might not have been taken any day at St. Paul. There is no allegation that a subpoena ever issued, or that he refused to obey its mandate, or that even a request had been made, or notice given him of the time and place where his testimony was to have been taken. All these things, did they exist, should be set out in the affidavit. It is not enough, under any circumstances, merely to swear to the judicial conclusion, that due diligence had been used. It is for the Court or Justice to say whether the acts of the party amount to due diligence, and not for the affiant.

In this case there is evidence of a want of diligence; of laches so gross, that the justice would have been unwarrantable in granting an adjournment. After the first adjournment, which was of course, motions for a further adjournment were addressed to the discretion of the Justice. That discretion must be exercised soundly and with care; ever having a just regard for the rights and interests of both parties. The defendant had already appeared to defend in this action, three several times, and to have adjourned again, unless under the most urgent and peculiar circumstances, and after all the diligence that could be used on the part of the plaintiffs, would have been visiting upon the defendant burdens created by the laches of the other party. This could not be permitted. The Justice did right in refusing it, and the judgment must be affirmed.

Judgment affirmed with costs.

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Under the Statutes existing before the Code took effect, where several defendants were sued as joint promissors, judgment could not be taken against one of them separately.

This was an action of assumpsit in the usual form for work and labor; commenced by Carlton and Patch, plaintiffs, against Pierre Chouteau, Jr., John B. Sarpy, John F. A. Sandford, Joseph A. Sires, Henry H. Sibley, Henry M. Rice, and Sylvanus B. Lowry, defendants. By stipulation, a jury trial was waived, and the cause tried by the Court. On the 9th of Oct., 1851, after hearing the evidence, and argument of counsel, the Court rendered judgment against

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Henry M. Rice for the sum of four hundred and fifteen dollars, and in favor of the other defendants. The decision was as follows:

"In pursuance to the stipulations entered into by the parties to this suit on the 13th day of September 1851, and filed in this cause, the matters of law and fact in controversy between said parties were submitted to the determination of the Court, without the intervention of a jury on the 24th day of September, A. D. 1851. Whereupon, upon hearing the evidence, touching the matters and things involved, and upon argument by counsel the cause is held under advisement until this 9th day of October A. D. 1851, when it is adjudged by the Court, that the said Pierre Chouteau, Jr., John B. Sarpy, John M. A. Sandford, Joseph A. Sire, Henry H. Sibley, and Sylvanus B. Lowry, did not assume and promise in manner and form as the said John J. Carlton, and Edmund Patch, have complained against them, but that the said Henry M. Rice, did of his own right, for himself, assume and promise in manner and form as the said Carlton and Patch have complained, and do assess the damage of the said Carlton and Patch by reason of the premises at four hundred and fifteen dollars. Therefore it is considered by the Court that, the said John J. Carlton and Edward Patch recover of the said Henry M. Rice the said sum of four hundred and fifteen dollars, their damages aforesaid, in form aforesaid, assessed, and their costs in this behalf to be taxed."

The plaintiffs, upon this judgment sued out a writ of error to this court.

RICE, HOLLINSHEAD & BECKER, for Plaintiffs.

AMES, BABCOCK & WILKINSON, for Defendants.

FULLER, C. J. This is an action of assumpsit. The declaration is against the defendants as partners and joint contractors, and contains the common counts only. The defendants, Rice and Lowry did not plead to it. The other defendants pleaded *non assumpsit*.

The Court below rendered judgment against Henry M. Rice, and in favor of his co-defendants; the Judge who tried the cause without a jury, finding by his written decision, spread upon the record, that there was no joint undertaking, but that the defendant Rice promised individually.

We are not at all satisfied, that under the provisions of the Revised Statutes, p. 343, 349, chapter 70, an action can be commenced against joint contractors on a joint promise, and judgment rendered against one of them alone on his several promise; and we leave that question undetermined. See *Murray vs. Gifford*, 5 How. Pr. Rep. 14 *Voorhies Prac.* 229.

But this action was commenced before the Revised Statutes took effect; and by Section 26 of chap. 70, page 332, is expressly excepted from the operation of that chapter.

By the common law, the plaintiffs must recover against all the defendants or none. ... *Graham's Pl.* 91, 95 1 *ch. P. C.*, 50 7 *Term Rep.* 352.

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The District Court erred therefore in rendering judgment against one of the defendants, and in favor of the others, and the judgment must be reversed with costs of reversal, the cause remitted to the Court below, and a *venire de novo* issued. Order accordingly.

It is unnecessary to decide the other questions raised upon the argument. We think, however, that the statement of facts found on the trial contained in the decision of the Court is not a sufficient compliance with the provisions of Section 41, p. 856, R. S.

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The assignee of an instrument in writing not negotiable, cannot maintain an action thereon in his own name.

This was an action commenced before a Justice of the Peace of Ramsey County, on the 20th day of June, 1851, upon the following instrument, in the name of the assignee thereof.

"I do agree to cut and split two thousand rails on the North-West quarter of Section 20, Township 29 north, and Range 22 West, on or before the first day of May next, to be delivered to Elliott Adams or bearer.

(Signed) "WARREN WOODBURY."

