

Kearny Code of Laws

Letter of General Kearny to the Adjutant

General

Headquarters, Army of the West,

Santa Fe, New Mexico

September 22, 1846.

Sir: - I enclose 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 Colonel A. W. Doniphan, of the first regiment of Missouri mounted volunteers, who received much assistance from Private 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 modification, 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.A.

The adjutant general, U.S.A., Washington.

(Received at the war department, November 23.)

Appointment by General 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.

Donaciano 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 Jose Otero, Charles Beaubian, to be judges of the superior court.

Given at Santa Fe, the capital of the territory of New Mexico, this 22nd day of September, 1864, and in the 71st year of the independence of the United States.

S.W. KEARNY,

Brigadier General, U.S.A.

Francisco Sanacino (Pajarito) is hereby reappointed perfect 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.A.

Santa Fe, New Mexico, September 22, 1846.

(Received at the war department, November 23.)

Laws for the Government of the Territory of

New Mexico

Administrations

Sec. 1.

The laws heretofore in force concerning descents, distributions, wills and testaments, as contained in the treatise on these subjects, written by Pedro Murillo [Velarde] De Lorde, shall remain in force so far as they are in conformity with the constitution of the United States and the state laws in force for the time being.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — No present counterpart.

Sec. 2.

The prefects shall grant letters testamentary and of administration.

ANNOTATIONS

Present status. — Compiled as 31-1-2, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-1-302 NMSA 1978.

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 lies.

If the deceased had no mansion house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died or where 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 county in which any personal estate of the deceased may be.

ANNOTATIONS

Present status. — Compiled as 31-1-3, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-1-303 and 45-3-201 NMSA 1978.

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.

ANNOTATIONS

Present status. — Compiled as 31-5-1, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-1-303 and 45-3-201 NMSA 1978.

Sec. 5.

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

ANNOTATIONS

Present status. — Superseded by 31-1-9, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-203 NMSA 1978.

Sec. 6.

If no such 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.

ANNOTATIONS

Present status. — Superseded by 31-1-10, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-203 NMSA 1978.

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.

ANNOTATIONS

Present status. — Compiled as 31-1-8, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-203, 45-3-603, 45-3-605 and 45-3-613 NMSA 1978.

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 of 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, pay and deliver all the money and property of the estate to the executor or regular administrator when qualified to act.

ANNOTATIONS

Present status. — Superseded by 31-1-13, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-203 and 45-3-614 NMSA 1978.

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 of, and faithfully administer all the estates of the deceased, and account for and pay all assets which shall come to his possession or knowledge.

ANNOTATIONS

Present status. — Compiled as 31-1-11, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-301 and 45-3-601 NMSA 1978.

Sec. 10.

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

ANNOTATIONS

Present status. — Compiled as 31-1-12, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-301 and 45-3-601 NMSA 1978.

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 amount 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.

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.

ANNOTATIONS

Present status. — Compiled as 31-1-17, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-601 to 45-3-606 NMSA 1978.

Sec. 12.

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 [(\$100)] for the use of the country [county], and shall forfeit to the party injured double the damages sustained by such default.

ANNOTATIONS

Present status. — Superseded by 31-12-1, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions, see 45-3-1001 to 45-3-1003 and 45-3-1204 NMSA 1978.

Attachments

Sec. 1.

Creditors whose demands amount to fifty dollars [(\$50.00)] or more may sue their debtors in the circuit court by attachment in the following cases, to wit:

A. when the debtor is not a resident of nor resides in this territory;

B. 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 cannot be passed upon him;

C. when the debtor is about to remove his property or effects out of this territory; or has fraudulently concealed or disposed of his property or effects so as to defraud, hinder or delay his creditors;

D. when the creditor [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;

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

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 42-9-1 NMSA 1978.

Sec. 2.

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

ANNOTATIONS

Present status. — Superseded by 42-9-4 NMSA 1978.

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 that the affidavit [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.

ANNOTATIONS

Present status. — Superseded by 42-9-5 NMSA 1978.

Sec. 4.

The bond shall be executed by the plaintiff or some responsible person as principal, and ten [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 this attachment, or any process of judgment thereon.

ANNOTATIONS

Present status. — Superseded by 42-9-7 NMSA 1978.

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 affidavits and petition or other lawful statement of the cause of action shall be filed before an attachment shall be issued.

ANNOTATIONS

Present status. — Superseded by 42-9-10 NMSA 1978.

Sec. 6.

The bond given by the plaintiff or other person in 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 sustain.

ANNOTATIONS

Present status. — Superseded by 42-9-11 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 42-9-13 NMSA 1978.

Sec. 8.

Original writs of attachment shall be issued and returned in like 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 action on contracts; and a general judgment may be rendered for or against the defendant.

ANNOTATIONS

Present status. — Superseded by 42-9-15 NMSA 1978.

Sec. 9.

The manner of serving writs of attachment shall be as follows:

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

B. 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;

C. 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;

D. 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;

E. when the credits of the defendant are to be attached, the officer shall declare to the debtor of the defendant that he attached 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.

ANNOTATIONS

Present status. — Superseded by 42-9-17 NMSA 1978.

Sec. 10.

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

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 107, § 1 (300).

Sec. 11.

When the defendant cannot 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 appears 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.

ANNOTATIONS

Present status. — Superseded by 42-9-18 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 42-9-19 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 42-9-20 NMSA 1978.

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 garnishees, the times and places when and where respectively summoned.

ANNOTATIONS

Present status. — Superseded by 42-9-21 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 42-9-22 NMSA 1978.

Sec. 16.

In all cases when [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 shall be found for him the cause shall proceed, but if it be found for the defendant the cause shall be dismissed at the costs of the plaintiff.

ANNOTATIONS

Present status. — Superseded by 42-9-31 NMSA 1978.

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.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 107, § 1 (300).

Sec. 18.

Such judgment by default may be proceeded on to final judgment in like manner as in cases of the defendant in actions upon contracts, but no final judgment shall be rendered against the garnishee until there shall be final judgment against the defendant.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 107, § 1 (300).

Sec. 19.

The 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 shall be assessed and judgment shall be [rendered] for the proper amount of money. If the answer of the garnishee be not excepted to or denied at the same time at which it is filed, it shall be taken to be true and sufficient.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 107, § 1 (300).

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 effects, or of the debt being ascertained, judgment may be rendered against the garnishee.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 107, § 1 (300).

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.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 107, § 1 (300).

Sec. 22.

Creditors whose demands are for a less amount than fifty dollars [(\$50.00)] 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 attachment in the circuit court, provided that publication when required may be by six handbills, put up at six different public places three weeks before the return day of the writ.

Attorney General and Circuit Attorneys

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by N.M. Const., art. V, § 1.

Sec. 2.

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

ANNOTATIONS

Present status. — Superseded by 8-5-2 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 24 and 36-1-18 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 36-1-19 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 36-1-19 NMSA 1978.

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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 36-1-18 NMSA 1978.

Sec. 7.

In addition to the fees of office, the attorney general shall receive a salary of five hundred dollars [(\$500)] a year, and each circuit attorney shall receive an annual salary of two hundred and fifty dollars [(\$250)], 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. V, § 12, 8-1-1 and 36-1-6 NMSA 1978.

Clerks

Sec. 1.

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

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by N.M. Const., art. VI, § 22.

Sec. 2.

The clerk of the circuit court of the county in which the supreme court may set [sit], shall be as [ex] officio clerk of the superior [supreme] court.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 9.

Sec. 3.

The clerks of the superior and inferior courts, and of the prefect, shall seasonable [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 [processes] 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 the respective offices and keep a correct account thereof.

ANNOTATIONS

Present status. — Compiled as 34-1-6 NMSA 1978.

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 [bonds] 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.

ANNOTATIONS

Present status. — Superseded by 16-3-36, 1953 Comp., which was repealed by Laws 1968, ch. 69, § 69.

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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 9.

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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 10-3-1 to 10-3-3, 10-4-1 to 10-4-29, 10-5-1 to 10-5-9 and 10-6-1 to 10-6-6 NMSA 1978 for provisions on removal and suspension of officers.

Constables

Sec. 1.

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

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

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[/]dollars [(\$400)], nor more than four thousand dollars [(\$4,000)], conditioned that he will execute all process [processes] 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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 10-2-8 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 10-2-12 NMSA 1978.

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 prescribed for the removal of clerks, and shall moreover forfeit to the party entitled thereto two percent a month upon the amount so detained, from the time of the demand made, until actual payment.

ANNOTATIONS

Present status. — No present counterpart, *but see* 4-44-32 NMSA 1978.

Courts and Judicial Powers

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

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.

ANNOTATIONS

Present status. — Superseded by 34-6-1 NMSA 1978.

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 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 Monday [Mondays] of March and of September of every year; in the central district, at the city of Santa Fe, on the third Monday [Mondays] of March and September of every year, and in the northern district, at the town of Don Fernando, on the first Monday [Mondays] of April and October of every year.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 7.

