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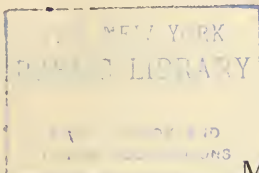








# OCCUPATION OF MEXICAN TERRITORY



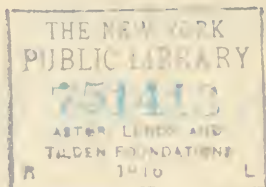
## MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

IN ANSWER TO A RESOLUTION OF  
THE HOUSE OF REPRESENTATIVES OF  
DECEMBER 15, 1846, REPORTS FROM THE  
SECRETARY OF WAR AND THE SEC-  
RETARY OF THE NAVY RELATIVE TO THE  
OCCUPATION OF MEXICAN TERRITORY



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1912



IN THE SENATE OF THE UNITED STATES,  
*August 5, 1912.*

*Ordered.* That executive document numbered sixty, "Occupation of Mexican Territory," message from the President of the United States, December twenty-second, eighteen hundred and forty-six, executive documents, first session, Thirtieth Congress, pages one hundred and forty-nine to two hundred and twenty-nine, inclusive, be reprinted for the use of the Senate document room.

Attest:

CHAS. G. BENNETT, *Secretary.*  
By H. M. ROSE, *Assistant Secretary.*



## OCCUPATION OF MEXICAN TERRITORY.

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### MESSAGE

FROM THE

## PRESIDENT OF THE UNITED STATES,

IN ANSWER TO A

RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE 15TH  
INSTANT RELATIVE TO THE OCCUPATION OF MEXICAN TERRI-  
TORY.

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DECEMBER 22, 1846.—Read and laid upon the table.

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*To the House of Representatives of the United States:*

In compliance with the request contained in the resolution of the House of Representatives of the 15th instant, I communicate herewith reports from the Secretary of War and the Secretary of the Navy, with the documents which accompany them.

These documents contain all the "orders or instructions" to any military, naval, or other officer of the Government, "in relation to the establishment or organization of civil government in any portion of the territory of Mexico which has or might be taken possession of by the Army or Navy of the United States."

These orders and instructions were given to regulate the exercise of the rights of a belligerent, engaged in actual war, over such portions of the territory of our enemy as, by military conquest might be "taken possession of" and be occupied by our armed forces—rights necessarily resulting from a state of war and clearly recognized by the laws of nations. This was all the authority which could be delegated to our military and naval commanders, and its exercise was indispensable to the secure occupation and possession of territory of the enemy which might be conquered. The regulations authorized were temporary, and dependant on the rights acquired by conquest. They were authorized as belligerent rights, and were to be carried into effect by military or naval officers. They were but the amelioration of martial law, which modern civilization requires, and were due as well to the security of the conquest as to the inhabitants of the conquered territory.

The documents communicated also contain the reports of several highly meritorious officers of our Army and Navy, who have conquered and taken possession of portions of the enemy's territory.

Among the documents accompanying the report of the Secretary of War, will be found a "form of government," "established and organized" by the military commander who conquered and occupied with his forces the Territory of New Mexico. This document was received at the War Department in the latter part of the last month, and, as will be perceived by the report of the Secretary of War, was not, for the reason stated by that officer, brought to my notice until after my annual message of the 8th instant was communicated to Congress.

It is declared on its face to be a "temporary government of the said Territory;" but there are portions of it which purport to "establish and organize" a permanent territorial government of the United States over the Territory, and to impart to its inhabitants political rights which, under the Constitution of the United States, can be enjoyed permanently only by citizens of the United States. These have not been "approved and recognized" by me. Such organized regulations as have been established in any of the conquered Territories for the security of our conquest, for the preservation of order, for the protection of the rights of the inhabitants, and for depriving the enemy of the advantages of these Territories, while the military possession of them by the forces of the United States continue, will be recognized and approved.

It will be apparent from the reports of the officers who have been required by the success which has crowned their arms to exercise the powers of temporary government over the conquered Territories, that if any excess of power has been exercised, the departure has been the offspring of a patriotic desire to give to the inhabitants the privileges and immunities so cherished by the people of our own country, and which they believed calculated to improve their condition and promote their prosperity. Any such excess has resulted in no practical injury, but can and will be early corrected, in a manner to alienate as little as possible the good feelings of the inhabitants of the conquered territory.

JAMES K. POLK.

WASHINGTON, *December 22, 1846.*

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WAR DEPARTMENT, *December 21, 1846.*

SIR: In compliance with your request to be furnished with all the information in the War Department in regard to the objects of inquiry embraced in the resolution of the House of Representatives of the 15th instant, I have the honor to report that the accompanying papers, numbered from 1 to 24, contain all the orders and instructions which have issued from this department to any officer of the Army "in relation to the establishment or organization of civil government in any portion of the territory of Mexico, which has been or might be taken possession of by the Army or Navy of the United States." They also furnish all the information in this department in relation to any form of government which any such

officer has established or organized, and also in relation to any approval or recognition of such government.

As the information called for by the resolution of the House of Representatives is contained in various dispatches which relate principally to military operations, I have preferred, in most instances, to give the whole document, though parts of it have little or no direct relation to the matters embraced in that resolution. What is omitted does not relate to any branch of the inquiry, but chiefly to the plans of the campaign, and contemplated military movements, which it would not be proper to make public.

You will perceive that I stated, in my letter of the 3d of June last, to Gen. Kearny, that a proclamation in the Spanish language would be furnished to him for the purpose of being distributed among the Mexican people. A few copies of the proclamation prepared for Gen. Taylor were sent to Gen. Kearny; but, owing to the different circumstances under which the two generals might be placed, it was afterwards deemed proper to instruct Gen. Kearny not to use them, and I am not aware that he did so in any instance. My letter to him on this subject, dated the 6th of June, is one of the paper herewith transmitted.

Among the accompanying documents you will find two proclamations issued by Gen. Kearny, but neither the form nor substance of them was furnished from this department.

In relation to the annexed paper, No. 24, called the "Organic Law of the Territory of New Mexico," it is proper that I should state that it was received at the Adjutant General's Office on the 23d of November, and thence sent to me. As the document was voluminous, and my whole time was required for the indispensable current business of the department, then unusually pressing, and for preparing my annual report to accompany your message to Congress, I did not, at that time, nor until a few days since, examine it, and it was not laid before you to receive your directions in regard to it.

I have the honor to be, very respectfully, your obedient servant.

W. L. MARCY.

To the PRESIDENT.

LIST OF PAPERS ACCOMPANYING THE REPORT OF THE SECRETARY OF WAR TO THE PRESIDENT, IN ANSWER TO THE RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE 15TH OF DECEMBER, 1846.

- No. 1. Letter of the Secretary of War to Gen. Kearny, dated June 3, 1846.
- No. 2. Extract of a letter of the Secretary of War to Gen. Taylor, dated July 9, 1846.
- No. 3. Letter of the Secretary of War to Gen. Taylor, dated July 6, 1846, inclosing the circular of the Secretary of the Treasury.
- No. 4. Circular of the Secretary of the Treasury, dated June 30, 1846.
- No. 5. Letter of the Secretary of War to Col. Stevenson, dated September 11, 1846.

- No. 6. Letter of the Secretary of War to Gen. Kearny, dated September 12, 1846.
- No. 7. Letter of the Adjutant General to the Secretary of War, dated December 17, 1846.
- No. 8. Letter of Maj. Gen. Scott to Gen. Kearny, dated November 3, 1846.
- No. 9. Letter of the Secretary of War to Gen. Taylor, dated June 4, 1846, with a proclamation in Spanish.
- No. 10. Translation of the proclamation.
- No. 11. Letter of the Secretary of War to Gen. Kearny, dated June 5, 1846.
- No. 12. Proclamation of Gen. Kearny, to the citizens of New Mexico, dated July 31, 1846.
- No. 13. Letter of Gen. Kearny to the Adjutant General, dated August 24, 1846.
- No. 14. Proclamation alluded to in the preceding letter, dated August 22, 1846.
- No. 15. Letter from Gen. Kearny to Gen. Wool, dated August 22, 1846.
- No. 16. Appointment by Gen. Kearny of treasurer for Santa Fe, dated August 28, 1846.
- No. 17. Appointment by Gen. Kearny of collector for Santa Fe, dated August 29, 1846.
- No. 18. Letter from Gen. Kearny to the Adjutant General, dated September 1, 1846.
- No. 19. Order of Gen. Kearny, abolishing the use of stamp paper, dated August 29, 1846.
- No. 20. Order of Gen. Kearny regulating licenses for stores, etc., and duties on wagons, etc., dated August 27, 1846.
- No. 21. Letter of Gen. Kearny to the Adjutant General, dated September 16, 1846.
- No. 22. Letter of Gen. Kearny to the Adjutant General, dated September 22, 1846 (received at the War Department November 23), inclosing—
- No. 23. A list of officers appointed by him; also
- No. 24. Copy of the organic law, compiled under his direction, of the Territory of New Mexico.

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No. 1.—LETTER OF THE SECRETARY OF WAR TO GEN. KEARNY.

[Confidential.]

WAR DEPARTMENT,  
*Washington, June 3, 1846.*

SIR: I herewith send you a copy of my letter to the governor of Missouri for an additional force of 1,000 mounted men.

The object of thus adding to the force under your command is not, as you will perceive, fully set forth in that letter, for the reason that it is deemed prudent that it should not, at this time, become a matter of public notoriety; but to you it is proper and necessary that it should be stated.

It has been decided by the President to be of the greatest importance in the pending war with Mexico to take the earliest possession of Upper California. An expedition with that view is hereby ordered, and you are designated to command it. To enable you to



be in sufficient force to conduct it successfully this additional force of a thousand mounted men has been provided, to follow you in the direction of Santa Fe, to be under your orders, or the officer you may leave in command at Santa Fe.

It can not be determined how far this additional force will be behind that designed for the Santa Fe expedition, but it will not probably be more than a few weeks. When you arrive at Santa Fe with the force already called, and shall have taken possession of it, you may find yourself in a condition to garrison it with a small part of your command (as the additional force will soon be at that place), and with the remainder press forward to California. In that case you will make such arrangements, as to being followed by the reinforcements before mentioned, as in your judgment may be deemed safe and prudent. I need not say to you that, in case you conquer Santa Fe (and with it will be included the department or State of New Mexico), it will be important to provide for retaining safe possession of it. Should you deem it prudent to have still more troops for the accomplishment of the objects herein designated, you will lose no time in communicating your opinion on that point, and all others connected with the enterprise, to this department. Indeed, you are hereby authorized to make a direct requisition for it upon the governor of Missouri.

It is known that a large body of Mormon emigrants are en route to California, for the purpose of settling in that country. You are desired to use all proper means to have a good understanding with them, to the end that the United States may have their cooperation in taking possession of and holding that country. It has been suggested here that many of these Mormon would willingly enter into the service of the United States and aid us in our expedition against California. You are hereby authorized to muster into service such as can be induced to volunteer: not, however, to a number exceeding one-third of your entire force. Should they enter the service they will be paid as other volunteers, and you can allow them to designate, so far as it can be properly done, the persons to act as officers thereof. It is understood that a considerable number of American citizens are now settled on the Sacramento River, near Suter's establishment, called "Nueva Helvetia," who are well disposed toward the United States. Should you, on your arrival in the country, find this to be the true state of things there, you are authorized to organize and receive into the service of the United States such portion of these citizens as you may think useful to aid you to hold the possession of the country. You will in that case allow them, so far as you shall judge proper, to select their own officers. A large discretionary power is invested in you in regard to these matters, as well as to all others in relation to the expeditions confided to your command.

The choice of routes by which you will enter California will be left to your better knowledge and ampler means of getting accurate information. We are assured that a southern route (called the Caravan route, by which the wild horses are brought from that country into New Mexico) is practicable; and it is suggested as not improbable that it can be passed over in the winter months, or at least late in autumn. It is hoped that this information may prove to be correct.

In regard to the routes, the practicability of procuring needful supplies for men and animals, and transporting baggage, is a point to be well considered. Should the President be disappointed in his cherished hope, that you will be able to reach the interior of Upper California before winter, you are then desired to make the best arrangement you can for sustaining your forces during the winter, and for an early movement in the spring. Though it is very desirable that the expedition should reach California this season (and the President does not doubt you will make every possible effort to accomplish this object), yet if, in your judgment, it can not be undertaken with a reasonable prospect of success, you will defer it, as above suggested, until spring. You are left unembarrassed by any specific direction in this matter.

It is expected that the naval forces of the United States, which are now, or will soon be in the Pacific, will be in possession of all the towns on the seacoast, and will cooperate with you in the conquest of California. Arms, ordnance, munitions of war, and provisions to be used in that country will be sent by sea to our squadron in the Pacific for the use of the land forces.

Should you conquer and take possession of New Mexico and Upper California, or considerable places in either, you will establish temporary civil governments therein—abolishing all arbitrary restrictions that may exist, so far as it may be done with safety. In performing this duty it would be wise and prudent to continue in their employment all such of the existing officers as are known to be friendly to the United States and will take the oath of allegiance to them. The duties at the customhouses ought, at once, to be reduced to such a rate as may be barely sufficient to maintain the necessary officers, without yielding any revenue to the Government. You may assure the people of those Provinces that it is the wish and design of the United States to provide for them a free government, with the least possible delay, similar to that which exists in our Territories. They will then be called on to exercise the rights of freemen in electing their own representatives to the Territorial legislature. It is foreseen that what relates to the civil government will be a difficult and unpleasant part of your duty, and much must necessarily be left to your own discretion.

In your whole conduct you will act in such a manner as best to conciliate the inhabitants and render them friendly to the United States.

It is desirable that the usual trade between the citizens of the United States and the Mexican Provinces should be continued, as far as practicable, under the changed condition of things between the two countries. In consequence of extending your expedition into California, it may be proper that you should increase your supply for goods to be distributed as presents to the Indians. The United States superintendent of Indian affairs at St. Louis will aid you in procuring these goods. You will be furnished with a proclamation<sup>1</sup> in the Spanish language, to be issued by you, and circu-

<sup>1</sup> No proclamation for circulation was ever furnished to Gen. Kearny. A few copies of that prepared for and sent to Gen. Taylor, were forwarded to Gen. Kearny, but he was requested not to use them. These copies were the only proclamations sent by the War Department to him, and I am not aware that he ever used any of them. See letter of the Secretary of War to Gen. Kearny of the 6th of June, 1846, a copy of which is with the papers sent to the President, in answer to the resolution of the House of Representatives of the 15th of December, 1846.

lated among the Mexican people on your entering into or approaching their country. You will use your utmost endeavors to have the pledges and promises therein contained carried out to the utmost extent.

I am directed by the President to say that the rank of brevet brigadier general will be conferred on you as soon as you commence your movement toward California, and sent round to you by sea, or over the country, or to the care of the commandant of our squadron in the Pacific. In that way cannon, arms, ammunition, and supplies for the land forces will be sent to you.

Very respectfully, your obedient servant,

W. L. MARCY,

*Secretary of War.*

Col. S. W. KEARNY,

*Fort Leavenworth, Mo.*

NO. 2.—EXTRACT OF A LETTER FROM THE SECRETARY OF WAR TO  
GEN. TAYLOR.

[Confidential.]

WAR DEPARTMENT.

*Washington, July 9, 1846.*

SIR: The proclamation which you were directed to spread among the Mexican people will have put you in possession of the views of the Government in relation to the mode of carrying on the war, and also in relation to the manner of treating the inhabitants. The war is only carried on to obtain justice, and the sooner that can be obtained, and with the least expenditure of blood and money, the better. One of the evils of war is the interruption of diplomatic communications between the respective authorities, and the consequent ignorance under which each party may lie in relation to the views of the other. The natural substitute of these interrupted diplomatic communications is the military intercourse which the usages of war allow between contending armies in the field, and in which commanding generals can do much toward reopening negotiations and smoothing the way to a return of peace.

The President has seen, with much satisfaction, the civility and kindness with which you have treated your prisoners, and all the inhabitants with whom you have come in contact. He wishes that course of conduct continued, and all opportunities taken to conciliate the inhabitants, and to let them see that peace is within their reach the moment their rulers will consent to do us justice. The inhabitants should be encouraged to remain in their towns and villages, and these sentiments be carefully made known to them. The same things may be said to officers made prisoners, or who may visit your headquarters according to the usages of war, and it is the wish of the President that such visits be encouraged; and, also, that you take occasion to send officers to the headquarters of the enemy for the military purposes, real or ostensible, which are of ordinary occurrence between armies, and in which opportunity may be taken to speak of the war itself as only carried on to obtain justice, and that we had much rather procure that by negotia-



tion than by fighting. Of course, authority to speak of your Government will be disavowed, but a knowledge of its wishes will be averred, and a readiness will be expressed to communicate to your Government the wishes of the Mexican Government to negotiate for honorable peace, whenever such shall be their wish, and with the assurance that such overtures will be met in a corresponding spirit by your Government. A discreet officer, who understands Spanish, and who can be employed in the intercourse so usual between armies, can be your confidential agent on such occasions, and can mask his real under his ostensible object of a military interview.

You will also readily comprehend that in a country so divided into races, classes, and parties as Mexico is, and with so many local divisions among departments and personal divisions among individuals, there must be great room for operating on the minds and feelings of large portions of the inhabitants, and inducing them to wish success to an invasion which has no desire to injure their country, and which, in overthrowing their oppressors, may benefit themselves. Between the Spaniards, who monopolize the wealth and power of the country, and the mixed Indian race, who bear its burdens, there must be jealousy and animosity. The same feelings must exist between the lower and higher orders of the clergy, the latter of whom have the dignities and the revenues, while the former have poverty and labor. In fact, the curates were the chief authors of the revolution which separated Mexico from Spain, and their relative condition to their superiors is not much benefited by it. Between the political parties into which the country is divided, there must be some more liberal and more friendly to us than others; the same may be said of rival chiefs, political and military; and even among the departments there are local antipathies and dissensions. In all this field of division—in all these elements of social, political, personal, and local discord—there must be openings to reach the interests, passions, or principles of some of the parties, and thereby to conciliate their good will and make them cooperate with us in bringing about an honorable and a speedy peace. The management of these delicate movements is confided to your discretion; but they are not to paralyze the military arm, or in any degree to arrest or retard your military movements. These must proceed vigorously. Policy and force are to be combined, and the fruits of the former will be prized as highly as those of the latter.

It is seen from the Mexican papers that great attempts are made to prejudice and exasperate the minds of the people against us. The war is represented on their part as one of "national existence," as if it was our wish to destroy the Mexican nation. It is represented as a war of "rapine and plunder," as if we intended to rob and oppress the people. It is represented as a war of "impiety," as if we were going to rob churches and pull down altars. The conduct of yourself, your officers, and men has shown to all Mexican citizens that you have met, and as far as you have gone, the injustice and absurdity of all these imputations; but they are still systematically propagated through the country, and must find believers in a country where ignorance is so great, and the means of disseminating truth so small. The counteraction of these injurious imputations will be your particular duty; first, by a continuation



of your just and honorable conduct toward the people, their property and religion, and kindness to prisoners; and next, by making it a point in your interviews with the commanders of the army of the enemy to speak of these unjust imputations for the purpose of correcting them. It is the President's wish not only to bring the war to a speedy conclusion, but so to conduct it as to leave no lasting animosities behind to prejudice the future friendship and commerce of the two countries, nor to permit injurious reports to go forth to excite the ill will of the other Republics of Spanish origin against us.

Availing yourself of divisions which you may find existing among the Mexican people—to which allusion has been made—it will be your policy to encourage the separate departments or States, and especially those which you may invade and occupy, to declare their independence of the central Government of Mexico, and either to become our allies or to assume, as it is understood Yucatan has done, a neutral attitude in the existing war between the United States and Mexico. In such of the departments or States as may take this course you will give the inhabitants assurances of the protection of your Army until the return of peace, so far as may be consistent with your military plans of operation. When peace is made, they may decide for themselves their own form of government. In such departments as may be conquered, or assume a neutral attitude, you may, at your discretion, observe the same course of conduct as that presented in the instructions given to Gen. Kearny by the department on the 3d day of June, 1846. A copy of the instructions to Gen. Kearny is herewith transmitted to you.

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I have the honor to be, very respectfully, your obedient servant,  
W. L. MARCY.

No. 3.—LETTER OF THE SECRETARY OF WAR TO GEN. TAYLOR.

WAR DEPARTMENT,  
*Washington, July 6, 1846.*

SIR: I have the honor to inclose you a circular of the Secretary of the Treasury relative to the commerce and trade with Matamoros and such other places in Mexico as may be in the actual occupancy or under the control of the American forces. I believe the circular contains all the instructions you may need for the guidance of your conduct. Should there be other points not embraced in it, they will receive prompt attention when brought to the notice of this department.