Dated Feb. 18, 1850.

The plaintiff declared, in writing, upon the above instrument, and filed the same as his bill of particulars. The defendant pleaded non assumpsit.

The Justice gave judgment for the defendant, and the case was taken to the District Court on *certiorari*, when the judgment of the Justice was reversed. To review the last judgment, the defendant sued out a writ of error.

L. EMMETT, for Plaintiff in Error.

PIERSE & MURRAY, for Defendant in Error.

MEEKER, J. The following instrument was executed by Warren Woodbury on the 18th of Feb. 1850 to wit:

St. PAUL, Min. Ty., Ramsey County.

I do agree to cut and split four thousand rails on the North-West quarter of

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Section 20, Township 29 North, and Range twenty-two [22] West, on or before the first day of May next, to be delivered to Elliott Adams or bearer.

“WARREN WOODBURY.”

Upon this instrument, as the holder thereof, J. B. Woodbury brought suit before Orlando Simons, a Justice of the Peace, in and for the county of Ramsey, who gave judgment for the defendant. Spencer then took it to the District Court of Ramsey County, by *certiorari*, when the Justice's judgment was reversed, and that decision of the District Court, is brought before us by writ of error.

The only question that is legitimately raised in the record before us, is whether the writing upon which this suit is based is negotiable or assignable so as to vest in any holder, other than the original obligee, a right of action at Law. It is at most but a chose in action, and as that class of rights were not assignable at common law, and as the Statutes in force at the time, rendering notes assignable promising the payment of money, does not affect other obligations, promising payment of anything else, or the performance of labor, the action in this case upon the obligation in question, cannot be maintained at law.

The judgement of the District Court is therefore reversed with costs.

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First. Where new matters are to be set up in a suit of equity, it must be done by supplemental bill and not by special replication.

Second. Pleading new matter by special replication is no longer allowable.

Third. New matter cannot be set up by amendments to an original bill.

Fourth. Objections to the form and manner of a bill in equity, cannot be made available on *general demurrer*.

Fifth. Inconsistent and repugnant matters are not admitted by a demurrer. They cannot be well pleaded; and only such matters as are well pleaded are admitted by demurrer.

Sixth. The original and supplemental bills compose but one suit and a general replication applies to both.

HOLLINSHEAD, BECKER & WILKIN, for Appellants.

AMES & NELSON, Contra.

This was an appeal from an order overruling a demurrer to a supplemental bill, in the District Court of the U. S. for the Second Judicial District, and

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brought into this Court to reverse that order. The judge below over-ruled the demurrer on the grounds that a general demurrer was not good when there were equities apparent upon the face of the bill. That the demurrer went simply to the form and manner of pleading, and that could only be taken advantage of by a special demurrer, setting forth with certainty the objections.

Held by appellants,

1. That the facts are not set forth with the reasonable certainty necessary to enable the defendants to answer, or the court to decree. 1 Barb. Ch. Pr. 38, 39, 40.

2. That the facts set forth in the Supplemental Bill, arose prior to the filing of the original bill, as appears upon the face of the supplemental bill. 3 Dan'l Ch. Pr. 1681; Lord Red. 202; 4 Sims 76; 1 Paige 200; Story's Eq. Pl. 614; 2 Barb. Ch. Pr. 75; Mitford's Pl. 60—164; 3 Atk. 817; Cooper's Eq. Pl. 214; Mitford's Eq. by Jeremy 202, 203, 207; 2 Madd 387.

3. The supplemental bill is inconsistent with the original bill and in the most important particulars in direct conflict therewith.

4. That the statements contained in the supplemental bill do not establish any claim of the complainants to equitable relief, but are (apart from sweeping charges and unsupported allegations,) entirely consistent with fairness and integrity on the part of the defendants.

5. The facts and circumstances set forth in the supplemental bill are all either legitimate evidence in support of the original bill, or are properly the subject of replication to the plea on file, and therefore need not, and ought not, to be stated by way of supplement. Story's Eq. Pl. Sec. 337; Mitford's Pl. 164; 3 Atk. 817; 1 Paige 201; 2 Barb. Ch. Pr. 75; 3 Paige 294; 2 Mad. Rep. 53, 387; 17 Ves. 144; 1 Barb. Ch. Pr. 106; 1 Dan'l Ch. Pr. 656.

The appellees held:

1. Where new events or new matters have occurred since the filing of a bill, a supplemental bill is in many cases the proper mode of bringing them before the Court, for generally such facts cannot be introduced by way of amendment. Story's Eq. Pl. pg. 381, Sec. 332; pg. 385, Sec. 335, 336.

2. After the pleadings on both sides are closed, the Complainants cannot remedy an original deficiency in their bill by amendment, because that would open the whole cause anew and be productive of irregularity and confusion; but if at such a stage of the proceedings any imperfection should be discovered in the bill as that which requires further discovery or to put new matters in issue, the Complainants will be at liberty to resort to a supplemental bill for such purposes. Lubes Eq. Pl. 137.

3. A supplemental bill in the nature of a bill of discovery may be filed, after the cause is at issue, where the new facts were not known to the complainants at the time of filing the replication. Bar. & Har. Dig. Vol. 3, pg. 44; 3d Vol. Eq. Dig. 45; 4 Simons 628.