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.

ANNOTATIONS

Present status. — For present provision on district court terms, see 34-6-2 NMSA 1978.

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 Ana, on the first Mondays of February and June, and the third Mondays [Monday] of October of each year, at the town of Algodones; 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 Monday of February and June, and the first Monday in November of each year, at the town of San Miguel.

ANNOTATIONS

Present status. — For present provision on district court terms, see 34-6-2 NMSA 1978.

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 Monday [Mondays] of February, and June and the fourth Monday of October of each year, in the town of Don Fernando.

ANNOTATIONS

Present status. — For present provision on district court terms, see 34-6-2 NMSA 1978.

Sec. 8.

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

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 2. For jurisdiction of court of appeals, see N.M. Const., art. VI, § 29.

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.

ANNOTATIONS

Present status. — For right to appeal in civil case, see N.M. Const., art. VI, § 2, 39-3-2 NMSA 1978 and Rule 12-201 NMRA.

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.

ANNOTATIONS

Present status. — For time and manner of taking civil appeal, see 39-3-2 NMSA 1978 and Rules 12-201 and 12-202 NMRA.

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 no others:

A. when the appellant shall be executor or administrator, and the action by or against him as such;

B. when the appellant, or some responsible person for him, together with two sufficient securities, to be approved by the court, during [the] same time [term] at which the judgment or decision appealed from was rendered, enter into a recognizance to the adverse party in a sum sufficient to secure the debt, damages and costs recovered 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, that 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.

ANNOTATIONS

Present status. — For statutory provisions on supersedeas and stay, see 39-3-9 and 39-3-22 to 39-3-24 NMSA 1978. For rule governing supersedeas and stay, see Rule 12-207 NMRA.

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.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 43, § 60. For present statutory provision on right to appeal, see 39-3-2 NMSA 1978. For present rule on when a matter is appealable, see Rule 12-201 NMRA.

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 in 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 such court to which the appeal is returnable, a perfect transcript of the record and proceedings in the case. If he fail to do so, the appellee may produce in court such transcript, and if it appear thereby that an appeal has been allowed in the cause, the court shall affirm the judgment, unless good cause be shown to the contrary. 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.

ANNOTATIONS

Present status. — Repealed by Laws 1907, ch. 43, § 60. For present rule governing notice of appeal, see Rule 12-202 NMRA. As to docketing of appeal, along with skeleton transcript, and failure so to do, see Rule 12-208 NMRA.

Sec. 14.

The superior court in appeals or writs of error shall examine the record, and on the facts thereon 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 the law.

ANNOTATIONS

Present status. — For disposition of appeal after review, see 39-3-27 NMSA 1978.

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 percent on the amount of the judgment complained of as may be just.

ANNOTATIONS

Present status. — For statutory provision regarding damages on appeal, see 39-3-27 NMSA 1978. For rule on damages, see Rule 12-403 NMRA.

Sec. 16.

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

ANNOTATIONS

Present status. — Repealed by Act of Feb. 9, 1854.

Sec. 17.

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

ANNOTATIONS

Present status. — For directions, execution and judgment on bond following review, see 39-3-28 and 39-3-29 NMSA 1978.

Sec. 18.

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

A. of all criminal cases that shall not otherwise be provided for by law;

B. exclusive original jurisdiction in all civil cases which shall not be cognizable before the prefects and alcaldes;

C. 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 13.

Sec. 19.

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

ANNOTATIONS

Present status. — Compiled as 34-7-1 NMSA 1978.

Sec. 20.

Six terms of the prefect's court 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.

ANNOTATIONS

Present status. — Superseded by 34-7-8 NMSA 1978.

Sec. 21.

The several prefects shall have exclusive original jurisdiction in all cases relative to the probate of last wills and testaments; the granting [of] letters testamentary and of administration, and the repealing [of] the same; the appointing and displacing [of] guardians of orphans and persons of unsound minds; to binding out apprentices; to settlement and allowance of the accounts of executors, administrators and guardians; to hear and determine all controversies respecting wills, the right of executorship,

administration or guardianship, respecting the duties or accounts of executors, administrators and guardians and all controversies between master [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 any such demand shall exceed one hundred dollars [(\$100)] the claimant may sue either before the prefect or in the circuit court, in the first place.

The prefect shall have a 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 where the amount in controversy, or the value of the thing claimed does not exceed fifty dollars [(\$50.00)]; appeals shall be allowed from all judgments of the prefect to the circuit court, provided that all judgments, in cases of appeals from the decision of alcaldes, shall be final and conclusive.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 23 and former 16-4-10, 1953 Comp.

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 case of appeals from the circuit to the superior court.

ANNOTATIONS

Present status. — Compiled as 30-2-17, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101.

Sec. 23.

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

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 26, providing for magistrates' courts. See also 35-1-3 NMSA 1978.

Sec. 24.

Every alcalde shall have jurisdiction over the following actions:

A. all actions founded upon bonds or other contracts, when the balance due or damages claimed, exclusive of interest, shall not exceed ninety dollars [(\$90.00)];

B. all actions of trespass and of trespasses on the case for injuries to persons, or real or personal property, when the damages claimed shall not exceed fifty dollars [(\$50.00)];

C. to take auditor judgment or confession, where the amount confessed shall not exceed one hundred dollars [(\$100)], but no alcalde shall have jurisdiction of any action against an executor or administrator, 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VI, § 26. See also 35-3-1 to 35-3-10 NMSA 1978.

Sec. 25.

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

ANNOTATIONS

Present status. — No present counterpart, *but see* Rule 2-202 NMRA.

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 the complaint of the plaintiff; all processes issued by alcaldes shall run in the name of the territory of New Mexico, be dated on the day it is issued and shall be signed by the alcalde granting the same.

ANNOTATIONS

Present status. — No present counterpart, *but see* Rule 2-202 NMRA.

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.

ANNOTATIONS

Present status. — No present counterpart, *but see* Rule 2-202 NMRA.

Sec. 28.

When both parties first appear before the alcalde on the return of the process, the alcalde shall, on 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.

ANNOTATIONS

Present status. — Superseded by 36-4-8, 1953 Comp., which was repealed by Laws 1975, ch. 242, § 12. For present rule, *see* Rule 2-502 NMRA.

Sec. 30.

Every suit shall be determined on 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 until his next law day.

Sec. 31.

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

ANNOTATIONS

Present status. — Superseded by 36-4-6, 1953 Comp., which was repealed by Laws 1975, ch. 242, § 12. For rule on granting of continuances, *see* Rule 2-601 NMRA.

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.

ANNOTATIONS

Present status. — Superseded by 35-8-2 and 35-8-3 NMSA 1978. See *also* Rule 2-602 NMRA.

Sec. 34.

The alcalde shall issue a summons, directed to some constable of the county wherein the cause is to be tried, commanding him to summon six good and 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.

ANNOTATIONS

Present status. — Superseded by 35-8-3 NMSA 1978. See *also* Rule 2-603 NMRA.

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 cannot be obtained from those returned, the constable shall immediately summon others to serve in their place.

ANNOTATIONS

Present status. — Superseded by 35-8-3 NMSA 1978. See *also* Rule 2-603 NMRA.

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.

ANNOTATIONS

Present status. — Superseded by 35-8-2 to 35-8-4 NMSA 1978. See also Rule 2-603F NMRA.

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.

ANNOTATIONS

Present status. — Superseded by 35-8-4 NMSA 1978. See also Rule 2-701 NMRA.

Sec. 38.

Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn that the evidence [that] 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.

ANNOTATIONS

Present status. — Superseded by 36-4-8, 1953 Comp., which was repealed by Laws 1975, ch. 242, § 12. For present provision, see Rule 2-601 NMRA.

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 verdict [docket].

ANNOTATIONS

Present status. — Superseded by 35-8-4 NMSA 1978. See also Rule 2-701 NMRA.

Sec. 40.

The alcalde, whenever he shall be satisfied that a jury in a civil cause before him, after having been out a reasonable time, cannot 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.

ANNOTATIONS

Present status. — Superseded by 35-8-4 and 35-8-5 NMSA 1978. See also Rule 2-604 NMRA.

Sec. 41.

If the defendant after having been 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 [(\$5.00)] for the use of the county, for a contempt of court.

ANNOTATIONS

Present status. — Superseded by 36-4-5, 1953 Comp., which was repealed by Laws 1975, ch. 242, § 12. For present provisions, see Rule 2-702 NMRA.

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 costs against him, unless his suit be founded upon a bond or not [note], in which case the cause shall proceed in the same manner, and with a like effect as though the plaintiff were personally present.

ANNOTATIONS

Present status. — No present counterpart, *but see* Rule 2-702 NMRA.

Sec. 43.

Appeals shall be allowed from judgments of alcaldes when the debt or damages do not exceed fifty dollars [(\$50.00)], 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 supreme court; provided that an appeal may be taken from the judgment of an alcalde within ten days of the rendition of the judgment.

