AN ACT to establish Courts, and prescribe their powers and duties.—*Continued.*

§ 72. The oath of the grand jurry, in all cases, shall be as follows, to-wit: "You, as grand jurors for the body of the county of ———, (as the case may be,) do solemnly swear, that you will diligently enquire into, and true presentment make of, all such matters and things as shall come to your knowledge, according to your charge; the counsel of Oregon, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice, neither will you leave any person unpresented through fear, favor, affection, or hope of reward; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory, so help you God."

§ 73. No grand jury shall make presentment of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence is deemed sufficient, an indictment may be found thereon, as upon the evidence of any other witness who may not be of the jury.

§ 74. Every person who shall fail to appear when lawfully summoned as a grand juror, as aforesaid, without having a reasonable excuse, shall be considered as being guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars for each day's non-attendance, for the use of the proper county, unless good cause be shown for such default at or before the next term of said court, and it shall be the duty of the clerk to issue a summons against such delinquent, when such person shall not appear, without process, to show cause at the next succeeding term of said court, why he, or they, should not be fined for such contempt. The oath or affirmation of any such delinquent shall, at all times, be received as competent evidence in his favor.

§ 75. In case of the death, sickness, or non-attendance of any grand juror, after he shall have been sworn upon the jury, or where any such juror, being sworn as aforesaid, shall, for any reasonable cause, be dismissed, or discharged, it shall be lawful for the court to cause others, if necessary, to be summoned and sworn in his or their stead.

§ 76. All grand jurors shall be privileged from arrest, in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going to, and returning from, the same; and all arrests in such cases shall be deemed as illegal and void.

§ 77. The prosecuting attorney may attend the grand jury at all times, except while they are expressing their opinions, or giving their votes, in relation to any matter before them, at which times no one but the jurors themselves shall be allowed to be present.

§ 78. Members of a grand jury may be required by a court of justice to testify as to the evidence given by a witness before said jury, but in no case shall they be called on to reveal the votes or opinions of any member of the grand jury.

§ 79. It shall be the duty of the county court to arrange and select the grand jurors, as aforesaid, in such manner as to make the qualified persons of the county perform duties as jurors, as nearly as may be in rotation, and so that the same may not be unnecessarily burdensome to any of the citizens of the county.

§ 80. The clerk of the court shall give to each juror a certificate of his attendance on the court, and such certificate shall exempt the holder from as many days of service on roads or other public duties, as he may have been in attendance on the court, and grand jurors shall receive no other compensation.

ARTICLE V.

Of indictments, and proceedings thereon in county courts.

§ 81. The county courts may hold a call term at any time to try a criminal.

§ 82. All indictments found by a grand jury, shall be returned to the court in presence of said jury; but such as are found against any person for a felony, who is not in custody, and over which the county court have jurisdiction, shall not be open to the inspection of any person but the prosecuting attorney, until the defendant therein shall have been arrested, after which it shall be entered on the minutes of the court.

§ 83. All indictments found by a grand jury over which the county court has not jurisdiction, together with all papers belonging to the same, whether they be recognizances of witnesses or defendant, shall be delivered at the time of finding such indictments to the prosecuting attorney, whose duty it shall be to file the same, within ten days thereafter, with the clerk of the criminal court; and it shall be the duty of the clerk of the county court to make a record of the finding and delivering such indictments as aforesaid.

§ 84. Any grand juror, or officer of the court, who shall be convicted of disclosing the fact of an indictment having been found against any person for a felony, not in actual custody, on such indictment, shall be punished by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding six months, or by both such fine and imprisonment: *Provided*, such disclosure do not necessarily take place in the discharge of some official duty: And the judges shall give this section in charge to all grand juries.

§ 85. Indictments for murder may be found at any time after the death of the person killed; in all other cases of felony they must be found, if at all, within four years after the commission of crime; for all offences less than felony, within two years thereafter, but the time, during which the defendant shall not have been usually a resident within the territory, shall form no part of the said limitation.

§ 86. Where a person steals, or becomes the receiver of stolen property, he may be indicted in any county where he stole, received, or was in possession of any of the property stolen or received.

§ 87. Where a person shall commit an offence within this territory, on board of any vessel or float, he may be indicted for the same in any county, through any part of which such vessel or float may have passed on that trip or voyage.

§ 88. Where an offence shall have been committed within five hundred yards of the boundary line of two counties, the offender may be indicted in either of such counties.