4. Where material facts have occurred subsequent to the commencement of the suit, the court will give the complainants leave to file a supplemental bill; and where such leave is given, the court will permit other matters to be introduc-

ed into the supplemental bill, which might have been incorporated in the original bill by way of amendment. 6 Monroe 141; 2 Maddock 544; Moulton Ch. Pr. 234, 264, 291; 1 Pg. Ch. Rep. 163, 200; 3 Atkins 370; Kanington's Mich. Rep. 332; 1 Hoff. Pr. 405, 42; 4 Eq. Dig. 583; 5 Mad. Ch. Rep. 427.

5. A supplemental bill is not a supplemental suit, but a mere continuation of the original, which introduces supplemental matters. The whole record is one cause, and a general replication applies to the whole record, and both the original and supplemental bill is to be taken together. 5 Mad. Ch. Rep. 259.

6. Where a bill is defective in substance and shows no equities upon its face, a general demurrer is proper; and where defective in form only, can be reached by special demurrer, and the causes of the demurrer must be assigned with certainty. Lubes Equity, 347.

7. Where the demurrer is to the whole bill, if any part of the bill is good, the demurrer must be overruled; as in a bill of discovery and relief, if the complainant is entitled to relief only, the demurrer is bad. 1 Johnson's Cases, *Larghts vs. Morgan*, et. al. 433, 434; 5 Johnson's Ch. Rep. 186.

8. A demurrer which is bad in part must be overruled, (for it is not like a plea which may be allowed in part,) but a demurrer bad in part is bad in toto. 1 Athys Ch. Rep. 450, *Suffolk vs. Green*, *Story's Eq. Pl.* 486, and Notes 707 and Sec. 692; 5 Page's Ch. Rep. *Randolph vs. Dickinson*, 517; 1 Page's Ch. Rep. *Insurance Co.* 284.

FULLER C. J. The plaintiffs, being members of the firm known as the "Northern Outfit" engaged in the Indian trade, filed their bill of Complaint against their Co-partners Rice & Lowry, on the ground of fraud, and breach of the covenants contained in the articles of Co-partnership on the part of the defendant, Rice; and prayed a dissolution of the partnership; an injunction; the appointment of a receiver; the taking of an account; a decree against Rice, for any balance found due from him to the plaintiffs to be paid out of his individual property, if the partnership effects in his hands should prove insufficient; and for general relief. The bill was filed on the 10th day of October, 1849. A settlement was made the next day between the parties, the terms of which were reduced to writing, signed and sealed.

By the first article of the settlement, the plaintiffs released and discharged Rice from all contracts with them, and from his accounts and liabilities to them or any of them or to the outfit, on the Co-partnership books, or the books of the plaintiff P. Chouteau, Jr., & Co.

By the second article, the plaintiffs assumed all the debts and liabilities of the Co-partnership, incurred in its legitimate business.

By the fourth article, in consideration of the preceding, the partnership was dissolved.

By the fifth, Rice covenanted to transfer to the plaintiffs forthwith and without delay, the books, papers, accounts, property, and effects, real and personal, in the possession of himself or Lowry, or under their control, belonging to the partnership; and a schedule of the real property was annexed.

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By the sixth article, Rice relinquished to the plaintiffs all claim to four thousand and five hundred dollars deposited by him with B. H. Campbell of Galena, and credited in an account made up of items for his individual benefit, as well as items for the outfit.

By the eighth article, upon the faithful performance by Rice of the stipulations on his part, so far as was immediately practicable, all proceedings upon the said Bill of Complaint were to be forthwith discontinued and withdrawn.

At a subsequent period the plaintiffs proceeded with their original suit. The defendant, Rice, being brought into Court by process of subpoena, pleaded the articles of settlement in bar, and averred performance on his part. The plea was filed in March, 1850.

In May following, after the plea had been allowed by the Court, the plaintiffs filed a supplemental bill, reciting the original, impeaching and avoiding the settlement on the ground of fraud, and that Rice had not fulfilled on his part. To this Bill Rice demurred, and the decision of the court below overruling the demurrer, is now brought here for review.

It is contended by the counsel for the defendant, that the matters in avoidance should have been set up by replication, and not by supplemental bill. This point is not well taken. Special replications are now disused, and general replications denying and putting in issue the matter of the plea, are the only ones allowed. Story's Eq. Pl. § 878.

There was therefore no mode of avoiding the plea in bar, but by supplemental bill. It could not be done by amendment of the original bill, because the matters pleaded in bar had arisen subsequent to its exhibition; and the fraud charged could not be consummated, till the articles of settlement were executed, nor the breach of them till afterwards; and consequently the matters set up in avoidance, in part at least, must have transpired subsequent to the filing of the original bill also. The plaintiffs could not by an amendment of the original bill, avoid a settlement made after it was filed. It is true that the accounts and inventory alleged to be false and fraudulent in the supplemental bill, were *in esse* and known to the plaintiffs before the commencement of their suit, and as false and deceptive then as they ever were afterwards; but if the plaintiffs did not know them to be incorrect, and taking advantage of their ignorance, the defendant Rice, subsequently to the filing of the original bill, fraudulently used the Books and inventory to induce the plaintiffs to consent to the settlement which was made, then they can only show that by way of supplement; and the statement of the accounts and inventory and of their falsity is necessary in order to show by what means the fraud was committed. For this purpose, what went before was as necessary to be set out, as what happened after suit brought, and could not be separated from it without rendering the pleading imperfect. The prior matter was indispensable for the explanation of that which followed. It is not because it was not discovered before the original bill was filed, that it is properly stated by way of supplement, but because it could not possibly be used for the purpose for which it is brought forward, till afterwards. Story's Eq. Pl. § 335. 1 Hoff. Ch. Pr. 42.