ANNOTATIONS

Present status. — Superseded by 35-13-1 NMSA 1978. *See also* Rule 2-705 NMRA.

Costs

Sec. 1.

For 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by Rule 1-054 NMRA. See *also* Rule 2-701 NMRA.

Costs recoverable against any party, including state. — The legislature, in 39-3-30 NMSA 1978, gives express authority, without exception, to the recovery of costs against any losing party, including the state. *Kirby v. New Mexico State Hwy. Dep't*, 1982-NMCA-014, 97 N.M. 692, 643 P.2d 256.

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 recover 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.

ANNOTATIONS

Present status. — Compiled as 39-2-4 NMSA 1978.

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:

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

B. 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;

C. 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 as tendered, he shall pay costs in the appellate court, but not in the court below, he shall recover costs in both courts.

ANNOTATIONS

Present status. — Compiled as 39-2-5 NMSA 1978. See *also* Rule 12-403 NMRA.

Sec. 4.

If such appeal shall be from a judgment in favor of the appellant, costs shall be adjudged as follows: if upon the trial anew, the appellant shall not recover more than the judgment below, he shall pay the costs of the appellate court. If he recover nothing, the costs shall be adjudged against him in both courts. If he recover more than the judgment below, he shall recover costs in both courts.

ANNOTATIONS

Present status. — Compiled as 39-2-6 NMSA 1978. See *also* Rule 12-403 NMRA.

Sec. 5.

In cases of appeal 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.

ANNOTATIONS

Present status. — For supreme court rules governing supersedeas bond, see Rule 1-062 NMRA and Rule 12-207 NMRA. For recovery of costs, see Rule 12-403 NMRA.

Sec. 6.

When any demand shall be presented to the court of the 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.

ANNOTATIONS

Present status. — Compiled as 31-8-7, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions relating to creditors' claims against an estate, see 45-3-801 NMSA 1978 et seq.

Sec. 7.

If any person commences 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.

ANNOTATIONS

Present status. — Compiled as 31-8-8, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions relating to creditors' claims against an estate see 45-3-801 NMSA 1978 et seq.

Sec. 8.

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

ANNOTATIONS

Present status. — Superseded by 31-12-6 NMSA 1978. See *a/so* Rule 5-701 NMRA and Rule 2-803 NMRA.

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.

Sec. 10.

In all capital cases in which the defendant shall be acquitted, the costs shall be paid by the prosecutor.

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, and the defendant be acquitted, the costs shall be paid by the prosecutor.

Sec. 13.

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

ANNOTATIONS

Present status. — Compiled as 41-11-5, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18.

Sec. 14.

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. 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 [of] any criminal case shall be taxed against the United States, the territory or any county, the fees of the clerk, sheriff, alcalde, 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 shall order the same.

ANNOTATIONS

Present status. — Compiled as 41-12-1, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For present provisions on compelling attendance of witnesses in a criminal case, see Rules 5-613 and 6-606 NMRA.

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 record, recognizance or subpoena, against the same witness.

ANNOTATIONS

Present status. — Compiled as 41-12-12, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For present provisions on compelling attendance of witnesses in a criminal case, see Rules 5-613 and 6-606 NMRA.

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

Sec. 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 punishments to the respective offenses.

ARTICLE I

Sec. 1.

If any person shall be convicted of the crime of willful murder, such person shall suffer death. If any person or persons shall be convicted of manslaughter, such person or persons shall be imprisoned, not exceeding five years, and fined not exceeding one thousand dollars [(\$1,000)].

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 30-2-1, 30-2-3, 31-18-13 and 31-18-14 NMSA 1978.

Sec. 2.

If any person or persons shall be convicted of the crime of arson, such person or persons shall be imprisoned, not exceeding ten years, and fined not exceeding five thousand dollars [(\$5,000)].

ANNOTATIONS

Present status. — Superseded by 30-17-5, 30-17-6 and 31-18-15 NMSA 1978.

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 or their accessories before the fact, shall be deemed guilty of willful murder, and punished with death.

ANNOTATIONS

Present status. — Superseded by 30-2-1, 30-16-2 to 30-16-4 and 31-18-15 NMSA 1978.

Sec. 4.

If any person shall be convicted of larceny or theft, he shall be fined in a sum not exceeding one thousand dollars [(\$1,000)], or imprisonment [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.

ANNOTATIONS

Present status. — Superseded by 30-16-1, 31-18-15 and 31-19-1 NMSA 1978. See also 30-18-4 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 30-16-10 and 31-18-15 NMSA 1978.

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 [(\$1,000)], or imprisonment [imprisoned] not exceeding seven years.

ANNOTATIONS

Present status. — Superseded by 30-26-1 and 31-18-15 NMSA 1978.

ARTICLE II

Sec. 1.

Every person who shall kill another in the necessary defense of his own life, or that of any other persons, 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 30-2-6 to 30-2-8 NMSA 1978.

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 [(\$1,000)].

ANNOTATIONS

Present status. — Superseded by 30-9-10 to 30-9-13 and 31-18-3 NMSA 1978.

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 pretenses, shall suffer the same punishment as in case of larceny.

ANNOTATIONS

Present status. — Superseded by 30-16-6, 31-18-3 and 31-19-1 NMSA 1978.

Sec. 4.

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

ANNOTATIONS

Present status. — Superseded by 30-16-11, 30-22-4, 31-18-3 and 31-19-1 NMSA 1978.

ARTICLE III

Sec. 1.

Every person who shall willfully, 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:

A. 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;

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

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 30-25-1 and 31-18-3 NMSA 1978.

Sec. 2.

Every person who shall procure any other person, by any means, to commit any willful or 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 procured.

Sec. 3.

Every person who shall be convicted of having directly or indirectly given any sum of money, or any other bribe, present or reward, or any promise, contracts, 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 [pending] before him, and any 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 [(\$5,000)] nor less than five hundred dollars [(\$500)], and shall receive not less than twenty, nor more than one hundred lashes on the bare back well laid on.

ANNOTATIONS

Present status. — Superseded by 30-24-1, 30-24-2 and 31-18-3 NMSA 1978.

Sec. 4.

If any person or persons shall, knowingly and willfully, obstruct, resist or oppose any officer of this territory, serving or attempting to serve or execute any process, or any rule or order of any of the courts of the territory, or any other judicial writ or process, or shall assault, beat or wound any officer or other person duly authorized in serving 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 [(\$300)].

ANNOTATIONS

Present status. — Superseded by 30-22-1 and 31-19-1 NMSA 1978.

Sec. 5.

If any person or persons shall, by force, set at liberty or rescue any persons who shall be found guilty of any capital crime, or rescue any person convicted of the said crimes [crime], 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 [(\$500)] and imprisoned not exceeding one year.

ANNOTATIONS

Present status. — Superseded by 30-22-7, 30-22-11 and 31-18-3 NMSA 1978. See also 33-2-8 NMSA 1978.

Sec. 6.

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

ANNOTATIONS

Present status. — Superseded by 30-22-6 and 31-19-1 NMSA 1978.

Sec. 7.

Every person who shall be convicted of shooting 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.

ANNOTATIONS

Present status. — Superseded by 30-3-2, 30-3-3, 30-3-5, 31-18-3 and 31-19-1 NMSA 1978.

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 [(\$50.00)] nor less than one dollar [(\$1.00)].

ANNOTATIONS

Present status. — Superseded by 30-3-1, 30-3-4 and 31-19-1 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 30-10-1 and 31-18-3 NMSA 1978.

Sec. 10.

If three or more persons shall assemble together with intent to do any 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 [(\$50.00)] and not less than five dollars [(\$5.00)] each.

ANNOTATIONS

Present status. — Superseded by 30-20-3 and 31-19-1 NMSA 1978.

Sec. 11.

The offenses mentioned in the eighth and tenth sections of this article shall be punished in [a] summary way before the alcalde; all of the 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.

ANNOTATIONS

Present status. — Superseded by 31-14-1 and 31-14-11 NMSA 1978.

Sec. 13.

In all cases of imprisonment for offenses under this law, it shall be lawful for the jailer 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 chains and blocks, or otherwise, so as to prevent their escape during the period of their imprisonment.

ANNOTATIONS

Present status. — Superseded by 33-2-21 NMSA 1978.

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 may be bound, may secure him, without cruelty, to prevent his escape.

ANNOTATIONS

Present status. — No present counterpart, *but see* 33-3-11 NMSA 1978.

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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 30-1-14 NMSA 1978.

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 the Superior Court

Sec. 1.

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

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by N.M. Const., art. VI, § 9.

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 court is filed in his office, endorse 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 [(\$20.00)] to [for] the use of the territory, to be recovered by indictment.

Sec. 5.

The reporter shall publish his [the] decisions of the superior court, under the direction of the court.

ANNOTATIONS

Present status. — For duty of the board of trustees of the supreme court law library regarding publication of opinions, see 18-1-5 NMSA 1978.

Elections

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by N.M. Const., art. IV, § 4, and art. XX, § 6.