I am, with great respect, your obedient servant,

W. L. MARCY,  
*Secretary of War.*

Maj. Gen. Z. TAYLOR,  
*Commanding, etc.*

## No. 4.—CIRCULAR TO COLLECTORS AND OTHER OFFICERS OF THE CUSTOMS.

TREASURY DEPARTMENT, *June 30, 1846.*

The circular of this department of the 11th instant contained the following paragraph:

By the law of nations, as recognized by repeated decisions of our judicial tribunals, the existence of a state of war interdicts all trade or commerce between the citizens of the two nations engaged in the war. It consequently follows that neither vessel nor merchandise of any description can be allowed to proceed from ports or places in the United States to ports or places in the Territories of Mexico, with the exception of such ports or places in the latter country as may be at the time in the actual possession of the United States forces.

Matamoros is now in the actual possession of the forces of the United States, and perhaps other ports and places on the same side of the Rio Grande.

In case of the application of vessels for clearances for the port of Matamoros, you will issue them under the following circumstances:

First. To American vessels only.

Second. To such vessels carrying only articles of the growth, produce, or manufacture of the United States or of imports from foreign countries to our own upon which the duties have been fully paid; and upon all such goods, whether of our own or of foreign countries, no duties will be chargeable at the port of Matamoros, so long as it is in the possession of the forces of the United States.

In issuing this order it is not intended to interfere with the authority of Gen. Taylor to exclude such articles, including spirituous liquors or contraband of war, the introduction of which he may consider injurious to our military operations in Mexico.

Foreign imports which may be reexported in our vessels to Matamoros will not be entitled to any drawback of duty: for, if this were permitted, they would be carried from that port into the United States, and thus evade the payment of all duties.

Whenever any other port or place upon the Mexican side of the Rio Grande shall have passed into the actual possession of the forces of the United States, such ports and places will be subject to all the above instructions which are applicable to the port of Matamoros.

R. J. WALKER,

*Secretary of the Treasury.*

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## No. 5.—LETTER OF THE SECRETARY OF WAR TO COL. STEVENSON.

WAR DEPARTMENT, *September 11, 1846.*

SIR: The transports having on board the regiment under your command are destined to the Pacific, and will repair to our naval squadron now on the coast of California. Instructions, with a copy of which you are herewith furnished, have been given to the naval commander on the station in regard to his operations, and you are directed to cooperate with him in carrying out his plans, so far as the land forces may be needed for that purpose. Without undertaking to give specific instructions as to the movements of our forces in that quarter—for much must be left to the judgment of

the commanding officers—it is proper to state that the military occupation of California is the main object in view. There are three points deemed to be worthy of particular attention. These are San Francisco, Monterey, and San Diego. It is important to have possession of the Bay of San Francisco and the country in that vicinity. The necessity of having something like a permanent and secure position on the coast of California, and probably at this place, will not be overlooked. Assuming that such a position will be found and selected in the Bay of San Francisco, it is expected that a fortification, such as the means at your command may enable you to construct, will be erected, and that the heavy guns heretofore sent out and those taken by the transports, to the extent needed, will be used for its armament. This work should be designed for a twofold object—the protection of the vessels in the bay and the security of the land forces. The selection of the site will be an important matter. It should be preceded by a careful examination of the place with reference to both objects, and the location made under the advice and direction of the commanding naval officer. It may, however, be that your first debarkation will not be at this point. The circumstances which may be found to exist on your arrival in that region must control in this matter.

It is probable that Monterey will have been taken by our naval force before the land troops reach that coast, and they may be needed to hold possession of it. This place is also secured by fortifications or temporary works from an attack either by sea or land. Judging from the information we have here of what will be the state of things on your arrival on the coast of California, it is concluded that these will be found to be the important points, and the possession of them essential to the objects in view in prosecuting the war in that quarter; but the particular mention of them is by no means intended as instructions to confine our military operations to them. As to the third place suggested—San Diego—less is known of it than the other two. Should the naval commander determine to take and hold possession of it, and need the land force, or a part of it, for that purpose, you will, of course, yield to his views in that respect. Whatever is done upon the coast of California or of any other part of Mexico will require, it is presumed, the cooperation of the land and naval forces, and it is not doubted that this cooperation will be cordially rendered.

The point or points of debarkation of the regiment under your command should be settled as speedily as practicable after your arrival upon the Mexican coast and the transports discharged. The land forces will thereafter be attended with the vessels of the squadron. The ordnance, ammunition, arms, and all descriptions of public property which are not required on shore, or can not be safely deposited there, will be transferred to the public ships. Upon them the land forces must rely for bringing supplies where water transportation is necessary. If the exigency of the service requires these forces to remove from one place to another on the coast, the public vessels will furnish the means of doing so.

The regiment under your command, as well as the company of Capt. Tompkins, which has preceded it, is a part of Gen. Kearny's command, but it may be that he will not be in a situation to reach you by his orders immediately on your debarkation. Until that is



the case yours will be an independent command, except when engaged in joint operations with the naval force.

It is not expected that you will be able to advance far into the country, nor is it advisable for you to undertake any hazardous enterprises. Until you shall fall under the command of Gen. Kearny your force will be mostly, if not wholly, employed in seizing and holding important possessions on the seacoast.

The Government here have received information which is deemed to be reliable, though not official, that our squadron in the Pacific had taken possession of Monterey as early as the 6th of July last.

There is reason to believe that California is not favorably disposed to the central government of Mexico, and will not be disposed to make a vigorous resistance to our operations in that quarter. Should you find such to be the state of things there, it will be of the greatest importance that the good will of the people toward the United States should be cultivated. This is to be done by liberal and kind treatment. They should be made to feel that we come as deliverers. Their rights of person, property, and religion must be respected and sustained. The greatest care must be taken to restrain the troops from all acts of license or outrage: the supplies drawn from the country must be paid for at fair prices: and, as far as possible, friendly relations should be established. In the event of hostile resistance, your operations must be governed by circumstances, and you must use the means at your command to accomplish the objects in view—the military occupation of the country. It is not, however, expected that much can be done, if preparations have been made to resist, until the force under Gen. Kearny shall have entered the country.

You are directed to embrace every opportunity to communicate with this department, and to furnish it with not only a full account of your movements and operations previous to your coming under the direct command of Gen. Kearny, but with such other information as may be useful for the department to possess in regard to conducting the war in that quarter.

Your attention is particularly directed to that portion of the instructions to the commanding officer of the squadron in the Pacific, herewith, which has reference to the joint operation of the land and naval force, and you will conform your conduct thereto.

You are also furnished with an extract from instruction to Gen. Kearny, giving directions for the course of conduct to be pursued while in the military occupation of any portion of the enemy's country, together with a copy of a letter to Gen. Taylor, inclosing one from the Secretary of the Treasury in regard to commercial intercourse with such parts of the enemy's ports, etc., as may be in possession of our forces. These are to be regarded as instructions to you, should you find yourself placed in the circumstances therein contemplated. You will take the earliest opportunity to make the commanding officer of the squadron in the Pacific fully acquainted with your instructions and the accompanying papers. Where a place is taken by the joint action of the naval and land force, the naval officer in command, if superior in rank to yourself, will be entitled to make arrangements for the civil government of it while it is held by the cooperation of both branches of the military force. All your

powers in this respect will, of course, be devolved on Gen. Kearny whenever he shall arrive in California and assume the command of the volunteer regiment. As soon as practicable you will furnish him with a copy of this communication and the other papers herewith transmitted.

Very respectfully, your obedient servant,

W. L. MARCY,  
*Secretary of War.*

Col. J. D. STEVENSON,  
*Commanding Regiment of Volunteers,  
Governors Island, Harbor of New York.*

NO. 6.—LETTER OF THE SECRETARY OF WAR TO GEN. KEARNY.

WAR DEPARTMENT,  
*Washington, September 12, 1846.*

SIR: A volunteer regiment raised in the State of New York, engaged to serve during the war with Mexico, and to be discharged wherever they may be at its termination, if in a territory of the United States, has been mustered into service, and is about to embark at the port of New York for California. This force is to be a part of your command, but, as it may reach the place of its destination before you are in a condition to subject it to your orders, the colonel of the regiment, J. D. Stevenson, has been furnished with instructions for his conduct in the meantime. I herewith send you a copy thereof, as well as a copy of the instructions of the Navy Department to the commander of the naval squadron in the Pacific; a copy of a letter to Gen. Taylor, with a circular from the Treasury Department; a copy of a letter from Gen. Scott to Capt. Tompkins; and a copy of general regulations relative to the respective rank of naval and Army officers. These, so far as applicable, will be looked upon in the light of instructions to yourself. The department is exceedingly desirous to be furnished by you with full information of your progress and proceedings, together with your opinion and views as to your movements in California, having reference as to time, route, etc. Beyond the regiment under the command of Col. S. Price and the separate battalion called for at the same time by the President from the governor of Missouri, a requisition for one regiment of infantry was issued on the 18th of July last, but the information subsequently received here induced the belief that it would not be needed, and the difficulty of passing it over the route at so late a period in the season with the requisite quantity of supplies, etc., was deemed so great that the orders to muster it into service have been countermanded. It will not be sent. Your views as to the sufficiency of your force and the practicability of sustaining a larger one, etc., are desired.

I am, with great respect, your obedient servant,

W. L. MARCY,  
*Secretary of War.*

Gen. S. W. KEARNY,  
*Fort Leavenworth, Mo.*

# NO. 7.—LETTER OF THE ADJUTANT GENERAL TO THE SECRETARY OF WAR.

ADJUTANT GENERAL'S OFFICE.

*Washington, December 17, 1846.*

SIR: In answer to the resolution of the House of Representatives of the 15th instant, calling for copies of all orders and instructions given to Gens. Taylor, Wood, Kearny, or any other officer, relative to the establishment or organization of civil government in Mexico by United States officers, also what forms of government such officers, or either of them, may have established, etc., I have the honor to submit the inclosed copy of the letter of instructions of Maj. Gen. Scott to Brig. Gen. Kearny, dated November 3, 1846, being the only communication from this office, or that of the Commanding General of the Army, having any reference to the subject of the House resolution.

In respect to the second head of the inquiry, I have to state that on the 23d of November a communication was received from Brig. Gen. Kearny, dated at Santa Fe, N. Mex., September 22, 1846, sending a copy of the laws established by his authority for the government of that Territory, and also a list of the persons he had appointed to office. This communication was immediately laid before the Secretary of War, and has not since been returned to this office. No other communication touching the subject of civil government in Mexico has been received at the Adjutant General's Office.

Respectfully submitted.

R. JONES.

*Adjutant General.*

HON. W. L. MARCY.

*Secretary of War.*

# NO. 8.—LETTER FROM MAJ. GEN. SCOTT TO GEN. KEARNY.

HEADQUARTERS OF THE ARMY,

*Washington, November 3, 1846.*

SIR: We have received from you many official reports, the latest dated September the 16th. A special acknowledgment of them, by dates, will go herewith from the Adjutant General's Office.

Your march upon and conquest of New Mexico, together with the military dispositions made for holding that Province, have won for you, I am authorized to say, the emphatic approbation of the Executive, by whom it is not doubted that your movement upon and occupation of Upper California will be executed with like energy, judgment, and success.

You will at Monterey, or the Bay of San Francisco, find an engineer officer (Lieut. Halleck) and a company of the United States Artillery, under Capt. Tompkins. It is probable that an officer of Engineers or of topographical engineers has accompanied you from Santa Fe. Those officers and the company of artillery, aided by other troops under your command, ought promptly to be employed in erecting and garrisoning durable defenses for holding the Bays



of Monterey and San Francisco, together with such other important points in the same Province as you may deem it necessary to occupy. Intrenching tools, ordnance, and ordnance stores went out in the ship *Lexington*, with Capt. Tompkins. Further ordnance supplies may be soon expected.

It is perceived by dispatches received at the Navy Department from the commander of the United States squadron on the coast of the Pacific that certain volunteers were taken into service by him from the settlers about the Bays of Monterey and San Francisco, to aid him in seizing and holding that country. With a view to regular payment, it is desirable that those volunteers, if not originally mustered, should be caused by you to be regularly mustered into service (retrospectively), under the volunteer act of May 13, 1846, amended by an act of the following month. This may be done with the distinct understanding that, if not earlier discharged as no longer needed, you will discharge them at any time they may signify a wish to that effect.

You will probably find certain port charges and regulations established for the harbors of the Province by the commanders of the United States squadron upon its coast. The institution and alteration of such regulations appertain to the naval commander, who is instructed by the proper department to confer on the subject with the commander of the land forces. As established, you will, in your sphere, cause those regulations to be duly respected and enforced. On the other hand, the appointment of temporary collectors at the several ports appertains to the civil governor of the Province, who will be for the time the senior officer of the land forces in the country. Collectors, however, who have been already appointed by the naval commander will not be unnecessarily changed.

As a guide to the civil governor of Upper California, in our hands, see the letter of June the 3d (last), addressed to you by the Secretary of War. You will not, however, formally declare the Province to be annexed. Permanent incorporation of the territory must depend on the Government of the United States.

After occupying with our forces all necessary points in Upper California, and establishing a temporary civil government therein, as well as assuring yourself of its internal tranquillity and the absence of any danger of reconquest on the part of Mexico, you may charge Col. Mason, United States First Dragoons, the bearer of this open letter, or land officer next in rank to your own, with your several duties, and return yourself, with a sufficient escort of troops, to St. Louis, Mo., but the body of the United States Dragoons that accompanied you to California will remain there until further orders.

It is not known what portion of the Missouri Volunteers, if any, marched with you from Santa Fe to the Pacific. If any, it is necessary to provide for their return to their homes and honorable discharge, and on the same supposition they may serve you as a sufficient escort to Missouri.

It is known that Lient. Col. Fremont, of the United States Rifle Regiment, was in July last with a party of men in the service of the United States Topographical Engineers, in the neighborhood of San Francisco or Monterey Bay, engaged in joint operations against Mexico with the United States squadron on that coast.

Should you find him there, it is desired that you do not detain him, against his wishes, a moment longer than the necessities of the service may require.

I need scarcely enjoin deference and the utmost cordiality on the part of our land forces toward those of our Navy in the joint service on the distant coast of California. Reciprocity may be cordially expected, and toward that end frequent conferences between commanders of the two arms are recommended. Harmony in cooperation, and success can not but follow.

Measures have been taken to supply the disbursing officers, who have preceded and who may accompany you, with all necessary funds. Of those measures you will be informed by Col. Mason.

I remain, sir, with great respect, your obedient servant,

WINFIELD SCOTT.

Brig. Gen. S. W. KEARNY, U. S. Army,  
*Commanding U. S. Forces, Tenth Military Department.*

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#### NO. 9.—LETTER OF THE SECRETARY OF WAR TO GEN. TAYLOR.

WAR DEPARTMENT, *June 4, 1846.*

SIR: I send herewith a number of copies of a proclamation in the Spanish language, addressed to the people of Mexico, which you are requested to sign and cause to be circulated in the manner and to the extent you may deem proper. You will use your utmost endeavors to have the pledges and promises therein contained carried out to the fullest extent. There are also sent some copies of the proclamation in the English language.

Very respectfully, your obedient servant,

W. L. MARCY,  
*Secretary of War.*

Brevet Maj. Gen. Z. TAYLOR,  
*Commanding Army of Occupation, Texas.*

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#### NO. 10.—TRANSLATION OF A PROCLAMATION, IN SPANISH, FURNISHED TO GEN. TAYLOR.

A PROCLAMATION BY THE GENERAL COMMANDING THE ARMY OF THE UNITED STATES OF AMERICA.

*To the people of Mexico:*

After many years of patient endurance the United States are at length constrained to acknowledge that a war now exists between our Government and the Government of Mexico. For many years our citizens have been subjected to repeated insults and injuries, our vessels and cargoes have been seized and confiscated, our merchants have been plundered, maimed, imprisoned, without cause and without reparation. At length your Government acknowledged the justice of our claims, and agreed by treaty to make satisfaction by payment of several millions of dollars, but this treaty has been



violated by your rulers, and the stipulated payments have been withheld. Our late effort to terminate all difficulties by peaceful negotiation has been rejected by the dictator Paredes, and our minister of peace, whom your rulers had agreed to receive, has been refused a hearing. He has been treated with indignity and insult, and Paredes has announced that war exists between us. This war, thus first proclaimed by him, has been acknowledged as an existing fact by our President and Congress with perfect unanimity, and will be prosecuted with vigor and energy against your army and rulers, but those of the Mexican people who remain neutral will not be molested.

Your Government is in the hands of tyrants and usurpers. They have abolished your State governments, they have overthrown your federal constitution, they have deprived you of the right of suffrage, destroyed the liberty of the press, despoiled you of your arms, and reduced you to a state of absolute dependence upon the power of a military dictator. Your army and rulers extort from the people by grievous taxation, by forced loans, and military seizures the very money which sustains the usurpers in power. Being disarmed, you are left defenseless, an easy prey to the savage Cumanches, who not only destroy your lives and property, but drive into a captivity, more horrible than death itself, your wives and children. It is your military rulers who have reduced you to this deplorable condition. It is these tyrants and their corrupt and cruel satellites, gorged with the people's treasure, by whom you are thus oppressed and impoverished, some of whom have boldly advocated a monarchical government, and would place a European prince on the throne of Mexico. We come to obtain reparation for repeated wrongs and injuries, we come to obtain indemnity for the past and security for the future, we come to overthrow the tyrants who have destroyed your liberties; but we come to make no war upon the people of Mexico, nor upon any form of free government they may choose to select for themselves. It is our wish to see you liberated from despots, to drive back the savage Cumanches, to prevent the renewal of their assaults, and to compel them to restore to you from captivity your long-lost wives and children. Your religion, your altars and churches, the property of your churches and citizens, the emblems of your faith and its ministers shall be protected and remain inviolate. Hundreds of our Army and hundreds of thousands of our people are members of the Catholic Church. In every State and in nearly every city and village of our Union Catholic churches exist and the priests perform their holy functions in peace and security, under the sacred guarantee of our Constitution. We come among the people of Mexico as friends and republican brethren, and all who receive us as such shall be protected, whilst all who are seduced into the army of your dictator shall be treated as enemies. We shall want from you nothing but food for our Army, and for this you shall always be paid in cash the full value. It is the settled policy of your tyrants to deceive you in regard to the policy and character of our Government and people. These tyrants fear the example of our free institutions, and constantly endeavor to misrepresent our purposes and inspire you with hatred for your republican brethren of the American Union. Give us but the opportunity to undeceive you and you will soon learn that all the representations of Paredes were false,

and were only made to induce you to consent to the establishment of a despotic government.

In your struggle for liberty with the Spanish monarchy thousands of our countrymen risked their lives and shed their blood in your defense. Our own commodore, the gallant Porter, maintained in triumph your flag upon the ocean, and our Government was the first to acknowledge your independence. With pride and pleasure we enrolled your name on the list of independent Republics, and sincerely desired that you might in peace and prosperity enjoy all the blessings of free government. Success on the part of your tyrants against the Army of the Union is impossible; but if they could succeed it would only be to enable them to fill your towns with their soldiers, eating out your substance, and harassing you with still more grievous taxation. Already they have abolished the liberty of the press as the first step toward the introduction of that monarchy which it is their real purpose to proclaim and establish.

Mexicans, we must treat as enemies and overthrow the tyrants who, whilst they have wronged and insulted us, have deprived you of your liberty, but the Mexican people who remain neutral during the contest shall be protected against their military despots by the republican Army of the Union.

#### NO. 11.—LETTER OF THE SECRETARY OF WAR TO GEN. KEARNY.

WAR DEPARTMENT,  
*Washington, June 5, 1846.*

SIR: I inclose to you a few copies of a proclamation prepared for Gen. Taylor, to issue to the Mexicans. I discover that there are parts of it that will not answer our purpose for Santa Fe or Upper California. You will not, therefore, use these copies. It is intended to make the needful alterations in it, and, thus altered, send on copies<sup>1</sup> to you before you will have occasion to distribute them. I must, however, urge you not to use those which have been forwarded.

Yours, respectfully,

W. L. MARCY.

Col. S. W. KEARNY.

#### NO. 12.—PROCLAMATION OF GEN. KEARNY OF 31ST JULY

PROCLAMATION TO THE CITIZENS OF NEW MEXICO BY COL. KEARNY,  
COMMANDING THE UNITED STATES FORCES.

The undersigned enters New Mexico with a large military force for the purpose of seeking union with and ameliorating the condition of its inhabitants. This he does under instructions from his Government, and with the assurance that he will be amply sustained in the accomplishment of this object. It is enjoined on the citizens of New Mexico to remain quietly at their homes and to pursue their

<sup>1</sup> No proclamation modified as proposed was sent.—W. L. MARCY.

peaceful avocations. So long as they continue in such pursuits they will not be interfered with by the American Army, but will be respected and protected in their rights, both civil and religious.

All who take up arms or encourage resistance against the Government of the United States will be regarded as enemies, and will be treated accordingly.