The objection that the statements of the supplemental bill are vague and uncertain, is to their form and manner, and not good on general demurrer. Story's Eq. Pl. § 455. Lubes' Eq. Pl. 347. Averments may be so vague and imperfect, as not to be susceptible of an answer, or lay the foundation of a decree. Story's Eq. Pl. § 242. Some of the statements of the bill before us are loose and indistinct, but sufficient in that respect when taken in connection with others to call for discovery and relief.

Let us next enquire, whether admitting the statements of the supplemental bill to be true, they make out a case sufficient to avoid the settlement set up in bar. They are in effect, 1. That in the latter part of September 1849, Rice furnished the plaintiffs an inventory of the goods and effects remaining on hand, of that branch of the Northern Outfit of which he had charge, called the Winnebago and Chippewa Outfit, as required by the third article of Co-partnership; that at the time of the filing of the original bill, and at the time of the settlement, they supposed it to be true, and that it contained a correct, or nearly correct statement of the goods, effects and matters enumerated as the property of the said Company; that Rice so represented to them; and that was one ground and inducement for their entering into the covenants mentioned in the plea; that said inventory was, in fact, false and deceptive, which was well known to Rice and unknown to them till after the settlement; and they were thereby deceived and defrauded. Some of the specifications, intended to show that particular items of the inventory were false and fraudulent, are insufficient for that purpose, but one or two of them, if true, tend to impeach its integrity to some extent.

The statements of the supplemental bill charging fraud, are in effect, 2. That the books of account of the Winnebago and Chippewa Outfit, kept by Rice, pursuant to the third article of Co-partnership, showed at the time of filing the original bill, and at the time of the settlement, large bills and accounts standing upon them against different responsible persons, and purporting to be due from them to said Outfit; that Rice represented the same to be due and unpaid, which the plaintiffs at that time believed, supposing the books to have been truly and correctly kept, and that they showed fully and exactly the debts due the Outfit; that that was a principal consideration for entering into the agreement of settlement; but that many of those accounts and bills, had been fully paid to Rice previously, others partially paid, and against others there were meritorious offsets, of which payments and offsets, numerous specifications are given; and that all this was well known to Rice and unknown to the plaintiffs. There is also a specification under this head, of a large amount of notes and bills appearing upon the books under the head of "bills receivable," to be due the concern, and so represented to be by Rice; but it does not appear from the statements of the bill that they were not so due, or that the amount was less than the books showed, but merely that Rice has not satisfactorily accounted for a part of them since the settlement, and had either used in his transactions or retained a part of them, to the amount of about \$17,000.

This summary of the allegations of fraud, shows conclusively that they sustain

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the charge if true. They establish both a *suppressio veri* and a *suggestio falsi*. Story's Eq. Secs. 192, 207.

The deception practiced upon the plaintiffs, if any, was the gist of the fraud. If they were not deceived; if they knew the inventory to be untrue, in the particulars complained of; that the books did not show truly the debts due the concern; and that the representations of Rice were false, they are concluded by the settlement. Story's Eq. § 202. The decision of this case is greatly embarrassed by the difficulty of reconciling the statements of the original, with those of the supplemental bill. They are apparently in conflict and inconsistent with each other. The principal averments of the original bill are incorporated with and made part of the supplement; substantially they make but one pleading, and so far as they conflict destroy each other. Inconsistent and repugnant matters are not admitted by a demurrer, they are not well pleaded, and in the language of the books, "such matters only as are well pleaded are admitted. Gould's Pl. 470. Briggs vs. Dorr, 19 J. R. 96.

It is alleged in the original bill, that Rice did not render any *such* account of his transactions, as he was bound to, nor comply in any thing with the terms of the third article of Co-partnership. The only account he was bound to render by that article, was an inventory of the goods and effects on hand at the end of the year, and a schedule of the debts due the Company. It is averred in the supplemental bill, that he did furnish an inventory, and that it was false. Now if the averment in the original bill, means that he had not rendered such an inventory as he was required to, because some of the items in the one furnished were false, then it is plain the plaintiffs knew they were false when that bill was filed, and were not deceived or defrauded in that respect, in the settlement. But it is not necessary to put such a construction on the averment. The pleader, probably did not mean to convey the idea that no inventory had been rendered, but that such an one as was required had not; and it was not such as he was bound to render, if strictly true so far as it went, but not sufficiently full or comprehensive. The defect intended to be complained of, may have been the omission of items of real estate, which it was charged Rice had purchased with the Company funds or moneys of the Company which it was alleged he had converted to his own use; or the omission of a schedule of debts. It may not even have occurred to the plaintiffs at that time, that any items of the inventory were false; and the allegation of the supplemental bill, that they did not discover their falsity till after the settlement, may be strictly true, and consistent with the averments of the original bill, when fairly construed.