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.

ANNOTATIONS

Present status. — Superseded by 1-3-1 NMSA 1978 et seq.

Sec. 3.

If the governor shall not designate the election precincts or the house, nor appoint the judges thirty days before the day of the 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 elections [election].

ANNOTATIONS

Present status. — Superseded by 1-3-1 NMSA 1978 et seq.

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 designated by the governor or prefects, it shall be the duty of the sheriff to fix the place of holding the election, and if no judges be appointed, or those appointed fail to attend, the voters when assembled may appoint the judges of the election.

ANNOTATIONS

Present status. — Superseded by 1-3-1 NMSA 1978 et seq.

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.

ANNOTATIONS

Present status. — No present counterpart. But see N.M. Const., art. IV, § 4, 1-8-6 to 1-8-8 and 1-11-1 NMSA 1978, for present provisions as to filling of vacancies and notice of elections.

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 pollbooks 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.

ANNOTATIONS

Present status. — No present counterpart. For present provisions regarding election supplies, see 1-11-5 to 1-11-18 NMSA 1978.

Sec. 7.

There shall be allowed to the clerks, for making out and furnishing the pollbooks aforesaid, one dollar [(\$1.00)] 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 judges at the present election according to law.

ANNOTATIONS

Present status. — No present counterpart, *but see* 1-2-7 NMSA 1978, regarding precinct board members' oath of office.

Sec. 9.

The judges shall appoint two clerks, who, before entering on the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected as judges 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 til six o'clock in the evening, when they shall be closed.

ANNOTATIONS

Present status. — Superseded by 1-12-1 NMSA 1978.

Sec. 11.

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

ANNOTATIONS

Present status. — No present counterpart, *but see* 1-12-1 NMSA 1978, for opening and closing of polls.

Sec. 12.

At the close of each election the judges shall certify, under their hands, 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 pollbooks, by one of their clerks, to the clerk of the prefect of the county in which the election was held, within five days thereafter; the other pollbook shall be retained in the possession of one of the judges of the election, open to the inspection of all persons.

ANNOTATIONS

Present status. — Superseded by 1-12-30 NMSA 1978.

Sec. 13.

The clerk 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.

ANNOTATIONS

Present status. — Superseded by 1-13-3 and 1-13-4 NMSA 1978.

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 [the] districts for the election of members to the legislative council composed of two or more counties, the clerks of all the counties in 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 for each candidate in their 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. XX, § 7 and 3-13-13 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. XX, § 7 and 1-13-13 NMSA 1978.

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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 1-13-2 NMSA 1978, for present provisions regarding missing returns.

Sec. 18.

If such failure shall happen by neglect of the clerk, he shall forfeit to the territory one hundred dollars [(\$100)], 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 after such failure, if the circumstances will justify it, taking care that the returns, in all cases, be obtained by the time that the returns from the most distant counties 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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 1-13-2 NMSA 1978, for present provisions regarding missing returns.

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 of 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 places 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. V, § 2 and 1-13-11 NMSA 1978.

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 speakers 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. IV, § 7.

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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. IV, § 7, art. V, § 2 and 1-13-11 NMSA 1978.

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 [(\$.05)] per mile going and returning, to be paid out of the territorial treasury.

ANNOTATIONS

Present status. — For similar provision, see 1-2-20 NMSA 1978.

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 [(\$200)], 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.

ANNOTATIONS

Present status. — Superseded by 1-20-19 and 1-20-23 NMSA 1978.

Sec. 26.

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

Sec. 27.

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

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. VII, § 1.

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 pollbook as a registered voter and shall also take down the names of the person [persons] for whom such person wishes to vote.

ANNOTATIONS

Present status. — Superseded by 1-12-22 NMSA 1978.

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 contest the election of any person proclaimed duly elected by 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 were illegal and the name of the alcalde who will attend to taking of the depositions, and where he will attend to take the same.

ANNOTATIONS

Present status. — Superseded by 1-14-3 NMSA 1978.

Sec. 31.

It shall be the duty of the person whose election is contested to select another alcalde to attend at [to] the taking of depositions at the time and place specified in the next preceding section, and when the two 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.

ANNOTATIONS

Present status. — No present counterpart. For application of Rules of Civil Procedure in actions to contest elections, see 1-14-3 NMSA 1978.

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.

ANNOTATIONS

Present status. — No present counterpart. For application of Rules of Civil Procedure in actions to contest elections, see 1-14-3 NMSA 1978.

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.

ANNOTATIONS

Present status. — No present counterpart. For application of Rules of Civil Procedure in actions to contest elections, see 1-14-3 NMSA 1978.

Sec. 34.

If, from sickness or 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 each vacancy.

Sec. 35.

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

ANNOTATIONS

Present status. — No present counterpart. For application of Rules of Civil Procedure in actions to contest elections, see 1-14-3 NMSA 1978.

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.

ANNOTATIONS

Present status. — No present counterpart. For application of Rules of Civil Procedure in actions to contest elections, see 1-14-3 NMSA 1978.

Executions

Sec. 1.

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

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Compiled as 39-4-1 NMSA 1978.

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.

ANNOTATIONS

Present status. — Compiled as 39-4-2 NMSA 1978.

Sec. 3.

When any execution shall be placed in the hands of any officer for collection, he shall call upon the 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 sufficient 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 cases of garnishees summoned in suits originating by attachments. 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.

ANNOTATIONS

Present status. — Compiled as 39-4-3 NMSA 1978.

Sec. 4.

Any defendant so committed to jail, may at the expiration of five days from the day of his commitment, 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 land [bond] in favor of the plaintiff with sufficient security 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.

ANNOTATIONS

Present status. — Compiled as 39-4-7 NMSA 1978.

Sec. 7.

Upon the 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.

ANNOTATIONS

Present status. — Compiled as 39-4-8 NMSA 1978.

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.

ANNOTATIONS

Present status. — Superseded by 39-5-1 NMSA 1978.

Sec. 9.

When real estate shall be taken on 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.

ANNOTATIONS

Present status. — Superseded by 39-5-1 NMSA 1978.

Sec. 10.

All executions issued from the circuit or superior court, or the court of the 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 of said court shall be returnable to the second succeeding term.

ANNOTATIONS

Present status. — Superseded by 39-4-9 NMSA 1978 and 42-9-16 NMSA 1978.

Sec. 11.

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

Fees

Sec. 1.

The attorney general and circuit attorneys shall, respectively, be allowed fees as follows, which shall be taxed as other costs. For every conviction on indictment, when the punishment assessed by the court or jury shall be [a] fine or imprisonment, or both, five dollars [(\$5.00)]. For judgment in every proceeding of a criminal nature, otherwise than by indictment, five dollars [(\$5.00)]. For his services in all actions which it is, or shall be made, his duty by law, to prosecute or defend, five dollars [(\$5.00)]. For a correction [conviction] for homicide other than capital, for rape, arson, burglary, robbery,

forgery and counterfeiting, ten dollars [(\$10.00)]. For a conviction in a capital case, twenty dollars [(\$20.00)].

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Sec. 2.

The clerk of the prefect shall be allowed the following fees: for recording letters testamentary or of administrations, one dollar [(\$1.00)]. For filling [filing] the bond of the executor or administrator, fifty cents [(\$.50)]. For appointing guardian or curator, twelve and one-half cents [(\$.125)]. For filing and preserving bond of guardian or curator, fifty cents [(\$.50)]. For every order of publication, twenty-five cents [(\$.25)]. For every order relating to executors, administrators or guardians not otherwise provided for, twelve and one-half cents [(\$.125)]. For copying any order, record or paper, for every hundred words, ten cents [(\$.10)]. For entering any judgment and verdict, twelve and one-half cents [(\$.125)]. For proof of every will or codicil taken by the prefect, twenty-five cents [(\$.25)]. For every certificate and seal, twenty-five cents [(\$.25)]. For issuing every subpoena, twenty-five cents [(\$.25)]. For administering every oath, three cents [(\$.03)]. For keeping abstracts of demands for each demand, three cents [(\$.03)]. For certifying the amount, date and classes of any demand without seal, five cents [(\$.05)]. For entering every motion or rule, five cents [(\$.05)]. For swearing and entering a jury, twenty-five cents [(\$.25)]. For entering every trial, five cents [(\$.05)]. For a commission to take depositions, twenty-five cents [(\$.25)]. For every execution, fifty cents [(\$.50)]. For every continuance of a cause, five cents [(\$.05)]. For entering an appeal, twelve and one-half cents [(\$.125)]. For every writ to summon a jury, twelve and one-half cents [(\$.125)]. For every order to distribute offsets among heirs, etc., twelve and one-half cents [(\$.125)]. For every settlement of executor, administrator or guardian, whether annual or final, twenty-five cents [(\$.25)]. For every order appointing road overseers, twenty-five cents [(\$.25)]. For filing and preserving constable's bond [bonds], to be paid for by the constable, twenty-five cents [(\$.25)]. For all services in filing, taking and safekeeping the collector's bonds for territorial taxes, to be paid by the territory, one dollar [(\$1.00)]. For like services for collector's bonds for county taxes, to be paid by the territory and county, each for its own, for every one hundred words, ten cents [(\$.10)]. For issuing any license, to be paid for by the applicant, fifty cents [(\$.50)]. For taking, filing and safekeeping every other bond, not otherwise provided for, fifty cents [(\$.50)]. For issuing each writ, and receiving, filing and docketing the return, fifty cents [(\$.50)]. For taking every acknowledgment to a deed or writing, twenty-five cents [(\$.25)].

