

# PENAL CODE.

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An Act to Establish a Penal Code for the Territory of Dakota.

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## CHAPTER I.

### PRELIMINARY PROVISIONS.

§ 1. **Title of act.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That this act shall be known as the Penal Code of the territory of Dakota.

§ 2. **What acts criminal.** No act or omission shall be deemed criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes which it specifies as continuing in force, or such laws as do not conflict with the provisions of this Code.

§ 3. **Crime defined.** A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments :

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust, or profit under this territory.

§ 4. **Crimes divided.** Crimes are divided into

1. Felonies.
2. Misdemeanors.

§ 5. **Felony defined.** A felony is a crime which is or may be punishable with death or by imprisonment in the territorial prison.

§ 6. **Misdemeanor.** Every other crime is a misdemeanor.

§ 7. **Objects of Penal Code.** This Code specifies the classes of persons who are deemed capable of crimes, and liable to punishment therefor; and defines the nature of the various crimes; and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the Code of Criminal Procedure.

§ 8. **Conviction precedes punishment.** The punishment prescribed by this Code can be inflicted only upon a legal conviction in a court having jurisdiction.

§ 9. **Jury find degree of crime.** Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, shall find the degree of crime of which he is guilty.

§ 10. **Rule of construction.** The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

§ 11. **Punishment determined by court.** The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed.

§ 12. **Punishments.** Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code.

§ 13. **Punishment of felonies.** Except in cases where a different punishment is prescribed by this Code, or by some existing provision of law, every offense declared to be felony is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the territorial prison not exceeding two years, or by both such fine and imprisonment.

§ 14. **Misdemeanors.** Except in cases where a different punishment is prescribed by this Code, or by some existing provision of law, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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## CHAPTER II.

### OF PERSONS LIABLE FOR PUNISHMENT FOR CRIME.

§ 15. **Who liable to punishment.** The following persons are liable to punishment under the laws of this territory:

1. All persons who commit, in whole or in part, any crime within this territory.

2. All who commit theft out of this territory, and bring or are found with the property stolen, in this territory.

3. All who, being out of this territory, abduct or kidnap, by force or fraud, any person, contrary to the laws of the place where such act is committed, and bring, send, or convey such person within the limits of this territory, and are afterwards found therein.

4. And all who, being out of this territory, cause or aid, advise or encourage another person, causing an injury to any person or property within this territory, by means of any act or neglect which is declared criminal by this Code, and who are afterwards found within this territory.

§ 16. **Who capable of crimes.** All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven years.

2. Children of the age of seven years, but under the age of fourteen years, in the absence of proof that at the time of committing the act or neglect charged against them they knew its wrongfulness.

3. Idiots.

4. Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.

5. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact, which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

6. Persons who committed the act charged without being conscious thereof.

7. Persons who committed the act, or made the omission charged, while under involuntary subjection to the power of superiors.

§ 17. **Intoxication—how considered.** No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

See sec. 259.

§ 18. **Morbid propensity.** A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.

§ 19. **Insanity—court may commit for.** When a jury have returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public safety, order him

to be committed to the territorial lunatic asylum, or to the care of such person or persons as the court may direct, till he become sane.

§ 20. **Involuntary acts.** The involuntary subjection to the power of a superior, which exonerates a person charged with a criminal act or omission from punishment therefor, arises either from :

1. Duress; or,
2. Coverture.

§ 21. **What duress excuses.** The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force or fear.

§ 22. **Subjection inferred from coverture.** A subjection sufficient to excuse from punishment may be inferred in favor of a wife, from the fact of coverture, whenever she committed the act charged, in the presence, and with the assent of her husband, except where such act is a participation in :

1. Treason.
2. Murder.
3. Manslaughter.
4. Maiming.
5. An attempt to kill.
6. Rape.
7. Abduction.
8. Abuse of children.
9. Seduction.
10. Abortion, either upon herself or another female.
11. Concealing the death of an infant, whether her own or that of another.
12. Fraudulently producing a false child, whether as her own or that of another.
13. Bigamy.
14. Incest.
15. The crime against nature.
16. Indecent exposure.
17. Obscene exhibitions of books and prints.
18. Keeping a bawdy or other disorderly house.
19. Misplacing a railway switch; or,
20. Obstructing a railway track.

§ 23. **When not inferred.** In case of the crimes enumerated in the last section, the wife is not excused from punishment by reason of her subjection to the power of her husband, unless the facts proved show a case of duress, as defined in section twenty-one.

§ 24. **Inference may be rebutted.** The inference of subjection arising from the fact of coverture may be rebutted by any facts showing that in committing the act charged the wife acted freely.

§ 25. **Exemption of public ministers.** Ambassadors and other public ministers from foreign governments accredited to the president or the government of the United States, and recognized by it according to the laws of the United States, with their secretaries, messengers, families, and servants are not liable to punishment in this territory, but are to be returned to their own country for trial and punishment.

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### CHAPTER III.

#### OF PARTIES TO CRIMES.

§ 26. **Classification of parties.** The parties to crimes are classified as :

1. Principals; and,
2. Accessories.

§ 27. **Principals.** All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals.

§ 28. **Accessories.** All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

§ 29. **No accessories.** In misdemeanor there are no accessories.

§ 30. **Punishment of accessories.** Except in cases where a different punishment is prescribed by law, an accessory to a felony is punishable by imprisonment in a territorial prison not exceeding five years, or in county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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### CHAPTER IV.

#### OF CRIMES AGAINST RELIGION AND CONSCIENCE.

§ 31. **Blasphemy defined.** Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the Holy Scriptures, or the Christian religion.

§ 32. **Serious discussion.** If it appears beyond reasonable doubt that the words complained of were used in the course of serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy.

§ 33. **Misdemeanor.** Blasphemy is a misdemeanor.

§ 34. **Profane swearing defined.** Profane swearing consists in any use of the name of God, or Jesus Christ, or the Holy Ghost, either in imprecating divine vengeance upon the utterer, or any other person, or in light, trifling, or irreverent speech.

§ 35. **Punishment of.** Every person guilty of profane swearing is punishable by a fine of one dollar for each offense.

§ 36. **Summary conviction for.** Whenever any profane swearing is committed in the presence and hearing of any justice of the peace, mayor, recorder, or alderman of any city, while holding a court, or under any other circumstances, such as in the opinion of the magistrate amount to a gross violation of public decency, such magistrate may, in his discretion, immediately convict the offender, without any other proof.

§ 37. **Penalties—how collected.** If the offender does not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the county jail for every offense, or for any number of offenses whereof he was convicted at one and the same time, for not less than one day nor more than three days, there to be confined in a room separate from all other prisoners.

§ 38. **The Sabbath.** The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

§ 39. **Sabbath-breaking.** Any violation of this prohibition is Sabbath-breaking.

§ 40. **Day defined.** Under the term "day," as employed in the phrase "first day of the week," in the eight sections following, is included all the time from midnight to midnight.

§ 41. **Sabbath-breaking defined.** The following are the acts forbidden to be done on the first day of the week, the doing any of which is Sabbath-breaking:

1. Servile labor.
2. Undue travel.
3. Public sports.
4. Trades, manufactures, and mechanical employments.
5. Public traffic.
6. Serving process.

§ 42. **Sabbath labor.** All manner of servile labor, on the first day of the week, is prohibited, excepting works of necessity or charity.

§ 43. **Undue travel repealed.** (*Sess. Laws 1879, c. 57.*)

§ 44. **Persons observing other day.** It is a sufficient defense in proceedings for servile labor or undue travel on the first day of the week to show that the accused uniformly keeps another day of the week as holy time, and does not labor or travel upon that day, and that the labor or travel complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

§ 45. **Public sports.** All shooting, sporting, horse-racing, gaming, or other public sports, upon the first day of the week, are prohibited.

§ 46. **Trades and employments.** All trades, manufactures, and mechanical employments, upon the first day of the week, are prohibited.

§ 47. **Public traffic.** All manner of public selling, or offering or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk, and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

§ 48. **Serving process.** All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

§ 49. **Punishment.** Every person guilty of Sabbath-breaking is punishable by a fine of one dollar for each offense.

§ 50. **Fines collected—no exemptions.** The fines prescribed in this chapter for profane swearing and for Sabbath-breaking may be collected in the manner prescribed by law for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

§ 51. **Maliciously serving process.** Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action, to which such person is a party, to be adjourned to that day for trial, is guilty of a misdemeanor.

§ 52. **Compelling form of belief.** Any willful attempt, by means of threats or violence, to compel any person to adopt, practice, or profess any particular form of religious belief is a misdemeanor.

§ 53. **Preventing religious act.** Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes is guilty of a misdemeanor.

§ 54. **Disturbing religious meeting.** Every person who willfully disturbs, interrupts, or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor.

§ 55. **Definition of the offense.** The following are the acts deemed to constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting.

2. Exposing to sale or gift any ardent or distilled liquors, or keeping open any huckster shop, within one mile of the place where any religious society or assembly shall be actually convened for religious worship, and in any other place than such as shall have been duly licensed and in which the person accused shall have actually resided or carried on business.

