

L A W S

OF THE

TERRITORY OF NEVADA,

PASSED AT THE

FIRST REGULAR SESSION

OF THE

LEGISLATIVE ASSEMBLY,

BEGUN

THE FIRST DAY OF OCTOBER AND ENDED ON THE TWENTY-NINTH DAY  
OF NOVEMBER, 1861, AT CARSON CITY.

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charge and collect such rates of toll as the board of commissioners of Humboldt County may fix, and the said commissioners shall open the gates of said road if said road is not kept in repair.

SEC. 3. Said parties shall keep at each toll-gate on said road a bulletin-board, which shall contain the scale of prices. Bulletin-board.

SEC. 4. It shall be lawful for the governor and legislature of this territory, at any future session of such legislature, to regulate, alter, or change the rates of toll to be charged on said road. Tolls, how changed.

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

CHAP. XXXI.—*An Act to audit the Claim of Alfred James, and to provide for the payment of the same.*

[Approved November 27, 1861.]

*Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:*

SECTION 1. The claim of Alfred James, for services rendered as clerk of the district court of the second judicial district, of the territory of Utah, in and for the county of Carson, amounting to the sum of six hundred and twenty dollars, is hereby audited and allowed as a charge against the territory, and the auditor is hereby required to draw his warrant upon the territorial treasurer for the same, and the said treasurer shall pay the same in its regular order, out of any money in the general fund not otherwise specifically appropriated by law, and the said warrant shall draw interest at the rate of ten per cent. per annum, from its presentation to the treasurer until paid. Claim allowed.  
How paid.

✓ CHAP. XXXII.—*An Act to prohibit Marriages and Cohabitation of Whites with Indians, Chinese, Mulattoes and Negroes.*

[Approved November 28, 1861.]

*Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:*

SECTION 1. If any white man or woman intermarry with any black person, mulatto, Indian, or Chinese, the parties to such marriage shall be deemed guilty of a misdemeanor, and, Intermarriage prohibited.

on conviction thereof, be imprisoned in the territorial prison, for a term not less than one year, nor more than two years.

Persons,  
performing  
marriage  
ceremony.  
SEC. 2. If any person authorized to perform the marriage ceremony, shall unite any such person as mentioned in this act, in marriage, he shall be deemed guilty of a misdemeanor, and, upon conviction, be subject to imprisonment in the territorial prison, for a period not less than one year, nor more than three years.

Cohabitat'n.  
SEC. 3. That, if any white person shall live and cohabit together with any black person, mulatto, Indian, or Chinese, in a state of fornication, such person so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred, and not less than one hundred dollars, or be imprisoned in the county jail, not less than one, nor more than six months, or both such fine and imprisonment, as the court may order.

Fines, how  
applied.  
SEC. 4. All fines collected under this act, shall be paid into the treasury of the county in which the conviction is had, and set apart for the common school fund of the territory.

SEC. 5. This act to take effect from and after the second day of December, A. D. one thousand eight hundred and sixty-one.

### CHAP. XXXIII.—*An Act relating to Marriage and Divorce.*

[Approved November 28, 1861.]

*Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:*

Marriage.  
SECTION 1. That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential.

Persons  
capable of  
contracting.  
SEC. 2. Every male person, who shall have attained the full age of eighteen years, and every female, who shall have attained the full age of sixteen years, shall be capable, in law, of contracting marriage, if otherwise competent; *provided*, however, that nothing in this act shall be construed so as to make the issue of any marriage illegitimate, if the person shall not be of lawful age; and *provided*, further, that all minors who shall have attained the age provided in this act for the contracting of marriage, shall be deemed in law to have attained their majority upon entering into the bonds of matrimony.

Consanguin-  
ity.  
SEC. 3. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor between parties who are nearer of kin than second cousins, computing by the rules of the civil law, whether the half or the whole blood.