ANNOTATIONS

Present status. — Compiled as 14-8-13 NMSA 1978. See also 34-7-14 and 34-7-15 NMSA 1978.

Sec. 3.

Clerks of the circuit courts shall be allowed the following fees for their services: for drawing, sealing and entering every writ and filing the same, one dollar [(\$1.00)]. For taking and entering every recognizance, twenty-five cents [(\$.25)]. For taking and entering every bond in any case, twenty-five cents [(\$.25)]. For every issue joined, twenty-five cents [(\$.25)]. For entering every motion, rule or order, twenty-five cents [(\$.25)]. For every continuance of a cause, twenty-five cents [(\$.25)]. For every subpoena, fifty cents [(\$.50)]. For a copy of every rule or order, twenty-five cents [(\$.25)]. For entering every judgment, fifty cents [(\$.50)]. For swearing and entering every jury, fifty cents [(\$.50)]. For search of a record of twelve months' standing, five cents [(\$.05)]. For entering an appeal to [a] superior court, twenty-five cents [(\$.25)]. For every writ of attachment, one dollar [(\$1.00)]. For administering every oath, five cents [(\$.05)]. For copies of records and papers, for every one hundred words, ten cents [(\$.10)]. For producing any record of the court under any rule or order, twenty-five cents [(\$.25)]. For taking and entering of record every acknowledgment of a sheriff's deed, fifty cents [(\$.50)]. For certificate and seal, fifty cents [(\$.50)]. For a venire to summon a jury, fifty cents [(\$.50)]. For every execution, one dollar [(\$1.00)].

ANNOTATIONS

Present status. — Superseded by 34-6-40 NMSA 1978.

Sec. 4.

Clerks of the several courts of this territory possessing criminal jurisdiction shall be entitled to the following fees in criminal cases: for every indictment by a grand jury, fifty cents [(\$.50)]. For venire to summon grand or petit jury, fifty cents [(\$.50)]. For issuing and filing every writ of capias or attachment, one dollar [(\$1.00)]. For taking and entering recognizance of every prisoner, twenty-five cents [(\$.25)]. For every issue of fact joined, twenty-five cents [(\$.25)]. For every continuance of a cause, twenty-five cents [(\$.25)]. For every subpoena, twenty-five cents [(\$.25)]. For commission to take depositions, fifty cents [(\$.50)]. For entering a judgment on a plea of guilty, fifty cents [(\$.50)]. For swearing and entering each grand jury, fifty cents [(\$.50)]. For swearing and entering each petit jury and delivering a copy to each party, fifty cents [(\$.50)]. For judgment on any issue of law or fact, twenty-five cents [(\$.25)]. For entering an appeal to superior court, twenty-five cents [(\$.25)]. For taking recognizance of such appeal, twenty-five cents [(\$.25)]. For copies of papers and records, for every one hundred words, ten cents [(\$.10)]. For administering each oath, five cents [(\$.05)]. For each certificate and seal, fifty cents [(\$.50)]. For issuing execution, one dollar [(\$1.00)].

ANNOTATIONS

Present status. — Superseded by 13-12-4 NMSA 1978.

Sec. 5.

Clerks of the superior court shall receive the following fees: for every writ, one dollar [(\$1.00)]. For taking bond and issuing supersedeas, one dollar [(\$1.00)]. For supersedeas alone, fifty cents [(\$.50)]. For filing transcript and docketing a case, fifty cents [(\$.50)]. For filing assignment or joinder of error, twenty-five cents [(\$.25)]. For recording the opinion of the court when acquired [required] so to do, for every one hundred words, ten cents [(\$.10)]. For copies of the same with certificates, for every one hundred words, ten cents [(\$.10)]. For certified copies of counsel's briefs, for every one hundred words, ten cents [(\$.10)]. For retaxing any bill of costs to be paid by the clerk whose bill is retaxed, one dollar [(\$1.00)]. 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.

ANNOTATIONS

Present status. — Superseded by 34-2-5 NMSA 1978.

Sec. 6.

Sheriffs shall be allowed the following fees for their services: for serving every citation or summons for each default, one dollar [(\$1.00)]. For every writ of capias or attachment for each defendant, one dollar [(\$1.00)]. For taking and returning every bond required by law, fifty cents [(\$.50)]. For levying every execution, one dollar [(\$1.00)]. For making, executing and delivering every sheriff's deed, to be paid for by the purchaser, two dollars [(\$2.00)]. For every return of non est inventus on summons or citation, fifty cents [(\$.50)]. For a return of nulla bona or execution, fifty cents [(\$.50)]. For executing a special summons for a jury, one dollar [(\$1.00)]. For summoning a jury in any other case, fifty cents [(\$.50)]. For summoning each witness, fifty cents [(\$.50)]. For serving every order or rule of court, fifty cents [(\$.50)]. For attending each court per day, one dollar and fifty cents [(\$1.50)]. For calling each action, party or jury, twelve and one-quarter cents [(\$.125)]. For calling each witness, five cents [(\$.05)]. For serving and returning each writ of capias in a criminal case, for each defendant, one dollar [(\$1.00)]. For serving a writ of attachment, for each person in a criminal [case], one dollar [(\$1.00)]. For serving each writ of execution in a criminal case, one dollar [(\$1.00)]. For every return of non est inventus or nulla bona on an execution in a criminal case, fifty cents [(\$.50)]. For summoning a grand jury, five dollars [(\$5.00)]. For committing any person to jail in any case, one dollar [(\$1.00)]. For furnishing [a] prisoner with board for each day, twenty-five cents [(\$.25)]. For executing every death warrant, fifteen dollars [(\$15.00)]. For commission for receiving and paying moneys on execution, where land or goods have been levied on, advertised and sold, three and one-half percent on the first two hundred dollars [(\$200)], and two percent 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 or goods levied on have not been sold.

The party at whose application any writ, execution, subpoena 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 in the county in which he resides, to the place of the sitting of the superior court, five cents [(\$.05)] per mile.

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

Witnesses shall be allowed fees for services in all cases as follows: for attending any court, referee, clerk or commission within the county where the witness resides, for each day, fifty cents [(\$.50)]. For attendance as aforesaid out of the county for each day, one dollar [(\$1.00)]. For each mile of travel in going to, and returning from the place of trial, five cents [(\$.05)].

ANNOTATIONS

Present status. — Superseded by 4-41-16 to 4-41-18, 4-44-19, 4-44-20, 38-6-4 and 38-6-5 NMSA 1978.

Sec. 7.

Alcaldes shall be allowed fees for their services as follows: for every summons, twenty-five cents [(\$.25)]. For every subpoena, twenty-five cents [(\$.25)]. For every attachment, fifty cents [(\$.50)]. For every judgment, twenty-five cents [(\$.25)]. For every execution, twenty-five cents [(\$.25)]. For administering each oath, five cents [(\$.05)]. For every order for a jury, twenty-five cents [(\$.25)]. For taking acknowledgment to a deed or power of attorney, twenty-five cents [(\$.25)]. For making certified copies in appeals, for every 100 words, ten cents [(\$.10)]. For writ of habeas corpus, one dollar and fifty cents [(\$1.50)]. For certifying depositions, twenty-five cents [(\$.25)]. For writing depositions, for every 100 words, ten cents [(\$.10)]. For issuing a warrant in a criminal case, twenty-five cents [(\$.25)]. For swearing a jury, twenty-five cents [(\$.25)]. For taking each recognizance, twenty-five cents [(\$.25)].

ANNOTATIONS

Present status. — Superseded by 35-6-1 NMSA 1978.

Sec. 8.

Constables shall be allowed the following fees for their services: for serving a warrant in a criminal case for each defendant, fifty cents [(\$.50)]. For serving summons or notice in a civil case, twenty-five cents [(\$.25)]. For summoning each juror, seventy-five cents [(\$.75)]. For taking a criminal to jail, seventy-five cents [(\$.75)]. For serving every execution, twenty-five cents [(\$.25)]. For taking a debtor to jail, seventy-five cents [(\$.75)]. For taking every bond required by law to be taken by him, twenty-five cents

[(.25)]. For summoning each witness, twenty-five cents [(\$.25)]. For serving writ of attachment, fifty cents [(\$.50)]. For collecting and paying over to the plaintiff on all sums collected, three percent.

Sec. 9.

