CIVIL ACTIONS.

CHAPTER 20.

METHOD OF APPEALS TO SUPREME COURT.

AN ACT Providing the Method of Appeals to the Supreme Court of the Territory of Dakota.

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

§ 1. APPEALS MAY BE TAKEN—WHEN.] Appeals to the Supreme Court may be taken from the district courts when no other court of appeal is provided by law.

§ 2. WRIT OF ERROR NOT NECESSARY.] No writ of error shall be necessary to bring up any judgment for review before the Supreme Court, but any judgment or any order defined in section twenty-three (23) of this act may be reviewed upon an appeal by the party aggrieved. The party appealing is called the appellant; the other, the respondent.

§ 3. APPEALS, HOW TAKEN.] An appeal must be taken by serving a notice in writing signed by the appellant or his attorney, on the adverse party, and on the clerk of the court, in which the judgment or order appealed from is entered, stating the appeal from the same, and whether the appeal is from the whole or a part thereof, and if from a part only, specifying the part appealed from. The appeal shall be deemed taken by the service of the notice of the appeal, and perfected on service of the undertaking for costs, or the deposit of money instead, or the waiver hereof, as hereinafter prescribed. When service of a notice of appeal and undertaking cannot in any case be made within this Territory, the court may prescribe a mode for serving the same.

§ 4. TRANSMISSION OF PAPERS BY CLERK.] Upon an appeal being perfected, the clerk of the court from which the appeal is taken shall, at the expense of the appellant, forthwith transmit to the Supreme Court, if the appeal is from a judgment, the judgment roll, if the appeal is from an order he shall transmit the order appealed from, and the original papers used by each party on the application for the order appealed from. The court may, however, in each case, direct copies to be sent in lieu of the originals. The clerk shall also, in all cases, transmit to the Su-

preme Court the notice of appeal and undertaking given thereon; and he shall annex to the papers so transmitted a certificate, under his hand and the seal of the court, from which the appeal is taken, certifying that they are the original papers or copies, as the case may be, and that they are transmitted to the Supreme Court pursuant to such appeal. No further certificate or attestation shall be necessary.

§ 5. DEPOSIT IN PLACE OF UNDERTAKING—RESPONDENT MAY WAIVE UNDERTAKING.] When the appellant is required, under any provision of this act to give an undertaking, he may in lieu thereof deposit with the clerk of the court in which the judgment or order appealed from is entered (who shall give a receipt therefor), a sum of money equal to the amount for which such undertaking is required to be given, and in lieu of the service of such undertaking, serve a notice of the making of such deposit. Such deposit and notice shall have the same effect as the service of the required undertaking, and be held to answer the event of the appeal upon the terms prescribed for the undertaking, in lieu of which the same is deposited. Any such undertaking and deposit may be waived in writing by the respondent for whose benefit the same is required to be made, and such waiver shall have the same effect as the giving of the undertaking would have had.

§ 6. APPELLANT MUST EXECUTE UNDERTAKING.] To render an an appeal effectual for any purpose, and undertaking must be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred and fifty dollars.

§ 7. STAY OF EXECUTION—ADDITIONAL UNDERTAKING REQUIRED] If the appeal be from a judgment directing the payment of money it shall not stay the execution of the judgment unless an undertaking be executed on the part of the appellant, by at least two sureties, to the effect that if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affrmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant on appeal.

§ 8. EXECUTION OF JUDGMENT NOT TO BE DELAYED—EXCEPT WHEN.] If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be delayed by the appeal, unless the things required to be assigned or delivered be brought into the court or placed in the custody of such officer or receiver as the court or presiding judge thereof shall appoint, or unless an undertaking be entered on the part of the appellant, by at least two sureties in such sum as the court or presiding judge thereof shall direct, to the effect that the appellant will obey the order of the Appellate Court on the appeal.

§ 9. To EXECUTE CONVEYANCE.] If the judgment appealed from direct the execution of a conveyance or other instrument the execution of the judgment shall not be stayed by the appeal, unless the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the Appellate Court.

