

CHAP. 469.—An act in relation to courts and judicial officers in the Territory of Utah.

June 23, 1874.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the United States marshal of the Territory of Utah, in person or by deputy, to attend all sessions of the supreme and district courts in said Territory, and to serve and execute all process and writs issued out of, and all orders, judgments, and decrees made by, said courts, or by any judge thereof, unless said court or judge shall otherwise order in any particular case. All process, writs, or other papers left with said marshal, or either of his deputies, shall be served without delay, and in the order in which they are received, upon payment or tender of his legal fees therefor; and it shall be unlawful for said marshal to demand or receive mileage for any greater distance than the actual distance by the usual routes from the place of service or execution of process, writ, or other paper, to the place of return of the same, except that when it shall be necessary to convey any person arrested by legal authority out of the county in which he is arrested, said marshal shall be entitled to mileage for the whole distance necessarily traveled in delivering the person so arrested before the court or officer ordering such arrest. Said marshal is hereby authorized to appoint as many deputies as may be necessary, each of whom shall have authority, in the name of said marshal, to perform any act with like effect and in like manner as said marshal; and the marshal shall be liable for all official acts of such deputies, as if done by himself. Such appointment shall not be complete until he shall give bond to said marshal, with sureties, to be by him approved, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of his duties; and he shall also take and subscribe the same oath prescribed by law to be taken by said marshal, and said appointment, bond and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory. In actions brought against said marshal for the misfeasance or non-feasance of any deputy it shall be lawful for the plaintiff at his option, to join the said deputy and the sureties on his bond with said marshal and his sureties. Any process either civil or criminal returnable to the supreme or district courts, may be served in any county, by the sheriff thereof or his legal deputy. and they may also serve any other process which may be authorized by act of the territorial legislature.

SEC. 2. That it shall be the duty of the United States attorney in said Territory in person or by an assistant, to attend all the courts of record having jurisdiction of offenses as well under the laws of said Territory as of the United States, and perform the duties of prosecuting officer in all criminal cases arising in said courts, and he is hereby authorized to appoint as many assistants as may be necessary, each of whom shall subscribe the same oath as is prescribed by law for said United States attorney and the said appointment and oath shall be filed and remain in the office of the clerk of the supreme court of said Territory, The United States attorney shall be entitled to the same fees for services rendered by said assistants as he would be entitled to for the same services if rendered by himself. The territorial legislature may provide for the election of a prosecuting attorney in any county; and such attorney, if authorized so to do by such legislature, may commence prosecutions for offenses under the laws of the Territory within such county, and if such prosecution is carried to the district court by recognizance or appeal, or otherwise may aid in conducting the prosecution in such court. And the costs and expenses of all prosecutions for offenses against any law of the territorial legislature shall be paid out of the treasury of the Territory.

SEC. 3. That there shall be held in each year two terms of the supreme court of said Territory, and four terms of each district court, at such times as the governor of the Territory may by proclamation fix. The district courts shall have exclusive original jurisdiction in all suits or proceedings in chancery, and in all actions at law in which the sum or value of the

United States marshal of Utah Territory to attend all sessions of supreme and district courts, &c.

Service of process.

Mileage.

Appointment and authority of deputies.

Liability of marshal for their official acts.

Deputies to give bond.

Oath.

Appointment, bond, and oath to be filed.

Actions for misfeasance or non-feasance of deputy.

Authority of sheriffs.

United States attorney to attend all courts of record.

To perform duties of prosecuting officer in all criminal cases.

May appoint assistants.

Oath.

Appointment and oath to be filed.

Fees.

Prosecuting attorney may be elected in any county.

Authority under territorial laws.

When prosecution is carried to district court.

Costs, &c., of prosecutions, how paid.

Terms of supreme and district courts.

Jurisdiction of district courts.