S. W. KEARNY,  
*Colonel First Dragoons.*

CAMP AT BENTS FORT, ON THE ARKANSAS,  
*July 31, 1846.*

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NO. 13.—LETTER OF GEN. KEARNY TO THE ADJUTANT GENERAL.

HEADQUARTERS ARMY OF THE WEST,  
*Santa Fe, N. Mex., August 24, 1846.*

SIR: I have to report that on the 18th instant the Army under my command marched into this city, the capital of New Mexico, having met with no armed resistance, the Mexican troops, numbering about 4,000, which had been collected on the road by Gov. Armijo to oppose us, having dispersed on our approaching them, and the governor himself having fled, with a troop of his dragoons, toward Chihuahua. On the 22d I issued a proclamation, claiming the whole of New Mexico, with its then boundaries, as a Territory of the United States of America, and taking it under our protection. I send herewith copies of all official papers on the subject. The people of the Territory are now perfectly tranquil, and can easily be kept so. The intelligent portion know the advantages they are to derive from the change of government, and express their satisfaction at it.

In a few days I shall march down the Del Norte and visit some of the principal cities below, for the purpose of seeing the people and explaining to them personally our intentions relating to the Territory. On my return (which will be in two or three weeks) a civil government shall be organized, and the officers appointed for it, after which I will be ready to start for Upper California, which I hope may be by the latter end of next month, and in such case I shall expect to have possession of that department by the close of November.

I have not heard from or of Col. Price and his command, which he was to raise and bring here, and have received but vague rumors of Capt. Allen and the Mormons. I suppose, however, they will all be here in a few weeks. Capt. Allen's command will accompany me to the Pacific, and the number of efficient men he brings will determine the additional number I must take from here. After deciding upon that and upon the number which will be necessary to hold this territory, I shall send the surplus to Chihuahua to report to Brig. Gen. Wool. I inclose a copy of my communication to him of the 22d instant.

On the 15th instant I received yours of 2d and 3d July, the former inclosing a copy of a letter to Capt. Tompkins, Third Artillery, from the General in Chief, the latter inclosing for me a commission of brigadier general, which I hereby accept of, and for which I offer



to the President and Senate my acknowledgment and thanks for the honor they have conferred on me.

Very respectfully, your obedient servant,

S. W. KEARNY,  
*Brigadier General.*

Brig. Gen. R. JONES,  
*Adjutant General U. S. Army, Washington.*

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NO. 14.—PROCLAMATION OF GEN. KEARNY OF 22D AUGUST.

PROCLAMATION TO THE INHABITANTS OF NEW MEXICO BY BRIG. GEN. S. W. KEARNY, COMMANDING THE TROOPS OF THE UNITED STATES IN THE SAME.

As by the act of the Republic of Mexico a state of war exists between that Government and the United States, and as the undersigned, at the head of his troops, on the 18th instant took possession of Santa Fe, the capital of the department of New Mexico, he now announces his intention to hold the department, with its original boundaries (on both sides of the Del Norte), as a part of the United States, and under the name of "the Territory of New Mexico."

The undersigned has come to New Mexico with a strong military force, and an equally strong one is following close in his rear. He has more troops than is necessary to put down any opposition that can possibly be brought against him, and therefore it would be but folly or madness for any dissatisfied or discontented persons to think of resisting him.

The undersigned has instructions from his Government to respect the religious institutions of New Mexico, to protect the property of the church, to cause the worship of those belonging to it to be undisturbed, and their religious rights in the amplest manner preserved to them; also to protect the persons and property of all quiet and peaceable inhabitants within its boundaries against their enemies, the Eutaws, the Navajoes, and others; and when he assures all that it will be his pleasure as well as his duty to comply with those instructions, he calls upon them to exert themselves in preserving order, in promoting concord, and in maintaining the authority and efficacy of the laws. And he requires of those who have left their homes and taken up arms against the troops of the United States to return forthwith to them, or else they will be considered as enemies and traitors, subjecting their persons to punishment and their property to seizure and confiscation for the benefit of the public treasury.

It is the wish and intention of the United States to provide for New Mexico a free government, with the least possible delay, similar to those in the United States, and the people of New Mexico will then be called on to exercise the rights of freemen in electing their own representatives to the Territorial legislature. But until this can be done the laws hitherto in existence will be continued until changed or modified by competent authority, and those persons holding office will continue in the same for the present, provided they will consider themselves good citizens and are willing to take the oath of allegiance to the United States.

The United States hereby absolves all persons residing within the boundaries of New Mexico from any further allegiance to the Republic of Mexico, and hereby claims them as citizens of the United States. Those who remain quiet and peaceable will be considered good citizens and receive protection; those who are found in arms or instigating others against the United States will be considered as traitors and treated accordingly.

Don Manuel Armijo, the late governor of this department, has fled from it; the undersigned has taken possession of it without firing a gun or spilling a single drop of blood, in which he most truly rejoices, and for the present will be considered as governor of the Territory.

Given at Santa Fe, the capital of the Territory of New Mexico, this 22d day of August, 1846, and in the seventy-first year of the independence of the United States.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

By the governor:

JUAN BAUTISTA VIGIL Y ALAND.

#### NO. 15.—LETTER FROM GEN. KEARNY TO GEN. WOOL.

HEADQUARTERS ARMY OF THE WEST,  
*Santa Fe, N. Mex., August 22, 1846.*

GENERAL: I have to inform you that on the 18th instant, without firing a gun or spilling a drop of blood, I took possession of this city, the capital of the department of New Mexico, and that I have this day issued a proclamation claiming the whole department, with its original boundaries, for the United States, and under the title of "the Territory of New Mexico."

Everything here is quiet and peaceable. The people now understand the advantages they are to derive from a change of Government, and are much gratified with it.

I have more troops (Missouri Volunteers) following in my rear. On their arrival there will be more than necessary for this Territory. I will send the surplus to you. Should you not want them, you can order them to Maj. Gen. Taylor, or to their homes, as you may think the good of the public service requires.

I am destined for Upper California, and hope to start from here in the course of a few weeks. Success attend you.

Very respectfully, your obedient servant,

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

Brig. Gen. JNO. E. WOOL,  
*U. S. Army, Chihuahua.*

#### NO. 16.—APPOINTMENT BY GEN. KEARNY OF TREASURER OF SANTA FE.

Henry L. Dodge is appointed treasurer of Santa Fe, N. Mex., in the place of Francisco Ortis, who, in consequence of sickness, is unable to perform the duties.

Mr. Ortis will turn over to his successor any public funds, books, or property pertaining to his office which he may have in his possession.

S. W. KEARNY.

*Brigadier General, U. S. Army.*

SANTA FE, N. MEX., *August 28, 1846.*

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NO. 17.—APPOINTMENT BY GEN. KEARNY OF COLLECTOR OF SANTA FE.

Tomas Rivero is appointed collector of Santa Fe, Territory of New Mexico, in the place of José Garcia, who, from deafness, is unable to perform the duties.

Mr. Garcia will turn over to his successor any public funds, books, or property pertaining to his office which he may have in his possession.

S. W. KEARNY.

*Brigadier General, U. S. Army.*

SANTA FE., N. MEX., *August 29, 1846.*

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NO. 18.—LETTER OF GEN. KEARNY TO THE ADJUTANT GENERAL.

HEADQUARTERS ARMY OF THE WEST,

*Santa Fe, N. Mex., September 1, 1846.*

SIR: I avail myself of a private opportunity to Missouri to send to you copies of all papers, civil and military, which have passed from under my hands since the 24th ultimo, the date of my last communication to you.

The troops composing this command are and have been since the day after our reaching here necessarily divided—one half the officers and men (excepting of the Infantry) are, with all the horses and mules, about 25 miles from here, where they went for grass; the other half are in and around this city, and a large number of them daily employed under the engineers in erecting fortifications to insure the safety of it.

We leave here to-morrow, taking about 700 mounted men with us to visit the lower country, and to quiet the minds of the people, which are still a little excited by idle rumors and reports. I shall be absent about a fortnight, after which an express will be sent to Fort Leavenworth, with such information as I may obtain.

I am now endeavoring to raise from the inhabitants of the Territory a company of Infantry (volunteers for one year). I have appointed a Mexican captain and an American first lieutenant of it. I think much good will result from it.

Very respectfully, your obedient servant,

S. W. KEARNY,

*Brigadier General.*

Brig. GEN. JONES,

*Adjutant General U. S. Army, Washington.*

# No. 19.—ORDER OF GEN. KEARNY ABOLISHING THE USE OF STAMP PAPER.

From this day so much of the law, hitherto in force in New Mexico, which requires that stamped paper shall be used in certain transactions, is abolished.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

SANTA FE, TERRITORY OF NEW MEXICO,  
*August 29, 1846.*

# No. 20.—ORDER OF GEN. KEARNY REGULATING LICENSES.

## LICENSES FOR STORES, ETC.—DUTIES ON WAGONS, ETC.

The following sums will be collected in place of those established April 11, 1844:

License for dry-goods store, per month.....	\$2. 00
License for grocery store, per month.....	4. 00
License for taverns, per month.....	5. 00
License for public billiard tables, per month.....	3. 00
License for monte table, chuza, or game of chance, per night.....	1. 50
License for balls, where money is charged for attending.....	2. 00

Licenses for the above must be obtained and paid for in advance; if not, then five times the foregoing sums to be charged, and the individuals confined until the amount is paid.

Wagons from the Arkansas or Chihuahua, with goods belonging to individuals, and not public ones, each.....	\$4. 00
Pleasure carriages from the above places, each.....	2. 00
Wagons or carriages belonging to individuals entering the public plaza.....	. 25

The above sums will be collected by the collector of Santa Fe and turned over to the treasurer of the city for the benefit thereof, the treasurer and collector keeping a correct account of all sums received, and for which they will be held strictly responsible.

The collector of Galisteo will collect the same amount for each wagon or carriage as above, both to take effect from the 22d instant, the day of New Mexico becoming a part of the United States.

The above to continue in force until changed by proper authority.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

SANTA FE, N. MEX., *August 27, 1846.*

# No. 21.—LETTER OF GEN. KEARNY TO THE ADJUTANT GENERAL.

HEADQUARTERS ARMY OF THE WEST,  
*Santa Fe, N. Mex., September 16, 1846.*

SIR: Since my communication to you of the 1st instant, I have marched with 700 men about 100 miles down the Del Norte to the village of Tome. The inhabitants of the country were found to be



highly satisfied and contented with the change of government, and apparently vied with each other to see who could show to us the greatest hospitality and kindness.

There can no longer be apprehended any organized resistance in this Territory to our troops, and the commander of them, whoever he may be, will hereafter have nothing to attend to but to secure the inhabitants from further depredations from the Navajo and Eutaw Indians, and for this object paragraph 3 of Orders No. 23 was this day issued, a copy of which is inclosed herewith.

As this Territory is now so perfectly quiet, I have determined (knowing the wishes of the Executive) to leave here for Upper California as soon as possible, and have fixed upon the 25th as the day of departure. As I am ignorant when to expect Capt. Allen and his command, I have determined upon taking with me Maj. Sumner and the efficient men (about 300) of the First Dragoons. Orders will be left for Capt. Allen to follow on our trail. From the most reliable information yet received as to the best route, we have determined upon marching about 200 miles down the Del Norte, then to the Gila, down that river near to its mouth, leaving which, we cross the Colorado, and then, keeping near the Pacific, up to Monterey. This route will carry us not far from and along the southern boundary of New Mexico and Upper California, and we hope to reach the Pacific by the end of November. No exertions will be wanting on the part of anyone attached to this expedition in insuring to it full and entire success.

I have now respectfully to ask that, in the event of our getting possession of Upper California—of establishing a civil government there—securing peace, quiet, and order among the inhabitants, and precluding the possibility of the Mexicans again having control there, I may be permitted to leave there next summer with the First Dragoons, and march them back to Fort Leavenworth, on the Missouri; and I would respectfully suggest that troops to remain in California and Oregon should be raised expressly for the purpose—say for three years—to be discharged at the expiration of that time; each man, from the colonel to the private, receiving a number of acres of land in proportion to his rank. Regiments could easily be raised on such terms: and when discharged, military colonies would thus be established by them.

Surgeon Decamp will be left in charge of the hospitals at this place, and to superintend the medical departments in this Territory. He is very desirous, as are the other officers of the Army now here, to leave next summer. The doctor wishes to return to Jefferson Barracks, St. Louis, or to the arsenal, and I recommend that he be gratified.

A large number of troops are daily employed under the direction of Lieut. Gilmer, of the Engineers, in erecting a fort for the defense and protection of the city; and, as this is the capital of the Territory—a new acquisition to the United States—the fort will be an important and a permanent one, and I have this day named it “Fort Marcy,” and now ask for a confirmation of it.

I have not heard or received a line from Col. Price at any time, and know not if he, or any part of his regiment, has even left Fort Leavenworth.



I will write to you again before leaving here, and will then inform you of the arrangements made relating to the civil government for this Territory, which has been and continues a delicate and difficult task.

Very respectfully, your obedient servant,

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

Brig. Gen. R. JONES,  
*Adjutant General of U. S. Army, Washington.*

NO. 22.—LETTER OF GEN. KEARNY TO THE ADJUTANT GENERAL.

HEADQUARTERS ARMY OF THE WEST,  
*Santa Fe, N. Mex., September 22, 1846.*

SIR: I inclose herewith a copy of the laws prepared for the government of the Territory of New Mexico, and a list of appointments to civil offices in the Territory, both of which I have this day signed and published.

I take great pleasure in stating that I am entirely indebted for these laws to Col. A. W. Doniphan, of the First Regiment of Missouri Mounted Volunteers, who received much assistance from Pvt. Willard P. Hall, of his regiment.

These laws are taken, part from the laws of Mexico—retained as in the original—a part with such modifications as our laws and constitution made necessary, a part are from the laws of the Missouri Territory, a part from the laws of Texas, and also of Texas and Coahuila, a part from the statutes of Missouri, and the remainder from the Livingston Code.

The organic law is taken from the organic law of Missouri Territory. (See act of Congress, June 4, 1842.)

Very respectfully, your obedient servant.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

The ADJUTANT GENERAL, U. S. Army,  
*Washington.*

(Received at the War Department Nov. 23.)

NO. 22.—APPOINTMENT, BY GEN. KEARNY, OF CIVIL OFFICERS.

Being duly authorized by the President of the United States of America, I hereby make the following appointments for the government of New Mexico, a Territory of the United States. The officers thus appointed will be obeyed and respected accordingly:

Charles Bent, to be governor.

Donaisano Vigil, to be secretary of the Territory.

Richard Dallam, to be marshal.

Francis P. Blair, to be United States district attorney.

Charles Blumner, to be treasurer.

Eugene Seitzendorfer, to be auditor of public accounts.

Joab Houghton, Antonio José Otero, Charles Beaubian, to be judges of the superior court.

Given at Santa Fe, the capital of the Territory of New Mexico, this 22d day of September, 1846, and in the seventy-first year of the independence of the United States.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

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Francisco Sanacino (Pajarito) is hereby reappointed prefect of the district of the Southwest, in place of Francisco Armijo y Ortiz, this day removed.

Miguel Romero is hereby appointed alcalde at the Placeya, in place of Julien Tenoira, this day removed.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

SANTA FE, N. MEX., *September 22, 1846.*  
(Received at the War Department Nov. 23.)

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# NO. 24.—ORGANIC LAW FOR THE TERRITORY OF NEW MEXICO, COMPILED UNDER THE DIRECTIONS OF GEN. KEARNY.

(Received at the War Department Nov. 23, 1846.)

## ORGANIC LAW OF THE TERRITORY OF NEW MEXICO.

The Government of the United States of America ordains and establishes the following organic law for the Territory of New Mexico, which has become a Territory of the said Government:

### ARTICLE I.

SECTION 1. The country heretofore known as New Mexico shall be known hereafter and designated as the Territory of New Mexico, in the United States of America, and the temporary government of the said Territory shall be organized and administered in the manner herein prescribed.

### ARTICLE II.

#### EXECUTIVE POWER.

SEC. 2. The executive power shall be vested in a governor, who shall reside in the said Territory, and shall hold his office for two years, unless sooner removed by the President of the United States.

He shall be the commander in chief of the militia of the said Territory, except when called into the service of the United States, and ex officio superintendent of Indian affairs.

He shall have power to fill all civil and military offices which shall be established, the appointments to which shall not be otherwise provided for by law.

He shall cause the laws to be distributed and faithfully executed, and shall be conservator of the peace throughout the Territory.

He shall, from time to time, inform the general assembly of the condition of the government, and shall recommend all necessary measures, and may convene them on extraordinary occasions by proclamation, stating the purpose for which they are convened.

Whenever any office shall become vacant he shall fill the same, until a successor shall be properly appointed and qualified. He shall have power to remit fines and forfeitures, and grant reprieves and pardons for all offenses against the laws of the Territory, and reprieves in all cases against the laws of the United States, until the decision of the President thereof can be known.

SEC. 2. There shall be a secretary of the Territory who shall hold his office for two years, unless sooner removed by the President of the United States.

He shall, under the direction of the governor, record and preserve all the proceedings and papers of the executive, and all acts of the general assembly, and transmit copies of the same to the President every six months.

In case of a vacancy in the office of governor, the secretary shall discharge the duties of governor until another be appointed and qualified.

SEC. 3. There shall be a marshal, a United States district attorney, an auditor of public accounts, and a treasurer for the Territory, and a sheriff and coroner for each county, whose duty shall be defined by law.

### ARTICLE III.

#### LEGISLATIVE POWER.

SECTION 1. The legislative power shall be vested in a general assembly, which shall consist of a legislative council and a house of representatives.

SEC. 2. The house of representatives shall consist of members to be chosen every two years by the qualified electors of the several counties; and the legislative council shall consist of members to be chosen every four years by the qualified electors of their respective districts.

SEC. 3. No person shall be eligible to the house of representatives who shall not have attained to the age of twenty-four years, who shall not be a free male citizen of the Territory of New Mexico, and who shall not have been an inhabitant of the county he may be chosen to represent at least six months next preceding his election.

SEC. 4. No person shall be eligible to the legislative council who shall not have attained to the age of thirty years, who shall not be a free male citizen of the Territory of New Mexico, and who shall not have been an inhabitant of the district which he may be chosen to represent at least six months next preceding his election, if such district shall be so long established; but if not, then of the district or districts from which the same shall have been taken.

SEC. 5. The legislative council shall never be more than one-third as numerous as the house of representatives, for the election of whom the Territory shall be divided into convenient districts.

which may be altered from time to time, and new districts established, as public convenience may require.

SEC. 6. The general assembly shall divide the Territory into a convenient number of counties, and shall apportion the members of the house of representatives among the same according to the free male population; but the whole number of its members shall never exceed twenty-one, until otherwise directed by the law of the United States.

SEC. 7. Until the legislative power shall otherwise direct, the Territory of New Mexico shall retain the division of counties and districts established by the decree of the department of New Mexico, of June seventeenth, eighteen hundred and forty-four, and they shall be represented as follows: In the house of representatives, the county of Santa Fe shall have three members; the county of San Miguel del Bado, three; the county of Rio Arriba, three; the county of Valencia, five; the county of Taos, three; the county of Santa Anna, two; and the county of Bernalillo, two. In the legislative council, the central district shall have three members; in the northern district, two members; and the southeastern district, two members; which apportionment shall continue until otherwise directed by law.

SEC. 8. All free male citizens of the Territory of New Mexico who then are, and for three months next preceding the election shall have been, residents of the county or district in which they shall offer to vote, shall be entitled to vote for a Delegate to the Congress of the United States, and for members of the general assembly, and for all other officers elected by the people.

SEC. 9. The first election for a Delegate to the Congress of the United States, and for members of the general assembly, shall be on the first Monday in August, in the year of our Lord eighteen hundred and forty-seven. And the governor, by proclamation, shall designate as many places in each county as may be necessary for the public convenience, at which the electors may vote.

SEC. 10. The general assembly shall convene at the city of Santa Fe on the first Monday in December, in the year of our Lord eighteen hundred and forty-seven, and on the first Monday in December every two years thereafter, until otherwise provided by law; and each house shall elect one of its own members as a speaker, and shall choose clerks and such other officers as may be necessary; and shall sit from day to day on its own adjournments, until all its business shall be finished.

SEC. 11. In case of a vacancy in either house, by death or otherwise, the governor shall issue a writ to the county or district from which such member was elected, to elect another for the residue of the term.

SEC. 12. No person who now is, or hereafter may be, a collector or holder of public money, assistant, or deputy thereof, shall be eligible to any office of profit or trust, until he shall have accounted for, and paid over, all sums for which he may be accountable; and no person holding any lucrative office under the United States or this Territory, except militia officers and justices of the peace, shall be eligible to either house of the general assembly. No person who shall be convicted of having, directly or indirectly, given or offered any bribe to procure his own election or appointment,



or the election or appointment of any other person, or who shall be convicted of perjury or other infamous crime, shall be eligible to any office of honor, profit, or trust, within this Territory, or shall be allowed the right of suffrage.