§ 10. To SELL AND DELIVER REALTY.] If the judgment appealed from direct the sale or delivery of possessions of real property (except in actions for foreclosure of mortgage), the execution of the same shall not be stayed unless an undertaking be executed on the part of the appellant, by at least two sureties, in such sum as the court or presiding judge thereof shall direct, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment.

§ 11. DIRECTING THE SALE OF MORTGAGED PREMISES.] If the judgment appealed from direct the sale of mortgaged premises, the execution thereof shall not be stayed by the appeal, unless an undertaking be executed on the part of the appellant, by at least two sureties, conditioned for the payment of any deficiency which may arise on such sale, not exceeding such sum as shall be fixed by the court or presiding judge thereof, to be specified in the undertaking, and all costs and damages which may be awarded to the respondent on such appeal.

§ 12. DIRECTING THE ABATEMENT, OR RESTRAINING THE CONTINUANCE, OF A NUISANCE.] If the judgment appealed from direct the abatement, or restrain of the continuance of a nuisance, either public or private, the execution of the judgment shall not be stayed by the appeal unless an undertaking be entered on the part of the appellant, by at least two sureties, in such sum as the court, or presiding judge thereof, shall direct, to the effect that the appellant will pay all damages which the opposite party may sustain by the continuance of such nuisance.

§ 13. OTHER JUDGMENTS.] If the judgment appealed from direct the doing of any particular act or thing, and no express provision is made by the statute in regard to the undertaking to be given on appeal therefrom, the execution thereof shall not be stayed by the appeal therefrom unless an undertaking be entered on the part of the appellant, in such sum as the court, or presiding judge thereof, shall direct, and by at least two sureties, to the effect that the appellant will pay all damages which the opposite party may have sustained by not doing the particular act or thing directed to be done by the judgment appealed from, and to such further effect as such court or judge shall in discretion direct.

§ 14. FROM ORDERS.] When the appeal is from an order the execution or performance thereof shall not be delayed, except upon compliance, as the court or presiding judge thereof shall

direct, and when so required, an undertaking shall be executed on the part of the appellant, by at least two sureties in such sums and to such effect as the court or presiding judge thereof shall direct; such effect shall be directed in accordance with the nature of the order appealed from, corresponding to the foregoing provisions in respect to appeals from judgments, where applicable, and such provision shall be made in all cases as shall properly protect the respondent, and no appeal from an intermediate order before judgment shall stay proceedings, unless the court or presiding judge thereof shall, in his discretion, so specially order.

§ 15. UNDERTAKING OF APPELLANT.] When a party shall give immediate notice of appeal from an order vacating or modifying a writ of attachment, or from an order denying, disolving, or modifying an injunction, he may within three days thereafter serve an undertaking executed on his part by at least two sureties in such sum as the court or presiding judge thereof shall direct, to the effect that if the order appealed from or any part thereof be affirmed the appellant will pay all costs and damages which may be awarded against him on appeal, and all which the adverse party may sustain by reason of the continuance of the attachment, or the granting or continuance of the injunction, as the case may be. Upon the giving of such undertaking such court or judge shall order the attachment to be continued, and in his discretion, may order the injunction asked to be allowed, or that before granted to be continued until the decision of the appeal, unless the respondent shall, at any time pending the appeal, give an undertaking, with sufficient surety in a sum to be fixed by the court or presiding judge, to abide and perform any final judgment that shall be rendered in favor of the appellant in the action, but may at any time subsequently vacate such order if the appeal be not diligently prosecuted.

§ 16. UNDERTAKING ON APPEAL NOT NECESSARY IN CERTAIN CASES.] When the Territory or any Territorial officer, or Territorial board, in a purely official capacity, or any municipal corporation within the Territory, shall take an appeal, service of the notice of appeal shall perfect the appeal and stay the execution or performance of the judgment or order appealed from, and no undertaking need be given. But the Supreme Court may on motion require surety to be given, in such form and manner as it shall in its discretion prescribe, as a condition of the further prosecution of the appeal.