Every prefect shall be allowed for his services two hundred dollars [(\$200)] a year, to be paid out of the treasury of the United States, and two dollars [(\$2.00)] a day for every day he may be necessarily employed in the discharge of his duties, to be paid out of the county treasury.

ANNOTATIONS

Present status. — Superseded by 4-44-4 to 4-44-12 and 4-44-14 NMSA 1978.

Guardians

Sec. 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 the children, and have the custody and care of their persons, education and estates, and when such estate is not denied [derived] from the parent acting as guardian, such parent shall give security and account as other guardians.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 32-1-1, 1953 Comp., which was repealed by Laws 1975, ch. 257, § 9-101. For present provisions on guardians of minors, and of their property generally, see 45-5-201 to 45-5-212 and 45-5-401 to 45-5-432 NMSA 1978.

Sec. 2.

If a minor have no parents living, or if 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.

ANNOTATIONS

Present status. — For present provisions relating to appointment of guardian of minor, see 45-5-201 to 45-5-207 NMSA 1978. For appointment of conservator of property of minor, see 45-5-404 to 45-5-413 NMSA 1978.

Sec. 3.

Every appointment of guardian shall specify whether it be of the person, or of the person and estate.

ANNOTATIONS

Present status. — For present provisions relating to appointment of guardian of minor, see 45-5-201 to 45-5-207 NMSA 1978. For appointment of conservator of property of minor, see 45-5-404 to 45-5-413 NMSA 1978.

Sec. 4.

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

ANNOTATIONS

Present status. — For bond given by conservator of property of minor, see 45-5-411 NMSA 1978.

Sec. 5.

Guardians and curators shall put the money of minors entrusted to their care, to interest upon mortgage to be approved by the prefect, or they may, with 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 and 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.

ANNOTATIONS

Present status. — For present provisions regarding powers and duties of guardian of minor, see 45-5-209 NMSA 1978. For present provisions governing powers and duties of conservator of minor's property, see 45-5-417 to 45-5-429 NMSA 1978.

Sec. 6.

Guardians and curators may put the money of minors entrusted to their care, in all sums under five hundred dollars [(\$500)], to interest upon any sufficient security, to be approved by the prefect.

ANNOTATIONS

Present status. — For present provisions regarding powers and duties of guardian of minor, see 45-5-209 NMSA 1978. For present provisions governing powers and duties of conservator of minor's property, see 45-5-417 to 45-5-429 NMSA 1978.

Sec. 7.

Guardians and curators shall make annual settlements with the court of the prefect, in which their proceedings shall be, beginning at the first term after the beginning of a year from their appointments or admission 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 the 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 he [they] make such settlements and statements, the court first making a rule on them respectively, to show cause why they should not be so proceeded against.

ANNOTATIONS

Present status. — For duty of guardian of minor to report on the condition of his ward and the ward's estate on court order so to do, see 45-5-209 NMSA 1978. As to duty of conservator of minor's estate to file an accounting, see 45-5-419 NMSA 1978.

Habeas Corpus

Sec. 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 alcaldes.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 44-1-1 and 44-1-2 NMSA 1978.

Sec. 2.

The petition shall state in substance, by whom the party for whom [the] 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.

ANNOTATIONS

Present status. — Superseded by 44-1-5 NMSA 1978.

Sec. 3.

The jailer or person having the 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 court, judge, prefect or alcaldes issuing the writ.

ANNOTATIONS

Present status. — Superseded by 44-1-6 and 44-1-10 NMSA 1978.

Sec. 4.

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

ANNOTATIONS

Present status. — Superseded by 44-1-14 NMSA 1978.

Sec. 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 on giving bail as required by law.

ANNOTATIONS

Present status. — Superseded by 44-1-23 NMSA 1978.

Sec. 6.

If the officers [officer] trying the same shall deem the party innocent, he shall release him, but if he thinks him guilty, he shall demand [remand] him or bail him according to the circumstances of the case.

ANNOTATIONS

Present status. — Superseded by 44-1-15 to 44-1-20 NMSA 1978.

Jails and Jailers

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 33-3-1 NMSA 1978.

Sec. 3.

It shall be the duty of the sheriffs to receive from constables and other officers all persons who shall be apprehended by each constable or other officers for offenses against this territory, or who shall be committed to such jail by any competent authority.

Sec. 4.

When any person is confined in jail on civil process and money or property of the person in prison cannot be found sufficient to pay 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 [(\$.25)] per day, to be paid to the sheriff or jailer, to furnish said prisoner with provision [provisions] to the full amount thereof. In case the said plaintiff shall refuse to pay the money as aforesaid, and shall be in arrear[s] two weeks, the

sheriff may discharge the prisoner and recover the same from the said plaintiff in the same manner as other debts.

Sec. 5.

Whenever any sheriff of any county of this territory shall have any person in his custody either on civil or criminal process, and 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 from whence said person was brought.

ANNOTATIONS

Present status. — Superseded by 33-3-14, 33-3-15 and 33-3-18 NMSA 1978.

Jurors

Sec. 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, householders and freeholders, and subject to no legal disability.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 31-6-1 and 38-5-10 NMSA 1978.

Sec. 2.

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

ANNOTATIONS

Present status. — Superseded by 31-6-1 and 38-5-10 NMSA 1978.

Sec. 3.

There shall be not 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.

ANNOTATIONS

Present status. — Superseded by 31-6-1 and 38-5-10 NMSA 1978.

Sec. 4.

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

ANNOTATIONS

Present status. — Superseded by 31-6-12 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 31-6-2 NMSA 1978.

Sec. 6.

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

ANNOTATIONS

Present status. — Superseded by 31-6-7 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 31-6-12 NMSA 1978.

Sec. 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 been [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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 31-6-4 and 31-6-6 NMSA 1978.

Sec. 9.

In every case wherein 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 a petit juror.

ANNOTATIONS

Present status. — Superseded by 38-5-10 to 38-5-12 NMSA 1978.

Sec. 10.

Every person summoned to attend and failing, without a good excuse, shall be fined by the court in its discretion not exceeding five dollars [(\$5.00)].

ANNOTATIONS

Present status. — Superseded by 38-5-10 NMSA 1978.

Sec. 11.

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

ANNOTATIONS

Present status. — Superseded by 38-5-14 NMSA 1978.

Laws

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by N.M. Const., art. XXII, § 4.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. IV, § 23.

Sec. 3.

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

ANNOTATIONS

Present status. — Superseded by 12-2A-3 and 12-2A-5 NMSA 1978.

Practice at Law in Civil Suits

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Sec. 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.

Sec. 3.

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

Sec. 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 such suit may be commenced in any county.

ANNOTATIONS

Present status. — Superseded by 38-3-1 and 38-3-2 NMSA 1978.

Sec. 5.

A citation shall be executed either by reading the petition and writ to the defendant, or second, 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.

Sec. 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.

Sec. 7.

Any creditor whose demand amounts to fifty dollars [(\$50.00)] 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 setoffs, in a sum specified in the affidavit, and on what account, that 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 filling [filing] a bond as is required in attachments.

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 8.

Creditors whose demands amount to less than fifty dollars [(\$50.00)], may sue their debtors before alcaldes, by writs of *capias* subject to the same rules as are prescribed in the preceding [section], concerning such writs.

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 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.

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 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 case [cases] of attachment.

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 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.

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 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.

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 13.

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

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 14.

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

ANNOTATIONS

Present status. — Repealed by Laws 1899, ch. 80, § 5.

Sec. 15.

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

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 39-3-1 NMSA 1978.

Sec. 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 [causes] therein, who shall receive therefor the compensation and mileage allowed to witnesses, and twenty-five cents [(\$.25)] for every hundred words translated.

ANNOTATIONS

Present status. — Partially compiled as 34-1-7 NMSA 1978.

Practice of Law in Criminal Cases

Sec. 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 complainant, and any witness [witnesses] 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Compiled as 41-1-1, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 4. For present provisions on docketing of criminal actions and issuance of summons or warrant, see 31-1-4 NMSA 1978.

Sec. 2.

Whenever any person who shall have committed any criminal offense, in any county, shall escape into any other, any magistrate within the county in which such offense [offender] may be found, may issue his warrant for his apprehension, or may endorse 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 offense was committed, for trial.

ANNOTATIONS

Present status. — Compiled as 41-1-5, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18.

Sec. 3.

If the offense be an assault, battery or affray, or gaming [gaming], or the 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 be not less than one dollar [(\$1.00)], nor more than fifty dollars [(\$50.00)].

ANNOTATIONS

Present status. — For present provisions governing jurisdiction of magistrate court, see 35-3-4 NMSA 1978. For jury in magistrate court, see 35-8-1 to 35-8-4 NMSA 1978. For authorized sentences upon conviction of misdemeanor, see 31-19-1 NMSA 1978.

Sec. 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 witnesses for the prosecution, on oath, [and] 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.

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

ANNOTATIONS

Present status. — Compiled as 41-3-9, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18.

Sec. 6.