3. Exhibiting within the like distance any shows or plays without a license by the proper authority.

4. Engaging in, or aiding, or promoting, within the like distance, any racing of animals, or gaming of any description.

5. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway, to the place of such meeting.

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## CHAPTER V.

### CRIMES AGAINST THE ELECTIVE FRANCHISE.

§ 56. **Giving or receiving bribe.** Every person who, by offering to give, or by giving, a bribe, to any elector, or who by menace or any other corrupt means, either directly or indirectly, attempts to influence such elector in giving his vote at any election, and every elector entitled to vote at such election who shall take or receive such bribe, shall be punished by fine not exceeding one thousand dollars, and not less than one hundred dollars, and be imprisoned in the county jail not exceeding one year, and not less than three months.

§ 57. **Illegal influence.** Every person offering, giving, or loaning to another any money or other thing of value to induce him to influence any elector to vote in a particular way, or for any person, at any such election, shall be punished by fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment.

§ 58. **Betting upon elections.** Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast either in the aggregate or for any particular candidate, or upon the vote to be cast by any person or persons, or upon the decision to be made by any inspector or canvasser of any question arising in the course of an election, or upon any event whatever depending upon the conduct or result of an election, is guilty of a misdemeanor.

§ 59. **Offers of office.** Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person or persons to office, as an inducement or consideration to any person to vote for or procure, or aid in procuring, the election of such candidate, is guilty of misdemeanor.

§ 60. **Communicating same.** Every person who, not being a candidate, communicates any offer made in violation of the last section to any person, with intent to induce him to vote for, or to procure, or aid in procuring the election of the candidate making the offer, is guilty of misdemeanor.

§ 61. **Money for elections.** Every person who, with intent to promote the election, either of himself or of any other person or candidate, either:

1. Furnishes or engages to pay or deliver any money or property, for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick, poor, or infirm; or,

2. Furnishes or engages to pay or deliver any money or property, for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers previous to such election, is guilty of misdemeanor.

§ 62. **Defrauding elector in his vote.** Every person who fraudulently alters the ballot of any elector, or substitutes one ballot for another, or furnishes any elector with a ballot containing more than the proper number of names, or who intentionally practices any fraud upon any elector to induce him to deposit a ballot as

his vote, and to have the same thrown out and not counted, or otherwise to defraud him of his vote, is guilty of misdemeanor.

§ 63. **Obstructing electors.** Every person who willfully and without lawful authority obstructs, hinders, or delays any elector on his way to any poll where an election shall be held, is guilty of a misdemeanor.

§ 64. **Double voting, or offer.** Every person who votes more than once at any election, or who offers to vote, after having once voted, either in the same or in another election district, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.

§ 65. **Unqualified voting.** Every person knowing himself not to be a qualified voter, who votes, or offers to vote, at any election, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months.

§ 66. **Procuring same.** Every person who procures, aids, assists, counsels, or advises another to give his vote, knowing that such person is disqualified, shall be punished by fine not exceeding five hundred dollars, nor less than fifty dollars, and by imprisonment in the county jail not exceeding one year.

§ 67. **Same.** Every person who procures or counsels another to enter any town, ward, or election district, for the purpose of giving his vote at an election, knowing that such person is not entitled so to vote, is guilty of a misdemeanor.

§ 68. **Voting out of precinct.** Every person who, at any election, knowingly votes, or offers to vote, in any election district in which he does not reside, or in which he is not authorized by law to vote, is guilty of a misdemeanor.

§ 69. **Convicted felon.** Every person who, having been convicted of any bribery, or felony, thereafter offers to vote at any election without having been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor.

§ 70. **Name registered improperly.** Every person who causes his name to be registered as that of an elector, upon any registry of voters authorized by law to be kept in any town, city, or election district of this territory, knowing that he is not a qualified voter within the territorial limits covered by such registry, is punishable by imprisonment in the territorial prison not less than one year.

§ 71. **Personating registered voters.** Every person who, within any city, town, or election district in this territory, in which a registry of qualified voters is by law authorized to be kept, falsely personates a registered voter, and in such personating offers to vote at any election, is punishable by imprisonment in the territorial prison not less than one year.

§ 72. **False statements upon.** Every person who, at the time of requesting his name to be registered as that of a qualified voter, upon any registry of voters authorized by law to be kept in any city, town, or election district of this territory, or at the time of offering his vote at any election, knowingly makes any false statement, or employs any false representation, or false pretense, or token, to procure his name to be registered or his vote to be received, is guilty of a misdemeanor.

§ 73. **What false statement.** A false statement, representation, or token, made or used in the presence and to the knowledge of a person requesting his name to be registered, or offering his vote, is to be deemed made by himself, if it appears that it was made or used in support of his claim to be registered, or to vote, that he knew it to be false, and suffered it to pass uncontradicted.

See Pol. Code, Dak. Appendix, c. 52.

§ 74. **Disturbance of public meetings.** Every person who willfully disturbs or breaks up any public meeting of electors and others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor.

§ 75. **Preventing public meetings.** Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

§ 76. **Preventing attendance.** Every person who makes use of any force or violence, or of any threat to do any unlawful act, as a means of preventing an elector from attending any public meeting, lawfully held for the purpose of considering any public questions, is guilty of a misdemeanor.

§ 77. **Intimidation and bulldozing.** Every person who willfully, by unlawful arrest, by force and violence, or by threats or intimidation, prevents or endeavors to prevent an elector from freely giving his vote at any election, or employs either of such means to hinder him from voting, or to cause him to vote for any person or candidate, shall be punished by fine not exceeding one thousand dollars, and not less than fifty dollars.

§ 78. **Violence, threats, etc.** Every person who procures or endeavors to procure the vote of any elector, or the influence of any person or [over] other electors, at any election, for himself or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealings in business or trade, or enforcing the payment of debts, or bringing a suit or criminal prosecution, or any other threat or injury, to be inflicted by him, or by his means or procurement, shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding six months.

§ 79. **Disobedience to judges.** Every person who willfully disobeys a lawful command of a judge or board of judges of any election, given in the execution of their duty as such, at an election, is guilty of a misdemeanor.

§ 80. **Violence which impedes elections.** Every person who is guilty of any riotous conduct, or who causes any disturbance or breach of the peace, or uses any disorderly violence, or threats of violence, whereby any election is impeded or hindered, or whereby the lawful proceedings of the judges or canvassers at such election, in the discharge of their duty, are interfered with, is guilty of a misdemeanor.

§ 81. **Summary arrest therefor.** Whenever, at an election, any person refuses to obey the lawful command of the board of judges, or by any disorderly conduct in their presence interrupts or disturbs their proceedings, they may make an order directing the sheriff or any constable of the county, or one or more special constables to be appointed by them, to take the person so offending into custody, and detain him until the final canvass of the votes shall be completed. But such order shall not prohibit the person taken into custody from voting at the election.

§ 82. **No defense.** The fact that any person offending against the provisions of the preceding section was taken into custody and detained, as therein authorized, forms no defense to a prosecution for the offense committed, under any provisions of this Code.

§ 83. **Destroying ballots or boxes.** Every person who willfully breaks or destroys, on the day of any election, or before the canvass is completed, any ballot-box used or intended to be used at such election, or defaces, injures, destroys, or conceals, any ballot which has been deposited in any ballot-box at an election, and has not already been counted or canvassed, or any poll-list used or intended to be used at such election, is guilty of a felony.

§ 84. **False poll-list.** Every clerk of the poll, at any election, who willfully keeps a false poll-list, or knowingly inserts in his poll-list any false statement, is guilty of a misdemeanor.

§ 85. **Misconduct of judges.** Every judge of an election who willfully excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or who willfully receives a vote from any person who has been duly challenged in relation to his right to vote at such election, without exacting from such person such oath or other proof of qualification as may be required by law, or who willfully omits to challenge any person offering to vote whom he knows or suspects not to be duly entitled to vote, and who has not been challenged by any other person, is guilty of a misdemeanor.

§ 86. **Falsely canvassing or certifying.** Every judge of any election, member of any board of canvassers, messenger, or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election, who willfully makes any false canvass of such votes, or makes, signs, publishes, or delivers any false return of such election, knowing the same to be false, or willfully defaces, destroys, or conceals any statement or certificate intrusted to his care, is guilty of a misdemeanor.

§ 87. **Bribing election officer.** Every person who gives or offers a bribe to any judge, clerk, canvasser, or other officer of an election, as a consideration for some act done, or omitted to be done, contrary to his official duty, in relation to such election, shall be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail not exceeding six months.

§ 88. **Disfranchised.** Any person guilty of either of the offenses mentioned in sections fifty-six and fifty-seven shall thereafter be forever disfranchised and render ineligible to any office of trust or profit within the territory, including that of delegate to congress.