§ 17. WHEN SURETY BECOMES INSOLVENT.] The Supreme Court, upon satisfactory proof that any of the sureties to an undertaking given under this act has become insolvent, or that his circumstances have become so precarious that there is reason to apprehend that the undertaking is insufficient security, may in its discretion require the appellant to file and serve a new undertaking, with such sureties and in such time as shall be prescribed, and that in default thereof the appeal shall be dismissed or the

stay of proceedings vacated, and the execution or performance of the judgment or order be allowed to be enforced without further delay.

§ 18. THE UNDERTAKINGS MAY BE IN ONE INSTRUMENT—REFUSAL OF JUDGE TO STAY.] The undertakings required by this act may be in one instrument or several, at the option of the appellant; the original must be filed with the notice of the appeal, and a copy showing the residence of the sureties must be served with the notice of appeal. When the sum or effect of any undertaking is required under the foregoing provisions to be fixed by the court or judge, at least twenty-four hours' notice of the application therefor shall be given the adverse party. When the court, or the judge thereof, from which the appeal is taken, or desired to be taken, shall neglect or refuse to make any order or direction not wholly discretionary, necessary to enable the appellant to stay proceedings upon an appeal, the Supreme Court, or one of the Justices thereof, shall make such order or direction.

§ 19. SURETIES MUST JUSTIFY.] An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties, in which each surety shall state that he is worth a certain sum mentioned in such affidavit, over and above all his debts and liabilities, in property within this Territory not by law exempt from execution, and which sum so sworn to by such sureties shall, in the aggregate, be double the amount specified in said undertaking. The respondent may, however, except to the sufficiency of the sureties within ten days after such notice of the appeal, and unless they or other sureties justify in the same manner as upon bail on arrest within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than five days.

§ 20. EFFECT OF PERFECTED APPEAL—COURT TO ORDER SALE OF PERISHABLE PROPERTY.] Whenever an appeal shall have been perfected and the proper undertaking given, or other act done prescribed by this act to stay the execution or performance of the judgment or order appealed from, all further proceedings thereon shall be thereby stayed accordingly, except that the court below may proceed upon any other matter included in the action, not affected by the judgment or order appealed from, and except that the court or presiding judge thereof may order perishable property, held under the judgment or order appealed from, to be sold, and the proceeds paid into the court to abide the event.

§ 21. REFERENCE TO ASCERTAIN DAMAGES—WHEN—BREACH OF UNDERTAKING.] When the amount of damages to be paid by the appellant on affirmance of the judgment or order appealed from, pursuant to any undertaking is not fixed by the judgment or decision of the Supreme Court on the appeal, the district court may, after the remitter of the record from the Supreme Court is filed, order a reference to ascertain such damages, the expense of which shall be included and recoverable with such damages. In all cases

a neglect for the space of thirty days after the affirmance on appeal of a judgment directing the payment of money, to pay the amount directed to be paid on such affirmance, shall be deemed a breach of the undertaking on such appeal. A neglect for a space of thirty days after the confirmation of the report of a referee, to whom a reference has been ordered for the purpose of ascertaining the damages to be paid, on the affirmance of any other judgment or order appealed from, to pay the amount of damages so ascertained and the costs of such reference, shall be deemed a breach of the undertaking on such appeal. The dismissal of an appeal or writ of error by the appellant or plaintiff in error, or by the court for want of prosecution, unless the court shall, at the time, otherwise expressly order, shall render the sureties upon any undertaking or bond, given under this act, liable in the same manner and to the same extent as if the judgment or order appealed from, or the judgment brought up on error had been affirmed.

§ 22. PROCEEDINGS ON APPEAL MAY BE AMENDED TO PERFECT APPEAL.] When a party shall in good faith give notice of appeal, and shall omit, through mistake or accident, to do any other act necessary to perfect the appeal or make it effectual, or to stay proceedings, the court from which the appeal is taken, or the presiding judge thereof, or the Supreme Court, or any one of the Justices thereof, may permit an amendment, or the proper act to be done on such terms as may be just.