If upon the examination of the whole matter it appears to the magistrate that no offense has been committed by any person, or that there is no probable cause for charging 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 prisoner guilty thereof, the magistrate shall, by recognizance, summon the prosecutor and all material witnesses against the prisoner to appear and testify before the court, having cognizance of such offense on the first day of the next term thereof, and not depart from such court without leave.

ANNOTATIONS

Present status. — Compiled as 41-3-12, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For requiring bail of a witness, see 31-3-7 NMSA 1978.

Sec. 7.

If the offense beailable, and the prisoner 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 to depart from such court without leave.

ANNOTATIONS

Present status. — Compiled as 41-3-13, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For present provisions on bail, see 31-3-1 to 31-3-9 NMSA 1978.

Sec. 8.

If the offense be notailable, 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.

ANNOTATIONS

Present status. — Compiled as 41-3-14, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For present provisions on bail, see 31-3-1 to 31-3-9 NMSA 1978.

Sec. 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 officer 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 according to [accompany] the warrant of commitment, and be delivered therewith to the jailer.

ANNOTATIONS

Present status. — Superseded by 41-3-15, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18.

Sec. 10.

All criminal officers [offenses] except those cognizable before alcaldes and prefects shall be preferred by indictment of grand jury.

ANNOTATIONS

Present status. — Superseded by N.M. Const., art. II, § 14.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 31-6-10 NMSA 1978.

Sec. 12.

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

ANNOTATIONS

Present status. — No present counterpart, *but* see 31-6-2 and 31-6-5 NMSA 1978.

Sec. 13.

All trials of criminal offenses shall be had in the county in which they were committed; provided, when an offense shall be committed on the boundary of two counties, or within five hundred yards of such boundary, or where the persons committing the offense shall be on one side, and the injury be done on the other side of the boundary, a trial may be had in either of such counties; provided further, that if any mortal wound shall 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 the territory, a trial for such offense may be had in the county in which the death happened.

ANNOTATIONS

Present status. — Superseded by 30-1-14 NMSA 1978.

Sec. 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 officers, and may be directed to, and executed in any county in this territory.

ANNOTATIONS

Present status. — Compiled as 41-1-4, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 7. For present provision on issuance of warrant and statewide service thereof, see 31-1-4 NMSA 1978.

Sec. 15.

Where the indictment is for aailable offense, the defendant may be let to bail by the court in which such indictment is pending, or if such court be not setting [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 officers.

ANNOTATIONS

Present status. — Compiled as 41-4-7, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For present provisions on bail, see 31-3-1 to 31-3-9 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 41-4-13, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18. For present provisions on bail, see 31-3-1 to 31-3-9 NMSA 1978.

Sec. 17.

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

ANNOTATIONS

Present status. — Compiled as 41-11-4, 1953 Comp., which was repealed by Laws 1972, ch. 71, § 18.

Sec. 18.

The defendant in every indictment for a criminal offense shall be entitled to a peremptory challenge of jurors, as follows:

- A. if the offense charged be punishable with death, to the number of twelve;
- B. if punishable with fine and imprisonment, or stripes, to the number of eight;
- C. in [all] cases not punishable by death, or stripes, to the number of five and no more.

Sec. 19.

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

Sec. 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 is sworn, if required.

Sec. 21.

If any person indicted for any 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 apprehension.

Sec. 22.

All issues of fact in a criminal case shall be tried by a jury, who shall assess the punishment in their verdict, and the court shall render a judgment accordingly.

ANNOTATIONS

Present status. — For criminal defendant's right to jury trial, see N.M. Const., art. II, §.

Sec. 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.

ANNOTATIONS

Present status. — For appeals from the district court in criminal cases, see 39-3-3 NMSA 1978.

Sec. 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 thereof, and shall make an order expressly directing that such appeal shall operate as a stay of proceedings.

ANNOTATIONS

Present status. — Superseded by 31-11-1 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 31-11-1 NMSA 1978.

Sec. 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 imprisonment for life, the court which is authorized to order a stay of proceedings under the preceding provision, 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 the judgment on the appeal, and abide its division [decision], render himself in execution and obey every order and judgment which may be made in the premises.

ANNOTATIONS

Present status. — Superseded by 31-11-1 NMSA 1978.

Sec. 27.

The territory shall be allowed on [an] appeal in criminal cases, only in the cases, and under the circumstances mentioned in the next succeeding section.

ANNOTATIONS

Present status. — For present provisions on appeal by state in criminal proceedings, see 39-3-3 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — For present provisions on appeal by state in criminal proceedings, see 39-3-3 NMSA 1978.

Sec. 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 himself is the defendant [appellant].

ANNOTATIONS

Present status. — Superseded by 31-11-2 NMSA 1978.

Sec. 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 transcript of the record in the cause, and certify and return the same to the officer [office] of the clerk of the superior court without delay.

Sec. 31.

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

Sec. 32.

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

ANNOTATIONS

Present status. — Repealed by Laws 1917, ch. 43, § 60.

Sec. 33.

When an appeal is taken by the party indicted, of [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.

ANNOTATIONS

Present status. — Superseded by 31-11-3 NMSA 1978.

Sec. 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 received [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.

ANNOTATIONS

Present status. — Superseded by 31-11-4 NMSA 1978.

Sec. 35.

The circuit court to which any criminal cause shall be rendered for a new trial, shall proceed thereon in the same manner as if said cause has [had] not been rendered to the superior court.

ANNOTATIONS

Present status. — Superseded by 31-11-5 NMSA 1978.

Register of Lands

Sec. 1.

An office called the office of the register of lands [is] established which shall be kept at the city of Santa Fe.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Repudiated by Act of July 14, 1851.

Sec. 2.

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

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 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.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 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 governments, remaining in the archives of the secretary of the territory, of [or] which were in any of the officers [offices] of the department of New Mexico under the Mexican government.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 5.

Every person claiming lands 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 [of] 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 one-half cents [(\$.125)] per hundred words contained in such written evidence of the claims.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 6.

When there is no written evidence of the 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 ever existed, or any record thereof having ever been made, and as to the loss or destruction of the same, and how and when such loss and destruction happened. If any person shall neglect to deliver such evidence and notice of his claim as prescribed in this and the preceding section, within five years from the first day of next January such claim shall be void.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 7.

The register of lands shall communicate to the governor, or either house of the general assembly, such information relating 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, 1848, a fair abstract of all lands claimed as aforesaid, for which services he shall be paid ten cents [(\$.10)] per hundred words contained in the said abstract, by the United States.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 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 at the rate of ten cents [(\$.10)] for every hundred words contained in it, and one dollar [(\$1.00)] for the certificate and seal, to be paid by the applicant.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 9.

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

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 10.

Nothing contained in the fifth and sixth articles 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.

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Sec. 11.

For every willful neglect of duty or willful violation of law [laws] 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 [(\$1,000)].

ANNOTATIONS

Present status. — Repudiated by Act of July 14, 1851.

Records and Seals

Sec. 1.

The superior and circuit courts and the court of the prefect shall procure and keep a seal with such emblems and devices as the court shall think proper.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Compiled as 34-7-3 NMSA 1978, *but see* 34-2-3 and 34-6-25 NMSA 1978.

Sec. 2.

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

Sec. 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.

Sec. 4.

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

Sec. 5.

Every alcalde shall keep a docket in which he shall enter:

- A. the titles of all causes commenced before him;
- B. the time when the first process was issued against the defendant, and the particular nature thereof;
- C. the time when the parties appear before him;
- D. every adjournment, stating at whose request and at what time;
- E. the time when the trial was had;
- F. the verdict of the jury;
- G. the judgment rendered by the alcalde, and the time of rendering the same;
- H. the time of issuing execution, and the name of the officer to whom it was delivered;
- I. the fact of an appeal being allowed.

Revenue

Sec. 1.

No person shall directly or indirectly sell any spirituous liquors or wine, without a license as a grocer or dramshop keeper.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 60-10-1 NMSA 1978.

Sec. 2.

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

ANNOTATIONS

Present status. — Superseded by 7-22-1 NMSA 1978.

Sec. 3.

No person shall deal as a peddler without a license.

Sec. 4.

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

Sec. 5.

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

ANNOTATIONS

Present status. — Superseded by 60-10-1 NMSA 1978.

Sec. 6.

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

Sec. 7.

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

Sec. 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.

Sec. 9.

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

Sec. 10.

Upon every license to keep a billiard table, there shall be levied a tax for territorial purposes of thirty dollars [(\$30.00)] for each table, for every period of six months.

Sec. 11.

Upon every license to a grocer or dramshop keeper, there shall be levied a tax of not less than ten [(\$10.00)], nor more than fifty dollars [(\$50.00)], for every period of six months.

Sec. 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 [(\$1,000)], a tax of fifteen dollars [(\$15.00)] for every period of six months.

Sec. 13.

Where the amount of merchandise received as aforesaid exceeds in value one thousand dollars [(\$1,000)], but is less than three thousand dollars [(\$3,000)], the sum of twenty dollars [(\$20.00)] for every period of six months.