SEC. 4. Marriages may be solemnized by any justice of the

peace in the county in which he is elected, and they may be solemnized throughout the territory by any judge of a court of record, by ministers of the gospel, and by the governor of the territory. Who may perform ceremony.

SEC. 5. If any person intending to marry, shall be under the age of twenty-one, if a male, or under the age of eighteen years, if a female, and shall not have had a former wife or husband, the consent, in person, or in writing, of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living in this territory, shall be given to the person solemnizing the marriage, before such marriage shall take place. Consent of parent or guardian.

SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife; and, in every case, there shall be at least two witnesses present, besides the person performing the ceremony. Solemnization.

SEC. 7. When a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residences of the parties, and of at least two witnesses present, and the time and place of such marriage, and, where the consent of the parent or guardian is necessary, stating that the same was duly given. Certificate of to be given.

SEC. 8. Every person solemnizing a marriage, shall make a record thereof, and, within three months after such marriage, shall make and deliver to the recorder of deeds of the county where the marriage took place, a certificate under his hand, containing the particulars mentioned in the preceding section. The certificate may be in the following form: Record of.

TERRITORY OF NEVADA, }  
County of ———, } ss.

This is to certify, that the undersigned, a justice of the peace of said county (minister of the gospel, or judge, etc., as the case may be), did, on the — day of —, A. D. 18—, join in lawful wedlock, A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses. Form of certificate of.

J. P., Justice of the Peace.

SEC. 9. All such certificates shall be filed and recorded by the said recorder, in a book to be kept by him for that purpose; and shall receive a fee of one dollar from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage. Book of records.

SEC. 10. Every person solemnizing a marriage, who shall neglect to make and deliver to the recorder a certificate thereof, within the time above specified, shall forfeit for such neglect a sum not less than twenty, nor more than fifty dollars; and every Fee. Certificate of to recorder.

## LAWS OF NEVADA.

recorder who shall neglect to record such certificate, so delivered, shall forfeit the like penalty.

False  
certificate.

SEC. 11. If any person shall willfully make any false certificate of any marriage, or pretended marriage, he shall forfeit, for every such offense, a sum not exceeding five hundred dollars, or may be imprisoned in the territorial prison, not exceeding one year, or by both such fine and imprisonment.

Persons un-  
authorized  
performing  
ceremony.

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall, on conviction, be fined in any sum not exceeding five hundred dollars, and be imprisoned in the territorial prison, until such fine is paid.

When not  
void.

SEC. 13. No marriage, solemnized before any person professing to be a judge, justice, or minister, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority, provided it be consummated with a full belief, on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Presumptive  
evidence of.

SEC. 14. The original certificate and records of marriage, made by the judge, justice, or minister, as prescribed in this act, and the record thereof, by the recorder of the county, or a copy of such record duly certified by such recorder, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

Illegitimate  
children.

SEC. 15. Illegitimate children shall become legitimized by the subsequent marriage of their parents with each other.

Fines, appli-  
cation of.

SEC. 16. All fines and forfeitures, arising in consequence of a breach of this act, shall be paid into the county treasury, for the use of common schools; and in all cases, when a violation of the provisions of this act is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

"Friends,"  
or "Qua-  
kers."

SEC. 17. All marriages solemnized among the people called "Friends," or "Quakers," in the form heretofore practiced, and in use in their meetings, shall be good and valid.

## DIVORCE AND ALIMONY.

When void  
without  
decree of  
divorce.

SEC. 18. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings.

Parties inca-  
pable of  
assenting,  
when void.

SEC. 19. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall have been no subsequent voluntary cohabitation of the parties, the

marriage shall be void from the time its nullity shall be declared by a court of competent authority.

SEC. 20. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife, after such insane person was restored to a sound mind.

When not to be adjudged a nullity.

SEC. 21. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the probate court of the county where the parties, or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Parties may file complaint.