It is further alleged in the original bill, that "Rice did not keep such books or accounts of the moneys, goods, and property received by him from the plaintiffs, and of his transactions, as would give any insight into the business, or satisfactorily account for the same;" * * * "that they could not arrive at any certainty in regard to the amount (they should lose by him,) owing to the confused manner in which the books had been kept; and that they were quite in the dark in relation to the whole business." On the other hand, supplemental bill alleges that at the time of filing the original, they supposed and believed the books had been truly

and correctly kept; and that the amounts appearing from them to be due on accounts, were so due and unpaid; and that the books showed fully and exactly the amount of debts due the Company; which they afterwards discovered was not the case. The averments of the original bill referred to are very indefinite, and state no particulars in which the books were false or deceptive, but merely that they did not give any insight into, and left the plaintiffs in the dark in relation to the whole business. They amount to no more than that the books were very imperfect and unsatisfactory, and the averments would probably have been held bad on general demurrer. They are inconsistent with the statement in the supplemental bill, that the plaintiffs supposed and believed the books had been correctly kept; but are not necessarily in conflict with the allegation, that they supposed the accounts upon them appearing to be due, were due, and that the books showed fully the amount of debts due the Company. They might very well have supposed the books were very defective and even false in other particulars, and yet correct in these; and may at the time of the settlement have honestly confided in Rice's representation that they were so. His statement in that respect, was calculated to throw them off their guard, and to prevent further investigation and inquiry which otherwise they might have instituted; his means of knowledge were superior to theirs; he was bound in good faith not to take advantage of that circumstance, and to represent truly, if at all, and he may have deceived them into the belief that accounts were correct, which they had before supposed erroneous.

Upon a critical comparison of the statements incorporated in the supplemental bill, there does not appear to be so great a conflict between them, as is necessarily fatal to it; and although the supplemental statements may be to some extent false, it does not follow that the plaintiffs were not deceived by Rice's representations. His situation, and the relation in which he had stood to them, rendered it more easy for him to mislead them, than it was for them to discover the truth, and it is therefore proper that he should be more closely watched. Story's Eq. §§ 218, 220. He can hardly be permitted to use vague allegations in the original bill, to show that the plaintiffs knew before hand, that his representations made for the purpose of deceiving them, as detailed in the supplement, were false. Still it is but justice to the defendant to add, that if the two bills of the plaintiffs are not directly in conflict in their material allegations, so as to nullify each other, they are sufficiently at variance to cast suspicion on the supplemental statements, and render it to some extent doubtful whether the fraud charged was in fact committed.

There would be difficulty if there was no other ground, in sustaining the supplement bill, solely upon the ground of the alleged non-performance by Rice of the agreements on his part, contained in the articles of settlement. The material covenants in those articles, are not concurrent or dependent. Concurrent covenants, are those where mutual conditions are to be performed at the same time. Stephen's N. P. 1071. Dependent covenants, are those in which the performance of one, depends on the prior performance of another. Ib. The release by the

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plaintiffs contained in the first article of the agreement in question, was absolute and unconditional, and fully executed on delivery. It did not wait for any act to be done on the part of Rice, to give it full force and effect. The same is true of the fourth article, by which the partnership was dissolved. No omission on the part of Rice, could restore the partnership relation. The obligation of the plaintiffs to pay the debts of the company assumed in the third article, was complete and perfect on delivery of the instrument, and did not depend for vitality on any thing which was to follow. The acts covenanted to be performed by Rice in the fifth article, were not to be done simultaneously with the execution of the articles, but afterwards, and the length of time is not material. A failure to perform them, would not avoid the release or the dissolution contained in the prior covenants. By the sixth article, Rice gave up his interest in four thousand five hundred dollars, credited on the books of Campbell, unconditionally. And although by the eighth, the suit was not agreed to be discontinued, except upon the performance by Rice of the stipulations on his part, so far as was immediately practicable; yet, the agreement if left to stand, may have wrought such a change in the subject matter of the suit, that it could not be further prosecuted effectually. And the better opinion seems to be, that that would have been the effect of it. After releasing Rice from accountability and liability, they could not still call upon him to account; after a dissolution, it would be idle for the court to decree one; there was no occasion to adjust the profits and losses and the claims of the partners between themselves, after they had agreed on the terms of settlement. It was unnecessary to continue the original suit for the purpose of obtaining relief against the defendant for the breach of his covenants, and a bill for that purpose would not be a supplemental, but an original bill, or in the nature of an original bill.

But the charge of fraud being sustained by the allegations of the bill, if true as we have held in this case, the court may take into consideration the circumstance that the defendant has broken his agreement, along with the fraud charged in obtaining it, as an additional reason why the bill should be sustained.