Sec. 14.

Where the amount of merchandise received as aforesaid, is as much in value as three thousand dollars [(\$3,000)], but less than six thousand dollars [(\$6,000)], the sum of thirty dollars [(\$30.00)] for every period of six months.

Sec. 15.

Where the amount of merchandise received for sale as aforesaid, shall exceed in value six thousand dollars [(\$6,000)], a tax of forty dollars [(\$40.00)], for every period of six months.

Sec. 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, produce or manufacture of this 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.

Sec. 17.

There shall be levied on all peddlers' licenses, a territorial tax of the following rates:

A. if the peddler travel and carry his goods on foot, five dollars [(\$5.00)] for every period of six months;

B. if on one or more beasts of burden, five dollars [(\$5.00)] for every horse or beast of burden, for every period of six months;

C. if in a cart or other land [hand] carriage, eight dollars [(\$8.00)] for every period of six months.

Sec. 18.

The several prefects are empowered to levy such sums 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 percent for the same time.

ANNOTATIONS

Present status. — For board of county commissioners' authority to levy property tax, see 4-38-17 NMSA 1978. For general scheme of taxation, see Chapter 7 NMSA 1978.

Sec. 19.

There shall be levied on all distillers' licenses, twenty-five dollars [(\$25.00)] for each still he [they] may use for every period of six months.

ANNOTATIONS

Present status. — Superseded by 60-7-6 NMSA 1978.

Sec. 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 percent.

Sec. 21.

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

Sec. 22.

Each collector at each regular term of the court of the prefect of his county shall return:

- A. all blank licenses not granted by him;
- B. 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 granted by him;
- C. the aggregate statements of the amount of merchandise sworn to and delivered to him, by the person or persons to whom license was granted.

Sec. 23.

The prefect, at each regular term of his court shall settle and adjust the account of collector of licenses delivered to him under the provisions of this law, giving him credit for all blank licenses returned, and charging him with all licenses not returned, according to the aggregate statements required to be returned by the third subdivision of the next preceding section [section 22 C].

Sec. 24.

If the collector shall fail to return a number of such aggregate statements corresponding in numbers with the licenses not returned, the prefect shall for each license not returned, charge him in such settlement the sum of two hundred dollars [(\$200)].

Sec. 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 this county.

Sec. 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.

Sec. 27.

At the time of granting a license the sheriff shall collect in addition to the sums aforesaid, the sum of fifty cents [(\$.50)], the clerk's fee.

Sec. 28.

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

Sec. 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.

Sec. 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 him duplicate receipts for the amount paid; one of which shall be deposited with the auditor within five days after its date.

ANNOTATIONS

Present status. — For present scheme of taxation, see Chapter 7 NMSA 1978. For collection of and accounting for receipts of property taxes by county treasurer, see 7-38-42 and 7-38-43 NMSA 1978.

Sec. 31.

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

Sec. 32.

When any person shall be found keeping a billiard table, dramshop, grocery, distillery or vending goods as a merchant or peddler, contrary to the provisions of this law, every sheriff, collector, coroner and constable shall, and any 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 the constable of the county, and cause the offender to be arrested and brought before him, and shall determine the offense in a summary manner and assess the punishment, which shall be not more than five hundred dollars [(\$500)] nor less than fifty dollars [(\$50.00)].

ANNOTATIONS

Present status. — Superseded by 7-22-7 NMSA 1978.

Sec. 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 the day of trial.

Sheriffs

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 4-41-1 NMSA 1978.

Sec. 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 [(\$1,000)] nor more than fifty thousand dollars [(\$50,000)], conditioned for the faithful discharge of his duties, with securities, 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.

ANNOTATIONS

Present status. — Superseded by 10-1-13 NMSA 1978.

Sec. 3.

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

ANNOTATIONS

Present status. — Superseded by 4-41-13 NMSA 1978.

Sec. 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 court and answer such charges as may be preferred against them.

ANNOTATIONS

Present status. — Compiled as 4-41-2 NMSA 1978.

Sec. 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 his office by the circuit court, on motion founded on charges exhibited; a notice of the motion and a copy of the charges shall be served on him, at least ten days before the day on which the motion is made.

ANNOTATIONS

Present status. — Superseded by 10-4-1 and 10-4-2 NMSA 1978.

Sec. 6.

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

ANNOTATIONS

Present status. — Superseded by 10-4-12 NMSA 1978.

Sec. 7.

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 the collector according to law, and shall render an account to the prefect at his November court in each year, and pay over to the county treasurer whatever may be due the county and the territorial treasurer, whatever may be due to the territory, in one month after such settlement, and on a failure to do so, he may be removed from office in like manner as the sheriff.

ANNOTATIONS

Present status. — Superseded by 4-43-3 NMSA 1978.

Treasury Department

Sec. 1.

The territorial treasurer and the 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 a sum of at least three thousand dollars [(\$3,000)], to be approved by the governor, conditioned for the faithful discharge of the duties required, or which may be required of them by law.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Superseded by 8-6-1 NMSA 1978.

Sec. 2.

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

ANNOTATIONS

Present status. — Superseded by 8-6-1 NMSA 1978.

Sec. 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, settle and adjust the accounts of all collectors of revenue, and other holders of public money [moneys] who are required by law to pay the same into the public treasury; keep an account between the territory and the territorial treasury [treasurer]; report to the general assembly at the commencement of each regular session, 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.

Sec. 4.

All collectors of revenues and others bound by law to pay money directly into 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 [(\$.05)] 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.

Sec. 5.

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

ANNOTATIONS

Present status. — Superseded by 6-2-1 NMSA 1978.

Sec. 6.

The treasurer shall receive and keep all moneys of the territory, except where [when] otherwise specially provided, disburse the public money [moneys] 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, [and] 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.

ANNOTATIONS

Present status. — Superseded by 8-6-3 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 8-6-3 NMSA 1978.

Sec. 8.

If the auditor or treasurer shall willfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, he shall forfeit to the territory any sum not exceeding one thousand dollars [(\$1,000)], to be recovered by indictment.

ANNOTATIONS

Present status. — Superseded by 8-6-6 and 8-6-7 NMSA 1978.

Sec. 9.

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

ANNOTATIONS

Present status. — Superseded by 4-43-1 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Compiled as part of 4-43-2 NMSA 1978, prior to the 1967 amendment of that section. For present provisions on bond of county treasurer, see 10-1-13 NMSA 1978.

Sec. 11.

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

ANNOTATIONS

Present status. — Compiled as part of 4-43-2 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Superseded by 4-38-27 NMSA 1978.

Sec. 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 [should 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.

ANNOTATIONS

Present status. — Superseded by 4-43-4 and 10-17-4 NMSA 1978.

Sec. 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 the 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.

ANNOTATIONS

Present status. — Superseded by 7-38-42, 7-38-43 and 10-17-4 NMSA 1978.

Sec. 15.

It shall be the duty of the clerk of the prefect to keep regular accounts between the treasurer and the county, to keep just accounts between the county and all persons chargeable with money payable into the county treasury, or who may become 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, so often as required by the prefect, and keep his books and papers ready at all times to be inspected by the prefect.

ANNOTATIONS

Present status. — Superseded by 4-40-4 to 4-40-6 NMSA 1978.

Sec. 16.

It shall be the duty of all clerks to keep just accounts of all fines, penalties and 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.

ANNOTATIONS

Present status. — No present counterpart, *but see* 34-1-6, 34-6-33 NMSA 1978.

Sec. 17.

It shall be the duty of the circuit court and the court of the prefect at each term thereof to settle with the sheriff of the county for which such courts are holden, for all

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

ANNOTATIONS

Present status. — Superseded by 10-17-4 and 31-12-2 NMSA 1978.

Sec. 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.

Sec. 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 a half percent per month, on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment.

Sec. 20.

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

ANNOTATIONS

Present status. — Compiled as 15-42-2, 1953 Comp., which was repealed by Laws 1977, ch. 11, § 1.

Sec. 21.

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

ANNOTATIONS

Present status. — Superseded by 4-38-16 NMSA 1978.

Water Courses, Stock Marks, etc.

Sec. 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 require the ayuntamientos of the different villages to regulate these subjects, which duties and powers are transferred to and enjoined upon alcaldes and prefects of the several counties.

Witnesses

Sec. 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.

ANNOTATIONS

Compiler's notes. — The original Kearny Code carried the word "Section" preceding only the first section of each subdivision and did not use the abbreviation "Sec." preceding the numbers for the remaining sections.

Present status. — Compiled as 38-6-1 NMSA 1978.

Sec. 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 a summons for a defendant.

ANNOTATIONS

Present status. — Compiled as 38-6-2 NMSA 1978.

Sec. 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.

ANNOTATIONS

Present status. — Compiled as 38-6-3 NMSA 1978.

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,

Brig. Gen., U.S.A.

September 22nd, A.D., 1846.