§ 89. **Witness not excused—exempt.** No person shall be excused from testifying upon a prosecution for an offense mentioned in section fifty-seven, upon the ground that his statement might tend to criminate himself, but any person so testifying against the other party shall thereafter be exempt from punishment for such offense mentioned in said section.

§ 90. **Election defined.** The word "election," as used in this chapter, designates only elections had within this territory for the purpose of enabling electors, as such, to choose some public officer or officers under the laws of this territory, or of the United States.

§ 91. **Irregularities no defense.** Irregularities or defects in the mode of noticing, convening, holding, or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter.

§ 92. **Rights.** Nothing in this chapter shall be construed to authorize the punishment of any persons who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being, or is about to be, unlawfully conducted.

See sec. 482.

§ 93. **Submission of questions.** Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to electors to be decided by votes cast at an election.

§ 94. **Good faith.** Upon any prosecution for procuring, offering, or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed, upon good reason, that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not.

§ 95. **Selling liquors on election day.** Every person who sells, gives away, or disposes of any intoxicating liquors as a beverage on the day of any general election, or special or local election, in the town, city, or county were held, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail not to exceed twenty days, and by fine not exceeding one hundred, and not less than fifty dollars, such fine to go to the county general fund.

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## CHAPTER VI.

### OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE TERRITORY.

§ 96. **Usurping power.** Every person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, he forfeits his right to the office.

§ 97. **Acts of officer de facto.** The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

§ 98. **Falsely assuming office.** Every person who shall falsely assume or pretend to be any territorial, county, or township officer, or who shall knowingly take upon himself to act as such, or to require any person to act as such, or assist him in any matter pertaining to such office, shall be punished by imprisonment in the county jail not more than two years nor less than three months, and by fine not exceeding five hundred nor less than fifty dollars.

§ 99. **Giving or offering bribes.** Every person who gives or offers any bribe to any executive officer of this territory, with intent to influence him in respect to any act, decision, vote, opinion, or other proceedings of such officer, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 100. **Asking or receiving bribes.** Every executive officer or person elected or appointed to executive office who asks, re-

ceives, or agrees to receive, any bribe upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and, in addition thereto, forfeits his office and is forever disqualified from holding any public office under this territory.

§ 101. **Preventing officer's duty.** Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor.

§ 102. **Resisting officers.** Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty, is guilty of a misdemeanor.

§ 103. **Taking excessive fees.** Every executive officer who asks or receives any emolument, gratuity, or reward, or any promise of any emolument, gratuity, or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

§ 104. **Taking reward for omitting or delaying official acts.** Every executive officer who asks or receives any emolument, gratuity, or reward, or any promise of any emolument, gratuity, or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

§ 105. **Fees for service not rendered.** Every executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

§ 106. **Taking unlawful reward.** Every officer of this territory who asks or receives any compensation, fee, or reward of any kind for any service rendered or expense incurred in procuring from the governor of this territory a demand upon the executive authority of a state or territory of the United States, or of a foreign government, for the surrender of a fugitive from justice, or of any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this territory, or for detaining him therein, except upon an employment by the governor of this territory, and upon an account duly audited and paid out of the territorial treasury, is guilty of a misdemeanor.

See Code Crim. Proc. Dak. §§ 592-594.

§ 107. **Buying appointments to office.** Every person who gives, or agrees, or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any

public office, or shall be permitted to or to exercise, perform, or discharge the prerogatives or duties of any office, is punished by imprisonment in the county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars, or more than one thousand dollars, or both.

§ 108. **Selling same.** Every person who, directly or indirectly, asks or receives, or promises to receive, any gratuity or reward, or any promise of a gratuity or reward, for appointing another person, or procuring for another person, an appointment to any public office, or any clerkship, deputation, or other subordinate position in any public office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine not less than two hundred dollars, nor more than one thousand dollars, or both.

§ 109. **Rewards for deputation.** Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise, perform, or discharge any of the prerogatives or duties of his office, is punishable by imprisonment in the county jail not less than six months nor more than two years, and by a fine of not less than two hundred dollars, or more than one thousand dollars; and, in addition thereto, he forfeits his office.

§ 110. **Unlawful deputation void.** Every grant or deputation made contrary to the provisions of the two preceding sections is void; but official acts done before a conviction for any offense prohibited by those sections shall not be deemed invalid in consequence of the invalidity of such grant or deputation.

§ 111. **Exercising functions after term.** Every person who, having been an executive officer, willfully exercises any of the functions of his office after his term of office has expired and a successor has been duly elected or appointed, and has qualified in his place, and he has notice thereof, is guilty of a misdemeanor.

§ 112. **Refusal to surrender books.** Every person who, having been an executive officer of this territory, wrongfully refuses to surrender the official seal, or any of the books and papers appertaining to his office, to his successor, who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office, is guilty of a misdemeanor.

§ 113. **Administrative officers.** The various provisions of this chapter which relate to executive officers apply, in relation to administrative officers, in the same manner as if administrative and executive officers were both mentioned together.

## CHAPTER VII.

## OF CRIMES AGAINST THE LEGISLATIVE POWER.

§ 114. **Preventing meeting of legislature.** Every person who willfully and by force or fraud prevents the legislature of this territory, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in the territorial prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

§ 115. **Disturbing the legislature.** Every person who willfully disturbs the legislature of this territory, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislature, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 116. **Compelling adjournment.** Every person who willfully and by force or fraud compels, or attempts to compel, the legislature of this territory, or either of the houses composing it, to adjourn or disperse, is punishable by imprisonment in the territorial prison not less than five nor more than ten years, or by fine of not less than five hundred dollars nor more than two thousand dollars, or both.

§ 117. **Intimidating a member.** Every person who willfully, by intimidation or otherwise, prevents any member of the legislature of this territory from attending any session of the house of which he is a member, or of any committee thereof, or from giving his vote upon any question which may come before such house, or from performing any other official act, is guilty of a misdemeanor.

§ 118. **Compelling house to perform or omit act.** Every person who willfully compels, or attempts to compel, either of the houses composing the legislature of this territory to pass, amend, or reject any bill or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is punishable by imprisonment in the territorial prison not less than five nor more than ten years, or by a fine of not less than five hundred dollars nor more than two thousand dollars, or both.

§ 119. **Altering draft of bill.** Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of a felony.

§ 120. **Altering engrossed copy.** Every person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislature of this territory, with intent to procure it to be approved by the governor or certified by the secretary of the territory, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislature, is guilty of a felony.

§ 121. **Giving bribes to members.** Every person who gives or offers to give a bribe to any member of the legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or any other corrupt means, to influence a member in giving or withholding his vote, or in not attending the house of which he is a member, or any committee thereof, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 122. **Receiving bribes by members.** Every member of either of the houses composing the legislature of this territory, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives, or offers, or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the territorial prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both.

§ 123. **Witness refusing to attend.** Every person who, being duly summoned to attend as a witness before either house of the legislature, or any committee thereof authorized to summon witnesses, refuses or neglects, without lawful excuse, to attend pursuant to such summons, is guilty of a misdemeanor.

§ 124. **Refusing to testify.** Every person who, being present before either house of the legislature, or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

§ 125. **Members' forfeiture of office.** The conviction of a member of the legislature of either of the crimes defined in this chapter involves, as a consequence, in addition to the punishment prescribed by this Code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this territory.

CHAPTER VIII.

OF CRIMES AGAINST PUBLIC JUSTICE—BRIBERY AND CORRUPTION.

§ 126. **Bribes to judges, jurors, referees, etc.** Every person who gives, or offers to give, a bribe to any judicial officer, juror, referee, arbitrator, umpire, or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 127. **Receiving bribes by judicial officers.** Every judicial officer of this territory who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision shall be thereby influenced, is punishable by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and, in addition thereto, forfeits his office, and is forever disqualified from holding any public office under this territory.

§ 128. **By jurors, referees, etc.** Every juror, referee, arbitrator, umpire, or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion, or decision, upon any matter or question which is or may be brought before him for decision shall be thereby influenced, is guilty of felony.

§ 129. **Misconduct by jurors, etc.** Every juror, or person drawn or summoned as a juror, or chosen arbitrator, or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict for or against any party; or,
2. Willfully permits any communication to be made to him, or receives any book, paper, instrument, or information relative to any cause pending before him, except according to the regular course of proceedings upon the trial of such cause,

Is guilty of a misdemeanor.

§ 130. **Accepting gifts from parties.** Every judicial officer, juror, referee, arbitrator, or umpire who accepts any gift from any person, knowing him to be a party in interest, or the attorney or counsel of any party in interest, to any action or proceeding then pending, or about to be brought before him, is guilty of a misdemeanor.

§ 131. **Gifts defined.** The word "gift" in the foregoing section shall not be taken to include property received by inheritance, by will, or by gift in view of death.

§ 132. **Attempts to influence jurors, etc.** Every person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict or decision of any cause or matter pending, or about to be brought before him, either :

1. By means of any communication, oral or written, had with him, except in the regular course of proceedings upon the trial of the cause ;

2. By means of any book, paper, or instrument, exhibited otherwise than in the regular course of proceedings upon the trial of cause ;

3. By means of any threat or intimidation ;

4. By means of any assurance or promise of any pecuniary or other advantage ; or,

5. By publishing any statement, argument, or observation relating to the cause,

Is guilty of a misdemeanor.