It is questionable whether the agreement of settlement or compromise, has not been so far executed, that the plaintiffs are not entitled to the same or all the relief which the original bill calls for; enough appears upon the supplemental bill, to show that the parties cannot be placed in *statu quo*. They may however be entitled to some relief; and the nature and extent of it are proper for the determination of the court below, when all the facts are before it, and after a full hearing which shall not be confined to the allegations of the supplemental bill alone.

It only remains for us to inquire, whether the plaintiffs since the discovery of the alleged fraud, have lain by, neglected to assert their right to redress, still gone on under the contract of settlement, and by their acts ratified and adopted it.

The supplemental bill was not filed, till a year and a half after the agreement of 11th of Oct. 1849, was entered into. In the mean time, it is fairly inferable from the bill, that the books were in the possession of the plaintiffs. It is hardly possible

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he should not have discovered the errors in them complained of, if they existed in a shorter period. There is room for a suspicion that they slept upon their rights, when they should have asserted them if they intended ever to do so; but that is not enough.

The plaintiffs complain of a breach of the covenants in the agreement, on the part of Rice, in only two particulars. When he performed the balance of them is not stated, but we may presume it was immediately, or soon after their execution, as their terms required. At what time the plaintiffs discovered the alleged fraud is not averred, except that it was since the execution of the agreement. Nor does it sufficiently appear that he has done anything since the discovery, by way of performance which they have accepted, to ratify and confirm the settlement. From the letter to Sibley, a copy of which is inserted, the agreement seems to have been treated as binding and in force on the eighth of November after. There is nothing in the bill to show that the fraud was discovered before.

There is some reason for supposing, from the statement that Rice admitted to the plaintiffs, the proceeds of lots at St. Anthony belonged to them, and they were entitled either to such proceeds or the lots by virtue of his covenants, that they continued to insist upon his performance of the agreement notwithstanding the fraud. The only purpose the introduction of this allegation could serve, was to lay the foundation for a decree, that Rice pay the proceeds to them. And the preceding averment in the bill, that Rice had not turned over the claim at Sauk Rapids according to his agreement, which with the privilege of occupying, was of great value to them, to wit, of the value of two thousand dollars, seems to look to a specific performance, or the recovery of damages for the breach, as that claim was inventoried at only one thousand dollars. By proceeding in this suit to compel a performance on the part of Rice, or damages for his non performance, the plaintiffs would necessarily affirm the contract and be bound by it. They cannot reap the benefit of one part of it, and repudiate the other. The bill is certainly open to the construction, that the plaintiffs claim relief against Rice other than the avoidance of the contract, for the breaches of it on his part. That however, is not the construction we have put upon their allegations, but rather that the breaches are assigned for the purpose of avoiding the agreement, and what is said about the admissions of the defendant in one instance, and of the value of particular property in another, is mere surplusage, introduced through the carelessness of the pleader in not keeping the object before him, steadily in view. And it is proper to add, that the intention may have been to frame the bill with a double aspect, with a view to set the agreement aside for fraud, or if that should be denied, then to enforce its provisions. Whether upon failure to establish their right to the first, the plaintiffs could obtain the alternative relief, it is not now necessary to discuss; but their claiming it in case the court should refuse to set aside the agreement, does not necessarily confirm the settlement.

Upon the whole, it would be hazardous to decide the question, whether they have confirmed the settlement since the discovery of the alleged fraud, against the plaintiffs, by the feeble light to be gathered from the bill; and it is better, if they have, to leave the defendant to show it more fully by his answer and proofs.

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The conclusion arrived at from a review of the whole subject is, that the order appealed from, overruling the demurrer, should be affirmed with costs, and the cause remanded to the district court of Washington County, for further proceedings.

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TO

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AMENDMENTS.

See Bills in Chancery 2.

ASSUMPSIT.

See Judgment and Assignee.

B

BILL OF EXCEPUIONS.

1. Where the Court undertakes to instruct the Jury as to the law arising from a view of all the facts before them—all those facts, as detailed by each witness should be incorporated in the Bill of Exceptions, whenever the ruling of the Court is excepted to.—*Desnoyer vs. L'Hereux.* 7.

BILLS IN CHANCERY.

1. Where new matters are to be set up in a suit of equity, it must be done by supplemental bill and not by special replication. Pleading new matter by special replication is no longer allowable.—*Chouteau et. al. vs. Rice et. al.* 79.
2. New matter cannot be set up by amendments to an original bill. *Ibid.*
3. Objection to the form and manner of a bill in equity cannot be made available on *general demurrer.* *Ibid.*
4. Inconsistent and repugnant matters are not admitted by a demurrer. They cannot be well pleaded; and only such matters as are well pleaded are admitted by demurrer. *Ibid.*
5. The original and supplemental bills compose but one suit, and a general replication applies to both. *Ibid.*

C.

CERTIORARI.

1. Under the statutes of Minnesota, regulating proceedings in *Certiorari*, the District Judge only affirms or reverses, in whole or in part, the judgment of the Justice. The Act does not confer upon the District Court, authority to disregard all formal requirements in the proceedings before the Justice; and settle finally the rights of the parties as the very right of the matter might appear.—*St. Martin vs. Desnoyer*. 24.

