

THE
REVISED CODES

OF THE

TERRITORY OF DAKOTA.

A. D. 1877.

COMPRISING THE CODES AND GENERAL STATUTES PASSED AT THE TWELFTH
SESSION OF THE LEGISLATIVE ASSEMBLY, AND ALL OTHER
GENERAL LAWS REMAINING IN FORCE.

PUBLISHED AND EDITED BY

GEO. H. HAND,
SECRETARY OF DAKOTA.

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY.

YANKTON:

BOWEN & KINGSBURY, PUBLIC PRINTERS,

1877.

PREFACE.

The Territory of Dakota is one of a few remnants of that vast public domain, the title of which was acquired by the United States through the celebrated Louisiana Purchase. Though not a part of the territory northwest of the Ohio which was organized under the provisions of the ordinance of 1787, it has been at times under a common organization with a part of that territory, and the benign provisions of that historic enactment have practically been applied to its government and law.

Out of this domain the great western and northwestern states of Missouri, Kansas, Nebraska, Iowa and Minnesota have been organized, besides other more remote states and several divisions which, like Dakota, remain territories. During their existence as territories, the boundaries and extent of these divisions have been subject to frequent and marked changes, and new names have appeared and old ones have disappeared or become permanent in states formed out of a part, rendering, until recently, the political geography of the territories more like the figures in the kaleidoscope. On the maps of forty years ago, this was noted as the Mandan Region or the Mandan Territory. It became once a part of the Michigan Territory, and afterwards the Territory of Wisconsin included all of that present state, of Iowa and Minnesota, and of Dakota as far west as the Missouri river. After the organization of Wisconsin and Iowa as states, Minnesota while a territory, embraced besides its present area, all that portion of Dakota east of the Missouri river; and the boundaries of Nebraska Territory from 1854 to 1861 included that portion lying west of the Missouri river.

The admission of Minnesota as a state, in May, 1858, left all the country west of its diminished boundaries and of Northwest Iowa along the Big Sioux river to the Missouri river on the west, not included in any organization, and occupied by the Indians. This part was with propriety and by common consent designated by the name of Dakota, from the great associated tribe of Indians, known in their own language and among themselves as Dakotas, and recognizing the French word "Sioux" only when learned by long communication with the whites. The first cession of lands within Dakota, was made in 1858 by treaty with a band of the Dakota tribe called in their language, Iankton or Yankton, and with

the Poncas, a band of another nation, tribe and dialect, who claimed a part of it. This purchase opened 25,000 square miles lying in southeastern Dakota, and this has gradually been extended by successive treaties with the Sioux or Dakotas, until nearly all that east of the Missouri river has been ceded, and at the last session of Congress, in February, 1877, a treaty was ratified and approved by the necessary legislation which ceded and opened the Black Hills in western Dakota, already celebrated for its wealth in the precious metals and in timber.

White settlement was begun in 1859, but by reason of the critical and disturbed condition of national affairs the act of congress organizing the territory of Dakota was not passed until March 2, 1861. President Lincoln appointed the necessary executive and judicial officers at an early day thereafter, and they came promptly to their posts, so that after June, 1861, Dakota had a government. The original boundaries as declared by this act included, besides the present area of the territory, all that region now embraced in Idaho, Montana and Wyoming, each of which has been created by successive acts, leaving the western boundary of Dakota the 27th meridian of longitude west from Washington. Strong efforts are making to secure the erection of a new territory out of the northern half of Dakota, while at the same time an organized movement is growing for the organization and admission of Dakota, the southern half of the present territory, into the Union as a state. The growth of the territory in wealth and population was practically defeated for several years by the Indian troubles in 1862-3, the effects of which long deterred active development. The southern half, including the Black Hills, has now a population of 80,000 or more, and, with vast areas of the richest farming and best grazing lands, and mines of wonderful richness, a most delightful and salubrious climate, and enterprising, intelligent and law abiding population, with institutions and laws inferior to none, promises a rapid growth and development henceforth.

The first general election was held in September, 1861, and the legislative assembly convened in its first session in March, 1862. It continued for sixty days and passed a carefully prepared and good body of laws. Since that eleven other sessions have been held, and at each various acts were passed, amended, repealed or re-enacted, and throughout the course of this legislation each of the codes now revised and printed has had a more or less distinctive history, and are briefly referred to in their order.