SEC. 13. The general assembly shall have power to make laws in all cases, both civil and criminal, for the good government of the people of this Territory, not inconsistent with, or repugnant to, the Constitution and laws of the United States; to establish inferior courts, and prescribe their jurisdiction and duties; and to create other offices in said Territory, and to fix the fees of office and provide for the payment of the same, except those whose payment is provided for by the Government of the United States. Each house shall judge of the election, qualifications, and returns of its own members. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. Each house shall make its own rules or preceedings, punish its members for disorderly behavior, and two-thirds of all the members elected may expel a member; but no member shall be expelled twice for the same offense. Each house shall keep, and publish from time to time, a journal of its proceedings; all votes in the house shall be "viva voce," and, on the final passage of all bills shall be entered on the journals.

SEC. 14. Any bill may originate in either house, and may be altered, amended, or rejected by the other, and shall be read on three different days in each house; and, having passed both houses, shall be signed by their respective speakers and presented to the governor for his approval. If he approve the same, he shall sign it; if he disapprove it, he shall return it to the house in which it originated, within six days, with his objections; if he fail to return it within six days, or, after it shall have been returned, it again pass both houses, it shall be a law without the governor's approval.

SEC. 15. The members of the general assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest in going to, returning from, and during their attendance on their respective houses; and, for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 16. The sittings of each house shall be public, except when secrecy shall be required; and each house may punish any person, not a member, for disorderly or contemptuous behavior in their presence while in session, by a fine not exceeding three hundred dollars, or imprisonment not exceeding forty-eight hours, for one offense.

SEC. 17. Each member of the general assembly shall receive three dollars a day for each day he may attend the house of which he is a member, and three dollars for every twenty-five miles he must travel in going from his residence to the place of meeting and returning from thence; and the speaker of each house shall receive five dollars a day for every day he may attend the house of which he is a member, and the same mileage with other members. The other officers of the general assembly shall receive such compensation as the law may provide.

SEC. 18. The style of all laws shall be, "*Be it enacted by the General Assembly of the Territory of New Mexico.*"

## ARTICLE IV.

## JUDICIAL POWER.

SECTION 1. The judicial power shall be vested in a superior court and inferior tribunals to be established by law.

SEC. 2. The superior court shall consist of three judges, to be appointed by the President of the United States. One of them shall be the presiding judge, and the others associate judges. The judges shall be conservators of the peace throughout the Territory, and shall hold courts at such times and places, and perform such duties, as shall be prescribed by law.

SEC. 3. The superior court shall have a general superintending control over all inferior courts and tribunals of justice, and shall have power to issue original writs to compel inferior courts, and their officers, to perform their duties according to law, whenever they may fail or refuse so to do.

SEC. 4. Every court and tribunal of justice shall appoint its own clerk, who shall hold his office during the continuance of the temporary government, unless sooner removed by his respective court.

SEC. 5. All officers, both civil and military, shall, before entering on the duties of their office, take an oath to support the Constitution of the United States, and to faithfully demean themselves in office.

## ARTICLE V.

## MISCELLANEOUS.

SECTION 1. Members of the general assembly; the governor, whose salary shall be two thousand dollars a year; the secretary of the Territory, whose salary shall be one thousand two hundred dollars a year; the judges of the superior court, whose salaries shall be one thousand five hundred dollars a year each; the marshal of the Territory, whose salary shall be five hundred dollars a year; the United States district attorney, whose salary shall be five hundred dollars a year, shall be paid out of the Treasury of the United States. The auditor and treasurer shall each receive a salary of five hundred dollars a year, one-half of which shall be paid out of the Treasury of the United States and the remainder out of the Territorial treasury.

SEC. 2. The governor, secretary of the Territory, marshal, and United States district attorney shall be appointed by the President of the United States. The auditor and treasurer shall be elected every two years by joint vote of the general assembly, and shall hold their respective offices for two years, and until their successors are duly elected and qualified.

SEC. 3. All offices in this Territory are hereby declared vacant, except such as have been filed by the appointments of Brigadier General Kearny; and all offices created by this law shall be filled by appointment of Brigadier General Kearny or his successor, until the government is fully organized in accordance with the provisions of this law.

SEC. 4. Schools and the means of education shall be forever encouraged in this Territory. One or more schools shall be established

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in each village as soon as practicable, where the poor shall be educated free of all charges.

## BILL OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established, it is hereby declared—

First. That all political power is vested in and belongs to the people.

Second. That the people have the right peaceably to assemble for their common good, and to apply to those in power for redress of grievances, by petition or remonstrance.

Third. That all men have a natural and inalienable right to worship Almighty God according to the dictates of their consciences; that no person can ever be hurt, molested, or restrained in his religious professions, if he do not disturb others in their religious worship, and that all Christian churches shall be protected and none oppressed, and that no person on account of his religious opinions shall be rendered ineligible to any office of honor, trust, or profit.

Fourth. That the courts of justice shall be open to every person; just remedy given for every injury to person and property; that right and justice shall be administered without sale, denial, or delay, and that no private property shall be taken for public use without just compensation.

Fifth. That the right of trial by jury shall remain inviolate.

Sixth. That in all criminal cases the accused has the right to be heard by himself and counsel, to demand the nature and cause of the accusation, to have compulsory process for witnesses in his favor, to meet the witnesses against him face to face, and to have a speedy trial by a jury of his country.

Seventh. The accused can not be compelled to give evidence against himself, or be deprived of life, liberty, or property, but by a verdict of a jury and the laws of the land.

Eighth. No person, after having been once acquitted by a jury, can be tried a second time for the same offense.

Ninth. That all persons shall be bailed by sufficient sureties, except in capital offenses, where the proof of guilt is evident; and the privileges of the writ of habeas corpus can not be suspended except the public safety shall require it, in the case of a rebellion or invasion.

Tenth. Excessive bail shall not be required, excessive fines imposed nor cruel and unusual punishments inflicted.

Eleventh. That the people shall be secure in their persons, papers, houses, and effects, from unreasonable searches and seizures; and that no writ shall issue for search or seizure without a probable case of guilt is made out under oath.

Twelfth. That the free communication of thoughts and opinions is one of the invaluable rights of freemen, and that every person may freely speak, write, and print on any subject, being responsible for every abuse of that liberty.

Thirteenth. That no vicar, priest, preacher of the Gospel, nor teacher, of any religious denomination shall ever be compelled to bear arms, or to serve on juries, work on roads, or perform military duty.



Done at the government house in the city of Santa Fe, in the Territory of New Mexico, by Brigadier General Stephen W. Kearny, by virtue of the power and authority conferred on him by the Government of the United States, this twenty-second September, eighteen hundred and forty-six.

S. W. KEARNY,  
*Brigadier General, U. S. Army.*

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## LAWS FOR THE GOVERNMENT OF THE TERRITORY OF NEW MEXICO.

### ADMINISTRATION.

SECTION 1. The laws heretofore in force concerning descents, distributions, wills, and testaments, as contained in the treatise on these subjects written by Pedro Mirillo de Larde, shall remain in force, so far as they are in conformity with the Constitution and laws of the United States and the statute laws in force for the time being.

SEC. 2. The prefects shall grant letters testamentary and of administration.

SEC. 3. Letters testamentary and of administration shall be granted in the county in which the mansion house or place of abode of the deceased is situated. If he had no mansion house or place of abode at the time of his death, and be possessed of lands, letters shall be granted in the county in which the lands, or a part thereof, lie. If the deceased had no mansion house or place of abode, and was not possessed of land, letters may be granted in the county in which he died, or the greater part of his estate may be. If he died out of the Territory, having no mansion house or place of abode, or lands, within this Territory, letters may be granted in any country in which any of the personal estate of the deceased may be.

SEC. 4. All orders, settlements, trials, and proceedings, touching the administration of estates, shall be had or made in the county in which the letters testamentary or of administration were granted.

SEC. 5. Letters of administration shall be granted, first, to the husband or wife surviving; second, if there be no husband or wife surviving, to those who are entitled to the distribution of the estate, or one or more of them, as the prefect shall believe will best manage the estate.

SEC. 6. If no person apply for such letters within thirty days after the death of the deceased, any creditor shall be allowed to take out such letters; and in defect of these, the prefect may select as administrator such discreet person as he may choose.

SEC. 7. After probate of any will, letters testamentary shall be granted to the person or persons therein appointed executor or executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons therein appointed. If all such persons refuse to act, or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will. When there are two or more persons named executors in a will, none shall have power to act as such except those who give bond.



SEC. 8. If the validity of a will be contested, or the executor be a minor, or absent from the Territory, letters of administration shall be granted during the time such contest, minority, or absence, to some other person, who shall take charge of the property, and administer the same according to law, under the direction of the prefect, and account for and pay and deliver all the money and property of the estate to the executor or regular administrator, when qualified to act.

SEC. 9. Every applicant for letters of administration, at the time of the application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased; that the deceased died without a will, and that he will make a perfect inventory, and faithfully administer all the estate of the deceased, and account for and pay all assets which shall come to his possession or knowledge.

SEC. 10. A similar affidavit, with variations, as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the minority or absence of the executor.

SEC. 11. Every administrator, with the will annexed, and executor, at the time letters are granted to him, shall make an affidavit that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator, and render just accounts, and faithfully perform all things required by law touching such executorship or administration. The prefect shall take a bond of the person to whom letters testamentary or of administration are granted, with two or more sufficient securities, resident in the county, to the Territory of New Mexico, in such sum as the prefect shall deem sufficient, not less than double the estimated value of the estate, conditioned for the faithful performance of his duties as executor or administrator, and no person shall act as executor or administrator until he shall have given such bond. If any prefect shall refuse or neglect to take such bond at the time of granting such letters, he shall himself be liable for all the damages resulting from such neglect or refusal, at the suit of any person injured.

SEC. 12. All letters testamentary and of administration, and all bonds and affidavits of executors and administrators, shall be recorded by the clerk of the prefect, in a well-bound book, kept for that purpose, before such letters are delivered to the executor or administrator; and the clerk shall certify on the letters that they have been recorded; and if any prefect shall deliver, without complying with the foregoing requisitions, any such letters, he shall forfeit to the party injured double the damages occasioned by such default.

SEC. 13. Every executor and administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the court of the prefect, at the first term after the end of one year from the date of his letters, and at the corresponding term of such court every year thereafter, until the administration be completed; and upon every failure so to do, may be fined not more than one hundred dollars, for the use of the county, and shall forfeit to the party injured double the damage sustained by such default.

## ATTACHMENTS.

SECTION 1. Creditors, whose demands amount to fifty dollars or more, may sue their debtors in the circuit court by attachment, in the following cases:

First. When the debtor is not a resident of, nor resides in this Territory.

Second. When the debtor has concealed himself, or absconded, or absented himself from his usual place of abode in this Territory, so that the ordinary process of law can not be served upon him.

Third. When the debtor is about to remove his property or effects out of this Territory, or has fraudulently conveyed or assigned his property or effects, or has fraudulently concealed or disposed of his property or effects, so as to defraud, hinder, or delay his creditors.

Fourth. When the debtor is about fraudulently to convey or assign, conceal, or dispose of his property or effects, so as to hinder, delay, or defraud his creditors.

Fifth. When the debt was contracted out of this Territory, and the debtor has absconded, or secretly removed his property or effects into this Territory, with the intent to hinder, delay, or defraud his creditors.

SEC. 2. A creditor wishing to sue his debtor by attachment, may file in the clerk's office of the circuit court of any county in this Territory a petition or other lawful statement of his cause of action; and shall also file an affidavit and bond: and thereupon such creditor may sue out an original attachment against the lands, tenements, goods, moneys, effects, and credits of the debtor, in whosoever hands they may be.

SEC. 3. The affidavit shall be made by the plaintiff or some person for him, and shall state that the defendant is justly indebted to the plaintiff, after allowing all just credits and offsets, in a sum to be specified in the affidavit, and on what account; and shall also state the affiant has good reason to believe, and does believe, the existence of one or more of the causes which, according to the provisions of the first section, will entitle the plaintiff to sue by attachment.

SEC. 4. The bond shall be executed by the plaintiff, or some responsible person as principal, and two or more securities, residents of the county in which the action is to be brought, in a sum at least double the amount sworn to, payable to this Territory, conditioned that the plaintiff shall prosecute his action without delay, and with effect, and refund all sums of money that may be adjudged to be refunded, to the defendant, and pay all damages that may accrue to any defendant, or garnishee, by reason of the attachment, or any process or judgment thereon.

SEC. 5. The clerk shall judge of the sufficiency of the penalty, and the security in the bond; if they be approved, he shall indorse his approval thereon, and the same, together with the affidavit and petition, or other lawful statement of the cause of action, shall be filed before an attachment shall be issued.

SEC. 6. The bond given by the plaintiff, or other person, in a suit by attachment, may be sued on by any party injured, in the name of the Territory; and he shall proceed as in ordinary suits, and shall recover such damages as he may have sustained.

SEC. 7. Original writs of attachment shall be directed to the sheriff of the proper county, commanding him to attach the defendant by all and singular his lands and tenements, goods, moneys, effects, and credits, in whosoever hands the same may be found, with a clause of the nature and to the effect of an ordinary citation, to answer the action of the plaintiff.

SEC. 8. Original writs of attachment shall be issued and returned in like time and manner as ordinary writs of citation; and when the defendant is cited to answer the action, the like proceedings shall be had between him and the plaintiff as in ordinary actions or contracts, and a general judgment may be rendered for or against the defendant.

SEC. 9. The manner of serving writs of attachment shall be as follows:

First. The writ and petition, or other lawful statement of the cause of action, shall be served on the defendant as an ordinary citation.

Second. Garnishees shall be summoned by the sheriff, declaring to them that he summons them to appear at the return term of the writ to answer the interrogatories which may be exhibited by the plaintiff, and by reading the writ to them if required.

Third. When lands or tenements are to be attached, the officer shall briefly describe the same in his return, and state that he attached all the right, title, and interest of the defendant to the same; and shall moreover give notice to the actual tenants, if any there be.

Fourth. When goods and chattels, moneys, effects, or evidences of debt are to be attached, the officer shall seize the same and keep them in his custody, if accessible; and, if not accessible, he shall summon the person in whose hands they may be, as garnishee.

Fifth. When the credits of the defendant are to be attached, the officer shall declare to the debtor of the defendant that he attaches in his hands all debts due from him to the defendant, or so much thereof as shall be sufficient to satisfy the debt, interest, and costs, and summon such person as garnishee.

SEC. 10. All persons shall be summoned as garnishee who are named as such in the writ; and such others as the officer shall find in the possession of goods, money, or effects of the defendant not actually sized by the officer and debtors of the defendant, and also such as the plaintiff or his agent shall direct.

SEC. 11. When the defendant can not be cited, and his property or effects shall be attached, if he do not appear and answer to the action at the return term of the writ, within the first two days thereof, the court shall order a publication to be made, stating the nature and amount of the plaintiff's demand, and notifying the defendant that his property has been attached, and that, unless he appear at the next term, judgment will be rendered against him, and his property sold to satisfy the same; which notice shall be published four weeks successively in some newspaper printed in this Territory, the last insertion to be not less than two weeks before the first day of the next term; but if there should be no newspaper printed in this Territory, said notice shall be published by not less than six handbills put up at six different public places in the county at least six weeks before the first day of the next term.



SEC. 12. When the defendant shall be notified by publication as aforesaid, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded on to final judgment, as in ordinary actions, but such judgment shall only bind the property attached, and shall be no evidence of indebtedness against the defendant in any subsequent suit.

SEC. 13. When property of the defendant, found in his possession or in the hands of any other person, shall be attached, the defendant or such other person may retain possession thereof, by giving bond and security, to the satisfaction of the officer executing the writ, to the officer or his successor, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the court shall direct, and shall abide the judgment of the court.

SEC. 14. The officer executing the writ of attachment shall return with the writ all bonds taken by him in virtue thereof, a schedule of all property and effects attached, and the names of all the garnishees, the times and places when and where respectively summoned.

SEC. 15. If the officer willfully fail to return a good and sufficient bond in any case where bond is required by this law, he shall be held and considered as security for the performance of all acts and the payment of all money to secure the performance of which such bond ought to have been taken.

SEC. 16. In all cases where property or effects shall be attached, the defendant may, at the court to which the writ is returnable, put in his answer without oath, denying the truth of any material fact contained in the affidavit, to which the plaintiff may reply. A trial of the truth of the affidavit shall be had at the same term, and on such trial the plaintiff shall be held to prove the existence of the facts set forth in the affidavit as the ground of the attachment; and if the issue be found for him, the cause shall proceed; but if it be found for the defendant, the cause shall be dismissed, at the cost of the plaintiff.

SEC. 17. The plaintiff may exhibit in the cause written allegations and interrogatories at the return term of the writ, and not afterwards, touching the property, effects, and credits attached in the hands of any garnishee. The garnishee shall exhibit and file his answer thereto, on oath, during such term, unless the court, for good cause shown, shall order otherwise. In default of such answer, or of a sufficient answer, the plaintiff may take judgment by default against him, or the court may, upon motion, compel him to answer by attachment of his body.

SEC. 18. Such judgment by default may be proceeded on to final judgment, in like manner as in case of defendants in actions upon contracts; but no final judgment shall be rendered against the garnishee till there shall be a final judgment against the defendant.

SEC. 19. Plaintiff may deny the answer of the garnishee in whole or in part, and the issue shall be tried as ordinary issues between plaintiffs and defendants. If, on such trial, the property or effects of the defendant be found in the hands of the garnishee, the value thereof may be assessed, and judgment shall be for the proper amount of money. If the answer of the garnishee be not excepted to



or denied at the same term at which it is filed, it shall be taken as true and sufficient.

SEC. 20. If by the answer not excepted to, nor denied, it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the value of the property or the effects, or of the debt being ascertained, judgment may be rendered against the garnishee.

SEC. 21. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs as in ordinary cases between plaintiff and defendant.

SEC. 22. Creditors whose demands are for a less amount than fifty dollars may sue their debtors by attachment before an alcalde in the same cases, and in the same manner, and under the same rules as creditors are allowed to sue out writs of attachments in the circuit court, provided that publication, when required, may be by six hand-bills put up at different public places three weeks before the return day of the writ.

#### ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

SECTION 1. There shall be an attorney general appointed by the governor, who shall reside and keep his office at the seat of government; he shall act as circuit attorney for the circuit in which the seat of government is, and in said circuit shall perform the duties required by law of circuit attorneys, and receive the same fees therefor.

SEC. 2. When required, he shall give his opinion in writing to the general assembly, or either house, to the governor, secretary of the Territory, auditor, treasurer, and any circuit attorney, upon any question of law relating to their respective duties or offices.

SEC. 3. The governor shall appoint a suitable circuit attorney in every circuit in this Territory, who shall hold his office for two years, and until his successor be appointed and qualified; he shall reside in his circuit; he shall commence and prosecute all civil and criminal actions in which the Territory or any county in his circuit may be concerned, and defend all suits which may be brought against the Territory, or any county in his circuit; he shall prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the Territory or any county in his circuit.

SEC. 4. If the attorney general or circuit attorney be interested, or shall have been counsel in any cause, or shall be absent at the trial of any cause, the circuit court may appoint some other person to prosecute or defend the cause.

SEC. 5. If the attorney general or circuit attorney be sick, or absent, the circuit court shall appoint some person to discharge the duties of the office, until the proper officer resumes the discharge of his duties; the person thus appointed shall possess the same power and receive the same fees as the proper officer would if he were present.

SEC. 6. The circuit attorney shall give his opinion without fee to any alcalde or prefect in his circuit, if required, on any question of law in any case in which the Territory or any county in his circuit is concerned, pending before such officer.

SEC. 7. In addition to the fees of office the attorney general shall receive a salary of five hundred dollars a year, and each circuit attorney shall receive an annual salary of two hundred and fifty dollars, one half to be paid out of the Treasury of the United States and the other half to be paid out of the treasury of the Territory.

#### CLERKS.

SECTION 1. Every prefect shall appoint a clerk, who shall hold his office for two years, and until his successor is appointed and qualified.

SEC. 2. The clerk of the circuit court of the county in which the superior court may sit shall be ex officio clerk of the superior court.

SEC. 3. The clerks of the superior and inferior courts, and of the prefect, shall seasonably record the judgments, rules, orders, and other proceedings of their respective courts, and make a complete alphabetical index thereto, issue and attest all process issuing from their respective offices, and affix the seal of office thereto; they shall preserve the seal and other property belonging to their respective offices; they shall provide suitable books, stationery, and furniture for their respective offices, and keep a correct account thereof.

SEC. 4. Each court shall audit and allow such accounts, and all such allowances made to the clerk of the superior court shall be paid by the United States, and all others by their respective counties.

SEC. 5. The said clerks, previous to entering on the duties of their respective offices, shall give bond, with security, to the Territory, to be approved by the judge making the appointment, conditioned to do and perform all the duties required by law.