thing in controversy shall be three hundred dollars or upward, and in all controversies where the title, possession, or boundaries of land, or mines or mining claims shall be in dispute, whatever their value, except in actions for forcible entry, or forcible and unlawful detainer; and they shall have jurisdiction in suits for divorce. Probate courts, in their respective counties shall have jurisdiction in the settlement of the estates of decedents, and in matters of guardianship and other like matters; but otherwise they shall have no civil, chancery, or criminal jurisdiction whatever; they shall have jurisdiction of suits of divorce for statutory causes concurrently with the district courts; but any defendant in a suit for divorce commenced in a probate court shall be entitled after appearance and before plea or answer, to have said suit removed to the district court having jurisdiction when said suit shall proceed in like manner as if originally commenced in said district court. Nothing in this act shall be construed to impair the authority of the probate courts to enter land in trust for the use and benefit of the occupants of towns in the various counties of the Territory of Utah, according to the provisions of "An act for the relief of the inhabitants of cities and towns upon public lands," approved March second, eighteen hundred and sixty-seven and "An act to amend an act entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands'" approved June eighth, eighteen hundred and sixty-eight; or to discharge the duties assigned to the probate judges by an act of the legislative assembly of the Territory of Utah entitled "An act prescribing rules and regulations for the execution of the trust arising under an act of Congress entitled 'An act for the relief of the inhabitants of cities and towns upon the public lands.'" All judgments and decrees heretofore rendered by the probate courts which have been executed, and the time to appeal from which has by the existing laws of said Territory expired, are hereby validated and confirmed. The jurisdiction heretofore conferred upon justices of the peace by the organic act of said Territory is extended to all cases where the debt or sum claimed shall be less than three hundred dollars. From all final judgments of justices of the peace an appeal shall be allowed to the district courts of their respective districts, in the same manner as is now provided by the laws of said Territory for appeals to the probate courts; and from the judgments of the probate courts an appeal shall lie to the district court of the district embracing the county in which such probate court is held in such cases and in such manner as the supreme court of said Territory may, by general rules framed for that purpose, specify and designate, and such appeal shall vacate the judgment appealed from, and the case shall be tried de novo in the appellate court. Appeals may be taken from both justices' and probate courts to the district court of their respective districts in cases where judgments have been heretofore rendered and remain unexecuted; but this provision shall not enlarge the time for taking an appeal beyond the periods now allowed by the existing laws of said Territory for taking appeals. A writ of error from the Supreme Court of the United States to the supreme court of the Territory shall lie in criminal cases, where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy. Whenever the condition of the business in the district court of any district is such that the judge of the district is unable to do the same, he may request the judge of either of the other districts to assist him; and, upon such request made, the judge so requested may hold the whole or part of any term, or any branch thereof, and his acts as judge shall be of equal force as if he were duly assigned to hold the courts in such district.

Probate courts, jurisdiction.

Removal of divorce causes to district courts.

Authority of probate courts to enter land in trust not impaired.

1867, ch. 177, vol. xiv, p. 541.
1868, ch. 53, vol. xv, p. 67.

Certain judgments and decrees confirmed.

Jurisdiction of justices of the peace extended.

Appeal to district courts.

Appeal from probate courts.

Proceedings on appeal from probate courts.

Appeal in prior cases.

Writ of error from Supreme Court of United States in certain cases.

Judge of any district may request judge of any other district to assist him.

Jury-list for grand and petit jurors, when and how prepared.

SEC. 4. That within sixty days after the passage of this act, and in the month of January annually thereafter, the clerk of the district court in each judicial district, and the judge of probate of the county in which the district court is next to be held, shall prepare a jury-list from which grand and petit jurors shall be drawn, to serve in the district courts, of such district, until a new list shall be made as herein provided,

Said clerk and probate judge shall alternately select the name of a male citizen of the United States who has resided in the district for the period of six months next preceding, and who can read and write in the English language; and, as selected, the name and residence of each shall be entered upon the list, until the same shall contain two hundred names, when the same shall be duly certified by such clerk and probate judge; and the same shall be filed in the office of the clerk of such district court, and a duplicate copy shall be made and certified by such officers, and filed in the office of said probate judge. Whenever a grand or petit jury is to be drawn to serve at any term of a district court, the judge of such district shall give public notice of the time and place of the drawing of such jury, which shall be at least twelve days before the commencement of such term; and on the day and at the place thus fixed, the judge of such district shall hold an open session of his court, and shall preside at the drawing of such jury; and the clerk of such court shall write the name of each person on the jury lists returned and filed in his office upon a separate slip of paper, as nearly as practicable of the same size and form, and all such slips shall, by the clerk in open court, be placed in a covered box, and thoroughly mixed and mingled; and thereupon the United States marshal, or his deputy, shall proceed to fairly draw by lot from said box such number of names as may have previously been directed by said judge; and if both a grand and petit jury are to be drawn, the grand jury shall be drawn first; and when the drawing shall have been concluded, the clerk of the district court shall issue a venire to the marshal or his deputy, directing him to summon the persons so drawn, and the same shall be duly served on each of the persons so drawn at least seven days before the commencement of the term at which they are to serve; and the jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases. And the names thus drawn from the box by the clerk shall not be returned to or again placed in said box until a new jury-list shall be made. If during any term of the district court any additional grand or petit jurors shall be necessary, the same shall be drawn from said box by the United States marshal in open court; but if the attendance of those drawn cannot be obtained in a reasonable time, other names may be drawn in the same manner. Each party whether in civil or criminal cases, shall be allowed three peremptory challenges except in capital cases where the prosecution and the defense shall each be allowed fifteen challenges. In criminal cases, the court, and not the jury, shall pronounce the punishment under the limitation prescribed by law. The grand jury must inquire into the case of every person imprisoned within the district on a criminal charge and not indicted; into the condition and management of the public prisons within the district; and into the willful corrupt misconduct in office of public officers of every description within the district; and they are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge of all public records within the district.