§ 133. **Drawing jurors fraudulently.** Every person authorized by law to assist at the drawing of any jurors, to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn, any name which shall not have been drawn for that purpose in the manner prescribed by law ; or who omits to place on such list any name that shall have been drawn in the manner prescribed by law ; or who signs or certifies any list of jurors as having been drawn which was not drawn according to law ; or who is guilty of any other unfair, partial, or improper conduct in the drawing of any such list of jurors,—is guilty of a misdemeanor.

§ 134. **Misconduct by officers of jury.** Every officer to whose charge any juror is committed by any court or magistrate, who negligently or willfully permits them, or any one of them, either :

1. To receive any communication from any person ;

2. To make any communication to any person ;

3. To obtain or receive any book or paper, or refreshment ; or,

4. To leave the jury-room without the leave of such court or magistrate first obtained,

Is guilty of a misdemeanor.

## CHAPTER IX.

## OF RESCUES.

§ 135. **Rescuing prisoners.** Every person who, by force or fraud, rescues, or attempts to rescue, or aids another person in rescuing, or in attempting to rescue, any prisoner from any officer or other person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a charge of conviction of felony, by imprisonment in the territorial prison for not less than ten years.

2. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 136. **Retaking goods from custody.** Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

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CHAPTER X.

## OF ESCAPES, AND AIDING THEREIN.

§ 137. **Rearrest of escaped prisoners.** Every prisoner confined upon conviction for a criminal offense, who escapes from prison, may be pursued, retaken, and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time when he is retaken, and he shall remain so imprisoned until tried for such escape, or discharged on a failure to prosecute therefor.

§ 138. **Escape from territorial prison.** Every prisoner confined in the territorial prison for a term less than for life, who, by force or fraud, escapes therefrom, is punishable by imprisonment in such prison for a term not exceeding five years, to commence from the expiration of the original term of his imprisonment.

See sec. 139, \*§ 139a.

§ 139. **Attempt to escape.** Every prisoner confined in the territorial prison for a term less than for life, who attempts by force

or fraud, although unsuccessfully, to escape from such prison, is guilty of felony.

\*§ 139a. **Punishment for escaping from prison.** Any person committed to a territorial prison, who shall escape from or break said territorial prison, with intent to escape therefrom, or who shall attempt by force or violence, or in any other manner, to escape from said prison, whether such escape be effected or not, shall, upon conviction thereof, be punished by imprisonment in said prison for a term not exceeding double the term for which he or she was so sentenced, to commence from and after the expiration of his or her former sentence. (*Sess. Laws 1883, c. 89, § 1.*)

§ 140. **Escape from other prison.** Every prisoner confined in any other than the territorial prison, who by force or fraud escapes therefrom, is punishable by imprisonment in the territorial prison not exceeding two years, or in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

§ 141. **Attempt to escape.** Every prisoner confined in any other prison than the territorial prison, who attempts by force or fraud, although unsuccessfully, to escape therefrom, is punishable by imprisonment in a county jail not exceeding one year, to commence from the expiration of the original term of his imprisonment.

§ 142. **Assisting prisoner to escape.** Every person who willfully, by any means whatever, assists any prisoner confined in any prison to escape therefrom, is punishable as follows:

1. If such prisoner was confined upon a charge or conviction of felony, by imprisonment in the territorial prison not exceeding ten years.

2. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

§ 143. **Carrying into prison things to aid escape.** Every person who carries or sends into any prison anything useful to aid any prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as follows:

1. If such prisoner was confined upon any charge or conviction of felony, by imprisonment in the territorial prison not exceeding ten years.

2. If such prisoner was confined otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by a fine of five hundred dollars, or both.

§ 144. **Concealing escaped prisoners.** Every person who willfully and knowingly conceals any prisoner who, having been confined in prison upon a charge or conviction of misdemeanor has escaped therefrom, is guilty of misdemeanor.

§ 145. **Assisting escape from officer.** Every person who willfully assists any prisoner in escaping, or attempting to escape, from the custody of any officer or person having the lawful charge of such prisoner under any process of law, or under any lawful arrest, is guilty of a misdemeanor.

§ 146. **Prison defined.** The term "prison" in this chapter includes territorial prisons, county jails, and every place designated by law for the keeping of persons held in custody under process of law or under any lawful arrest.

§ 147. **Prisoner defined.** The term "prisoner" in this chapter includes every person held in custody under process of law, issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest.

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## CHAPTER XI.

### FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

§ 148. **Larceny, destruction, etc., of records.** Every clerk, register, or other officer having the custody of any record, map, or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering, or falsifying, or fraudulently removing or secreting such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the territorial prison not exceeding five years, and, in addition thereto, forfeits his office.

§ 149. **By other persons.** Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 150. **Offering forged or false instruments for record.** Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this territory, which instrument, if genuine, might be filed, or registered, or recorded under any law of this territory or of the United States, is guilty of felony.

## CHAPTER XII.

## PERJURY AND SUBORNATION OF PERJURY.

§ 151. **Perjury.** Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury.

§ 152. **Oath.** The term "oath," as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated which is authorized by law.

§ 153. **Oath of office.** So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the previous sections.

§ 154. **Irregularities no defense.** It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 155. **Incompetency—same.** It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he actually was required to give such testimony, or made such deposition or certificate.

§ 156. **Materiality not necessary.** It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him, or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

§ 157. **Making depositions.** The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with intent that it be uttered or published as true.

§ 158. **False statement.** An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

§ 159. **Punishment of perjury.** Perjury is punishable by imprisonment in the territorial prison, as follows:

1. When committed on the trial of an indictment for felony, by imprisonment not less than ten years.
2. When committed on any other trial or proceeding in a court of justice, by imprisonment for not more than ten years.
3. In all other cases, by imprisonment not more than five years.

§ 160. **Summary committal of witnesses.** Whenever it appears probable to any court of record that any person who has testified in any action or proceeding in such court has committed perjury, such court may immediately commit such person, by an order or process for that purpose, to prison, or take a recognizance, with sureties, for his appearing and answering to an indictment for perjury.

§ 161. **Witnesses bound over to appear.** Such court shall thereupon bind over the witnesses to establish such perjury to appear at the proper court to testify before grand jury and upon the trial, in case an indictment is found for such perjury, and shall also cause immediate notice of such commitment or recognizance, with the names of the witnesses so bound over, to be given to the district attorney of the county.

§ 162. **Document may be retained.** If, upon the hearing of such action or proceeding in which such perjury has probably been committed, any papers or documents produced by either party shall be deemed necessary to be used on the prosecution for such perjury, the court may, by order, detain such papers or documents from the party producing them and direct them to be delivered to the district attorney.

§ 163. **Subornation of perjury defined.** Every person who willfully procures another person to commit any perjury is guilty of subornation of perjury.

§ 164. **Punishment of.** Every person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.

§ 165. **Convict of perjury, incompetent.** No person who has been convicted of perjury, or of subornation of perjury, shall thereafter be received as a witness in any action, proceeding, or matter whatever upon his own behalf, nor in any action or proceeding between adverse parties, against any person who shall object thereto, until the judgment against him has been reversed. But where such person has been actually received as a witness, contrary to the provisions of this section, his incompetency shall not prejudice the rights, innocently acquired, of any other person claiming under the proceeding in which such person was so received.

## CHAPTER XIII.

## FALSIFYING EVIDENCE.

§ 166. **Offering false evidence.** Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered, is punishable in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this Code.

§ 167. **Deceiving a witness.** Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

§ 168. **Preparing false evidence.** Every person guilty of falsely preparing any book, paper, record, instrument in writing, or other matter or thing, with intent to produce it or allow it to be produced as genuine upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

§ 169. **Destroying evidence.** Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.

§ 170. **Preventing witnesses attending.** Every person who willfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending pursuant to the command of the summons or subpoena, is guilty of a misdemeanor.

§ 171. **Bribing witnesses.** Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony, is guilty of a misdemeanor.

## CHAPTER XIV.

## OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§ 172. **Injury to records, and embezzlement.** Every sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Mutilates, destroys, conceals, erases, obliterates, or falsifies any record or paper appertaining to his office; or,

2. Fraudulently appropriates to his own use, or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt, or other property intrusted to him in virtue of his office,

Is guilty of felony.

§ 173. **Permitting escapes by same.** Every sheriff, coroner, clerk of a court, constable, or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or,

2. Receives any gratuity, or reward, or any security or promise of one, to procure, assist, connive at, or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

3. Commits any unlawful act tending to hinder justice,

Is guilty of a misdemeanor.

§ 174. **Refusing to receive prisoner.** Every officer who, in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor.

§ 175. **Delaying to take before magistrate.** Every public officer or other person having arrested any person upon any criminal charge, who willfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

§ 176. **Arrest without lawful authority.** Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without due and legal process, is guilty of a misdemeanor.