SEC. 6. If any clerk shall willfully and knowingly do any act contrary to the duties of his office, or shall knowingly and willfully fail to perform any duty required of him by law, he shall be removed from his office by the court of which he is clerk, on motion founded on charges exhibited.

SEC. 7. A notice of such motion and copy of the charges shall be served on him at least ten days before the day on which the motion is made. A jury shall be summoned to try the truth of the charges, if they are denied, or the whole may be submitted to the court at the option of the accused.

#### CONSTABLES.

SECTION 1. Every prefect shall appoint not more than four constables in his county, who shall hold their offices for not more than two years.

SEC. 2. Every constable, within ten days after his appointment, shall appear before the prefect and enter into bond to the Territory with good securities, for not less than four hundred nor more than four thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all money by him collected by virtue of his office, and discharge all the duties of constable according to law; which bond shall be approved by the prefect and filed in the office of his clerk.

SEC. 3. Whenever the prefect shall be satisfied that the bond of any constable is likely to prove insufficient, by reason of the death or failure of the sureties to his bond, or any of them, he shall require

such constable to give a new bond; and, in default thereof, shall remove him from office.

SEC. 4. If any constable shall detain any money collected by him as constable after demand made therefor, he shall be removed from his office by the prefect in the same manner as is prescribed for the removal of clerks; and shall, moreover, forfeit to the party entitled thereto two per centum a month upon the amount so detained from the time of demand made until actual payment.

#### COURTS AND JUDICIAL POWERS.

SECTION 1. The judges of the superior court shall be ex officio judges of the respective circuit courts; and they shall determine, by vote or otherwise, who shall be presiding or chief justice, and who shall be first and who second associate justice.

SEC. 2. This Territory shall be divided into three judicial circuits, which shall correspond with the three municipal districts as established in the organic law, to wit, the central, the northern, and the southeastern.

SEC. 3. The presiding judge shall be judge of the central circuit; the first associate judge shall be judge of the southeastern circuit; and the second associate judge shall be judge of the northern circuit. Each judge shall hold three courts a year in each county of his circuit; and the three judges, as a superior court, shall hold two courts in each circuit every year.

SEC. 4. The superior court shall be held in the southeastern district, at the town of Valencia, on the first Mondays of March and September of every year; in the central district, at the city of Santa Fe, on the third Mondays of March and September of every year; and in the northern district, at the town of Don Fernando, on the first Mondays of April and October of every year.

SEC. 5. In the southeastern circuit, at the following times and places, the circuit court shall be held, to wit: For the county of Valencia, on the third Mondays of February, June, and October of each year, at the town of Valencia; and for the county of Bernalillo, on the fourth Mondays of February, June, and October of each year, at the town of Bernalillo.

SEC. 6. The circuit court for the central circuit shall be held at the following times and places, to wit: For the county of Santa Anna, on the first Mondays of February and June, and the third Monday of October of each year at the town of Algodonco; for the county of Santa Fe, on the second Mondays of February and June and the fourth Monday in October in each year, at the city of Santa Fe; for the county of San Miguel del Bado, on the third Mondays in February and June and first Monday in November of each year, at the town of San Miguel.

SEC. 7. The circuit court for the northern circuit shall be held at the times and places following, to wit: For the county of Rio Arriba, on the first Mondays of February and June and the third Monday in October of each year, at the town of Los Luceros; and for the county of Taos, on the second Mondays of February and June and the fourth Monday of October of each year, in the town of Don Fernando.



SEC. 8. The superior court shall have appellate jurisdiction in all cases, both civil and criminal, which may be determined in circuit courts.

SEC. 9. Every person aggrieved by any judgment or decision of any circuit court, in any civil case, may make his appeal to the superior court.

SEC. 10. No such appeal shall be allowed unless, first, the appeal be taken at the same term at which the judgment or decision appealed from was rendered; and, second, unless the appellant or his agent shall, during the same term, file in the court his affidavit stating that such appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

SEC. 11. Upon the appeal being made, the circuit court shall make an order allowing the same. Such allowance shall stay the execution in the following cases and in no others: First, when the appellant shall be executor or administrator and the action by or against him as such; and, second, when the appellant, or some responsible person for him, together with two sufficient sureties, to be approved by the court during some term at which the judgment or decision appealed from was rendered, shall enter into a recognizance to the adverse party in a sum sufficient to secure the debt, damages, and cost covered by such judgment or decision, together with the interest that may grow thereon, and the costs and damages which may be recovered in the superior court, conditioned that the appellant shall prosecute his appeal with due diligence to a decision in the superior court; and that, if the judgment or decision appealed from be affirmed, or the appeal be dismissed, he will perform the judgment of the circuit court; and that he will also pay the costs and damages that may be adjudged against him upon his appeal.

SEC. 12. No exception shall be taken in an appeal to any proceeding in the circuit court, except such as shall have been expressly decided by that court.

SEC. 13. All appeals taken thirty days before the first day of the next term of the superior court shall be tried at that term, and appeals taken less than thirty days before the first day of such next term shall be returnable to the next term thereafter. The appellant shall file, in the office of the clerk of the superior court, at least ten days before the first day of the term of such court to which the appeal is returnable, a perfect transcript of the record and proceedings in the case. If he fail so to do the appellee may produce in court such transcript; and if it appear thereby that an appeal has been allowed in the case, the court shall affirm the judgment, unless good cause to the contrary be shown. On appeals and writs of error the appellant and plaintiff in error shall assign errors on or before the first day of the term to which the cause is returnable: in default of such assignment of errors the appeal or writ of error may be dismissed and the judgment affirmed, unless good cause for such failure be shown. Joinders in error shall be filed within four days after the time required for the filing of the assignment of error.

SEC. 14. The superior court, in appeals or writs of error, shall examine the record, and on the facts therein contained alone shall award a new trial, reverse or affirm the judgment of the circuit court, or give such other judgment as to them shall seem agreeable to law.



SEC. 15. And upon the affirmance of any judgment or decision, the superior court may award to the appellee or defendant in error such damages, not exceeding ten per centum on the amount of the judgment complained of, as may be just.

SEC. 16. When the superior court shall be equally divided in opinion the judgment or decision of the circuit court shall be affirmed.

SEC. 17. The superior court, on the determination of the case in appeal or error, may award execution to carry the same into effect, or may remit the accord, with their decision, to the circuit court from which the cause came, and such determination shall be carried into execution by such circuit court.

SEC. 18. The circuit courts in the several counties in which they may be held shall have power and jurisdiction as follows:

First. Of all criminal cases that shall not otherwise be provided for by law.

Second. Exclusive original jurisdiction in all civil cases which shall not be cognizable before the prefects and alcaldes.

Third. Appellate jurisdiction from the judgments and orders of the prefects and alcaldes in all cases not prohibited by law, and shall possess a superintending control over them.

SEC. 19. There shall be a prefect in each county in this Territory, appointed by the governor, who shall hold his office for two years, and until his successor be appointed and qualified.

SEC. 20. Six terms of the prefects' courts shall be held in each county annually, commencing on the first Mondays of January, March, May, July, September, and November. Each prefect may hold adjourned terms of his court at any time that business may require it.

SEC. 21. The several prefects shall have exclusive original jurisdiction in all cases relative to the probate of last wills and testaments; the granting letters testamentary and of administration and the repealing the same; the appointing and displacing guardians of orphans and of persons of unsound mind; to binding out apprentices; to settlement and allowance of accounts of executors, administrators, and guardians; to hear and determine all controversies respecting wills, the right of executorship and administration of guardianship, respecting the duties or accounts of executors, administrators, and guardians, and all controversies between masters and those bound to them; to hear and determine all suits and proceedings instituted against executors or administrators, upon any demand against the estate of their testator or intestate: *Provided*, That when such demand shall exceed one hundred dollars the claimant may sue either before the prefect or in the circuit court of the first place. The prefect shall have the superintendence of public roads in his county; may appoint overseers and allot them hands for the purpose of establishing and repairing the same. He shall have the supervision of vagrants and those who have no visible means of support, and may have them arrested and tried by a jury, and, in case of conviction, put to hard labor by binding them out or placing them on public works for not more than three months; he shall have appellate jurisdiction from the judgment of the alcaldes, when the amount in controversy or the value of the thing claimed does not exceed fifty dollars. Appeals shall be allowed from all judgments of the prefect

of the circuit court: *Provided*, That all judgments in cases of appeals from the decision of the alcaldes shall be final and conclusive.

SEC. 22. Appeals from the judgment of the prefects shall be allowed to the circuit court in the same manner and subject to the same restrictions as in cases of appeals from the circuit to the superior court.

SEC. 23. The governor shall appoint not more than five alcaldes in each county, who shall hold their offices for two years.

SEC. 24. Every alcalde shall have jurisdiction over the following actions:

First. All actions founded upon bonds or other contracts when balance due as damages claimed, exclusive of interest, shall not exceed ninety dollars.

Second. All actions of trespass and of trespass on the case for injuries to persons, or real or personal property, when the damages claimed shall not exceed fifty dollars.

Third. To take and enter judgment on confession, when the amount confessed shall not exceed one hundred dollars; but no alcalde shall have jurisdiction of any action against an executor or administrator, or of any action of slander, malicious prosecution, or false imprisonment, nor of any action in which the title to lands or tenements shall come in question.

SEC. 25. Every alcalde shall appoint a day in every month to return all summons by him issued, and every summons shall be made returnable on such day, except in cases where it is otherwise specially provided.

SEC. 26. In all cases not otherwise specially provided for, the process shall be a summons, and shall be directed to some constable of the county in which the alcalde who granted the same resides, except where it is specially otherwise provided; and it shall command the defendant to appear before the alcalde who issued the same, at the time and place to be named in the summons, not less than five nor more than thirty days from the date of the summons, to answer to the complaint of the plaintiff. All process issued by alcaldes shall run in the name of the Territory of New Mexico, and be dated on the day it issued, and shall be signed by the alcalde granting the same.

SEC. 27. Every summons shall be served at least three days before the day of the appearance therein mentioned, and may be executed either—

First. By reading the same to the defendant; or,

Second. By giving a copy thereof to the defendant; or,

Third. By leaving a copy of the summons at his usual place of abode, with some member of the family over the age of fifteen years; but in all cases where the defendant shall refuse to hear the summons read, or to receive a copy thereof, such refusal shall be a sufficient service of such writ.

SEC. 28. When both parties first appear before the alcalde on the return of the process, the alcalde shall, upon the application of the defendant, require of the plaintiff a brief verbal statement of the nature of his demand.

SEC. 29. The alcalde shall issue subpoenas in all cases for witnesses at the request of either party, which shall be served by the constable in like manner as a summons.

SEC. 30. Every suit shall be determined at the return of the process duly served, unless the cause be adjourned. The alcalde, without the application or consent of either party, may, if it be necessary, adjourn a cause to his next law day.

SEC. 31. The alcalde, upon the application of either party, for good cause shown by the party applying, under oath, may adjourn a cause until his next law day.

SEC. 32. When both parties appear before the alcalde in person, or by agent, at the time appointed for the trial of the cause, the alcalde shall proceed to hear and determine the same according to equity and good conscience.

SEC. 33. Either party to any cause pending before an alcalde may, before the commencement of the investigation of its merits, demand that the same be tried by a jury, which jury shall consist of six persons.

SEC. 34. The alcalde shall issue a summons to some constable of the county wherein the cause is to be tried, commanding him to summon six good, lawful men of the county, qualified to serve as jurors, to appear before such alcalde at the time and place to be named therein, to make a jury, for the trial of the action between the parties named therein.

SEC. 35. The constable shall execute such summons fairly and impartially, in the manner prescribed for executing a summons on the defendant; and if a sufficient number of competent jurors can not be obtained from those returned, the constable shall immediately summon others to serve in their places.

SEC. 36. The alcalde shall administer an oath to each juror well and truly to try the matter in difference between the plaintiff and defendant, and, unless discharged by the alcalde, a true verdict to give according to the evidence.

SEC. 37. After the jury are sworn they shall sit together and hear the testimony of the witnesses, which shall be delivered publicly in their presence.

SEC. 38. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn that the evidence he shall give relating to the matter in dispute between the plaintiff and defendant shall be the truth, the whole truth, and nothing but the truth.

SEC. 39. When the jurors have agreed on their verdict they shall deliver the same to the alcalde publicly, who shall enter it upon his docket.

SEC. 40. The alcalde, whenever he shall be satisfied that a jury, in any civil cause before him, after having been out a reasonable time, can not agree on their verdict, he may discharge them, and shall issue a new jury summons, unless the parties consent that the alcalde may render judgment upon the evidence already before him; which, in such case, he may do.

SEC. 41. If the defendant, after being duly summoned, fail to appear at the time and place mentioned in the summons, the alcalde shall render judgment by default against him, and proceed to ascertain the amount due from the defendant to the plaintiff. If any witness fail to appear, unless good cause be shown, the alcalde shall issue an attachment against him to compel his attendance, and may



fine him, not exceeding five dollars, for the use of the county, for a contempt of court.

SEC. 42. If the plaintiff fail to appear before the alcalde at the time and place mentioned in the summons, the alcalde shall dismiss his suit and enter judgment for cost against him, unless his suit be founded upon bond or note; in which case the cause shall proceed in the same manner and with the like effect as though the plaintiff was personally present.

SEC. 43. Appeals shall be allowed from judgments of alcaldes when the debt or damages do not exceed fifty dollars to the prefect; in all other cases to the circuit court in the same manner and subject to the same restrictions as in cases of appeals from the circuit to the superior court: *Provided*, That an appeal may be taken from the judgment of an alcalde within ten days after the rendition of the judgment.

#### COSTS.

SECTION 1. In all civil actions or proceedings of any kind the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law.

SEC. 2. In all actions founded on debt or other contract, if the plaintiff recover an amount which, exclusive of interest, is below the jurisdiction of the court, he shall receive judgment therein; but the costs shall be adjudged against him unless the plaintiff's claim, as established on the trial, shall be reduced by offsets below the jurisdiction of the court.

SEC. 3. When an appeal shall be taken from the judgment of a prefect or alcalde against the appellant the costs shall be adjudged as follows:

First. If the judgment be affirmed or the appellee, on trial anew, shall recover as much or more than the amount of the judgment below, the appellant shall pay costs in both courts.

Second. If, on such trial, the judgment of the appellate court shall be in favor of the appellant, the appellee shall pay costs in both courts.

Third. If the appellant shall, at any time before the appeal is perfected, tender to the appellee any part of the judgment, and he shall not accept it in satisfaction, and the appellee shall not recover more than the amount so tendered, he shall pay costs in the appellate court, but not in the court below.

Fourth. If no such tender be made and the appellee recover anything in the appellate court the appellant shall pay costs in both courts.

SEC. 4. If such appeal shall be from a judgment in favor of the appellant, cost shall be adjudged as follows:

First. If, upon the trial anew, the appellant shall not recover more than the judgment below, he shall pay the costs of the appellate court.

Second. If he recover nothing, the costs shall be adjudged against him in both courts.

Third. If he recover more than the judgment below, he shall recover costs in both courts.



SEC. 5. In cases of appeals in civil suits, if the judgment of the appellate court be against the appellant, it shall be rendered against him and his securities in the appeal bond.

SEC. 6. When any demand shall be presented to the court of prefect for allowance against the estate of any decedent, if the demand be allowed, the estate shall pay the costs; if disallowed, the party presenting the demand shall pay the costs.

SEC. 7. If any person commence a suit in the circuit court against an estate within twelve months from the date of the administration, he may recover judgment, but shall pay all costs.

SEC. 8. In criminal cases, if the defendant be convicted, costs shall be adjudged against him.

SEC. 9. In all capital cases in which the defendant shall be convicted and shall be unable to pay the costs, they shall be paid by the United States; in all other cases of conviction on indictment, when the defendant shall be unable to pay the costs, they shall be paid by the Territory.

SEC. 10. In all capital cases, if the defendant be acquitted, the costs shall be paid by the United States; and in all other cases of acquittal on indictments the cost shall be paid by the Territory.

SEC. 11. In all cases when any person shall be committed or recognized to answer a criminal offense, and no indictment shall be found against such person, the prosecutor shall be liable for the costs.

SEC. 12. If a person charged with an offense shall be discharged by the officer taking his examination; or if on the trial before a prefect or alcalde of any criminal offense cognizable before such officers, the defendant be acquitted, the costs shall be paid by the prosecutor.

SEC. 13. In all prosecutions instituted otherwise than by indictment, if the offender be convicted, the costs shall not be taxed against the United States, the Territory, or any county.

SEC. 14. The person on whose oath or information any criminal prosecution shall have been instituted shall be considered the prosecutor.

SEC. 15. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part shall be paid by the United States, the Territory, or any county, except fees for board.

SEC. 16. When the costs in any criminal case shall be taxed against the United States, the Territory, or any county, the fees of clerk, sheriff, alcaldes, constable, attorney general, circuit attorney, and all other ministerial officers, shall be curtailed one-half.

SEC. 17. No subpoena for a witness in any criminal case shall be issued unless the name of such witness be indorsed on the indictment, or the circuit attorney, or the prosecutor in the case, or the defendant or his attorney shall order the same.

SEC. 18. Whenever a witness in a criminal case is recognized or subpoenaed he shall attend under the same until he be discharged by the court, and no costs shall be allowed for any second recognizance or subpoena against the same witness.

SEC. 19. All fines and penalties imposed, and all forfeitures incurred, in any case not triable by indictment, shall be paid into the treasury of the county in which the offense was committed, for the benefit of said county.

## CRIMES AND PUNISHMENTS.

SECTION 1. The crimes mentioned in the first article of this law being defined with sufficient accuracy by the laws heretofore in force in this Territory, it is deemed unnecessary to do more than to annex the punishment to the respective offenses.

## ARTICLE I.

SECTION 1. If any person shall be convicted of the crime of willful murder, such person shall suffer death. If any person or persons be convicted of manslaughter, such person or persons shall be imprisoned not exceeding ten years and fined not exceeding one thousand dollars.

SEC. 2. If any person or persons shall be convicted of the crime or arson, such person or persons shall be imprisoned not exceeding ten years and fined not exceeding five thousand dollars.

SEC. 3. Every person who shall be convicted of robbery or burglary shall be imprisoned at hard labor not exceeding ten years and receive on his bare back thirty-nine stripes well laid on; and if death ensue to any innocent person or persons from such robbery or burglary, the perpetrator or perpetrators, and his accessories before the fact, shall be deemed guilty of willful murder and punished with death.

SEC. 4. If any person shall be convicted of larceny or theft, he shall be fined in a sum not exceeding one thousand dollars, or imprisoned at hard labor not exceeding two years; and any person convicted of stealing any horse, mare, gelding, mule, ass, sheep, hog, or goat, shall be sentenced to not more than seven nor less than two years' imprisonment at hard labor, or to receive not more than one hundred nor less than twenty stripes well laid on his bare back.

SEC. 5. Every person who shall be convicted of forgery or counterfeiting shall be imprisoned not exceeding ten years, and receive on his bare back not exceeding one hundred lashes well laid on.

SEC. 6. Every person who shall be convicted of stealing, falsifying, or altering any record, or making any fraudulent deed or conveyance, shall be fined not exceeding one thousand dollars, or imprisoned not exceeding seven years.

## ARTICLE II.

SECTION 1. Every person who shall kill another in the necessary defense of his own life, or that of any other person, or of his own house or property, or in the legal execution of any process, or in order to prevent great bodily harm to himself or another, shall be deemed guiltless.

SEC. 2. If any person shall unlawfully have carnal knowledge of any woman by force and against her will, he shall, on conviction thereof, be castrated, or imprisoned not exceeding ten years, or fined not exceeding one thousand dollars.

SEC. 3. Every person who shall be convicted of obtaining any goods, moneys, or effects, with intent to defraud any other person, under any false pretense, shall suffer the same punishment as in case of larceny.

SEC. 4. Every person who shall receive or buy any goods, or effects, or chattels, knowing the same to be stolen. or shall knowingly receive or harbor any thief or felon. shall. on conviction thereof, be punished as in case of larceny.

### ARTICLE III.

SECTION 1. Every person who shall willfully and corruptly swear, testify, or affirm falsely any material matter. upon any oath or affirmation or declaration legally administered in any cause, matter, or proceeding before any court. tribunal. public body, or officer, shall be deemed guilty of perjury, and shall be punished as follows:

First. For perjury committed on the trial of any indictment for a capital offense, with an express premeditated design to effect the condemnation and execution of the prisoner. death or confinement in the county prison not less than ten years.

Second. For perjury committed on any other trial or proceeding or in any other case, by imprisonment not less than five years and not more than ten years, and by not less than fifty nor more than one hundred lashes on his bare back well laid on.

SEC. 2. Every person who shall procure any other person by any means to commit any willful and corrupt perjury in any cause, matter, or proceeding. in or concerning which such other person shall be legally sworn or affirmed. shall be punished in the same manner as hereinbefore prescribed, upon a conviction for the perjury which shall have been so procured.