2. A Justice of the Peace in his return to a writ of certiorari, should not confine himself to the affidavit of the party suing out the writ; he should make a complete return of all the proceedings, and his rulings at the trial, and the District Court in its affirmance or reversal of the judgment, should be guided by what appears upon the return.—*Gervais vs. Powers*. 27.

3. The District Court cannot review upon *certiorari* proceedings had before the President of the town of St. Paul, in cases arising under the laws and ordinances of said town.—*St. Paul vs. Dr. Franklin*. 73.

COVENANT.

1. A declaration in covenant must aver a demand for the specific articles named in the covenants, and it is error to receive evidence of a demand for specific articles when only a demand for money is averred.—*Snow & Bryant vs. Johnson*. 26.

2. Where covenants between parties are independent, or where it is evident, from the articles of agreement, that the act to be done by one, was to precede the act to be done by the other, then, upon a failure of him who was to do the first act, the other would have the right to recover upon a general averment of performance. But where the covenants are mutual and concurrent, the act of the one dependant on the act of the other—not only a readiness and willingness to perform must be averred, but an actual tender both averred and proved. *Ibid*.

3. How plead—when concurrent,—*Snow & Bryant vs. Johnson*. 30, 31, 32, 33.

4. J. covenanted to sell and convey to S. & B., by good and sufficient deed of conveyance. S. & B. covenanted to pay \$100 in groceries, liquors and provisions, one half in the month of April then next, and the remainder when called for. Held that the covenants were concurrent, and that the performance, or tender of performance, must bbe averrd and proved. 30.

CONTRACT—CONSIDERATION.

1. C. & A. were indebted to various persons. Their personal property had been attached for their debts. B., one of the creditors, obtained a transfer of the property to him in trust for the payment of himself and other creditors. He also procured releases from the plaintiffs in the several suits in attachment.

Held, that B., having taken the property to market, and sold it for cash funds, was liable for the indebtedness of C. & A. at the suit of one of the attaching creditors.—*Brewster vs. Leilh.* 36.

2. Forbearance to use legal means, by one party to secure himself, at the request of another, and consequent loss, is sufficient consideration to support a contract. *Ibid.*

COURT OF PROBATE.

1. The act of the Legislative Assembly establishing the Court of Probate, created a new tribunal—a Court of Record with new powers and duties. That act is not a supplement to the act of the Legislative Assembly of Wisconsin Territory. It supercedes and repeals the statute of Wisconsin relative to Judges of Probate.—*Ex parte—Francis Lee.* 39.

2. Judges of Probate are not invested with powers which authorize them to issue writs of Habeas Corpus.—*Ex parte, Francis Lee.* 39.

CHANCERY.

1. A Court sitting as a Court of Law, cannot at the same time exercise Chancery Jurisdiction.—*Hartshorn vs. Green's Adms.* 69.

D

DECREE.

1. An interlocutory decree is one which is made pending the cause, and before a final hearing on the merits.—*Chouteau vs. Rice.* 12.

2. A final decree is one which disposes of the cause, either sending it out of Court before a hearing is had upon the merits, or, after a hearing is had upon the merits, decreeing either in favor of, or against, the prayer in the bill. *Ibid.*

3. Decrees are final when they attack the merits of the cause. 12.

4. A decree dissolving an injunction is an interlocutory decree, and not properly the subject of appeal. *Ibid.*

5. Under the Organic Law and the Statutes of Minnesota, appeals will only lie from final decrees. *Ibid.*

DELIVERY.

1. Taking a party in the sight of a raft of logs and declaring them to be his property, and marking them at his instance, held to be sufficient delivery.—*Brewster vs. Leilh.* 36.

DISTRICT COURT.

See Certiorari.

DEMURRER.

See Bills in Chancery, 3 and 4.

E

ERROR.

1. It is an error in a Judge to instruct a Jury that they may disregard the the declaration, if the evidence were such as to warrant a recovery, and that the right of the plaintiff could not be affected by the declaration on file.—*Desnoyer vs. L'Hereux*. 7.

2. In an action of trespass *quare clausum et. de. bon. a.* for taking away a cow that had been taken up as an estray, evidence of the cost of advertising under the statute, and the value of pasturage was admitted. Held to be error. *Gervais vs. Willoughby*. 27.

3. A declaration in covenant must aver a demand for the specific articles named in the covenants, and it is error to receive evidence of a demand for specific articles when only a demand for money is averred.—*Snow vs. Johnson*. 30.

4. Where counsel request the Court to charge the Jury on a number of propositions collectively, and the Court refuse to charge as requested, if any one of the propositions is not correct, error will not lie for such refusal.—*Castner et. al. vs. Dr. Franklin*. 55.

5. Counsel must state the precise point which he wishes decided, and if the decision is against him, he must except to it specially. *Ibid.*

EVIDENCE.

See Covenant 1 and 2.

1. In an action of trespass *quare clausum fregit et. de bon. a.* for taking away a cow that had been taken up as an estray, evidence of the cost of advertising under the statute, and the value of pasturage, was admitted. Held to be error. *Gervais vs. Powers & Willoughby*. 27.

2. A declaration in covenant must aver a demand for the specific articles named in the covenants, and it is error to receive evidence of a demand for specific articles when a demand for money only is averred.—*Snow & Bryant vs. Johnson*. 30.