§ 89. Where an offence shall be committed upon, or in relation to, the property of several joint owners, the indictment for such offence shall be sufficient, if it alledge such property to belong to any one or more of such owners, without naming them all.

§ 90. Where a criminal act has been committed in one county, and the crime consummated in another, (as where the mortal blow was given in one county, and the death took place in another,) the offender may be indicted in either county.

§ 91. Whenever by law an offence is indictable in any particular county, it may be charged in the indictment to have been committed within that county.

§ 92. Accessaries before the fact shall be deemed principals, and may be charged in the indictment with having committed the principal offence. The indictment of such accessary may be found, either in the county where his own crime was perpetrated, or in that where the principal offence was committed.

§ 93. Accessaries may be tried and punished, although the principal has not been arrested or tried, and although he may have been pardoned, or otherwise discharged.

§ 94. The body of an indictment shall be considered as made up of charges and specifications, and no indictment shall be quashed if an indictable offence is clearly charged therein, nor shall any motion be entertained with a view to arrest, reverse, or set aside any judgment on account of a defect in the indictment, if the charge, upon which the offender was tried, be so explicitly set forth, that judgment can be rendered thereon.

§ 95. All mistakes or omissions in the commencement, or in the formal parts of an indictment, may be amended, on motion of either party, at any time before the rendition of judgment: And all clerical mistakes shall be amendable at the discretion of the court.

§ 96. Nothing need be stated in the body of an indictment, which is not required to be proved upon the trial in support of the charge.

§ 97. A *capias*, for the arrest of any person indicted, may be issued by the court, returnable either forthwith, or at the next term of the court. In the latter case the court shall, in bailable cases, direct the amount in which the defendant shall be held to bail, which shall be endorsed upon the *capias*. In cases of felonies, this shall not be done in open court.

§ 98. Such *capias* may be directed to the sheriff of any county in the territory, whose duty it shall be to arrest the defendant. Such officer may pursue him into any part of the territory, and, having arrested him, may exercise all power necessary to secure the prisoner, and return him to the proper county.

§ 99. In bailable cases, when the *capias* is returnable to the next term of the court, the prisoner may at any time be released upon entering into recognizance, with good security, in the amount endorsed upon the *capias*, conditioned as prescribed in the form appended to this code. The officer making the arrest, or any justice of the peace of the county where the indictment was found, may take such recognizance, and file the same in the office of the clerk of said county, before the next ensuing term of the county court therein, and for default in so doing, shall be deemed guilty of a contempt of court.

§ 100. The court, where the indictment was found, shall have power to take the recognizance of the prisoner, with sureties for his appearance from day to day, or for his appearance at the next ensuing term of said court.

§ 101. Upon the application of any person indicted, the clerk of the court shall, without fee, issue the necessary subpœnas for his witnesses.

§ 102. Subpœnas for witnesses, on the trial of any indictable offence, may be served in any part of the territory, by a sheriff or constable of any county therein.

§ 103. Any officer in whose hands a *capias* or subpœna, issued as above prescribed, shall be placed, who shall fail to make due return to the court from whence such process issued, and any witness who shall fail to obey such subpœna, shall, unless good excuse be rendered, be deemed guilty of a contempt of court, and may be fined in any sum, not exceeding two hundred and fifty dollars.

§ 104. All dilatory pleas to an indictment must be verified by affidavit.

§ 105. After an issue in fact is found on an indictment, the defendant, at the discretion of the court, shall be entitled to the same right of issuing a commission to take testimony out of the territory, or of taking depositions conditionally, as is provided for parties in civil cases.

ARTICLE VI.—*Of the trial and its incidents.*

§ 106. All issues of fact, joined upon any indictment, over which the county courts have jurisdiction, shall be tried by a jury of the court where such was found, provided, however, that the court may, for good cause shown, direct a change of venue to some other county.

§ 107. If the defendant, or prosecuting attorney, shall require it, the whole number of twenty-four jurors, shall be present in the jury box, twelve of whom shall then be drawn as follows, to-wit: The clerk shall write the name of each juror, on a separate ticket, and put the whole into a box, or other place, in presence of the court, and draw by chance, therefrom, twelve names, which shall designate the twelve to be sworn on the jury.

§ 108. The defendant, on his trial, if indicted for a capital crime, may challenge peremptorily twelve jurors, and no more; if indicted for any other felony, he shall challenge only six, in the same manner; and if for an offence less than felony, only two. In each case, the prosecuting attorney shall have the right to challenge peremptorily, one-half as many as the defendant is entitled to.