SEC. 3. Every person who shall be convicted of having, directly or indirectly, given any sum or sums of money or any other bribe, present, or reward, or any promise, contract, or obligation, or security for the payment or delivery of any money, present, or reward, or any other thing to obtain or procure the opinion, judgment, or decree of any judge, prefect, or alcalde, acting within this Territory, in any suit, controversy, matter, or cause depending before him, and every judge, prefect, or alcalde who shall be convicted of having in anywise accepted or received the same, shall be fined not more than five thousand dollars nor less than five hundred dollars, and shall receive not less than twenty nor more than one hundred lashes on the bare back well laid on.

SEC. 4. If any person or persons shall knowingly and willfully obstruct, resist, or oppose any officer of this Territory in serving or attempting to serve or execute any process or any rule or order of any of the courts of this Territory, or any other judicial writ or process, or shall assault, beat, or wound any officer or other person duly authorized, in serving or executing any writ, rule, order, or process aforesaid, he or they, on conviction thereof, shall be imprisoned not exceeding twelve months and fined not exceeding three hundred dollars.

SEC. 5. If any person or persons shall by force set at liberty or rescue any person who shall be found guilty of any capital crime, or rescue any person convicted of the said crimes, going to execution or during execution, he or they so offending and being thereof convicted shall suffer death; and if any person shall by force set at liberty or rescue any person who, before conviction, shall stand



committed for any capital offense, or if any person shall by force set at liberty or rescue any person committed for or convicted of any other offense against this Territory, the person so offending shall, on conviction, be fined not exceeding five hundred dollars and imprisoned not exceeding one year.

SEC. 6. Every person who shall agree or compound to take satisfaction for any criminal offense shall forfeit twice the value of the sum agreed for or taken: but no person shall be debarred from taking his goods or property from the thief, provided he prosecute such thief.

SEC. 7. Every person who shall be convicted of shooting at or stabbing another on purpose, or of assaulting or beating another with a deadly weapon, with intent to kill, maim, ravish, or rob such person, or to commit any other crime, shall be imprisoned not exceeding seven years nor less than two years.

SEC. 8. Every person who shall unlawfully assault, strike, or wound another, except as is provided for in the next preceding section, shall, on conviction, be fined a sum not more than fifty dollars nor less than one dollar.

SEC. 9. Every person who shall be convicted of bigamy or polygamy shall be imprisoned not more than seven years nor less than two years.

SEC. 10. If three or more persons shall assemble together with intent to do any unlawful act against the person or property of another, or to do any other unlawful act against the peace and to the terror of the people, or having lawfully assembled, shall make any movement or preparation to do such act, they shall, on conviction, pay a fine not exceeding fifty dollars and not less than five dollars each.

SEC. 11. The offenses mentioned in the eighth and tenth sections of this article shall be punished in a summary way before the alcaldes. All other offenses provided for in this law shall be punished by indictment in the circuit court.

SEC. 12. The manner of inflicting the punishment of death shall be by hanging the person convicted, by the neck, until dead, and shall be executed by the sheriff in not less than twenty nor more than thirty days from the time sentence was pronounced.

SEC. 13. In all cases of imprisonment for offenses under this law it shall be lawful for the jailor to compel the prisoner to labor at some useful employment, under such directions and regulations as may from time to time be given by the judge of the court before whom the conviction was had; and it shall be lawful to secure such convicts by chain and block, or otherwise, so as to prevent their escape during the period of their imprisonment.

SEC. 14. In all cases of conviction under this law, or any other, for any criminal offense, the convict shall remain in confinement until all the costs attending the prosecution shall be paid and his sentence fully complied with; and if such convict shall not discharge and satisfy the fine and costs, it shall be lawful for the sheriff of the county in which the convict may be imprisoned, if the circuit judge of that county shall so direct, to bind such convict to labor for any term not exceeding five years, to any person who will pay such fine and costs; and the person to whom such convict shall be bound may secure him, without cruelty, to prevent his escape.



SEC. 15. This act shall extend to all crimes committed beyond the limits of any county or settlement within this Territory, and the offender shall be apprehended and brought to the most convenient county or district in the Territory, and prosecuted according to law.

SEC. 16. All fines and penalties accruing under the eighth and tenth sections of this article shall be paid into the treasury of the county in which the offense was committed; all other fines and penalties accruing under this law shall be paid into the Territorial treasury.

#### DECISIONS OF SUPERIOR COURT.

SECTION 1. The attorney general shall be ex officio reporter of the decisions and opinions of the superior court.

SEC. 2. The opinion of the court shall, in all cases, be reduced to writing and filed in the cause to which it relates, which shall apply as well to motions which will dispose of a cause as to final decisions.

SEC. 3. The opinion shall always contain a sufficient statement of the case, so that the same may be understood without reference to the record or other proceedings of the cause.

SEC. 4. The clerk of the superior court shall, when any opinion of the court is filed in his office, indorse thereon the day it is filed, and enter the same on his minutes, and shall, within thirty days thereafter, make a true copy thereof, and shall certify the same and transmit it to the reporter within thirty days after he is required to copy the same; and, upon failure to perform the duties required by this section, he shall forfeit twenty dollars to the use of the Territory, to be recovered by indictment.

SEC. 5. The reporter shall publish the decisions of the superior court under the directions of the court.

#### ELECTIONS.

SECTION 1. On the first Monday in August, eighteen hundred and forty-seven, and every two years thereafter, an election shall be held throughout this Territory for a Delegate to Congress and members of the general assembly.

SEC. 2. The governor of the Territory shall divide each county into as many election precincts as the public convenience may require, and shall name a house in each precinct where the election shall be held, and appoint three discreet persons to hold the same at each place of election.

SEC. 3. If the governor shall not designate the election precincts, or the house, nor appoint the judges thirty days before the day of election, it shall be the duty of the prefects to divide their respective counties into precincts, to name a house in each where the election shall be held, and appoint the judges of the election.

SEC. 4. If both the governor and prefects fail to designate the election precincts, the election shall be held at the seat of justice of each county which is not so divided into precincts; and if no house shall be named by the governor or prefects, it shall be the duty of the sheriff to fix the place of holding the election. And if no judge be appointed, or if those appointed fail to attend, the voters, when assembled, may appoint the judges of the election.

SEC. 5. When the governor issues a writ of election to fill any vacancy, he shall mention in said writ how many days the sheriff shall give notice thereof.

SEC. 6. It shall be the duty of the clerks of the prefects, respectively, one month before each general election, or six days before a special election, to make out and deliver to the sheriff of their counties two blank poll books for each election precinct in their county, properly laid off with columns, with the proper certificates attached. The sheriff shall forthwith deliver to the judges of the election, in their respective precincts, the blank books aforesaid.

SEC. 7. There shall be allowed to the clerks for making out and furnishing the poll books aforesaid one dollar for each copy, to be paid out of the county treasury.

SEC. 8. The judges, before they enter on their duties, shall take an oath or affirmation, to be administered by one of their own body, or by any magistrate authorized to administer oaths, that they will impartially discharge the duties of judge of the present election according to law.

SEC. 9. The judges shall appoint two clerks, who, before entering upon the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected as judge of the election, that they will faithfully record the names of all the voters, and distinctly carry out in lines and columns the name of the person for whom each voter votes.

SEC. 10. The judges of each election shall open the polls at nine o'clock in the morning and continue them open until six o'clock in the evening, when they shall be closed.

SEC. 11. All elections held in pursuance of this law shall continue one day and no longer.

SEC. 12. At the close of each election the judges shall certify, under their hand, the number of votes given for each candidate, which shall be attested by their clerks; and they shall transmit the same, together with one of their poll books, by one of the clerks, to the clerk of the prefect of the county in which the election was held, within five days thereafter; the other poll book shall be retained in the possession of one of the judges of the election, open to the inspection of all persons.

SEC. 13. The clerks of each prefect in this Territory shall, within eight days after the close of each election, take to his assistance the prefect of his county, and examine and cast up the votes given to each candidate, and give to the person having the highest number of votes for any particular office a certificate of election.

SEC. 14. The clerks, in comparing the returns from the several election precincts, shall do it publicly in the courthouse of their counties, first giving notice of the same by public proclamation at the courthouse door.

SEC. 15. In all districts for the election of members to the legislative council composed of two or more counties, the clerks of all the counties of the district shall transmit to the clerk of the county first named in the district, within twelve days after such election, a certificate, under their hands, of the number of votes given to each candidate in the respective counties. The clerk of the county to which such return shall be made shall give to the person having the highest number of votes a certificate of election, under his hand

SEC. 16. The clerks of the several counties to whom a transcript of the votes is directed shall, within two days after the time limited for the examination of the polls, transmit to the seat of government, by a special messenger, a fair abstract of the votes given in their respective counties for Delegate to Congress, members of the legislative council, and house of representatives.

SEC. 17. If there shall be a failure to receive any of the returns at the seat of government for one week after the same shall be due, estimating thirty miles as a day's travel, the secretary of the Territory shall dispatch a messenger to the county not returned, with directions to bring up said abstract.

SEC. 18. If such failure shall happen by neglect of the clerk, he shall forfeit to the Territory one hundred dollars, together with the expense of such messenger, to be recovered by indictment.

SEC. 19. The secretary of the Territory may delay longer than one week, if the circumstances will justify it, taking care that the return in all cases be obtained in the time that the returns from the most distant county ought to be made: *Provided*, That the secretary shall in no case delay to dispatch such messenger for said returns more than forty days after such election.

SEC. 20. Within sixty days after each general election, or sooner if the returns shall all have been made, the secretary, in the presence of the governor, shall proceed to cast up the votes given in all the counties in the Territory for Delegate to Congress, and shall give to the person having the highest number of votes a certificate of his election, under his hand, with the seal of the Territory affixed thereto.

SEC. 21. Should any two or more persons have an equal number of votes, and a higher number than any other persons, the governor shall, in such case, issue his proclamation, giving notice of such fact, and that an election will be held at the place of holding elections in this Territory for such Delegate to Congress, in which shall be mentioned the day of election; which election shall be conducted and returned according to the provisions of this law.

SEC. 22. Within two days after the meeting of each general assembly the secretary of the Territory shall lay before each house a list of members elected, agreeably to the returns in his office; and the two houses shall, without delay, assemble in the hall of the house of representatives, and the speaker of the house of representatives and of the legislative council shall, in the presence of the two houses, examine the returns and declare who are elected to fill said offices.

SEC. 23. If any two or more persons have an equal number of votes for the same office, and more votes than any other persons, the two houses shall, by joint vote, determine the election; and the speakers of the two houses shall deposit in the office of the secretary of the Territory a certificate declaring what persons have been elected.

SEC. 24. There shall be allowed to clerks for sending or conveying the returns of any election in any district into any other county in the district, as occasion may require, and also to any messenger who may be employed to convey the returns of any election to the seat of government, at the rate of five cents per mile going and returning, to be paid out of the Territorial treasury.



SEC. 25. If any judge or clerk, after he shall have undertaken to perform the duties pointed out by this law fails so to do, or if any person employed to carry the returns of any election fails so to do, he shall be fined two hundred dollars for the use of the county, to be recovered by indictment: *Provided*, That said penalty shall not be inflicted on any person prevented by sickness or unavoidable accident from performing the duties assigned him by this law.

SEC. 26. When any person offers to vote, with whose qualifications neither of the judges is personally acquainted, either of the judges may administer an oath and examine him touching his qualifications as a voter.

SEC. 27. If any person offer to vote in a precinct of which he is not a resident, if he possesses the necessary qualifications of a voter, he may vote on taking an oath that he has not voted and will not vote at any other precinct during this election.

SEC. 28. When any person who shall offer himself as a voter shall be excluded from voting by the judges they shall cause his name to be entered on the poll book as a rejected voter and shall also take down the names of the persons for whom such person wishes to vote.

SEC. 29. All judges, clerks, and voters shall be free from arrest, except for felony or breach of the peace, in going to, attending on, and returning from elections.

SEC. 30. If any candidate of the proper county or district contests the election of any person proclaimed duly elected to either house of the general assembly, such person shall give notice in writing to the person whose election he contests, or leave a written notice thereof at the house where such person last resided, within forty days after the return of the election to the clerk's office. The notice shall specify the names of the voters whose votes are contested, the grounds on which such votes are illegal, and the name of the alcalde who will attend to the taking of the depositions, and when and where he will attend to take the same.

SEC. 31. It shall be the duty of the person whose election is contested to select another alcalde to attend at the taking of the depositions at the time and place specified in the next preceding section; and when the parties meet at the time and place specified for taking the depositions, they shall, unless it is otherwise agreed upon, select a third alcalde to assist in taking the depositions.

SEC. 32. If the person whose seat is contested fail to select an alcalde, as provided for in the next preceding section, the person contesting the same shall proceed to select another alcalde without delay, and the two alcaldes thus selected by the contestor shall, in such event, have full power and authority to take depositions of witnesses who may be brought before them to be examined.

SEC. 33. The person whose seat is contested, if he intends to contest the legality of any votes given to the candidate who contests the same, shall, within twenty days after he is notified that his election will be contested, give to the adverse party a similar notice to that specified in the thirtieth section of this law; and the candidate to whom the notice is given shall proceed to select an alcalde in the same manner as is provided for in the thirty-first section; and on his failing to do so the party giving the notice shall, without delay, select another alcalde, and the two alcaldes so selected by the party proclaimed duly elected shall proceed to take the depositions



of such witnesses as may be brought before them to be examined: *Provided, however,* That either party may, without notice, take rebutting testimony before the alcaldes at the time and place specified for taking depositions.

SEC. 34. If from sickness or from any other cause the alcaldes so selected by either party shall fail to attend at the time and place specified for taking depositions, said party shall, without delay, select some other alcalde to supply such vacancy.

SEC. 35. The taking of such depositions shall be commenced within forty days from the day of election; and the said alcaldes, or either of them, shall issue subpœnas to all persons required by either party commanding such persons to appear and give testimony at the time and place therein mentioned.

SEC. 36. The alcaldes shall hear and certify all testimony relative to such election to the speaker of the house a seat to which is contested.

SEC. 37. No testimony shall be received by the alcaldes, or either house of the general assembly, on the part of the contestor or contestee, which does not relate to the point specified in the notice; a copy of which notice, attested by the person who served or delivered the same, shall be delivered to said alcaldes, and by them transmitted with the depositions; and no testimony, except that contained in the depositions taken before the alcaldes, shall be received as evidence by either house of the general assembly.

#### EXECUTIONS.

SECTION 1. The party in whose favor judgment, order, or decree in any court may be rendered shall have execution therefor in conformity to the order, judgment, or decree.

SEC. 2. The execution shall be against the goods, chattels, lands, and body of the defendant against whom the judgment, order, or decree shall be rendered: *Provided,* That executions from alcaldes shall not go against lands.

SEC. 3. When any execution shall be placed in the hands of any officer for collection, he shall call upon defendant for payment thereof, or to show him sufficient goods, chattels, effects, and lands whereof the same may be satisfied; and if the officer fail to find property whereof to make the same, he shall notify all persons who may be indebted to said defendant not to pay said defendant, but to appear before the court out of which said execution issued, and make true answers on oath concerning his indebtedness; and the like proceedings shall be had as in case of garnishees summoned in suits originating by attachment. If the officer shall not find sufficient goods, chattels, effects, lands, or debts to satisfy the execution he shall arrest the body of the defendant, and in default of payment commit him to jail.

SEC. 4. Any defendant so committed to jail, at the expiration of five days from the day of his commitment, may be discharged upon rendering a schedule, under oath, of all his property, money, and effects and delivering the same to the sheriff of the county. The sheriff shall have power to administer the oath aforesaid to said defendant.

SEC. 5. The truth of such schedule may be tried, on the return of the execution, before the tribunal which issued the same; and if

it be found untrue the body of the defendant may be retaken and committed to jail to await his trial for perjury.

SEC. 6. The person whose goods are taken on execution may retain possession thereof until the day of sale, by giving bond in favor of the plaintiff, with sufficient securities, to be approved by the officer, in double the value of such property, conditioned for the delivery of the property to the officer at the time and place of sale to be named in such condition; which bond shall be returned with the execution.

SEC. 7. Upon a failure of the officer to return such bond, or in case of its insufficiency, the officer shall be subjected to the same liability as is provided in the case of similar bonds in suits commenced by attachment.

SEC. 8. No goods and chattels, or other personal effects, taken by virtue of any execution, shall be sold until the officer having charge of the writ shall have given ten days' notice of the time and place of sale and of the property to be sold by at least three advertisements put up at public places in the county in which the sale is to be made.

SEC. 9. When real estates shall be taken in execution by any officer it shall be his duty to expose the same to sale, at the courthouse door, on some day during the term of the court of the county in which the same is situated, having previously given twenty days' notice of the time and place of sale, and what lands are to be sold, and where situated by at least six handbills signed by him and put up at different public places in the county.

SEC. 10. All executions issued by the circuit or superior court or court of a prefect twenty days before the next term of such court shall be returnable to the said next term; and all executions issued from said courts less than twenty days before the next term shall be returnable to the second succeeding term.

SEC. 11. All executions issued by the alcaldes shall be returnable in thirty days from their date.

#### FEES.

SECTION 1. The attorney general and circuit attorneys, respectively, shall be allowed fees as follows, which shall be taxed as other costs:

1. For every conviction on indictment, where the punishment assessed by the court or jury shall be fine or imprisonment, five dollars.

2. For judgment in every proceeding of a criminal nature otherwise than by indictment, five dollars.

3. For his services in all actions which it is or shall be made his duty to prosecute or defend, five dollars.

4. For a conviction for homicide other than capital, for rape, arson, burglary, robbery, forgery, and counterfeiting, ten dollars.

5. For a conviction in a capital case, twenty dollars.

SEC. 2. The clerk of the prefect shall be allowed the following fees:

1. For recording letters testamentary or of administration, one dollar.

2. For filing the bond of an executor or administrator, fifty cents.

3. For order appointing guardian or curator, twelve and one-half cents.

4. For filing and preserving bond of guardian or curator, fifty cents.
  5. For every order of publication, twenty-five cents.
  6. For every order relating to executors, administrators, or guardians, not otherwise provided for, twelve and one-half cents.
  7. For copying any order, record, or paper, for every one hundred words, ten cents.
  8. For entering every verdict and judgment, twelve and one-half cents.
  9. For every instrument of writing, for every one hundred words, ten cents.
  10. For proof of every will or codicil taken by the prefect, twenty-five cents.
  11. For every certificate and seal, twenty-five cents.
  12. For issuing every subpœna, twenty-five cents.
  13. For administering every oath, three cents.
  14. For keeping abstracts of demands—for each demand, three cents.
  15. For certifying the amount, date, and classes of any demand, without seal, five cents.
  16. For entering every motion or rule, five cents.
  17. For swearing and entering a jury, twenty-five cents.
  18. For entering every trial, five cents.
  19. For commission to take depositions, twenty-five cents.
  20. For every execution, fifty cents.
  21. For every continuance of a cause, five cents.
  22. For entering an appeal, twelve and one-half cents.
  23. For every writ to summon a jury, twelve and one-half cents.
  24. For every order to distribute assets among heirs, and so forth, twelve and one-half cents.
  25. For every settlement of executor, administrator, or guardian, whether annual or final, twenty-five cents.
  26. For every order appointing road overseers, twenty-five cents.
  27. For filing and preserving constable's bond, to be paid by constable, twenty-five cents.
  28. For all services in taking, filing, and keeping collector's bond for Territorial taxes, to be paid by the Territory, one dollar.
  29. For like services for collector's bond for county taxes, to be paid by the county, one dollar.
  30. For making out Territorial and county taxes, to be paid by the Territory and county (each for its own), for every one hundred words, ten cents.
  31. For issuing every license, to be paid for by the applicant, fifty cents.
  32. For taking, filing, and safe-keeping every other bond, not otherwise provided for, fifty cents.
  33. For issuing each writ, and receiving, filing, and docketing the return, fifty cents.
  34. For taking every acknowledgment to a deed or writing, twenty-five cents.
- SEC. 3. Clerks of the circuit courts shall receive the following fees for their services:
1. For drawing, sealing, and entering every writ and filing the same, one dollar.

2. For taking and entering every recognizance, twenty-five cents.  
 3. For taking and entering every bond in any case, twenty-five cents.

