

at the county seat on the first Monday of January in each year.

To qualify and give bonds.

Sec. 2. It shall be the duty of territorial, county, and precinct officers elected, to qualify and give bond according to law, on or before the first Monday of January in each year; *Provided*, That all such officers elected at the October election, 1864, shall qualify into office and give bonds on or before the first Monday in March, 1865.

When office considered vacant

Sec. 3. In case of a failure of any territorial, county or precinct officer to comply with the provisions of the second section of this act, then in that case, such office for which such person shall have been elected shall be considered vacant and the proper officers of the law shall immediately proceed to fill such vacancies by appointment, or by special election, according to law.

When to take effect.

Sec. 4. This act shall take effect from and after its passage.

APPROVED, January 12th, 1865.

COUNTY OFFICERS.

CHAPTER V.

AN ACT LEGALIZING THE ACTS OF CERTAIN COUNTY OFFICERS OF YANKTON COUNTY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Official acts of County Commissioners legalized.

Section 1. That the official acts of Charles F. Picotte and Ole Sampson, county commissioners, William Miner, reg-

ister of deeds, and Chas F. Rossteuscher, sheriff, of Yankton county, be and are hereby declared legal.

Sec. 2. This act shall take effect and be in force from and ^{When to take effect.} after its passage and approval by the governor.

APPROVED, December 24th, 1864.

CHAPTER VI.

AN ACT PRESCRIBING THE MANNER OF CONTESTING THE ELECTION OF COUNTY OFFICERS.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

Section 1. The election of any person duly elected to any <sup>County office—
how contested.</sup> county office may be contested by any elector of the county.

First, For mal-conduct, fraud, or corruption on the part of the judges or clerks of election in any precinct or of any of the board of canvassers, or on the part of any member of either of those boards.

Second, When the incumbent was not eligible to the office at the time of the election.

Third, When the incumbent has been duly convicted of any infamous crime before the election and the judgment has no been reversed, annulled, or set aside, nor the incumbent pardoned, at the time of the election.

Fourth, When the incumbent has given, or offered any elector, or any judge, clerk or canvasser of election, any bribe or reward in money, property or any thing of value, for the purpose of procuring his election.

Fifth, When illegal votes shall have been received, and legal votes rejected at the polls sufficient to change the result.

Sixth, For any error or mistake in any of the board of canvassers in counting the votes or in declaring the result of the election, if the error or mistake would effect the result.

Seventh, For any other cause (though not enumerated above) which shows that another was the person legally elected.

Meaning of term incumbent.

Sec. 2. The term "incumbent," in this chapter, means the person whom the canvassers declared elected.

What not sufficient to set aside an election.

Sec. 3. The matter contained in the first ground of contest above named, shall not be held sufficient to set aside an election, unless the mal-conduct, fraud, or corruption, be such as to procure or cause the incumbent to be declared duly elected when he has not received the necessary number of legal votes.

When misconduct of judge or clerk shall not set aside an election.

Sec. 4. When the misconduct complained of is on the part of the judges or clerks of election in any particular precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office.

How the court shall be constituted.

Sec. 5. The court for the trial of contests as provided for in this act, shall be constituted as follows: The judge of probate of the county in which the contest arises, shall be the presiding officer, and the contestant and the incumbent may each name an elector of the county, who shall be associated with the judge of probate as a court, who shall proceed to hear and determine the case as hereinafter provided; *Provided* That if either the contestant or incumbent fails to nominate an associate as provided in this section, or that such associate or both of them fail to act, the presiding officer shall appoint a disinterested elector for each person so failing to act; *Provided, further*, If the judge of probate be an interested party, or if he be absent or if the office of judge of probate be vacant, then the district attorney of the county shall so preside; and if the district attorney be a party interested or absent, then the chairman of the board of county commissioners shall act as presiding officer of such court, and the presiding officer shall administer to each of his associates an oath to impartially hear and determine the case at issue according to law and evidence.

Who shall be clerk of the court.

Sec. 6. The register of deeds shall be the clerk of the court hereby established, and shall keep all papers and record the proceedings of the same in a book kept for that purpose in a manner similar to the record of the proceedings in the district court; but when the register of deeds is a party interested, the presiding officer of the court shall appoint a suitable person to

act as clerk for the time being, who shall take the oath required by law to be taken by the register of deeds, and the appointment and oath shall be recorded.

Sec. 7. The contestant shall file in the office of the register of deeds, within twenty days after the day upon which the returns were canvassed by the board of canvassers of the county, a written statement of his intention to contest the election, setting forth the name of the contestant and that he is an elector of the county, the name of the incumbent, the office contested, the time of the election and the particular causes of the contest, which statement shall be verified by the affidavit of the contestant or some other elector of the county, that the causes set forth are true as he verily believe, but before the judge of probate, or district attorney, or chairman of the board of county commissioners (as the case may be) is required to take jurisdiction of the contest, the contestant must file with the register of deeds a bond in the penal sum of one hundred dollars, with surety, to be approved by said officer, conditioned, that the contestant shall pay all the costs of said contest in case the election be confirmed, or the statement be dismissed, or the prosecution fails.

Contestant to file written statement, verified by affidavit

Must file a bond before jurisdiction is taken.

Sec. 8. When the reception of illegal, or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement.

Name of person and precinct to be set forth.

Sec. 9. The officer assuming jurisdiction of the contest, as provided by section seven, shall then issue a precept, containing copy of the statement, filed in the office of the register of deeds, with a written requisition, that the incumbent file within five days after the service of such precept, in the office of the register of deeds, a written nomination of one of the associate judges of the court for the trial of said contest, which precept shall be directed to the sheriff, coroner or any constable of the county who shall serve the same by leaving a copy of the precept and of the requisition with the incumbent or at his residence or place of business, and make return of his doings within five days after receiving such precept and requisition.