SEC. 5. That there shall be appointed by the governors of said Territory one or more notaries public for each organized county, whose term of office shall be two years, and until their successors shall be appointed and qualified. The act of the legislative assembly of the Territory of Utah entitled "An act concerning notaries public" approved January seventeenth, eighteen hundred and sixty-six, is hereby approved, except the first section thereof, which is hereby disapproved: *Provided*, That wherever, in said act, the words "probate judge" or "clerk of the probate court" are used, the words "secretary of the Territory" shall be substituted.

SEC. 6. That the supreme court of said Territory is hereby authorized to appoint commissioners of said court, who shall have and exercise all the duties of commissioners of the circuit courts of the United States, and to take acknowledgments of bail; and, in addition, they shall have the same authority as examining and committing magistrates in all cases

Selection of names.
Qualification of jurors.

List to contain two hundred names.

Certification and filing of list.

When jury to be drawn public notice to be given.

Judge to hold open session of court and preside at drawing.

Method of drawing

Writs of venire, how issued and served.

Regular juries, how constituted.

Names drawn not to be returned to jury-box until when

Additional jurors, how drawn.

Challenges.

In criminal cases, punishment how pronounced.

Grand jury, duties and powers.

Notaries public.

Act of legislative assembly approved, except, &c.

Proviso.

Supreme Court may appoint commissioners.

Authority and powers.

arising under the laws of said Territory as is now possessed by justices of the peace in said Territory

Act of territorial legislature in relation to marshals and attorneys, and inconsistent laws, disapproved.

Fees of clerks, marshals, and attorneys.

1853, ch. 80, vol. x, pp. 161, 169.

Limit of salary of district attorney.

SEC. 7. That the act of the territorial legislature of the Territory of Utah entitled "An act in relation to marshals and attorneys," approved March third, eighteen hundred and fifty-two, and all laws of said Territory inconsistent with the provisions of this act, are hereby disapproved. The act of the Congress of the United States entitled "An act to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the circuit and district courts of the United States, and for other purposes," approved February twenty-sixth, eighteen hundred and fifty-three, is extended over and shall apply to the fees of like officers in said Territory of Utah. But the district attorney shall not by fees and salary together receive more than thirty-five hundred dollars per year; and all fees or moneys received by him above said amount shall be paid into the Treasury of the United States.

Approved, June 23, 1874.

June 23, 1874.

CHAP. 470.—An act to establish certain post-routes.

Ante, 7.
Post-roads established in—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following are hereby established as post-routes:

Alabama;

ALABAMA.

From Memphis, via Windhamville, Stonewall, and Warsaw, to Gainesville.

From Port Deposit to Willing.

From Columbiana to Crossville.

From Edwardsville, via Coldwater and Oak Level, to Teetmseh.

From Centre, via Leesburg, to Collinsville.

From Houston, via Lane's Mills and Barton Town, to Larissa.

From Hoboken to Jackson.

From Kennedale to Smith's Shops.

From Bay Minette to Daphne.

From Daphne to Millview, in Florida.

From Pollard, via Nathansville and Lewis Station, to Chalk Springs, in Florida.

From Falkville via Gandy's Cove, to Lawrence Cove.

From Choctaw Corners via Morwin to Woods Bluff.

From Shiloh to Butler.

From Williamsville to Lake City.

From Ozark via Haw Ridge, Victoria, Henderson's, Hallsville and New Providence to Rulledge.

From Vance's Station to Day's Mills.

Arkansas;

ARKANSAS.

From Camden to Prescott.

From Yellville to Isabella in Missouri.

From Yellville to Jasper.

From Hotsprings to Fourchaluke.

From Conway to Quitman.

From Harrisburg to Jacksonport.

From Hope, via Washington Mineral Springs and Centre Point, to Silver City.

Arizona;

ARIZONIA.

From Clifton to Silver City in New Mexico.