§ 23. WHAT ORDERS REVIEWABLE.] The following orders, when made by the court, may be carried to the Supreme Court:

1. An order affecting a substantial right, made in any action when such order in effect determines the action and prevents a judgment from which an appeal might be taken.

2. A final order affecting a substantial right, made in special proceedings, or upon a summary application in an action for judgment.

3. When an order grants, refuses, continues or modifies a provisional remedy, or grants, refuses, modifies or dissolves an injunction; when it sets aside or dismisses a writ of attachment for irregularity; when it grants or refuses a new trial; or when it sustains or overrules a demurrer.

4. When it involves the merits of an action or some part thereof; when it orders judgment on application therefor, on account of the frivolousness of a demurrer, answer or reply, or strikes off such demurrer, answer or reply on account of the frivolousness thereof.

5. From orders made by the district court, vacating or refusing to set aside orders made at chambers, where, by the provisions of this act an appeal might have been taken, in case the order so made at chambers had been granted or denied by the district court in the first instance. For the purposes of an appeal from an order, either party may require the order to be entered by the clerk of record, and it shall be entered accordingly.

§ 24. DETERMINATION ON APPEAL.] Upon an appeal from a judgment, as well as upon a writ of error, the Supreme Court may review any intermediate order or determination of the court below which involves the merits and necessarily affects the judgment, appearing upon the record transmitted or returned from the district court, whether the same were excepted to or not; nor shall it be necessary in any case to take any exception or settle any bill of exceptions to enable the Supreme Court to review any alleged error which would, without a bill of exceptions, appear upon the face of the record. Any questions of fact or of law, decided upon trials by the court or by referee, may be reviewed when exceptions to the findings of fact have been duly taken by either party and returned.

§ 25. COURT MAY GRANT A REHEARING—WHAT CLERK MUST TRANSMIT.] Upon an appeal from a judgment or order, or upon a writ of error, the Supreme Court may reverse, affirm or modify the judgment or order, and as to any or all of the parties; and may, if necessary, or proper, order a new trial; and if the appeal is from a part of the judgment or order, may reverse, affrm or modify as to the part appealed from. In all cases the Supreme Court shall remit its judgment or decision to the court from which the appeal or writ of error was taken, to be enforced accordingly; and if from a judgment, final judgment shall thereupon be entered in the court below in accordance therewith, except where otherwise ordered, the clerk of the Supreme Court shall remit to such court the papers transmitted to the Supreme Court on the appeal or writ of error, together with the judgment or decision of the Supreme Court thereon, within sixty days after the same shall have been made, unless the Supreme Court, on application of either of the parties, shall direct them to be retained for the purpose of enabling such parties to move for a rehearing. In case such motion for a rehearing is denied the papers shall be remitted within twenty days after such denial. The clerk of the Supreme Court shall in all cases, except when the order or judgment is affirmed, also transmit with the papers so returned by him a certified copy of the opinion of the Supreme Court, and his fees for such copy shall be taxed and allowed with his other fees in the case.

§ 26. WHEN NEW TRIAL ORDERED—TIME LIMITED.] In every case in error, or on appeal, in which the Supreme Court shall order a new trial, or further proceedings in the court below, the record shall be transmitted to such court, and proceedings had therein within one year from the date of such order in the Supreme Court, or in default thereof, the action shall be dismissed, unless upon good cause shown, the court shall otherwise order.

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

Approved, March 11, 1887.

CHAPTER 21.

EXCEPTIONS.

AN ACT To Amend Article 8 and Article 9 of Chapter 12 of the Code of Civil Procedure.

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

§ 1. DEFINING EXCEPTIONS.] An exception is an objection upon a matter of law to a decision made, either before or after judgment by a court, or judge, in an action or proceeding. The exception must be taken at the time the decision is made, except as provided in section two of this act.

§ 2. WHAT ARE DEEMED EXCEPTED TO.] The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision finally determining the rights of the parties, or some of them; an order granting or refusing a new trial; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex parte* application and an order or decision made in the absence of a party are deemed to have been excepted to.