3. Where covenants are mutual and concurrent, the act of one dependant upon the act of the other, not only a readiness and willingness to perform must be averred, but an actual tender both averred and proved. *Ibid.*

4. Evidence tending to show the ownership of a promissory note which is the cause of action to be in another than the plaintiff is admissible.—*Hartshorn vs. Green's Adm's.* 68.

F

FORCIBLE ENTRY AND DETAINER.

1. In an action under the Statute of Forcible Entry and Detainer the complaint must *particularly* describe the premises detained.—*Lewis vs. Steele et. al.* 66.
2. The statute requiring these actions to be brought before two Justices, an adjournment when only one is present is irregular. *Ibid.*

H

HABEAS CORPUS.

See Court of Probate.

I

INJUNCTION.

See Decree 3.

1. A decree dissolving an injunction is an interlocutory decree, and not properly the subject of appeal.—*Choultau et. al. vs. Rice et. al.* 12.

J

JUSTICE OF THE PEACE.

See Forcible Entry and Detainer 2. Removal of Actions and Adjournments.

1. The action of replevin before Justices is a proceeding *in rem*, where the thing replevied, alone gives the magistrate authority to try replevins.—*St. Martin vs. Desnoyer.* 24.
2. The statute of Minnesota has made no provision for the trial of actions of replevin before Justices until the property is found and replevied. *Ibid.*
3. A Justice of the Peace in his return to a writ of certiorari should not confine himself to the affidavit of the party suing out the writ; he should make a complete return of all the proceedings and his rulings at the time; and the District Court, in its affirmance or reversal of the judgment, should be guided by the return.—*Gerrais vs. Powers & Willoughby.* 27.

JOINT PROMISSORS.

See Judgment.

JUDGMENT.

1. Under the Statutes existing before the Code took effect, where several defendants were sued as joint promissors, judgment could not be taken against one of them separately.—*Carlton & Patch vs. Chouteau et al.* 76.

N

NEGOTIABLE PAPER.

See Attachment, 1.

P

PLEADINGS.

1. The term "pleadings" has a technical and well defined meaning. They are the written allegations of what is affirmed on the one side, or denied on the other, disclosing to the Court or Jury having to try the cause, the real matter in dispute between the parties.—*Desnoyer vs. L'Hereux.* 7.

2. Such pleadings must be filed under the 7th sec. of the 4th art. of the Act of this Territory "concerning Justices," when required by the plaintiff, or defendant, or the Justice. *Ibid.*

3. It is error in a Judge to instruct a Jury that they may disregard the declaration, if the evidence were such as to warrant a recovery; and that the right of the plaintiff could not be affected by the declaration on file. *Ibid.*

GOODRICH, C. J. dissenting.

4. In pleading a judgment record, a variance between the declaration and the record as set forth therein in the amount declared on, or names of parties will be fatal.—*Lawrence vs. Willoughby.* 65.

5. In an action under the statute of Forcible Entry and Detainer the complaint must particularly describe the premises detained.—*Lewis vs. Steele et al.* 66.

6. A declaration in covenant must aver a demand for the specified articles named in the covenant, and it is error to receive evidence of a demand for specific articles when a demand for money only is averred.—*Snow & Bryant vs. Johnson.* 30.

7. Where covenants between the parties are independent, or where it is evident from the articles of agreement that the act to be done by one, was to precede the act to be done by the other, then upon a failure of him who was to do the first act, the other would have a right to recover upon a general averment of performance. But where covenants are mutual and concurrent, the act of the one dependent upon the act of the other, not only a readiness and willingness to perform must be averred, but an actual tender both averred and proved. *Ibid.*

PROMISSORY NOTE.

See Evidence.

1. An action cannot be sustained on a note given to secure the payment of

money to become due on the election of a candidate to a certain office. Such notes are void as being against public policy.—*Cooper vs. Brewster*. 70.

PUBLIC POLICY.

See Promissory Note.

R.

REPEAL.

1. It is not necessary that an actual repealing clause should be used to discontinue or supercede an existing enactment.—*Ex parte, Francis Lee*. 46.

REPLEVIN.

1. The action of replevin before Justices, is a proceeding *in rem*, where the thing replevied alone, gives the Magistrate authority to try replevins.—*St. Martin vs. Desnoyer*. 24.

2. The Statute of Minnesota has made no provision for the trial of actions of replevin before Justices until the property is found and replevied. *Ibid*.

REMOVAL OF ACTIONS.

1. A cause cannot be transferred from one Justice to another in the same county, on an affidavit of prejudice and partiality.—*Cooper vs. Brewster*. 70.

S

SPECIAL REPLICATION.

See Bills in Chancery 1 and 5.

T

TESTIMONY.

See Adjournments.

TRESPASS.

See Evidence, 1.

1. In an action of trespass *quare clausum fregit et. de. bon. a.* for taking away a cow that had been taken up as an estray, evidence of the cost of advertising under the statute, and the value of pasturage, was admitted. Held to be error.—*Gervais vs. Powers & Willoughby*. 27.

V

VARIANCE.

See Pleading.