§ 177. **Misconduct executing search.** Every peace officer who, in executing a search-warrant, willfully exceeds his author-

ity, or exercises it with unnecessary severity, is guilty of a misdemeanor.

§ 178. **Refusing to aid officer.** Every person who, after having been lawfully commanded to aid any officer in arresting any person, or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor.

§ 179. **Refusing to make arrest.** Every person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.

§ 180. **Resisting execution of process.** Every person who, after proclamation issued by the governor declaring any county to be in a state of insurrection, resists, or aids in resisting, the execution of process in the county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists, or aids in resisting, a force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the territorial prison for not less than two years.

§ 181. **Obstructing officer in duty.** Every person who willfully delays or obstructs any public officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor.

§ 182. **Extrajudicial oaths.** Every person who takes an oath before an officer or person authorized to administer judicial oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of, or in proof of, a claim, or when the same has been agreed to be received by some person as proof of any fact, in the performance of any contract, obligation, or duty, instead of other evidence, is guilty of a misdemeanor.

§ 183. **Administering same.** Every officer or other person who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required by the provisions of some contract as a basis of, or proof of, a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation, or duty, instead of other evidence, is guilty of a misdemeanor.

§ 184. **Compounding crimes.** Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime, or viola-

tion of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:

1. By imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, where the crime compounded is one punishable either by death or by imprisonment in the territorial prison for life.

2. By imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding six months, where the crime compounded was punishable by imprisonment in the territorial prison for any other term than for life.

3. By imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment, where the crime or violation of statute compounded is a crime punishable by imprisonment in a county jail or by fine, or is a misdemeanor, or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed.

§ 185. **Compounding prosecution.** Every person who takes any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue, or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a misdemeanor.

§ 186. **Attempt to intimidate officers, etc.** Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire, or assessor, or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor.

§ 187. **Suppressing evidence.** Every person who maliciously practices any deceit or fraud, or uses any threat, menace, or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper, or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper, or other matter or thing which might be evidence in such suit or proceeding, or prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor.

§ 188. **Buying lands in suit.** Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit and that the grantor was

not in possession of such lands or tenements, is guilty of a misdemeanor.

§ 189. **Buying pretended titles.** Every person who buys or sells, or in any manner procures, or makes, or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof, or the person making such promise or covenant, has been in possession, or he and those by whom he claims have been in possession of the same, or of the reversion and remainder thereof, or have taken the rents or profits thereof for the space of one year before such grant, conveyance, sale, promise, or covenant made, is guilty of a misdemeanor.

§ 190. **Mortgage, when not prohibited.** The two last sections shall not be construed to prevent any person having a just title to lands, upon which there shall be an adverse possession, from executing a mortgage upon such lands.

§ 191. **Common barratry defined.** Common barratry is the practice of exciting groundless judicial proceedings.

§ 192. **Misdemeanor.** Common barratry is a misdemeanor.

§ 193. **Proof required.** No person can be convicted of common barratry, except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy.

§ 194. **Interest.** Upon prosecution for common barratry, the fact that the accused was himself a party in interest or upon the record to any proceedings at law, complained of, is not a defense.

§ 195. **Buying demands or suits by attorney.** Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

§ 196. **Same by justice or constable.** Every justice of the peace and every constable who, directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, for the purpose of commencing any suit thereon before a justice, is guilty of a misdemeanor.

§ 197. **Loans on claims for collection.** Every attorney, justice of the peace, or constable, who, directly or indirectly, lends or advances any money or property or agrees for or procures any loan or advance to any person as a consideration for, or inducement towards, committing any evidence of debt or thing in action to such attorney, justice, constable, or any other person, for collection, is guilty of a misdemeanor.

§ 198. **Forfeiture of office.** Every person convicted of a violation of either of the three preceding sections, in addition to the

punishment by fine and imprisonment, prescribed therefor by this Code, forfeits his office.

§ 199. **Receiving claims allowable.** Nothing in the four preceding sections shall be construed to prohibit the receiving in payment of any evidence of debt or thing in action for any estate, real or personal, or for any services of an attorney actually rendered, or for a debt antecedently contracted, or the buying or receiving any evidence of debt or thing in action for the purpose of remittance, and without any intent to violate the preceding section.

§ 200. **Application of previous sections.** The provisions of sections one hundred and ninety-five, one hundred and ninety-seven, and one hundred and ninety-nine, relative to the buying of claims by an attorney, with intent to prosecute them, or to the lending or advancing of money by an attorney, in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting a suit or demand in person.

§ 201. **Witnesses' privilege.** No person shall be excused from testifying, in any civil action, to any facts showing that an evidence of debt or thing in action has been bought, sold, or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution.

§ 202. **Criminal contempts.** Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of any court or justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character, committed in the presence of any referee or referees, while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7. The publication of a false or grossly inaccurate report of the proceedings of any court. But no person can be punished, as for a

contempt, in publishing a true, full, and fair report of any trial, argument, decision, or proceeding had in court.

§ 203. **Application to stay trial.** Every attorney or counselor at law who, knowing that an application has been made for an order staying the trial of an indictment to a judge authorized to grant the same, and has been denied, without leave reserved to renew it, makes an application to another judge to stay the same trial, is guilty of a misdemeanor.

§ 204. **Acting after challenge allowed.** Every grand juror who, with knowledge of a challenge, interposed against him by a defendant, has been allowed, is present at or takes part, or attempts to take part, in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

§ 205. **Disclosure of depositions.** Every magistrate or clerk of any magistrate who willfully permits any deposition taken on an information or examination of a defendant before such magistrate, and remaining in the custody of such magistrate or clerk, to be inspected by any person, except a judge of a court having jurisdiction of the offense, the United States attorney, the district attorney of the district, and his assistants, and the defendant and his counsel, is guilty of a misdemeanor.

§ 206. **Same returned by grand jury.** Every clerk of any court who willfully permits any deposition returned by any grand jury with a presentment made by them, and filed with such clerk, to be inspected by any person, except the court, the deputies or assistants of such clerk, and the district attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

§ 207. **Fraudulent concealment.** Every person who, having been called upon, by the lawful order of any court, to make a true exhibit of his real and personal effects, either:

1. Willfully conceals any of his estate or effects, or any books or writing relative thereto; or,
2. Willfully omits to disclose to the court any debts or demands which he has collected, or any transfer of his property which he had made, after being ordered to make an exhibit thereof, is guilty of a misdemeanor.

§ 208. **Racing near a court.** Every person concerned in any racing, running, or other trial of speed between any horses or other animals, within one-half mile of the place where any court is actually sitting, is guilty of a misdemeanor.

§ 209. **Selling liquor in court-houses, etc.** Every person who sells any spirituous or intoxicating liquor within, or brings with intent to sell, or offer or expose for sale therein, any such liquor into, either:

1. Any building established as a court-house for the holding of courts of record while any session of such court is being held therein, except in such part of such building not appropriated to the use of courts, or of juries attending them, in which such sale has been authorized by a resolution of the board of county commissioners of the county; or,

2. Any building established as a jail or prison; or,

3. Any building or shed, outhouse, porch, yard, or curtilage appertaining to any building which, or any part of which, is at the time occupied or used for holding the polls at an election of any public officer of this territory, or for canvassing votes cast at such election, Is guilty of a misdemeanor.

§ 210. **Misconduct by attorneys.** Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for,

Is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor by this Code, he forfeits to the party injured treble damages, to be recovered in a civil action.

§ 211. **Permitting name to be used.** If any attorney knowingly permits any person, not being his general law partner, or a clerk in his office, to sue out any process, or to prosecute or defend any action in his name, except as authorized by the next section, such attorney, and every person who shall so use his name, is guilty of a misdemeanor.

§ 212. **In what cases lawful.** Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the people, or of any public officer, board of officers, or municipal corporation, on behalf of another party, the attorney general, or district attorney, or attorney of such public officer, or board, or corporation, may permit any proceeding therein to be taken in his name by an attorney, to be chosen by the party in interest.

§ 213. **Pretenses to birth of child.** Every person who fraudulently produces an infant, falsely pretending it to be born of any parent whose child would be entitled to inherit any real estate, or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 214. **Substituting child.** Every person to whom an infant has been confided for nursing, education, or any other purpose, who,

with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the territorial prison not exceeding seven years.

§ 215. **Importing convicts.** Every owner, master, or commander of any vessel, arriving from a port without this territory, who knowingly lands, or permits to land, at any port, city, or place within this territory, any passenger or hand who is a foreign convict of any crime which, if committed in this territory, would be punishable therein, without giving notice thereof to the mayor of such city, or other principal municipal officer of such port or place, is guilty of misdemeanor.

§ 216. **Omission of duty by officer.** Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful omission to perform such duty, where no special provisions shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

§ 217. **Prohibited act.** Where the performance of an act is prohibited by any statute, and no penalty for the provision [violation] of such statute is imposed in any statute, the doing such act is a misdemeanor.