4. For every issue joined, twenty-five cents.

5. For entering every motion, rule, or order, twenty-five cents.

6. For every continuance of a cause, twenty-five cents.

7. For every subpoena, fifty cents.

8. For a copy of every rule or order, twenty-five cents.

9. For entering every judgment, fifty cents.

10. For swearing and entering every jury, fifty cents.

11. For search of a record of twelve months' standing, five cents.

12. For entering an appeal to the superior court, twenty-five cents.

13. For every writ of attachment, one dollar.

14. For administering every oath, five cents.

15. For copies of records and papers, for every one hundred words, ten cents.

16. For producing any record of the court under any rule or order, twenty-five cents.

17. For taking and entering of record every acknowledgment of sheriff's deed, fifty cents.

18. For certificate and seal, fifty cents.

19. For a venire to summon a jury, fifty cents.

20. For every execution, one dollar.

SEC. 4. Clerks of the several courts of this Territory possessing criminal jurisdiction shall be entitled to the following fees in criminal cases:

1. For every indictment returned by a grand jury, fifty cents.

2. For venire to summon grand or petit jury, fifty cents.

3. For issuing and filing every writ of capias or attachment, one dollar.

4. For taking and entering recognizance of every prisoner, twenty-five cents.

5. For every issue of fact joined, twenty-five cents.

6. For every continuance of a cause, twenty-five cents.

7. For every subpoena, twenty-five cents.

8. For commission to take depositions, fifty cents.

9. For entering judgment on plea of guilty, fifty cents.

10. For swearing and entering each grand jury, fifty cents.

11. For swearing and entering each petit jury, and delivering copy to each party, fifty cents.

12. For judgment on any issue of law or fact, twenty-five cents.

13. For entering appeal to superior court, twenty-five cents.

14. For taking recognizance of such appeal, twenty-five cents.

15. For copies of papers and records, for every one hundred words, ten cents.

16. For administering each oath, five cents.

17. For each certificate and seal, fifty cents.

18. For issuing execution, one dollar.

SEC. 5. Clerks of the superior court shall receive the following fees:

1. For every writ, one dollar.

2. For taking bond and issuing supersedeas, one dollar.

3. For supersedeas alone, fifty cents.

4. For filing transcript and docketing case, fifty cents.



5. For filing assignment or joinder of error, twenty-five cents.
6. For recording the opinion of the court when required so to do, for every one hundred words, ten cents.
7. For copies of the same with certificates, for every one hundred words, ten cents.
8. For certified copies of counsels' briefs, ten cents.
9. For retaxing any bill of costs, to be paid by the clerk whose bill is retaxed, one dollar.
10. For every other service to be performed by said clerks they shall be allowed the same fees that are allowed to clerks of the circuit court for similar services.

SEC. 6. Sheriffs shall be allowed the following fees for their services:

1. For serving every citation or summons, for each defendant, one dollar.
2. For serving writ of capias or attachment for each defendant, one dollar.
3. For taking and returning every bond required by law, fifty cents.
4. For levying every execution, one dollar.
5. For making, executing, and delivering every sheriff's deed, to be paid by the purchaser, two dollars.
6. For every return of non est inventus, on citation or summons, fifty cents.
7. For a return of nulla bona on execution, fifty cents.
8. For executing a special summons for a jury, one dollar.
9. For summoning a jury in any other case, fifty cents.
10. For summoning each witness, fifty cents.
11. For serving every order or rule of court, fifty cents.
12. For attending each court, per day, one dollar and fifty cents.
13. For calling each jury, action, or party, twelve and one-half cents.
14. For calling each witness, five cents.
15. For serving each writ of capias in a criminal case. for each defendant, one dollar.
16. For serving a writ of attachment for each person in a criminal case, one dollar.
17. For serving each writ of execution in a criminal case, one dollar.
18. For every return of non est inventus or nulla bona on an execution in a criminal case, fifty cents.
19. For summoning a grand jury, five dollars.
20. For committing any person to jail in any case, fifty cents.
21. For furnishing prisoners with board, each day, twenty-five cents.
22. For executing every death warrant, fifteen dollars.
23. For commission for receiving and paying moneys on execution where lands or goods have been levied on, advertised. and sold, three and one-half per centum on the first two hundred dollars and two per centum on all sums above that amount, and one-half of such commission when the money has been paid without a levy or where the land and goods levied on have not been sold.
24. The party at whose application any writ, execution subpœna, or other process is issued from the superior court shall cause the same

to be returned without fee unless the court shall, for special reasons, order the personal attendance of the sheriff, in which case he shall be allowed for each mile going and returning from the courthouse of the county in which he resides to the place of sitting of the superior court, five cents.

25. Every court shall allow the sheriff or other officer reasonable compensation for conducting prisoners from one county to another or for keeping the same in custody before they are committed to jail, which cost shall be taxed as other costs in criminal proceedings.

SEC. 7. Witnesses shall be allowed fees for their services in all cases, as follows: For attending any court, referee, clerk, or commissioner within the county where the witness resides, for each day, fifty cents; for attendance as aforesaid, out of the county, for each day, one dollar; for each mile of travel in going to and returning from the place of trial, five cents.

SEC. 8. Alcaldes shall be allowed fees for their services as follows:

1. For every summons, twenty-five cents.
2. For every subpoena, twenty-five cents.
3. For every attachment, fifty cents.
4. For every judgment, twenty-five cents.
5. For every execution twenty-five cents.
6. For administering each oath, five cents.
7. For every order for a jury, twenty-five cents.
8. For taking acknowledgment to deed or power of attorney, twenty-five cents.
9. For making certified copies on appeals, for each one hundred words, ten cents.
10. For every writ of habeas corpus, one dollar and fifty cents.
11. For certifying depositions, twenty-five cents.
12. For writing depositions, for every one hundred words, ten cents.
13. For issuing a warrant in criminal cases, twenty-five cents.
14. For swearing a jury, twenty-five cents.
15. For taking each recognizance, twenty-five cents.

SEC. 9. Constables shall be allowed the following fees for their services:

1. For serving a warrant in a criminal case, for each defendant, fifty cents.
2. For serving summons or notice in a civil case, twenty-five cents.
3. For summoning each jury, seventy-five cents.
4. For taking a criminal to jail, seventy-five cents.
5. For serving every execution, twenty-five cents.
6. For taking a debtor to jail, seventy-five cents.
7. For taking every bond required by law to be taken by him, twenty-five cents.
8. For summoning each witness, twenty-five cents.
9. For serving writ of attachment, fifty cents.
10. For collecting and paying over to plaintiff all sums collected, three per centum.

SEC. 10. Every prefect shall be allowed for his services two hundred dollars a year, to be paid out of the Treasury of the United States, and two dollars a day for every day he may be necessarily employed in the discharge of his duties, to be paid out of the county treasury.

## GUARDIANS.

SECTION 1. In all cases not otherwise provided for by law, the father, while living, and after his death, and when there shall be no lawful father, then the mother, if living, shall be the natural guardian of their children, and have the custody and care of their persons, education, and estates; and when such estate is not derived from the parent acting as guardian such parent shall give security and account as other guardians.

2. If a minor have no parents living, or the parents be adjudged, according to law, incompetent or unfit for the duties of guardian, the prefects in their respective counties shall appoint guardians to such minors.

3. Every appointment of guardian shall specify whether it be of the person or of the personal estate.

4. All guardians of the estate of any minor and all guardians and curators appointed by law shall, before entering on the duties as such give bond, with security, to be approved by the prefect by whom they were appointed, to the Territory of New Mexico, for the use of the minors, respectively, in double the value of the estate or interest to be committed to their care, conditioned for the faithful discharge of their duties according to law.

5. Guardians and curators shall put the money of minors intrusted to their care to interest upon mortgage, to be approved by the prefect; or they may, with the leave of the prefect and the assent of their securities, retain the money in their hands, paying interest therefor; but if no person be found to take the money on interest and the guardian or curator should not choose to retain the same, paying interest, then they shall be liable for the principal alone until the same can be put to interest.

6. Guardians and curators may put the money of minors intrusted to their care, in all sums under five hundred dollars, to interest, upon any sufficient security, to be approved by the prefect.

7. Guardians and curators shall make annual settlements with the court of the prefect in which their proceeding shall be, beginning at the first term after the beginning of a year from their appointments or admissions, respectively, and at each corresponding annual term, as near as may be, until their final settlement; and in such settlements, guardians having the care and education of minors shall make a statement, on oath, of the application of all moneys directed by the court to be applied by them to the education of their wards. Guardians and curators neglecting or refusing to make such settlements or statements on oath herein required shall be liable to be attached and imprisoned until they make such settlement and statement, the court first making a rule on them, respectively, to show cause why they should not be so proceeded against.

## HABEAS CORPUS.

SECTION 1. Every person detained in custody charged with a criminal offense, or otherwise, may have a writ of habeas corpus by application by petition, verified by affidavit of the person in custody or some other competent person to any judge, prefect, or two alcaides.

2. The petition shall state, in substance, by whom the party for whom relief is prayed is imprisoned or restrained of his liberty, and the place where, and the true cause thereof, to the best of the knowledge and belief of the party.

3. The jailer or person having custody of the petitioner shall forthwith be commanded by the officer to whom application is made, by a writ under his hand, to have the petitioner, together with the cause of his detention, before the judge, prefect, or alcaldes issuing the writ.

4. The proper officer shall proceed to hear all the evidence for the prosecution and against it and to determine the cause in a summary manner.

5. Parties to whom bail has been denied or who were unable to give bail may have this writ for the purpose of being released from bail, as required by law.

6. If the officer trying the same shall deem the party innocent he shall release him, but if he thinks him guilty he shall remand him or bail him, according to the circumstance of the case.

#### JAILS AND JAILERS.

SECTION 1. There shall be kept and maintained in good and sufficient condition and repair a common jail in each county within this Territory, to be located at the permanent seat of justice for such county, and at the expense of said county.

2. The sheriff of each county in this Territory shall have the custody, rule, keeping, and charge of the jail within his county and of all prisoners in such jail.

3. It shall be the duty of the sheriff to receive from constables and other officers all persons who shall be apprehended by such constables or other officers for offenses against this Territory or who shall be committed to such jail by any competent authority.

4. When any person is confined in jail on civil process, and money or property of the person imprisoned can not be found sufficient for his maintenance, the plaintiff, at whose suit the person may be imprisoned, shall pay for his maintenance, at the rate of twenty-five cents per day, to be paid to the sheriff or jailer, to furnish such prisoner with provisions to the full amount thereof. In case the said plaintiff shall refuse to pay the money as aforesaid and shall be in arrear two weeks, the sheriff may discharge the prisoner and recover the same from said plaintiff in the same manner as other debts.

5. Whenever any sheriff of any county of this Territory shall have any person in his custody, either on civil or criminal process, or there shall happen to be no jail, or the jail of the county shall be insufficient, it shall be lawful for such sheriff to commit such person to the nearest jail of some other county, and it is hereby made the duty of the sheriff of said county to receive such person so committed as aforesaid, and him or them safely keep, subject to the order or orders of the circuit judge for the county whence said prisoner was brought.

#### JURORS.

SECTION 1. The clerk of each circuit court shall issue an order, at least thirty days before each term of said court, to the sheriff, commanding him to summon eighteen good men to serve as grand jurors



at the next term of said court, who shall be citizens of the county, over twenty-one years of age, and householders and freeholders, and subject to no legal disability.

2. Each grand juror shall be summoned at least six days before the first day of the term of the court.

3. There shall not be less than fifteen grand jurors sworn, and if that number fail to attend the court shall order the sheriff to summon of the bystanders enough others to make up that number.

4. The clerk shall issue subpoenas for and the sheriff shall summon all witnesses who are required by the grand jury.

5. The court shall select and have sworn some competent member of the grand jury as foreman, who shall swear all witnesses coming before them.

6. The circuit attorney shall attend on the grand jury and conduct all investigations and prepare all indictments directed by the foreman.

7. If any witness shall fail or refuse to appear before the grand jury or give evidence before them, the court shall imprison or otherwise punish him for contempt.

8. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, nor that any indictment has been found, nor how any member of the grand jury voted on any question, nor what was said by any juror, except when lawfully required to testify in relation thereto.

9. In every case whenever a petit jury may be required, the sheriff shall summon twelve free male citizens of the Territory, residents of the county, over the age of twenty-one years, and under no legal disability. No person of kin to either party or who has formed or expressed an opinion in any case and no witness can be sworn as a petit juror.

10. Every juror summoned to attend, and failing, without a good excuse, shall be fined by the court, in its discretion, not exceeding five dollars.

11. In all civil cases each party may object to three jurors peremptorily.

#### LAWS.

SECTION 1. All laws heretofore in force in this Territory which are not repugnant to or inconsistent with the Constitution of the United States and the laws thereof, or the statute laws in force for the time being, shall be the rule of action and decision in this Territory.

2. All acts of the general assembly of this Territory shall take effect at the end of ninety days after the passage thereof, except where it is otherwise specially provided.

3. When any person, party, or subject matter is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals shall be taken to be included.

#### PRACTICE AT LAW IN CIVIL SUITS.

SECTION 1. All actions brought in the circuit court shall be commenced by petition, which shall contain a plain statement of the names of the parties, the cause of action, and the relief sought; it

shall be sworn to before the clerk of the circuit court by the plaintiff or his agent, and filed in the office of the clerk.

2. Upon any such petition being filed as aforesaid, the clerk, except where it is otherwise specially provided, shall issue a citation for the opposite party.

3. The citation, when issued, shall be indorsed upon or annexed to the petition or a copy thereof, and the petition or a copy thereof shall be delivered, together with the writ, to the officer having execution thereof.

4. Suits instituted by citation shall be brought in the county in which the defendant resides, or in the county in which the plaintiff resides and the defendant may be found, in cases where the defendant is a resident of this Territory; but if the defendant be a nonresident of this Territory such suit may be commenced in any county.

5. A citation shall be executed either by reading the petition and writ to the defendant, or served by delivering to him a copy of the petition and writ; or third, by leaving a copy of the petition and writ at his usual place of abode, with some member of the family over the age of fifteen years.

6. In all cases where the defendant shall refuse to hear such writ and petition read, or to receive a copy thereof, the offer of the officer to read the same or to deliver a copy thereof and such refusal shall be a sufficient service of such writ.

7. Any creditor whose demand amounts to fifty dollars or more may sue out a writ of *capias* in the circuit court by filing an affidavit stating that the defendant is justly indebted to him, after allowing all set-offs in a sum specified in the affidavit, and on what account the affiant has reason to believe and does believe that the defendant is about to abscond from the Territory, so as to endanger the collection of his debt, and by also filing a bond as is required in attachments.

8. Creditors whose demands amount to less than fifty dollars may sue their debtors before *alcaldes*, by writs of *capias*, subject to the same rules as are prescribed in the preceding sections concerning such writs.

9. A writ of *capias* shall be served by taking the body of the defendant and retaining the same in custody until discharged by due course of law; but the defendant shall be discharged at any time by giving bond and security to the sheriff or constable that he will render himself in custody to abide the judgment, order, or decree of the court.

10. The defendant may, at the return term of the writ, deny the truth of the affidavit by answer without oath, and the same proceedings shall be had thereon as in cases of attachment.

11. If the petition and writ shall be served ten days before the first day of the next term of said court, the defendant shall, on or before the second day of said term, file his legal exceptions to said petition, if any he have, which exceptions shall be determined by the judge in a summary manner.

12. If the exceptions be overruled, the defendant shall forthwith file his answer under oath, fully admitting or denying, or confessing and avoiding every material part of said petition.

13. If no such exceptions be filed the defendant shall file such answer on or before the second day of said term.

14. All subsequent pleadings shall be filed under oath and in such times as the court shall prescribe.

15. All causes shall be tried at the next term after return of the writ, unless continued for good cause. Every cause may be continued by a court upon application by either party, verified by affidavit, showing good cause for such continuance.

16. All appeals from inferior tribunals to the prefects or circuit courts shall be tried anew in said courts on their merits, as if no trial had been had below.

17. The courts may from time to time appoint interpreters and translators to interpret the testimony of witnesses and to translate any writing necessary to be translated in such courts or cause therein, who shall receive therefor the compensation and mileage allowed to witnesses, and twenty-five cents for every one hundred words translated.

#### PRACTICE AT LAW IN CRIMINAL CASES.

SECTION 1. Whenever complaint shall be made to any judge, prefect, or alcalde that a criminal offense has been committed, it shall be his duty to examine the complaint, and any witness who may be introduced by him under oath; if it appear on such examination that any crime has been committed the magistrate shall issue a warrant commanding the sheriff or other officer forthwith to take the accused and bring him before such magistrate to be dealt with according to law. Warrants issued by a judge may be executed in any part of the Territory, and warrants issued by any other magistrate may be executed in any part of the county where such officer resides.

2. Whenever any person, who shall have committed a criminal offense in any county, shall escape into another, any magistrate within the county in which such offender may be found may issue his warrant for his apprehension, or may indorse a warrant which has been issued by a magistrate in the county from which the criminal escaped, and have him apprehended thereon and sent before some magistrate of the county in which the offender was committed for trial.

3. If the offense be an assault, battery, or affray, or gaming, or disturbance of a religious congregation, the prisoner shall be taken before some alcalde and punished in a summary manner. The trial of all such offenses shall be by a jury of twelve competent men, who, if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than one dollar nor more than fifty dollars.

4. In all other cases of crimes the prisoner may be taken before any magistrate authorized to issue a warrant, who shall proceed as soon as may be to examine the complainant and the witnesses for the prosecution, on oath, in the presence of the prisoner, with regard to the offense. After the examination of the witnesses for the prosecution, the witnesses for the defense shall be sworn and examined.

5. While any witness for or against the prisoner is under examination the magistrate may exclude all witnesses who have not been examined, and may cause the witnesses to be kept apart and pre-



vented from conversing with one another until they have all been examined.

6. If, upon the examination of the whole matter, it appear to the magistrate that no offense has been committed by any person, or that there is no probable cause to charge the prisoner therewith, he shall discharge him; but if it appear that an offense has been committed, and that there is probable cause to believe the person guilty thereof, the magistrate shall bind, by recognizance, the prosecutor and all material witnesses against the prisoner to appear and testify before the court having cognizance of the offense, on the first day of the next term thereof, and not depart such court without leave.

7. If the offense be bailable, and the persons offer sufficient securities, a recognizance shall be taken, with such securities, for his appearance before the court having cognizance thereof, on the first day of the next term thereof, and not depart such court without leave.

8. If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to jail, there to remain until he be discharged by due course of law.

9. All examinations and recognizances taken in pursuance of the provisions of this law shall be certified by the magistrate taking the same and delivered to the clerk of the court in which the offense is cognizable, on or before the first day of the next term thereof, except where the prisoner is committed to jail. The examination of the witnesses for or against him, duly certified, shall accompany the warrant of commitment, and be delivered therewith to the jailer.

10. All criminal offenses, except those cognizable before alcaides and prefects, shall be preferred by indictment of grand jury.

11. No indictment can be found without the concurrence of at least twelve grand jurors. When so found, and not otherwise, the foreman of the grand jury shall certify under his hand that such indictment is a true bill.

12. Indictments found and presentments made by a grand jury shall be presented by their foreman in their presence, and shall be there filed and remain as records of such courts.

13. All trials of criminal offenses shall be had in the county in which they were committed: *Provided*, Where an offense shall be committed on the boundary of two counties, or within five hundred yards of such boundary, or where the person committing the offense shall be on one side and the injury be done on the other side of such boundary, a trial may be had in either of such counties: *Provided, further*, That if any mortal wound should be given, or any poison shall be administered, or any means shall be employed in one county by which any human being shall be killed, who shall die thereof in another county, the trial of such offense may be had in either county: *Provided, also*, That if any such wound or mortal injury shall have been inflicted in another State on any human being, who shall die thereof in this Territory, a trial of such offense may be had in the county in which the death happened.

14. A warrant may be issued for the arrest of the defendant indicted by the court in which such indictment may have been found, or by the clerk or judge thereof, or by any judge of the superior court, and by no other officer; such warrant may be directed to and executed in any county in this Territory.



15. When the indictment is for a bailable offense, the defendant may be let to bail by the court in which such indictment is pending, or, if such court be not sitting, by the judge thereof, or by the prefect, or any two alcaldes of the county in which the indictment is pending, and by no other officer.

16. Whenever any person shall be let to bail, the officer taking the recognizance shall immediately file the same with the clerk of the court in which such offense is cognizable.

17. All indictments shall be tried at the first term at which defendant appears, unless continued for good cause.

18. The defendant in every indictment for a criminal offense shall be entitled to a peremptory challenge of jurors, as follows: First. If the offense charged be punishable with death, to the number of twelve. Second. If punished by fine and imprisonment, or stripes, to the number of eight. Third. In cases not punishable by death or stripes, to the number of five, and no more.

19. The prosecutor shall have a peremptory challenge of three jurors, and no more.

20. A list of the jurors summoned shall be given to the defendant, in all capital cases, forty-eight hours before the trial, and in all other cases before the jury be sworn, if required.

21. If any person indicted for an offense and committed to prison shall not be brought to trial before the end of the second term of the court which shall be held after the finding of such indictment, he shall be entitled to his discharge, unless the delay happened on his application.

22. All issues of fact in any criminal case shall be tried by a jury, who shall assess the punishment in their verdict, and the court shall render a judgment accordingly, and no trial of any criminal offense shall be had unless the accused be personally present.

