

Justices of the Peace.

CHAPTER 31.

AN ACT to amend Section Ninety, Ninety-one and Ninety-two of Justices' Code.

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

§ 1. PROCEEDINGS IN CASE OF APPEAL TO DISTRICT COURT.] That section ninety of the Justices' Code be and hereby is amended so as to read as follows: "§ 90. When a party appeals to the district court on questions of law alone, or desiring a review therein, upon the evidence appearing on the trial below, either of questions of fact or law, he must, within ten days from the rendition of judgment prepare a statement of the case and file the same with the justice. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the justice, and if no amendments be filed the original statement stands as adopted. The statement thus adopted or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial and the notice of appeal, may be used on the hearing of the appeal before the district court."

§ 2. WHEN ACTION TO BE TRIED ANEW IN DISTRICT COURT.] That section ninety-one of the Justices' Code be and hereby is amended so as to read as follows: "§ 91. When a party appeals to the district court on questions of fact, or on questions of both law and fact, and demands in his notice of ap-

peal a new trial in the district court, no statement must be made, but the action must be tried anew in that court."

§ 3. DUTY OF JUSTICE IN CASE OF APPEAL.] That section ninety-two of the Justices' Code be and hereby is amended, so as to read as follows: "§ 92. Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district if the appeal be on questions of fact or both law and fact, and a new trial in the district court be demanded in the notice of appeal, a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal and the undertaking filed; in all other cases a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered, upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justices' court."

Approved, February 22, 1879.

CHAPTER 32.

AN ACT to amend Sections Eight and Ninety-two of the Justices' Code.

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

§ 1. PROCEEDINGS WHERE ORDER TRANSFERRING ACTION HAS BEEN MADE.] That section eight of the Justices' Code is amended to read as follows: "§ 8. After an order has been made transferring the action for trial to another court the following proceedings must be had:

"1. The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of one dollar for the transcript, all the papers in the action, together with a certified transcript from his docket of the proceedings therein.

"2. Upon the receipt by him of such papers the justice of the court to which the case is transferred must issue a notice stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial, unless such notice be waived by consent of parties and such consent be entered on the docket of the justice."

§ 2. DUTY OF JUSTICE ON RECEIVING NOTICE OF APPEAL.] That section ninety-two of the Justices' Code is amended to read as follows: "§ 92. Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice, and filing and undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court."

§ 3. This act shall take effect and be in force from and after its passage and approval.

Approved, February 14, 1879.

CHAPTER 33.

AN ACT to amend Section Fifty-six of the Justice Code.

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

§ 1. WHEN EITHER PARTY MAY DEMAND JURY. PROCEEDINGS.] That section fifty-six of the Justices' Code is amended to read as follows: "§ 56. When the value in controversy or sum demanded exceeds twenty dollars, either party may demand a jury, and upon such demand the justice shall write down the names of eighteen persons, residents of the county, and having the qualifications of jurors in the district court, from which list of names each party, the plaintiff beginning, may strike out three names alternately, and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of such list such names; and the justice shall upon the deposit of the jury fee for one day's service, by the party demanding the jury, at once issue his venire directed to the sheriff or any constable of the county, commanding him to summon the twelve persons whose names remain upon the list as jurymen."

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved, February 12, 1879.

CHAPTER 34.

AN ACT increasing the Number of Justices of the Peace and Constables in the Counties of Lawrence, Pennington, Custer, Grand Forks and Burleigh, and Providing for the Election thereof.

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

§ 1. EACH ELECTION PRECINCT ENTITLED TO JUSTICE AND CONSTABLE.] Hereafter every election precinct in the counties of Lawrence, Pennington, Custer, Grand Forks and Burleigh in this Territory shall be entitled to one justice of the peace and one constable, each of whom shall reside and hold his office in the precinct for which he may be elected; and upon the removal of any justice of the peace or constable from such precinct or his attempt to hold his office in any other precinct the board of county commissioners of the county upon due proof thereof, shall declare such office vacant and immediately provide for a special election in each precinct to fill said vacancy.

§ 2. WHEN COUNTY COMMISSIONERS MAY CALL SPECIAL ELECTION.] The board of county commissioners of each of said counties may at any meeting thereof, when satisfied by petition from the residents of any election precinct or otherwise, that a justice of the peace and constable, or either, should be elected therein, they shall immediately call a special election for that purpose in such precinct, and hereafter no votes shall be counted in any election for justice of the peace and constable or either of them, except votes actually polled in the precinct in which said offices are to be held; and the same notice shall be given and like proceedings had in every respect in all special elections held under this act as provided in the election laws of this Territory.