§ 218. **Disclosing indictment.** Every grand juror, district attorney, clerk, judge, or other officer, who, excepting by issuing or in executing a warrant to arrest the defendant, willfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

§ 219. **Disclosing jury proceedings.** Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted, on a matter before them, is guilty of a misdemeanor.

§ 220. **Suit in a false name.** Every person who maliciously institutes or prosecutes any action or legal proceeding, or makes or procures any arrest, in the name of a person who does not exist or has not consented that it be instituted or made, is guilty of a misdemeanor.

§ 221. **Maliciously procuring search.** Every person who maliciously, and without probable cause, procures a search-warrant to be issued and executed, is guilty of a misdemeanor.

§ 222. **Communications with convict.** Every person who, not being authorized by law, or by a written permission from an inspector, or by the consent of the warden, communicates with any

convict in the territorial prison, or brings into or conveys out of the territorial prison any letter or printing to or from a convict, is guilty of a misdemeanor.

§ 223. **Neglect to canvass returns.** Every county clerk who willfully refuses or neglects to canvass the election returns of his county, or neglects to make proper abstracts thereof and forward the same to the proper officer, as is or may hereafter be provided by law, or fails to issue certificates of election to such persons lawfully entitled thereto, is punishable by a fine not exceeding one hundred dollars for each refusal or neglect.

§ 224. **False certificate.** Every public officer who, being authorized by law to make or give any certificate or other writing, knowingly makes and delivers as true any such certificate or writing containing any statement which he knows to be false, is guilty of a misdemeanor.

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## CHAPTER XV.

### CONSPIRACY.

§ 225. **Criminal conspiracies defined.** If two or more persons conspire, either :

1. To commit any crime; or,
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime; or,
3. Falsely to move or maintain any suit, action, or proceeding; or,
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretenses; or,

5. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws,

They are guilty of a misdemeanor.

§ 226. **Against peace of the territory.** If two or more persons, being out of this territory, conspire to commit any act against the peace of this territory, the commission, or attempted commission, of which within this territory would be treason against the territory, they are punishable by imprisonment in the territorial prison not exceeding ten years.

§ 227. **Overt act, when necessary.** No agreement except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act besides such agreement be done to effect the object thereof, by one or more of the parties to such agreement.

## CHAPTER XVI.

## OF CRIMES AGAINST THE PERSON.

## SUICIDE.

§ 228. **Suicide defined.** Suicide is the intentional taking of one's own life.

§ 229. **No forfeiture.** Although suicide is deemed a grave public wrong, yet from the impossibility of reaching the successful perpetrator no forfeiture is imposed.

§ 230. **Attempt.** But every person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which, if committed upon or towards another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide.

§ 231. **Aiding suicide.** Every person who willfully, in any manner, advises, encourages, abets, or assists another person in taking his own life, is guilty of aiding suicide.

§ 232. **Furnishing weapon or drug.** Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life.

§ 233. **Aiding attempt.** Every person who willfully aids another in attempting to take his own life in any manner, which by the preceding sections would have amounted to aiding suicide, if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide.

§ 234. **Incapacity—no defense.** It is no defense to a prosecution for aiding suicide, or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.

§ 235. **Punishment of aiding suicide.** Every person guilty of aiding suicide is punishable by imprisonment in the territorial prison for not less than seven years.

§ 236. **Punishment of attempting suicide.** Every person guilty of attempting suicide, or of aiding an attempt at suicide, is punishable by imprisonment in the territorial prison not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

## CHAPTER XVII.

## HOMICIDE.

§ 237. **Homicide defined.** Homicide is the killing of one human being by another.

§ 238. **Homicides classified.** Homicide is either :

1. Murder;
2. Manslaughter;
3. Excusable homicide; or,
4. Justifiable homicide.

§ 239. **Corpus delicti.** No person can be convicted of murder or manslaughter, or of aiding suicide, unless the death of the person alleged to have been killed, and the fact of killing by the accused, are each established as independent facts beyond a reasonable doubt.

§ 240. **Petit treason abolished.** The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.

§ 241. **Confidential or domestic relation.** Whenever the grade of punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty, or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.

§ 242. **Murder defined.** Homicide is murder in the following cases :

1. When perpetrated without authority of law, and with a premeditated design to effect the death of the person killed, or of any other human being.

2. When perpetrated by any act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual.

3. When perpetrated without any design to effect death, by a person engaged in the commission of any felony.

§ 243. **Design to effect death inferred.** A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed.

§ 244. **Premeditation.** A design to effect death sufficient to constitute murder, may be formed instantly before committing the act by which it is carried into execution.

§ 245. **Anger or intoxication no defense.** Homicide committed with a design to effect death is not less murder because the perpetrator was in a state of anger or voluntary intoxication at the time.

§ 246. **Act eminently dangerous.** Homicide perpetrated by an act eminently dangerous to others, and evincing a depraved mind, regardless of human life, is not the less murder because there was no actual intent to injure others.

§ 247. **Duel out of territory.** Every person who, by previous appointment within this territory, fights a duel without this territory, and in so doing inflicts a wound upon his antagonist, or any other person, whereof the person injured dies, and every second engaged in such duel, is guilty of murder, and may be indicted, tried, and convicted in any county of the territory.

§ 248. **Murder by forcibly taking mine.** If any person or persons shall associate and agree to enter, or attempt to enter, by force of numbers, and the terror such numbers is calculated to inspire, or by force and violence, or by threats of violence, against any person or persons in the actual possession of any lode, gulch, or placer claim, and upon such entry or attempted entry any person or persons shall be killed, said persons, and all and each of them so entering or attempting to enter, shall be deemed guilty of murder, and punished accordingly. Upon the trial of such cases any person cognizant of such entry or attempted entry, who shall be present, and aiding, assisting, or in anywise encouraging such entry or attempted entry, shall be deemed a principal in the commission of said offense.

§ 249. **Penalty for murder.** Every person convicted of murder shall suffer death, or imprisonment at hard labor in the territorial penitentiary for life, at the discretion of the jury. (*As amended, Sess. Laws 1883, c. 9.*)

See Code Crim. Proc. Dak. "Verdict," \*§ 393a.

§ 250. **Manslaughter in first degree.** Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated, without a design to effect death, by a person while engaged in the commission of a misdemeanor.

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon, unless it is committed under such circumstances as constitute excusable or justifiable homicide.

3. When perpetrated unnecessarily, either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

§ 251. **Killing unborn quick child.** The willful killing of an unborn quick child by any injury committed upon the person.

of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree.

§ 252. **By administering drugs.** Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug, or substance whatever, or who uses or employs any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, is guilty, in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree.

§ 253. **Punishment — manslaughter — first degree.** Every person guilty of manslaughter in the first degree is punishable by imprisonment in the territorial prison for not less than four years.

§ 254. **Second degree defined.** Every killing of one human being by the act, procurement, or culpable negligence of another, which under the provisions of this chapter is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

§ 255. **Owner of mischievous animal.** If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.

§ 256. **Navigating vessels.** Every person navigating any vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel that by means thereof such vessel sinks, or is upset, or injured, and thereby any human being is drowned or otherwise killed, is guilty of manslaughter in the second degree.

§ 257. **Having charge of steam-boats.** Every captain or other person having charge of any steam-boat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting, or breaking any person is killed, is deemed guilty of manslaughter in the second degree.

§ 258. **Charge of steam-engines.** Every engineer, or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, employed in any manu-

factory, railway, or other mechanical works, who willfully, or from ignorance or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

§ 259. **Liabilities of physicians.** Every physician who, being in a state of intoxication, without a design to effect death, administers any poison, drug, or medicine, or does any other act, as such physician, to another person, which produces the death of such other person, is guilty of manslaughter in the second degree.

See secs. 17 and 405.

§ 260. **Keeping gunpowder.** Every person guilty of making or keeping gunpowder or saltpeter within any city or village, in any quantity or manner, such as is prohibited by law, or by any ordinance of said city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter in the second degree.

\*§ 260a. **Hotel owners to provide fire-escapes.** The owners and proprietors of all hotels and other public buildings, in the territory of Dakota, over two stories in height, are required to provide safe and suitable fire-escapes from all rooms above the second story of such hotel; and, when rooms have no outside windows, there shall be affixed to the windows in the hallway leading from such rooms, at least three fire-escapes in each window, as herein directed; that said fire-escapes shall consist of at least one good cotton rope, not less than one inch in diameter, to be securely and permanently fastened with iron rings or bolts, at a point immediately outside or inside of, at least, one window in each and every room above the second story; and that such rope or ropes shall be of length sufficient to reach to the ground.

*Provided, however,* if any such owner or proprietor of hotels above two stories, provide good and sufficient iron ladders extending from each of the windows herein described, and from points immediately adjacent to each of such windows, to the ground, and securely and permanently fastened to said building, or shall have a fire-escape ladder in each of the aforesaid rooms and hall windows, of a sufficient length to reach from said windows to the ground, will be deemed to have complied with the requirements of this act. (*Sess. Laws 1883, c. 58, § 1.*)

\*§ 260b. **Penalty for neglect.** Every person violating any of the provisions of section one of this act, shall be punishable by a fine of not less than twenty-five dollars for each room in said hotel not provided with fire-escapes as required by this act. (*Id.* § 2.)