§ 3. HOW STATED.] Section 279 of the Code of Civil Procedure is amended so as to read as follows: "No particular form of exception is required, but when the exception is to the verdict or decision, upon the ground of the insufficiency of the evidence to justify it, the objection must specify the particulars in which such evidence is alleged to be insufficient; but the specification of such particulars as provided in section 288 shall be sufficient, the objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or proceeding may be copied, or the substance thereof stated, or a reference thereto sufficient to identify them may be made."

§ 4. TIME TO SETTLE BILL OF EXCEPTIONS.] Section 281 of the Code of Civil Procedure is amended so as to read as follows: "When a party desires to have exceptions taken at a trial settled in a bill of exceptions, he may, within thirty days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the court in which the action is pending, or a judge thereof, may allow, prepare the draft of a bill

and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken, upon which the party relies. Within twenty days after such service the adverse party may propose amendments thereto and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill to the judge who tried or heard the case, upon five days notice to the adverse party, or be delivered to the clerk of the court for the judge. When received by the clerk, he must immediately deliver them to the judge, if he be in the county; if he be absent from the county and either party desire the papers to be forwarded to the judge, the clerk must, upon notice in writing of such party, immediately forward them by mail or other safe channel; if not thus forwarded, the clerk must deliver them to the judge immediately after his return to the county. When received from the clerk, the judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated the judge must settle the bill, if no amendments are served, or if served are allowed, the proposed bill may be presented with the amendments, if any, to the judge for settlement, without notice to the adverse party. It is the duty of the judge, in settling the bill, to strike out of it all redoundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled the bill must be signed by the judge, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk."

§ 5. IN CASE OF A VACANCY.] Section 284 of the Code of Civil Procedure is amended so as to read as follows: "A judge may settle and sign a bill of exceptions after, as well as before he ceases to be such judge. If such judge, before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Territory, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the Supreme Court may by its order or rules direct. Judges of the district court and the Supreme Court shall respectively possess the same power in settling and certifying statements as is by this section conferred upon them in settling and certifying bills of exceptions."

§ 6. NOTICE—WHAT TO CONTAIN—WHEN HEARD.] Section 288 of the Code of Civil Procedure is amended so as to read as follows: "The party intending to move for a new trial must, within twenty days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the court, if the action were tried without a jury, serve upon the adverse party a notice of his intention, designating the statutory grounds upon which the motion will be made and whether the same will be made

upon affidavits or the minutes of the court, or a bill of exceptions, or a statement of the case.

1. If the motion is to be made upon affidavits, the moving party must, within twenty days after serving the notice, or such further time as the court in which the action is pending, or a judge thereof may allow, serve a copy of such affidavits upon the adverse party, who shall have ten days to serve counter-affidavits, a copy of which must be served upon the moving party. Motions for new trial on the ground of newly discovered evidence may be made at any time before the close of the term next succeeding that at which the trial was had.

2. If the motion is to be made upon a bill of exceptions and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions as is provided after the entry of judgment, or after receiving notice of such entry by section two hundred and eighty-one, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed, when the notice of motion is given, such bill shall be used on the motion. When the notice designates as the grounds of the motion errors in law occurring at the trial and excepted to by the moving party, such bill of exceptions shall specify the particular errors upon which the party will rely.

3. If the motion is to be made upon a statement of the case, the moving party must, within twenty days after service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement and serve the same, or a copy thereof on the adverse party. If such proposed statement be not agreed to by the adverse party, he must within twenty days thereafter prepare amendments thereto and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statement and amendments shall within ten days thereafter be presented by the moving party to the judge, upon five days' notice to the adverse party, or delivered to the clerk of the court for the judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties, and clerk, and judge, as are required for the settlement of bills of exception by section two hundred and eighty-one, if no amendments are served within the time designated, or, if served, are allowed, the proposed statement and amendments, if any, may be presented to the judge for settlement, without notice to the adverse party. When the notice of intention designates as the ground of the motion the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the

particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion errors in law occurring at the trial and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the judge, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

4. When the motion is to be made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of intention must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial, and excepted to by the moving party, the notice of intention must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied."