§ 3. TENURE AND JURISDICTION OF OFFICE OF OFFICERS NOW HOLDING.] Every justice of the peace and constable elected at the general election held in each of said counties in the year 1878, shall perform the duties of their offices in the precincts

in which they may be holding the same at the time of the passage of this act, until the general election in the year 1880; and no other justice or constable shall be elected in any such precinct until said election, except in case of a vacancy: *Provided*, That the jurisdiction of said officers, as well as all justices of the peace and constables hereafter elected in each of said counties shall extend over any part of the county in which they are holding such offices.

§ 4. THIS ACT TO APPLY TO COUNTIES NAMED.] This act shall only apply to and be in force in the said counties of Lawrence, Pennington, Custer, Grand Forks and Burleigh.

§ 5. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 6. This act shall take effect and be in force from and after its passage and approval.

Approved, February 10, 1879.

CHAPTER 35.

AN ACT to amend Section Three Hundred and Eight and Five Hundred and Eighty-five of the Penal Code.

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

§ 1. PENALTY FOR ASSAULT AND BATTERY.] That section 308 of the Penal Code be amended to read as follows: "Assault, or assault and battery shall be punishable by imprisonment in a county jail not exceeding thirty days, or by a fine of not less than five dollars or more than one hundred dollars, or both, at the discretion of the court."

§ 2. PENALTY FOR PETIT LARCENY.] That petit larceny shall be punishable by a fine of not less than ten dollars or more than one hundred dollars, or imprisonment in the county jail

not to exceed thirty days, or by both such fine and imprisonment, at the discretion of the court.

§ 3. JUSTICES TO HAVE JURISDICTION.] That justices of the peace shall have jurisdiction to fine and imprison in all cases arising under the provisions of this act, and may try and determine the same, subject to appeal by defendant as in other cases.

§ 4. That all acts and parts of acts conflicting with the provisions of this act are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage and approval.

JOHN R. JACKSON,

Speaker of the House.

GEO. H. WALSH,

President of the Council.

COUNCIL CHAMBER, February 19, 1879.

I certify that this act, known in the records of the Council as Council bill No. 44, has passed both Houses of the Legislative Assembly of Dakota Territory, at the 13th session thereof, the objections of his excellency the Governor to the contrary notwithstanding, by the necessary majority of two-thirds.

ALBERT O. HUBBARD,

Chief Clerk of the Council.

Note by the Secretary.

The foregoing act, together with the certificate of the chief clerk of the Council and House of Representatives attached, was deposited in the office of the Secretary of the Territory on the 20th day of February, and afterwards and on the 22d day of February, 1879, at 7 o'clock P. M. of said day, the following certificate relating to said act was deposited in the Secretary's office by the enrollment committee of the Council:

COUNCIL CHAMBER, YANKTON, D. T.. }
SATURDAY, February 22, 1879. }

I hereby certify that in the Council of the 13th session of the Legislative Assembly of the Territory of Dakota, begun and held at Yankton, D. T., on the 14th day of January, A. D. 1879, there was introduced by M. H. Day, member of the Council from the Fourth Council and Representative district a bill known in the records as Council bill No. 44, and entitled "A bill for an act to amend sections 308 and 585 of the Penal Code," which said bill was introduced in the Council on the 29th day of January, 1879, had its three several readings

and was passed by the Council on the 3d day of February, and as I verily believe, and as the records of the Council show, was passed by the House of Representatives, and returned to the Council on the 8th day of February, 1879, and the bill was presented to his excellency the Governor for his approval at 12 o'clock, noon, on the 13th day of February; was returned to the Council by him without his approval and with his objections thereto, which were entered at large on the journal of the Council; and on the 18th day of February the objections of the Governor having been duly considered, and the question being, "Shall the bill pass, his objections to the contrary notwithstanding?" the bill was so passed by the necessary two-thirds vote; and on the 19th day of February the said bill was passed by the House of Representatives over the veto of the Governor by a two-thirds vote, and was deposited with the Secretary of the Territory at 10 o'clock A. M., February 20, 1879; and this I know, as far as the transactions in the Council are concerned, of my own knowledge, and as far as the transactions in the House of Representatives are concerned, to the best of my knowledge and belief.

Attest:

ALBERT O. HUBBARD,
Chief Clerk.

GEO. H. WALSH,
President of the Council.

I hereby certify that I have read the above statement, and know of my own knowledge that the statements therein made, as far as they refer to the House of Representatives, are true and correct, and as far as they refer to the Council, are true and correct to the best of my belief.

Attest:

T. A. KINGSBURY,
Chief Clerk.

JOHN R. JACKSON,
Speaker of the House.