§ 261. **Punishment manslaughter—second degree.** Every person guilty of manslaughter in the second degree is punishable by imprisonment in the territorial prison not more than four years, and not less than two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment.

§ 262. **Excusable homicide.** Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat: *provided* that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

§ 263. **Justifiable homicide by officers.** Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

§ 264. **By other person.** Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling-house in which such person is; or,

2. When committed in the lawful defense of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there is a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished; or,

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

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## CHAPTER XVIII.

### MAIMING.

§ 265. **Maiming defined.** Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance, or disables any member or organ of his body, or seriously diminishes his physical vigor, is guilty of maiming.

§ 266. **Maiming one's self.** Every person who, with design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

§ 267. **Same.** Every person who inflicts upon himself any injury such as, if inflicted upon another, would constitute maiming, with intent to avail himself of such injury, to excite sympathy, or to obtain alms, or any charitable relief, is guilty of maiming.

§ 268. **What injury is maiming.** To constitute maiming it is immaterial by what means or instrument, or in what manner, the injury was inflicted.

§ 269. **What disfigurement.** To constitute maiming by disfigurement the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming.

§ 270. **Design to maim inferred.** A design to injure, disfigure, or disable, is inferred from the fact of inflicting an injury which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

§ 271. **Premeditated design.** A premeditated design to injure, disfigure, or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound.

§ 272. **Subsequent recovery.** When it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body, or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to the proof.

§ 273. **Punishment.** Every person guilty of maiming is punishable by imprisonment in the territorial prison not exceeding seven years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

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## CHAPTER XIX.

### KIDNAPING.

§ 274. **Kidnaping defined.** Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

1. To cause such other person to be secretly confined or imprisoned in this territory against his will; or,
2. To cause such other person to be sent out of this territory against his will; or,
3. To cause such person to be sold as a slave, or in any way held to service against his will, is punishable by imprisonment in the territorial prison not exceeding ten years.

Upon any trial for violation of this section, the consent thereto of the person kidnaped or confined shall not be a defense, unless it appear satisfactory to the jury that such person was above the age of twelve years, and that such consent was not extorted by threat or by duress.

§ 275. **Selling services of persons.** Every person who, within this territory or elsewhere, sells, or in any manner transfers, for any term, the services of labor of any black, mulatto, or other person of color, who has been forcibly taken, or inveigled, or kidnaped from this territory, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 276. **Removing persons held to service.** Every person claiming that he or another is entitled to the service of a person alleged to be held to labor or service in a state or territory of the United States, who, except as authorized by law, takes, or removes, or willfully does any act tending towards removing, from this territory any such person, is guilty of felony, punishable by imprisonment in the territorial prison not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

§ 277. **Penalty.** Every judge or other public officer of this territory who grants or issues any warrant, certificate, or other process in any proceeding for the removal from this territory of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of positive enactment, is guilty of a misdemeanor; and, in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

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## CHAPTER XX.

### ATTEMPTS TO KILL.

§ 278. **Administering poison.** Every person who, with intent to kill, administers, or causes or procures to be administered, to another, any poison which is actually taken by such other, but by

which death is not caused, is punishable by imprisonment in the territorial prison not less than ten years.

§ 279. **Shooting and assault.** Every person who shoots or attempts to shoot at another, with any kind of fire-arms, air-gun, or other means whatever, with intent to kill any person, or who commits any assault and battery upon another by means of any deadly weapon, and by such other means or force as was likely to produce death, with intent to kill any other person, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 280. **Other assaults.** Every person who is guilty of an assault with intent to kill any person, the punishment for which is not prescribed by the foregoing section, is punishable by imprisonment in the territorial prison for a term not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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## CHAPTER XXI.

### ROBBERY.

§ 281. **Robbery defined.** Robbery is a wrongful taking of personal property, in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

§ 282. **How force or fear employed.** To constitute robbery, the force or fear must be employed, either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

§ 283. **Degree immaterial.** When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

§ 284. **What fear an element.** The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed, at the time of the robbery.

§ 285. **Value taken immaterial.** When property is taken under the circumstances required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

§ 286. **Taking secretly not robbery.** The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

§ 287. **Two degrees of robbery.** Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree.

§ 288. **Punishment of first degree.** Every person guilty of robbery in the first degree is punishable by imprisonment in the territorial prison not less than ten years.

§ 289. **Of second degree.** Every person guilty of robbery in the second degree is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 290. **When by two or more persons.** Whenever two or more persons conjointly commit a robbery, or where the whole number of persons conjointly committing a robbery, and persons present and aiding such robbery, amount to two or more, each and either of such persons is punishable by imprisonment for life.

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## CHAPTER XXII.

### ASSAULTS WITH INTENT TO COMMIT FELONY OTHER THAN ASSAULTS WITH INTENT TO KILL.

§ 291. **Shooting and assault—deadly weapons.** Every person who shoots or attempts to shoot at another with any kind of fire-arms, air-gun, or other means whatever, or commits any assault or battery upon another by means of any deadly weapon, or by such other means or force as was likely to produce death, with intent to commit any felony other than assault with intent to kill, or in resisting the execution of any legal process, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 292. **Other assaults.** Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 293. **Administering drug.** Every person guilty of administering to another any chloroform, ether, laudanum, or other

intoxicating, narcotic, or anæsthetic agent, with intent thereby to enable or assist himself, or any other person, to commit any felony, is guilty of felony.

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## CHAPTER XXIII.

### DUELS AND CHALLENGES.

§ 294. **Duel defined.** A duel is any combat, with deadly weapons, fought between two persons by previous agreement or upon a previous quarrel.

§ 295. **Punishment for fighting.** Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 296. **Incapacity to hold office.** Every person convicted of fighting a duel is thereafter incapable of holding, or being elected, or appointed to any office, place, or post of trust or emolument, civil or military, under this territory.

§ 297. **Seconds, aids, and surgeons.** Every person who is present at the time when any duel is fought, either as second, aid, or surgeon, or who advises or gives any countenance to any duel, is punishable by imprisonment in the territorial prison not exceeding seven years.

§ 298. **Punishment for challenges.** Every person who challenges another to fight a duel; every person who accepts any such challenge; and any person who knowingly forwards, carries, or delivers any such challenge,—is punishable by imprisonment in the territorial prison not exceeding seven years.

§ 299. **Challenge defined.** Any words, spoken or written, or any signs, uttered or made, to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand to fight a duel, or to meet for the purpose of fighting a duel, are deemed a challenge.

§ 300. **Attempts to induce challenge.** Every person guilty of sending, uttering, or making to another any words or signs whatever, with intent to provoke or induce such person to give or receive any challenge to fight a duel, is guilty of a misdemeanor.

§ 301. **Posting for not fighting.** Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

§ 302. **Leaving territory to evade laws.** Every person who leaves this territory with intent to elude any of the provisions of this chapter, and to commit any act out of this territory, such as is prohibited by this chapter, and who does any act, although out of this territory, which would be punishable by said provisions if committed within this territory, is punishable in the same manner as he would have been in case such act had been committed within this territory.

§ 303. **Where tried.** Such person may be indicted and tried in any county within this territory.

§ 304. **Witnesses' privilege.** No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

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## CHAPTER XXIV.

### ASSAULT AND BATTERY.

§ 305. **Assault.** An assault is any willful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another.

§ 306. **Battery.** A battery is any willful and unlawful use of force or violence upon the person of another.

§ 307. **When force allowable.** To use, or attempt to offer to use, force or violence upon or towards the person of another, is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.

2. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass, or other unlawful interference with real or personal property, in his lawful possession: *provided*, the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master, or teacher, in the exercise of a

lawful authority to restrain or correct his child, ward, apprentice, or scholar: *provided*, restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice, or scholar, or by his refusal to obey the lawful command of such parent, or authorized agent, or guardian, master, or teacher, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from any carriage, railroad car, vessel, or other vehicle, any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped, and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person in preventing an idiot, lunatic, insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

§ 308. **Penalty for assault and battery.** Assault, or assault and battery, shall be punishable by imprisonment in a county jail not exceeding thirty days, or by fine of not less than five dollars nor more than one hundred dollars, or both, at the discretion of the court. (*As amended, Sess. Laws 1879, c. 35, § 1.*)

\*§ 308a. **Justices to have jurisdiction.** 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. (*Sess. Laws 1879, c. 35, § 3.*) See sec. 585.

§ 309. **Assaults with dangerous weapons.** Every person who, with intent to do bodily harm, and without justifiable or excusable cause, commits any assault upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots or attempts to shoot at another with any kind of fire-arms, or air-gun, or other means whatever, with intent to injure any person, although without intent to kill such person or to commit any felony, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year.