§ 7. HEARING IN OPEN COURT OR IN CHAMBERS.] Section 190 of the Code of Civil Procedure is amended so as to read as follows: "The application for a new trial shall be heard at the earliest practicable period after service of notice of intention, if the motion is to be heard upon the minutes of the court, and in other cases, after the affidavits are served or the bill of exceptions or statement, as the case may be, is filed and may be brought to a hearing in open court or before the judge at chambers, in any county in the district in which the action was tried by either party, upon notice of eight days to the adverse party, specifying the time and place of hearing. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence and phonographic report of the testimony on file."

§ 8. JUDGE MAY EXTEND TIME.] The court or judge may, upon good cause shown, in furtherance of justice, extend the time within which any of the acts mentioned in sections two hundred and eighty-one and two hundred and eighty-eight may be done, or may, after the time limited therefor has expired, fix another time within which any of such acts may be done.

§ 9. WHAT BILL OF EXCEPTIONS OR STATEMENT ON APPEAL MAY CONTAIN.] A bill of exceptions or statement of the case used upon the hearing of a motion for a new trial, or a bill of exceptions prepared as provided in section 281, or a statement of the case, prepared after judgment in the manner provided in section

288, and within the same time after judgment as is allowed for the preparation of a bill of exceptions, may be used on appeal from the final judgment; such statement shall only contain the grounds argued before the court for a new trial, and so much of the evidence or other matter as may be necessary to explain them, and it shall be the duty of the judge to exclude all other evidence or matter from the statement.

§ 10. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 11. This act shall take effect and be in force from and after the first day of October, 1887.

Approved, March 11, 1887.

CHAPTER 22.

NOTICE OF PENDENCY OF ACTION.

AN ACT To Amend Section One of Chapter 117 of the Laws Passed at the Sixteenth Session of the Legislative Assembly, Approved March 13, 1885.

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

§ 1. EFFECT OF LIS PENDENS.] That section one of chapter 117 of the laws passed at the Sixteenth Session of the Legislative Assembly, approved March 13, 1885, be and the same is hereby amended by inserting after the word "thereby," in the fifteenth line of said section, the following: "But if the action be for the foreclosure of a mortgage, or the enforcement of a mechanic's or miner's lien, no such notice need be filed."

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

Approved, February 7, 1887.

CHAPTER 23.

PLACE OF TRIAL OF CIVIL ACTIONS.

AN ACT To Amend Section 92 of the Code of Civil Procedure.

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

§ 1. WHERE SUBJECT MATTER IS.] That section 92 of the Code of Civil Procedure be amended by adding thereto the following: All actions brought on a policy of insurance to recover for loss or damage to the property insured, shall be tried in the county or judicial subdivision where such property is situate at the time of its loss or damage.

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

Approved, March 11, 1887.

CHAPTER 24.

PRESCRIBING TIME FOR FILING ATTACHMENT PAPERS.

AN ACT To Amend Section 203 of the Code of Civil Procedure Relating to the Filing of Papers in Proceedings by Attachment.

Be it Enacted by the Legislative Assembly of the Territory of Dakota.

§ 1. WHEN PAPERS SHALL BE FILED BY SHERIFF.] That section two hundred and three of chapter eleven of the Code of Civil Procedure be and the same is hereby amended by adding thereto the following words: "And such officer shall within twenty days after making such seizure, file all of said papers, including said inventory and return, with the clerk of the district court who issued the warrant."

§ 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

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

NOTE BY THE SECRETARY OF THE TERRITORY.

BISMARCK, DAK., March 7, 1887.

The foregoing act having been presented to the Governor of the Territory, and not having been returned by him to the Council of the Legislative Assembly, in which it originated, within the time prescribed by the organic act, has become a law without his approval.

M. L. MCCORMACK,
Secretary of the Territory.

CHAPTER 25.

JUDGMENTS NOT TO BE ENTERED UNTIL AFTER FILING OF COURT'S DECISION.

