

L A W S
OF THE
TERRITORY OF IDAHO,
FIRST SESSION;

CONVENED THE 7TH DAY OF DECEMBER, 1863, AND ADJOURNED
ON THE 4TH DAY OF FEBRUARY, 1864, AT

LEWISTON.

ALSO, CONTAINING THE
TERRITORIAL ORGANIC ACT,
DECLARATION OF INDEPENDENCE, THE FEDERAL
CONSTITUTION, THE PRE-EMPTION, AND
~~NATURALIZATION~~ LAWS, ETC., ETC.

LEWISTON:
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1864.

which he acts, either in the manner, the instrument or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 33. The killing being proved, the burden of proving circumstances or mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 34. If any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the territorial prison for a term not exceeding one year; *Provided, however,* That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot gun, pistol, bowie knife, dirk, small sword, back sword, or any other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly.

SEC. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the territorial prison not less than two, nor more than ten years, and shall be incapable of voting or holding any office of trust or profit, under the laws of this territory.

SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon or spectator, or who shall advise or give

assistance to such duel, shall be a competent witness against any person offending against any of the provisions of this act, and may be compelled to appear and give evidence before any justice of the peace, grand jury or court, in the same manner as other witnesses ; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

SEC. 38. If any person shall post another, or, in writing, or print, or orally, shall use any reproachful or contemptuous language to, or concerning another, for not fighting a duel, or for not sending, or accepting a challenge, he shall be imprisoned in the territorial prison for a term not less than six months, nor more than one year, and fined in any sum not less than five hundred, nor more than one thousand dollars.

SEC. 39. If any person, with or without deadly weapons, upon previous concert and agreement, fight one with another, upon conviction thereof, they, or either, or any of them, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years ; should death ensue to any person in such fight, or should any person die from any injury received in such fight, within one year and one day, the person or persons causing such death shall be deemed guilty of murder, and shall be punished accordingly.

SEC. 40. That any person in this territory, having, carrying, or procuring from another person, any dirk, dirk knife, sword, sword cane, pistol, gun, or other deadly weapon, who shall in the presence of two or more persons, draw or exhibit any of said deadly weapons, in a rude, angry, and threatening manner, not in necessary self-defense, or who shall, in any manner, unlawfully use the same, in any fight or quarrel, the person or persons so offending, upon conviction thereof in any criminal court in any county in this territory, shall be fined in any sum not less than one hundred nor more than one thousand dollars, or imprisoned in the territorial prison not less than one, nor more than twelve months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution ; which said costs shall in all cases be computed and collected in the same manner as costs in civil cases. All fines and forfeitures, arising under the provisions of this act, shall be paid into the county treasury of the county wherein such offence was committed, for county purposes: *Provided, nevertheless, That no sherriff, deputy sherriff, constable, marshal, or other peace officer, shall be held to answer, under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties.*

It shall be the duty of all military, civil, and peace officers in this territory, to be vigilant in carrying the provisions of this act into full force and effect, as well, also, as all grand juries, or grand jurors, to enquire into and make presentments of each and every offence under this act, which shall come under or within their knowledge. It shall be, and is hereby made the duty of all judges in this territory to give this act in charge to the grand juries, at each term of their respective courts; and also, to all trial juries, empaneled for the trial of any of the offences herein before mentioned in this act.

SEC. 41. If any person shall assault and beat another, with a cowhide, stick, or whip, having at the time, in his possession, a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the territorial prison not less than one, nor more than ten years.

SEC. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than ten years, and which may extend to life; and every person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years: *Provided*, That no physician shall be effected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

SEC. 43. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily, or of purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the territorial prison for a term not exceeding fourteen years.

SEC. 44. Rape is the carnal knowledge of a female, forcibly and against her will; and a person duly convicted thereof, shall be punished by imprisonment in the territorial prison for a term not less than five years, and which may extend to