The Political Code embraces the results of a large number of miscellaneous acts passed at the various sessions, but now brought into an orderly arrangement and amended into a harmonious and practical system. It comprises those matters which relate to the government of the territory, under the organic laws by congress, the powers and duties of its officers and subordinate municipal corporations, and the nature and management of its institutions.

The Civil Code embraces those divisions of the law which relate to persons and their relations, to property of every kind, and to obligations of every nature in relation to persons and property, including the entire

subject of private corporations; and as a code of written law, had its origin in the uncompleted labors of a commission appointed by the state of New York. This part of their work was not perfected or enacted in that state, but first took the form of a statute in an act passed at the fifth session of the legislative assembly of Dakota, and approved January 12th, 1866, thus having been in force here, though not in a complete form, over eleven years. It was then taken by a commission in California in 1872, and revised and amended, and was enacted as the law of that state in 1873, and has now been again revised, enlarged and re-enacted by Dakota as it appears herein.

The Code of Civil Procedure embraces, together with the Probate Code and the Justices' Code, which are properly parts of it, the jurisdiction of the courts of justice and the judicial and other officers thereof, and all the actions, special proceedings, writs and process, and the methods and means generally, which may be employed for the enforcement of rights and the remedies for their violation. A code of a different origin was enacted by the first session in 1862, and was repealed by implication in 1868, and expressly in 1873. The present code originated also in New York, where it was enacted into law. In an abridged form it was enacted in Dakota in 1868, and took effect on the first day of June in that year. It was also amended and adopted by the state of California in 1873. It has been here completely revised, amended, enlarged and re-enacted in its present comprehensive form.

The Probate Code has received special care, and embraces the latest and best results of legislation and judicial interpretation.

The Justices' Code was also entirely revised, and a really new code was prepared, more brief, exact and simple than the repealed code.

The Penal Code consists of a systematic classification of public offenses, according to the latest and best examples of legislation, with such provisions as are required by our peculiar circumstances, and it fully provides for the prevention of crimes and the punishment of offenders.

The Code of Criminal Procedure had its origin in New York, and it was revised and adopted in California. It was enacted in substantially its present form, but abridged on certain subjects, by the eleventh session of the legislative assembly of Dakota, and approved January 15, 1875. An amendatory act was passed by the late session of the assembly supplying the parts before omitted, and the whole code is thus revised according to the latest and best examples of legislation in the most enlightened states. A few unrepealed and miscellaneous enactments are inserted in the volume in their appropriate connections, and the general repealing act is printed at the close, thus bringing into this volume all the public and general laws and statutes now in force in the territory.

By an act of the eleventh session of the legislative assembly, entitled "An act to provide for revising and codifying the laws of Dakota Territory," approved January 14, 1875, the governor was empowered, and it was made his duty, to select and appoint a commission of "three competent and worthy persons, learned in the law, to revise and codify the laws of

this territory;" and for that purpose the act gave the commission "authority to add to or take from the laws now (then) in force, whatever may be necessary to make a perfect and complete code of laws for this territory." The commission was further authorized to employ a secretary to assist them. In pursuance of this law, His Excellency JOHN L. PENNINGTON, governor of the territory, commissioned the following gentlemen, viz: The Honorable P. C. SHANNON, chief justice of the supreme court of the territory; The Honorable GRANVILLE G. BENNETT, associate justice of the supreme court, and The Honorable BARTLET TRIPP.

This commission organized in January, 1876, by the election of Hon. P. C. SHANNON as chairman, and the unanimous choice of Gen. WM. H. H. BEADLE as secretary. Besides the great study each one had previously given to the whole subject, or various parts of it, the separate or joint labors of these commissioners continued from time to time throughout the year 1876, and during the session of the legislative assembly, beginning January 9th, and closing February 17th, 1877, and until the last hour thereof.

Besides his labors as secretary of the commission, Gen. W. H. H. BEADLE was also a member of the house of representatives, and therein served as chairman of the judiciary committee, which had original charge of all the several bills comprising the codes.

The Revised Codes, as now enacted and printed, save a very few and unimportant blemishes, are believed to embrace the best results of legislation in this country, and also to express the weight of the latest and most enlightened judicial learning and judgment. In them the territory, or the future state, has an invaluable public heritage which should be changed only with intelligent conservatism and the general integrity of which should be preserved with conscientious fidelity.

47. H. H.