Duty of officer assuming jurisdiction.

Sec. 10. As soon as the associate judges are nominated, the

Judge to fix a day for trial.

presiding judge shall fix a day for the trial, not more than thirty nor less than twenty days from the notice contemplated in this section, which notice, addressed to the usual officers of the law, shall contain the names of the contestant and the incumbent, and of the judges named by each party, a brief statement of the cause of the contest and the day set for the trial.

When notice shall be served.

Sec. 11. The notice shall be served on the incumbent, within five days, and on the two nominated judges within fifteen days from the day of its issue.

How testimony may be given.

Sec. 12. The testimony may be oral or by deposition, and depositions may be taken on four days notice, in the same manner, and for the same causes, as in an action in the district court.

Who may issue subpoenas.

Sec. 13. The judge of probate and the register of deeds, as well when interested as otherwise, may issue subpoenas for witnesses under the seal of their respective offices if there be a seal provided for the same.

Trial to proceed at time appointed.

Sec. 14. The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

Proceedings under the control of court.

Sec. 15. The proceedings shall be under the control and direction of the court; but shall be assimilated to the proceedings in an action at law as far as practicable.

Statement not dismissed for want of form.

Sec. 16. The statement shall not be dismissed for want of form if the particular causes of the contest are alleged with such certainty as will sufficiently advise the incumbent of the grounds of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court may deem reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be granted, on motion, and at the cost of the contestant.

Form of process same as in district court

Sec. 17. The style and form of process, the officers by whom served, and the manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court so far as the nature of the case permits. The

command to a witness may be, to appear at—on—to testify in relation to a contested election, wherein A B is contestant, and C D is incumbent.

Sec. 18. The trial of contested county elections shall take place at the county seat, unless adjourned to some other place within the county by the concurrence of the court and the parties, which may be done before the commencement of the trial.

where the trial is to be held.

Sec. 19. The court shall have all the powers incident to the district court which may be necessary to the right hearing, conduct and determination, of the matter, to compel the attendance of witnesses, to swear them and direct their examination, to punish for contempt in its presence, to adjourn from day to day, and to make any order concerning intermediate costs, and enforce it by attachment.

Powers of court

Sec. 20. The court may direct the attendance of the sheriff or a constable when deemed necessary.

Court may direct attendance of sheriff or constable.

Sec. 21. It shall be lawful to require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter, and if he was not a qualified voter in the county where he voted, then to require him to answer for whom he voted; and if the witness answer such questions no part of his testimony in that trial shall be used against him in any criminal action.

What required of witness.

Sec. 22. The court shall be governed, in the trial and determination of contested elections, by the usual rules of law and evidence, so far as applicable, except as herein otherwise expressed, and may dismiss the proceedings if all the causes of contest are insufficient and not amended, or for want of prosecution.

How the court is to be governed in the trial.

Sec. 23. The court shall pronounce judgment whether the incumbent or any other person was duly elected, and the person so declared elected will be entitled to his certificate upon qualification. If the judgment be against the incumbent and he has already received the certificate, the judgment annuls it. If the court find that no person was duly elected, the judgment shall be that the election be set aside.

Court to pronounce judgment.

Sec. 24. The judges and clerk shall be entitled to receive

Fees of judge
and clerk.

two dollars per day for the time occupied by trial.

Contestant and
incumbent lia-
ble for costs
made by them
respectively.

Sec. 25. The contestant and incumbent are liable to the officers and witnesses for the costs made by them respectively; but if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs also.

Register of
deeds to issue
execution for
costs.

Sec. 26. The register of deeds is authorized to issue execution for costs to run against personal property, which costs shall be collected as costs in civil action before a justice of the peace.

Probate judge
to carry into
effect any order
of court.

Sec. 27. The probate judge shall have authority to carry into effect any order of the court after the adjournment thereof, by attachment or otherwise.

When certificate
of election to
be withheld.

Sec. 28. If notice of contesting the election of an [officer] is filed before the certificate of election is delivered to the incumbent, it shall be withheld until the determination of the court.

When to take
effect.

Sec. 29. This act shall take effect and be in force from and after its passage

APPROVED, January 3, 1865.

CHAPTER VII.

AN ACT INCREASING THE FEES OF CERTAIN COUNTY OFFICERS.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

Fees of.

Section 1. That the county commissioners shall each receive two dollars per day for the time actually engaged as county commissioner, and the register of deeds shall receive two dollars per day for the time he is acting clerk of the board of county commissioners.

Sec. 2. All acts and parts of acts conflicting with this act, Conflicting acts repealed. are hereby repealed.

Sec. 3. This act shall take effect from and after its passage When to take effect. and approval by the governor.

APPROVED, January 7th, 1865.

COUNTY SEATS.

CHAPTER VIII.

AN ACT TO PROVIDE FOR THE LOCATION OF THE COUNTY SEAT OF UNION COUNTY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

Section 1. That a special election shall be held in the county of Union, in the Territory of Dakota, on the second Monday of April, A. D. 1865, at which election the legal voters of said county shall vote by ballot for the location of the county seat of said county; and the place having the highest number of votes shall be declared to be the permanent county seat of said county. Time of holding special elections.

Sec. 2. The board of county commissioners of said county shall, prior to said special election, set off and establish election precincts or districts, embracing the whole of said county, and shall appoint three judges of said election for each election precinct as is provided in case of a general election under the provisions of the existing election law. Duty of county commissioners.

Sec. 3. The register of deeds of said county shall make out and deliver to the sheriff of said county, immediately after Duty of register of deeds.