AN ACT to Amend Sections 266 and 268, of Chapter 12, of the Code of Civil Procedure, Relating to Trials and Judgments in Civil Actions.

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

§ 1. WHEN JUDGMENT SHALL BE ENTERED.] That section 266 of chapter 12 of the Code of Civil Procedure be and the same is hereby amended by adding thereto the following words: "And no judgment shall be rendered or entered until after the filing of such decision."

§ 2. That section 268 of chapter 12 of the Code of Civil Procedure be and the same is hereby amended by striking out the third subdivision thereof.

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

Approved, February 7, 1887.

CHAPTER 26.

BOND NOT REQUIRED IN CERTAIN CASES.

AN ACT To Amend Chapter 7 of the Session Laws of 1885, Entitled Appeals in Civil Actions.

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

§ 1. BOND NOT REQUIRED IN CERTAIN CASES.] That chapter seven of the Session Laws of 1885 be and the same is hereby amended to read as follows: That section four hundred and fourteen (414) of chapter sixteen (16) of the Code of Civil Procedure of Dakota Territory be and the same is amended by adding thereto after the word "respondent" the following words: *Provided*, That no bond shall in any action or proceeding be required of the Territory of Dakota, or any county, incorporated town or city thereof, on any appeal to any court of the Territory of Dakota, when the Territory, or any county, incorporated town or city shall be the party directly interested therein.

Approved, March 11, 1887.

CHAPTER 27.

DAMAGES FOR INJURIES TO PERSONS AND PROPERTY.

AN ACT to Amend Section 677 of the Code of Civil Procedure.

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

§ 1. DAMAGES.] That section 677 of the Code of Civil Procedure be and the same is hereby amended by striking out the word "p) nitive," wherever it occurs in said section.

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

Approved, March 9, 1887.

CHAPTER 28.

FEES AND DISBURSEMENTS—FORECLOSURE BY ADVERTISEMENT.

AN ACT to Amend Section Six Hundred and Fifteen (615) of Chapter 28 of the Code of Civil Procedure.

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

§ 1. PARTY FORECLOSING ENTITLED TO COSTS.] That section six hundred and fifteen (615) of chapter 28 of the Code of Civil Procedure be and hereby is amended to read as follows:

§ 615. The party foreclosing a mortgage by advertisement shall be entitled to his costs and disbursements out of the proceeds of the sale and shall also be entitled in addition, to any attorney fee agreed upon in the mortgage, upon the making by the attorney, or if more than one, by one of the attorneys employed to foreclose, and filing with the register of deeds at or prior to the time of sale, of an affidavit to the effect that such attorney or attorneys have been in good faith employed to foreclose; that the full amount of such fee innures to his or their benefit; that no agreement or understanding for any division thereof has been made with any other person; that no part thereof is or has been agreed to be paid to the party foreclosing and that such attorney or attorneys are actual and *bona fide* residents of the Territory of Dakota.

§ 2. That all acts and parts of acts inconsistent herewith are hereby repealed.

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

Approved, March 11, 1887.

CHAPTER 29.

FORECLOSURE OF MORTGAGES.

AN ACT Entitled an Act Amending Section 610 of the Code of Civil Procedure.

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

§ 1. AMENDED.] That section six hundred and ten of the Code of Civil Procedure be amended by striking out from said section the word "mortgagee" and inserting in lieu thereof the word "mortgagor."

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

Approved, January 22, 1887.

COMMISSIONER OF IMMIGRATION.

CHAPTER 30.

APPROPRIATION FOR PRINTING, PUBLISHING AND OTHER NECESSARY EXPENSES.

AN ACT To Provide for the Printing, Publishing and Other Current and Necessary Expenses of the Office of the Commissioner of Immigration.

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

§ 1. APPROPRIATION FOR PRINTING, ETC.] There is hereby appropriated for the various purposes embraced in section eleven, chapter sixty-six, laws of 1885, the same relating to the general printing, publication and expense fund of the office of the Commissioner of Immigration, the sum of seven thousand dollars for the year ending December 31, 1887, and the sum of seven thousand dollars for the year ending December 31, 1888, to be paid out