§ 109. In all criminal cases, either party shall have the same right of challenge, for cause shown, either to the array, or to individual jurors, as is permitted in civil cases.

§ 110. The court shall assign counsel to defend the prisoner, in case he cannot procure councel himself. And in case there be no prosecuting attorney present, the court may appoint any person to prosecute; and when no person will act, the court shall examine the witnesses for the prosecution, and shall give the law in charge to the jury.

§ 111. Persons indicted for felony shall not be tried, unless personally present at the trial. For other offences they may be tried, if present either personally, or by attorney duly authorized for that purpose; he must be present, when the sentence is pronounced, however, in all cases where imprisonment may form a part of the punishment.

§ 112. Any person indicted for a capital crime shall, if he require it, be furnished with a copy of the indictment, and a list of the jury summoned to try him, at least twenty-four hours before his trial.

§ 113. In capital cases the defendant shall be admitted to bail, unless indicted and tried by the end of the term next succeeding his arrest. In cases of other offences, under like circumstances, he shall be discharged absolutely: *Provided*, That, in any of the above cases, the delay of indictment or trial has not been occasioned by defendant himself.

§ 114. Where two or more persons are jointly indicted, and the evidence against one of them is insufficient to put him upon his trial, the court may order him to be discharged before the evidence shall bedeemed to be closed.

§ 115. Where two or more persons are jointly indicted for a felony, either of them may, at his option, be tried separately. In cases of lesser offences, defendants jointly indicted shall be tried jointly, or separately, at the discretion of the court.

§ 116. On the trial of indictments, exceptions may be taken by either party to the decision of the court for the same reasons as in civil actions, but judgment shall not be stayed, unless the court will give a certificate, stating that there is probable cause for taking said exceptions, or so much doubt as to render it expedient to take the opinion of the supreme court thereon: *Provided*, That where the exceptions have been taken by the prosecuting attorney, no further proceedings shall be had thereon, except in cases where the judgment has been stayed as aforesaid.

§ 117. If the exceptions have been taken on the part of the defendant, he shall remain in custody in the mean time, unless he will enter into a recognizance, with sufficient surety, before the court, or the presiding judge, in vacation, conditioned that he will appear before said court at such time as the supreme court shall direct, or that he will obey any order the supreme court shall make in the premises, which recognizance shall be filed with the clerk of the county court.

§ 118. If the exceptions are taken by the prosecuting attorney, the same proceedings shall be had, only the defendant need not find sureties in his recognizance.

§ 119. When judgment shall have been stayed upon an indictment as above provided, the prosecuting attorney shall forthwith sue out a writ of *certiorari*, returnable to the supreme court.

§ 120. The clerk of the court where the cause was tried, upon being served with such writ, shall forthwith make returns thereto, containing a transcript of said indictment, bill of exceptions, and certificate staying the judgment.

§ 121. After judgment rendered on an indictment, (except as provided in the last section,) a writ of error may be brought thereon by the defendant. In capital cases this shall not be permitted, except upon the allowance of the judge of the supreme court, and after sufficient notice to the prosecuting attorney of the time and place of making the application.

§ 122. In all other than capital cases, writs of error shall issue as a matter of course, upon a mere application to the clerk of the supreme court, in term or vacation; but the writ shall not operate as a stay of proceedings, unless allowed in the manner provided in the preceding section.

§ 123. Applications for such allowance shall, in all cases, be formed upon a transcript of the indictment and bill of exceptions, or other record upon which error is alledged, under the seal of the court where the indictment was tried.

§ 124. Upon filing the writ of error, and the allowance of the supreme judge, (if such allowance has been made,) with the clerk of the court where the indictment was tried, said clerk shall forthwith make returns thereto, containing a like transcript as is required in the last preceding section.

§ 125. If a stay of proceedings be allowed, the sheriff upon being served with the county clerk's certificate thereof, shall cease all further proceedings in execution of the sentence, but shall retain the defendant in custody, and at his request, take him before the judge of the supreme court for the purpose of giving bail.

§ 126. Such judge may admit the defendant to bail by recognizance, with sufficient surety, conditioned and filed as above provided in case of *certiorari*.

§ 127. If the judgment below be affirmed, the sentence there pronounced shall be executed accordingly. If it be reversed, the supreme court may grant a new trial, or discharge the defendant altogether. In either case, the certificate of the clerk of the supreme court, under the seal of said court, shall be sufficient authority for the court below, and its officers, to act in the premises.

[TO BE CONTINUED.]