23. In all cases of final judgment rendered upon any indictment, an appeal to the superior court shall be allowed, if applied for during the term at which such judgment is rendered.

24. No such appeal shall stay the execution of such judgment, unless the circuit court shall be of opinion that there is probable cause for such appeal, or so much doubt as to render it expedient to take the judgment of the superior court thereon, and shall make an order expressly directing that such appeal shall operate as a stay of proceedings.

25. If the defendant in the judgment so ordered to be stayed shall be in custody, it shall be the duty of the sheriff to keep the defendant in custody, without executing the sentence which may have been passed, to abide such judgment as may be rendered upon the appeal.

26. In all cases where an appeal is prosecuted from a judgment in a criminal cause, except where the defendant is under sentence of death or imprisoned for life, the court which is authorized to order a stay of proceedings under the preceding provisions may admit the defendant to bail upon a recognizance, with sufficient securities, to be approved by such court, conditioned that the defendant shall appear in the superior court, at the next term thereof, to receive judgment in the appeal and abide its decision, render himself in execution, and obey every order and judgment which may be made in the premises.

27. The Territory shall be allowed an appeal in criminal cases only in the cases and under the circumstances mentioned in the next succeeding section.

28. When any indictment is quashed, or adjudged insufficient on demurrer, or judgment is arrested, the circuit court may cause the defendant to be committed or recognized to answer another indictment, or an appeal to the superior court shall be granted, if the prosecuting attorney desire it.

29. If an appeal be granted, the circuit court shall order the defendant to be committed or recognized, and the commitment or recognizance shall be to the same effect as when the defendant is himself the appellant.

30. When an appeal shall be taken which operates as a stay of proceedings, it shall be the duty of the clerk of the circuit court to make out a full transcript of the record in the cause, certify, and return the same to the office of the clerk of the superior court without delay.

31. When the appeal does not operate as a stay of proceedings, such transcript shall be made out, certified, and returned, on the application of the appellant.

32. No assignment of error, or joinder in error upon any appeal in any criminal case, shall be required.

33. When the appeal is taken by the party indicted, if the superior court affirm the judgment of the circuit court it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If the judgment be reversed the superior court shall direct a new trial, or that the defendant be absolutely discharged, according to the circumstances of the case.

34. When the appeal has been taken by the Territory, if the judgment of the circuit court be affirmed, the party shall be discharged; if reversed, the superior court shall direct the circuit court to enter up judgment upon the verdict rendered, or when no judgment has been rendered, to proceed to trial on the indictment.

35. The circuit court, to which any criminal cause shall be remanded for a new trial, shall proceed thereon in the same manner as if such cause had not been removed to the superior court.

#### REGISTER OF LANDS.

SECTION 1. An office called the office of the register of lands is established, which shall be kept at the city of Santa Fe.

2. Until otherwise directed by law, the duties of said office shall be discharged by the secretary of the Territory.

3. The register shall procure, for the use of his office, large, well-bound books, wherein shall be recorded, in a fair, legible hand, all instruments of writing herein required to be recorded.

4. It shall be the duty of the register of lands to record all papers and documents of and concerning lands and tenements situated in this Territory, which were issued by the Spanish or Mexican Government, remaining in the archives of the secretary of the Territory, or which were in any of the offices of the department of New Mexico under the Mexican Government.

5. Every person claiming land in this Territory by virtue of any Spanish or Mexican grant may deliver to the register of lands a

notice, in writing, stating the nature and extent of his claim; and shall also, at the same time, deliver to the register of lands, for the purpose of being recorded, the grant, order of survey, deed, conveyance, or other written evidence of his claims, and the same shall be recorded by the register, for which the party shall pay him twelve and a half cents per hundred words contained in such written evidence of the claims.

6. When there is no written evidence of claim, the claimant may take evidence in writing before some officer having authority to administer oaths, showing the nature and extent of his claim, how much of the land claimed has been actually cultivated and inhabited by himself, and those under whom he claims, and for what length of time; and also as to any grant, deed, or conveyance relating to said land having existed, or any record thereof ever having been made, and as to the loss or destruction of the same, and how and when such loss or destruction happened. If any person shall neglect to deliver such evidence and notice of his claim, as presented in this and the preceding section, within five years from the first day of next January, such claim shall be void.

7. The register of lands shall communicate to the governor, or either house of the general assembly, such information relative to his office as may be called for by them respectively: he shall also transmit to the Commissioner of the General Land Office, at the city of Washington, once a year, beginning on the first day of January, eighteen hundred and forty-eight, a fair abstract of all lands claimed as aforesaid, for which services he shall be paid ten cents per hundred words contained in the said abstract by the United States.

8. The register of lands shall procure, keep, and use a seal of office, and shall furnish every person desiring it a certified copy of any record or paper in his office, authenticated by such seal, and shall receive for said copy ten cents for every hundred words contained in it, and one dollar for the certificate and seal, to be paid by the applicant.

9. The register of lands shall faithfully keep all the records, books, papers, and effects committed to his care, and shall not permit any — or paper to be taken out of his office unless the same be called for by the governor, or the general assembly, or the constituted authorities of the United States.

10. Nothing contained in the fifth or sixth article of this law shall be taken to include infants, married women, persons of unsound mind, nor those without the Government of the United States, while such disabilities continue.

11. For every wilful neglect of duty or wilful violation of law in his office, the register of lands may be indicted, and, upon conviction, shall be removed from office, and fined not exceeding one thousand dollars.

#### RECORDS AND SEALS.

SECTION 1. The superior and circuit courts, and the court of the prefect, shall procure and keep a seal, with such emblem and devices as the court shall deem proper.

2. The impression of the seal of any court by stamp shall be a sufficient sealing in all cases where sealing shall be required.



3. When no seal is provided, the clerk may use his private seal for the authentication of any record, process, or proceeding required by law to be authenticated by the seal of his office.

4. All of said courts shall keep just and faithful records of their proceedings in Spanish and English.

5. Every alcalde shall keep a docket, in which he shall enter—

First. The titles of all causes commenced before him.

Second. The time when the first process was issued against the defendant and the particular nature thereof.

Third. The time when the parties appeared before him.

Fourth. Every adjournment, stating at whose request and at what time.

Fifth. The time when the trial was had.

Sixth. The verdict of the jury.

Seventh. The judgment rendered by the alcalde and the time of rendering the same.

Eighth. The time of issuing an execution and the name of the officer to whom delivered.

Ninth. The fact of an appeal being allowed.

#### REVENUE.

SECTION 1. No person shall, directly or indirectly, sell any spirituous liquors or wines without a license, as a grocery or dramshop.

2. No person shall deal as a merchant without a license first obtained according to law.

3. No person shall deal as a pedlar without a license.

4. No person shall keep, or permit to be used and kept, any billiard table without a license.

5. No person shall carry on the business of distilling liquor from wheat, corn, or any other grain: nor shall, under any pretense, keep such distillery, or suffer or permit any spirituous liquors to be made or distilled from wheat, corn, or any other grain, on his or her account, or suffer or permit any such liquors to be made or distilled from wheat, corn, or any other grain, or any still belonging to him or her, or under his or her control, without a license.

6. A dramshop keeper is a person permitted by law to sell wine or spirituous liquors in a less quantity than one quart, or to be drunk at the place of sale.

7. A grocer is a person permitted, as aforesaid, to sell goods, wares, and merchandise—all kinds of dry goods excepted—and intoxicating liquors and wines, in a quantity not less than one quart, not to be drunk at the place of sale.

8. A merchant is a person permitted, as aforesaid, to deal in selling goods, wares, and merchandise at any store, stand, or place occupied for that purpose.

9. A pedlar is a person permitted, as aforesaid, to deal in the selling of goods, wares, and merchandise, other than the growth, produce, or manufacture of this Territory, by going from place to place to sell the same.

10. Upon every license to keep a billiard table there shall be levied a tax, for Territorial purposes, of thirty dollars for each table, for every period of six months.



11. Upon every license to a grocer or dramshop keeper there shall be levied a tax of not less than ten nor more than fifty dollars for every period of six months.

12. Upon every license to a merchant there shall be levied as follows: Where the amount of merchandise received for sale for the last six months preceding the granting of the license does not exceed the sum of one thousand dollars, a tax of fifteen dollars for every period of six months.

13. Where the amount of merchandise received, as aforesaid, exceeds in value one thousand dollars but is less than three thousand dollars, the sum of twenty dollars for every period of six months.

14. Where the amount of merchandise received for sale, as aforesaid, is as much in value as three thousand dollars but less than six thousand dollars, the sum of thirty dollars for every period of six months.

15. Where the amount of merchandise received for sale, as aforesaid, shall exceed in value six thousand dollars a tax of forty dollars for every period of six months.

16. Before any person shall receive a license as a grocer or as a merchant he shall deliver to the collector of the proper county an aggregate statement in writing of the amount of all goods, wares, and merchandise (except such as are the growth or manufacture of the Territory) received at his grocery, store, shop, stand, or warehouse for sale for the last six months preceding the application for such license; such statement shall be signed and sworn to by the person making application for such license, or some credible person for him.

17. There shall be levied on all pedlars' licenses a Territorial tax of the following rates:

First. If the pedlar travel and carry his goods on foot, five dollars for every period of six months.

Second. If on one or more horses or beasts of burden, five dollars for every horse or beast of burden for every period of six months.

Third. If in a cart or land carriage, eight dollars for every period of six months.

18. The several prefects are empowered to lay such sum as may be necessary annually to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for Territorial purposes; but the county tax shall in no case exceed the Territorial tax on the same subjects of taxation more than one hundred per centum for the same time.

19. There shall be levied on all distillers' licenses twenty-five dollars for each still he may use for every period of six months.

20. There shall be levied on all goods, wares, and merchandise, as contained in the statements required to be made by the sixteenth section of this law, an ad valorem tax of one-fourth of one per centum.

21. The clerk of the prefect shall issue as many blank licenses for billiard tables, dramshops, groceries, merchants, pedlars, and distillers as the prefect may direct. Such clerk shall deliver to the collector of his county all licenses so issued and shall charge him therewith in a book to be kept for that purpose.

22. Each collector at each regular term of the court of the prefect of his county shall **return**—

First. All blank licenses not granted by him.

Second. A list of licenses granted by him and not before accounted for, showing the names of persons to whom granted, the amount of taxes collected on each, and the commencement and termination of each license so granted by him.

Third. The aggregate statements of the amount of merchandise sworn to and delivered to him by the person or persons to whom license was granted.

23. The prefect, at each regular term of his court, shall settle and adjust the account of collectors for licenses delivered to him under the provisions of this law, giving him credit for all blank licenses returned and charging him for all licenses not returned, according to the aggregate statements required to be returned by the third subdivision of the next preceding section.

24. If the collector shall fail to return a number of such aggregate statements corresponding in number with the licenses not returned above the number of such aggregate statements returned, the prefect shall, for each license not returned, charge him in such settlement the sum of two hundred dollars.

25. The prefect, on ascertaining the amount received by the collector for licenses and taxes, for which he shall become chargeable under this law, shall cause his clerk at each term to certify to the auditor of public accounts the amount so charged against the collector of his county.

26. No license granted in virtue of this law shall authorize any person to carry on the business authorized by such license in any other county than the one in which the license was granted, nor at more than one place in the proper county at the same time, nor for a longer period than six months.

27. At the time of granting a license the sheriff shall collect, in addition to the sums aforesaid, the sum of fifty cents as clerk's fee.

28. Every collector shall receive, as a full compensation for his services for collecting the revenue, two per centum on all sums so collected.

29. Every collector of the revenue having made settlement, according to law, of county revenue by him collected or received, shall forthwith pay the amount found due from him into the county treasury, and the clerk of the prefect shall give him a receipt therefor under the seal of the court.

30. Every collector shall annually, on or before the first Monday in December, pay into the Territorial treasury the whole amount of revenue with which he may stand charged, deducting his commission, and the treasurer shall give duplicate receipts for the amount paid, one of which shall be deposited with the auditor in five days after its date.

31. Every collector who shall fail to make payment of the amount due from him in the time and manner prescribed in the two preceding sections shall forfeit two and one-half per centum per month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment.

32. When any person shall be found keeping a billiard table, dramshop, grocery, or distillery, or vending goods as a merchant

or pedlar, contrary to the provisions of this law, every sheriff, collector, coroner, and constable shall, and every other person may, give information thereof to the prefect of the county without delay. The prefect shall issue his warrant, directed to the sheriff or any constable of the county, and cause the offender to be arrested and brought before him, and he shall determine the case in a summary manner, and assess the punishment, which shall not be more than five hundred dollars nor less than fifty dollars.

33. Appeals may be taken from all such judgments of the prefects to the circuit court, but no such appeal shall be allowed unless it be taken on day of trial.

#### SHERIFFS.

SECTION 1. The governor shall appoint some suitable person as sheriff in every county in this Territory, who shall hold his office for two years, and until his successor be appointed and qualified.

2. Every sheriff shall, within fifteen days after he receives such appointment, give bond to the Territory in a sum not less than one thousand nor more than fifty thousand dollars, conditioned for the faithful discharge of his duties, with sureties to be approved by the circuit judge, which bond shall be filed in the office of the clerk of the circuit court of the county of which he is sheriff.

3. All process issued by the clerk of the circuit court and by the clerks of the prefects shall be directed to the sheriffs of their respective counties, who shall execute such process according to law and shall attend upon such courts during their sittings.

4. The sheriff shall be conservator of the peace within his county: shall suppress assaults and batteries, and apprehend and commit to jail all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them.

5. If any sheriff shall detain any money collected by him by virtue of his office after the same shall have been demanded, he shall be removed from office by the circuit court, on motion founded on charges exhibited. A notice of the motion and copy of the charges shall be served on him at least ten days before the day on which the motion is made.

6. A jury may be summoned to try the truth of the charges, if they are desired, or the whole may be submitted to the determination of the court, at the option of the accused.

The sheriff of each county shall be ex officio collector of his county, and shall, before entering on his duties as such collector, enter into a bond to the Territory, to be approved by the prefect, in a sum at least double the amount of the revenue to be collected by him, conditioned that he will faithfully collect and pay over all the revenue for the two ensuing years, and that he will faithfully perform all the duties of collector according to law, and shall render an account to the prefect at his November court, in cash, and pay over to the county treasurer whatever may be due the county, and to the Territorial treasurer whatever may be due the Territory. One month after such settlement and failure to do so he may be removed from office in like manner as the sheriff.



## TREASURY DEPARTMENT.

SECTION 1. The Territorial treasurer and auditor shall keep their offices at the seat of government; they shall be commissioned by the governor, and shall, before entering on the discharge of their duties, respectively execute and deliver to the governor a bond to the Territory in the sum of at least three thousand dollars, to be approved by the governor, conditioned for the faithful discharge of all duties required or which may be required of them by law.

2. The governor shall indorse on the bond his approval thereof, stating the time of the approval, and deliver the same to the secretary, who shall record the same in his office.

3. The auditor of public accounts shall audit, adjust, and settle all claims against the Territory payable out of the treasury; he shall draw all warrants on the treasury for money; he shall express in the body of every warrant the particular fund appropriated by law out of which the same is to be paid: audit, adjust, and settle the accounts of all collectors of revenue, and other holders of public money, who are required by law to pay the same into the public treasury; keep an account between the Territory and the Territorial treasury: report to the general assembly, at the commencement of each regular session, a full and detailed statement of the condition of the revenues, a full and detailed estimate of the revenues and expenditures for the two succeeding years, and a tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.

4. All collectors of revenue, and others bound by law to pay money directly in the treasury, shall exhibit their accounts and vouchers to the auditor on or before the first Monday in December of each year, to be audited, adjusted, and settled: and every such officer shall be allowed five cents for every mile they may necessarily travel in going to the seat of government and returning to their residences, for the purpose of settling with the auditor and paying the revenue into the Territorial treasury.

5. The auditor, whenever he may think it necessary to the proper settlement of any accounts, may examine the parties, witnesses, and others, on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue subpoenas and compel witnesses to attend before him and give evidence, in the same manner and by the same means as are allowed to courts of law.

6. The treasurer shall receive and keep all moneys of the Territory, except when otherwise specially provided: disburse the public money upon warrants drawn upon the treasury according to law, and not otherwise: keep a just, true, and comprehensive account of all moneys received and disbursed: render his accounts to the auditor quarterly, or oftener if required: report to each house of the general assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury.

7. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one with the auditor, who shall credit such person accordingly and charge the treasurer.

8. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any op-



pression or extortion in the performance of any legal duty, he shall forfeit to the Territory any sum not exceeding one thousand dollars, to be recovered by indictment.

9. The prefect of each county shall appoint a treasurer therefor, and when a vacancy occurs in the office shall fill the same.

10. So soon as he is appointed, the treasurer shall enter into a bond to the county, in such sum and with such securities, residents of the county, as shall be approved by the prefect, conditioned for the faithful performance of the duties of his office.

11. He shall keep a just account of all moneys received and disbursed, and regular abstracts of all warrants drawn on the treasurer and paid; he shall make duplicate receipts, in favor of the proper person, for all moneys paid into the treasury, and keep the books, papers, and money thereto pertaining ready for the inspection of the prefect at all times.

12. As often and in such manner as may be required by the prefect, he shall furnish an account of the receipts and expenditures of the county.

13. He shall, at least once in every year, settle his accounts with the prefect, and at the close of the term for which he was appointed the prefect shall immediately proceed to ascertain, by actual examination and count, the amount of balances and funds in the hands of such treasurer, and to what particular fund it belongs. If any county treasurer die, his executor or administrator shall immediately settle his accounts as treasurer with the prefect, and deliver to his successor in office all things pertaining thereto.

14. All collectors, sheriffs, clerks, constables, and other persons chargeable with moneys belonging to any county, shall render their accounts to and settle with the court of the prefect at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the prefect within five days thereafter.

15. It shall be the duty of the clerk of the prefect to keep regular accounts between the treasurer and the county, and to keep just accounts between the county and all persons chargeable with money payable into the county treasury, or who may be entitled to receive pay therefrom; to file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party; to issue warrants on the treasury for all moneys ordered to be paid by the prefect, keep an abstract thereof, present the same to the court of the prefect at every regular term thereof, balance and exhibit the accounts kept by him as often as required by the prefect, and keep his books and papers ready at all times to be inspected by the prefect.

16. It shall be the duty of all clerks to keep just accounts of all fines, penalties, forfeitures, and judgments rendered, imposed, or accruing in favor of any county, or of the Territory, ready at all times for the inspection of the judge of their respective courts.

17. It shall be the duty of the circuit court and the court of the prefect, at each term thereof, to settle with the sheriffs of the counties for which such courts are holden, for all moneys by them received, or which they ought to have collected, for the use of their respective counties, or the Territory, and have not before accounted for; they shall cause their clerks to make out a list of all sums charge-

able to said sheriffs, payable to the counties or Territory, specifying on what account, and cause the same to be certified to the clerk of the prefect, or the auditor of the Treasury, as the case may require.

18. It shall be the duty of each alcalde, at each term of the court of the prefect, to make out a list of all fines by him imposed to the use of the county, stating the name of the officer who has or ought to have collected the same; which he shall certify and deliver to the clerk of the prefect, who shall charge the same accordingly.

19. Every sheriff, collector, clerk, constable, or other person chargeable with money belonging to any county, who shall fail to pay the same into the county treasury without delay, shall forfeit two and one-half per centum per month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment.

20. No sheriff, collector, constable, clerk, or deputy thereof shall be eligible to the office of county treasurer.

21. Each prefect shall have power to audit and adjust and settle all accounts to which his county shall be a party, to order the payment out of the county treasury of any sum of money found due by the county, and to allow the clerk and treasurer of the county, for their respective services under this law, such compensation as he may deem just and reasonable.

#### WATER COURSES, STOCK MARKS, AND SO FORTH.

SECTION 1. The laws heretofore in force concerning water courses, stock marks, and brands, horses, inclosures, commons, and arbitrations, shall continue in force, except so much of said laws as requires the ayuntamiento of the different villages to regulate these subjects, which duties and powers are transferred to and enjoined upon the alcaldes and prefects of these several counties.

#### WITNESSES.

SECTION 1. In all cases where witnesses are required in any cause pending in any court having a clerk, such clerk, and in all other cases the person holding the court, shall issue a subpoena for such witnesses, stating the day and place when and where the witnesses are to appear.

2. Such subpoena shall contain the names of all witnesses for whom a summons is required by the same party at the same time, in the same cause, and who reside in the same county, and may be served in any county in this Territory in the same manner as a citation or summons for a defendant.

3. A witness summoned in any cause pending in any court, and failing to attend, may be compelled to appear by writ of attachment against his body, which may be served in any county in this Territory.

Done at the government house, in the city of Santa Fe, in the Territory of New Mexico, by Brigadier General Stephen W. Kearny, by virtue of the authority conferred upon him by the Government of the United States.

S. W. KEARNY,

*Brigadier General, U. S. Army.*

SEPTEMBER 22, 1846.











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