SEC. 22. Divorce from the bonds of matrimony, may be obtained by complaint, under oath, to the probate court of the county, in which the cause therefor shall have accrued, or in which the defendant shall reside, or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit be brought, for the following causes: First. Impotency at the time of the marriage, continuing to the time of the divorce. Second. Adultery since the marriage, remaining unforgiven. Third. Willful desertion of either party by the other, for the space of two years. Fourth. Conviction of felony, or infamous crime. Fifth. Habitual, gross drunkenness, contracted since marriage, of either party, which shall incapacitate such party from contributing his, or her share, to the support of the family. Sixth. Extreme cruelty in either party. Seventh. Neglect of the husband for the period of two years, to provide the common necessities of life, when such neglect is not the result of poverty, on the part of the husband, which he could not avoid by ordinary industry.

For causes divorce may be granted.

SEC. 23. If the defendant is not a resident of the territory, or cannot, for any cause, be personally summoned, the court, or judge, in vacation, may order notice of the pendency of the suit to be given in such manner, and during such time, as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper, printed in, or nearest to, the county in which the suit is pending, three months in succession; and if the defendant fail to appear, and make defense, at the first term after such notice, or after thirty days' personal service of summons, the evidence may be heard, and the cause decided, at that term; or compulsory process may be had to obtain an ap-

Non-resident defendants to be notified

pearance, or answer, if it be necessary to the disposition of property, or of children.

Disposition  
of children  
of divorced  
parents.

SEC. 24. The court, in granting a divorce, shall make such disposition of, and provisions for, the children, as shall appear most expedient under all the circumstances, and most for the present comfort and future well-being of such children; and when, at the commencement, or during the pendency, of the suit, it shall be made to appear to the court, or to the judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been, or is likely to be, taken or detained from her, or that any child of either party, has been, or is likely to be taken, or removed, by, or at the instance of, the other party, out of the county, or concealed within the same, it shall be the duty of the court, or of such judge, in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced, and made effectual, by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case; *provided*, the court, upon good cause shown, may change the custody of such minor children, if they should be satisfied that such change will be for the welfare of such children.

Disposition  
of property  
for benefit  
of children.

SEC. 25. In granting a divorce, the court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the court, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if, after the filing of the petition, it shall be made to appear probable to the court, or the judge, in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

Testimony  
and plead'gs.

SEC. 26. The testimony of witnesses in suits for divorce, shall be given orally in court, with the right to either party to take and use depositions, on the same terms and in the same manner as in actions at law; and the proceedings, pleadings and practice, shall conform to those at law, as nearly as con-

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veniently may be, but all preliminary and final orders may be in such form as will best effect the object of this act, and produce substantial justice.

SEC. 27. When the marriage shall be dissolved, by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead; but in other cases the court shall set apart such portion for her support, and the support of their children, as shall be deemed just and equitable.

Wife's  
proportion  
of property.

SEC. 28. Whenever an order of divorce from the bonds of matrimony, is granted in this territory, by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for a divorce, brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, and shall in its order decree and appoint.

Effect of  
divorce.

Female's  
name may  
be changed.

SEC. 29. Either party, on application to the court, may be entitled, at such trial, to have the issue of fact involved in such case, and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the district court.

Issue of fact.

SEC. 30. This act shall take effect, and be in force, from, on, and after the second day of December, A. D. 1861.

#### CHAP. XXXIV.—*An Act in relation to Money of Account and Interest.*

[Approved November 28, 1861.]

*Be it enacted, by the Governor and Legislative Assembly of the Territory of Nevada, as follows:*

SECTION 1. The money of account of this territory shall be the dollar, cent, and mill; and all accounts in the public offices, and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

Computa-  
tion of.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument, expressed in any other money of account, but the same shall be reduced to dollars, or parts of dollars, as herein before directed, in any suit thereupon.

Accounts  
not vitiated.

SEC. 3. In all judgments and decrees, rendered by any court of justice, for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions,

Judgments,  
how com-  
puted.



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