## CHAPTER XXV.

## LIBEL.

§ 310. **Libel defined.** Any malicious injury to good name, other than by words orally spoken, is a libel.

§ 311. **Libel a misdemeanor.** Every person who willfully, and with a malicious intent to injure another, publishes any libel, is guilty of a misdemeanor.

§ 312. **Malice presumed.** An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

§ 313. **Truth given in evidence.** In all criminal prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.

§ 314. **Publication defined.** To sustain a charge of publishing a libel it is not needful that the words complained of should have been read by any person. It is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read by any other person than himself.

§ 315. **Liability of editors and others.** Each author, editor, and proprietor of any book, newspaper, or serial publication, and each member of any partnership or incorporated association, by which any book, newspaper, or serial publication is issued, is chargeable with the publication of any words contained in any part of said book, or number of such newspaper, or serial.

§ 316. **Privilege.** No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall in no case be implied from the mere fact of publication.

§ 317. **Extent of privilege.** Libelous remarks or comments, connected with matter privileged by the last section, receive no privilege by reason of their being so connected.

§ 318. **Other privileged communications.** A communication made to a person interested in the communication by one who was also interested, or who stood in such a relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is called a privileged communication.

§ 319. **Threatening to punish libel.** Every person who threatens to another to punish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, is guilty of a misdemeanor.

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## CHAPTER XXVI.

### RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

§ 320. **Rape defined.** Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of ten years.
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but her resistance is overcome by force or violence.
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution.
5. Where she is prevented from resisting by any intoxicating, narcotic, or anæsthetic agent administered by or with the privity of the accused.
6. Where she is at the time unconscious of the nature of the act, and this is known to the accused.
7. Where she submits under a belief that the person committing the act is her husband; and this belief is induced by artifice, pretense, or concealment, practiced by the accused with intent to induce such belief.

§ 321. **When physical ability must be proved.** No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

§ 322. **What sufficient.** The essential guilt of rape consists in the outrage of the person and feeling of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

§ 323. **Rape in first degree defined.** Rape committed upon a female under the age of ten years, or incapable, through lunacy or any other unsoundness of mind, of giving legal consent, or accomplished by means of force overcoming her resistance, is rape in the first degree.

§ 324. **Second degree.** In all other cases rape is of the second degree.

§ 325. **Punishment in first degree.** Rape in the first degree is punishable by imprisonment in the territorial prison not less than ten years.

§ 326. **Second degree.** Rape in the second degree is punishable by imprisonment in the territorial prison not less than five years.

§ 327. **Compelling woman to marry.** Every person who takes any woman against her will, and, by force, menace, or duress, compels her to marry him, or to marry any other person, is punishable by imprisonment in the territorial prison not less than ten years.

§ 328. **To compel woman to marry or be defiled.** Every person who takes any woman unlawfully against her will, with the intent to compel her, by force, menace, or duress, to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 329. **Seduction for prostitution.** Every person who inveigles or entices any unmarried female of previous chaste character, under the age of twenty-five years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 330. **Abduction.** Every person who takes away any female under the age of fifteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of marriage, concubinage, or prostitution, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 331. **Seduction under promise of marriage.** Every person who, under promise of marriage, seduces and has illicit connection with any unmarried female of previous chaste character, is punishable by imprisonment in the territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 332. **Subsequent marriage a defense.** The subsequent marriage of the parties is a defense to a prosecution for a violation of the last section.

## CHAPTER XXVII.

## ADULTERY.

§ 333. **Adultery defined.** Adultery is the unlawful voluntary sexual intercourse of a married person with one of the opposite sex, and when the crime is committed between parties, only one of whom is married, both are guilty of adultery.

§ 334. **Punishment for.** Every person guilty of the crime of adultery shall be punished by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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## CHAPTER XXVIII.

## ABANDONMENT AND NEGLECT OF CHILDREN.

§ 335. **Deserting child.** Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child, in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the territorial prison not exceeding seven years, or in a county jail not exceeding one year.

§ 336. **Omitting to provide.** Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

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## CHAPTER XXIX.

## ABORTIONS, AND CONCEALING DEATH OF INFANT.

§ 337. **Administering drugs.** Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such

woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.

§ 338. **Submitting to attempt.** Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 339. **Concealing still-birth or death.** Every woman who endeavors, either by herself or by the aid of others, to conceal the still-birth of an issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

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## CHAPTER XXX.

### CHILD-STEALING.

§ 340. **Punishment.** Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the territorial prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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## CHAPTER XXXI.

### BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

§ 341. **Bigamy.** Every person who, having been married to another who remains living, marries any other person, except in the cases specified in the next section, is guilty of bigamy.

§ 342. **Exceptions.** The last section does not extend:

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive

years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage, whose husband or wife by such marriage has absented himself or herself from his wife or her husband, and has been continually remaining without the United States for the space of five years together; nor,

3. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court, unless such marriage was dissolved upon the ground of adultery committed by such person; nor,

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

§ 343. **Punishment of bigamy.** Every person guilty of bigamy is punishable by imprisonment in the territorial prison not exceeding five years.

§ 344. **Other unlawful marriages.** Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 345. **Incest.** Persons who, being within the degrees of consanguinity within which marriages are, by the laws of the territory, declared incestuous and void, intermarry with each other, or commit adultery and fornication with each other, are punishable by imprisonment in the territorial prison not exceeding ten years.

§ 346. **Crime against nature.** Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 347. **Penetration sufficient.** Any sexual penetration, however slight, is sufficient to complete the crime against nature.

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## CHAPTER XXXII.

### VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

§ 348. **Disposal of one's own body.** Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his life-time shall be dis-

posed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body, or any part thereof, inconsistent with these provisions.

§ 349. **Duty of burial.** Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being, lying within this territory, must be decently buried within a reasonable time after the death.

§ 350. **Burial in other states.** The last section does not affect the right to carry the dead body of a human being through this territory, or to remove from this territory the body of a person dying within it, for the purpose of burying the same in another state or territory.

§ 351. **Dissection—when allowed.** The right to dissect the dead body of a human being exists in the following cases:

1. In the cases authorized by positive enactment of the legislative assembly of this territory.

2. Whenever death occurs under the circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest.

3. Whenever any husband or next of kin of a deceased person, being charged by law with the duty of burial, authorizes such dissection for the purpose of ascertaining the cause of death.

§ 351 [352.] **Unlawful dissection misdemeanor.** Every person who makes, or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.

§ 352 [353.] **Remains after dissection.** In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.

§ 354. **Dead limb or member of body.** All provisions of this chapter requiring the burial of a dead body, or punishing interference with or injuries to a dead body, apply equally to any dead limb or member of a human body separated therefrom during life-time.

§ 355. **By whom burial done.** The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:

1. If the deceased were a married woman, the duty of burial devolves upon her husband.

2. If the deceased were not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within

this territory, and possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband, nor kindred, answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or, if there is no tenant, upon the owner of the premises or master; or, if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

§ 356. **Neglect of burial.** Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered by a civil action.

§ 357. **Who entitled to custody of body.** The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the cases in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

§ 358. **Unlawful removal of the dead.** Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it without authority of law, or from malice or wantonness, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 359. **Purchasing same—forbidden.** Every person who purchases, or who receives, except for the purpose of burial, any dead body of a human being, knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 360. **Unlawful interference with places of burial.** Every person who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body

of a human being is deposited while awaiting burial, with intent, either:

1. To remove any dead body of a human being for the purpose of selling the same or for the purpose of dissection; or,
2. To steal the coffin, or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles buried with the same,

Is punishable by imprisonment in the territorial prison not exceeding two, or in a county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 361. **Removal to another burial place.** Whenever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove, and rebury the remains of bodies there lying buried devolves upon the persons named in section three hundred and fifty-five, in the order in which they are named, and, if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial are made punishable by section three hundred and fifty-six.

§ 362. **Arresting or attaching dead body.** Every person who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

§ 363. **Disturbing funerals.** Every person who willfully disturbs, interrupts, or disquiets any assemblage of people met for the purpose of any funeral; or who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial,—is guilty of a misdemeanor.

§ 364. **Injury to cemetery or tomb.** Every person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or grave-stone, or other structure placed in any cemetery or private burying-ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument, or grave-stone, memento, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully destroy, cut, break, or injure any tree, shrub, or plant within the limits thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by fine of not less than five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment.

§ 365. **Dissection.** Every person who violates any provision of any enactment of the legislative assembly of this territory, now in force, or that hereafter may be enacted, not provided for in this Code relative to dissection, is guilty of a misdemeanor.

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### CHAPTER XXXIII.

#### INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

§ 366. **Indecent exposures — exhibitions — pictures.** Every person who, willfully and lewdly, either,

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself, or to take any part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite vicious or lewd thoughts or acts; or,

3. Writes or composes, stereotypes, prints, publishes, sells, distributes, or keeps for sale, or exhibits any obscene or indecent writing, paper, or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture, or print of any description, or moulds, cuts, casts, or otherwise makes any obscene or indecent figure or form,

Is guilty of a misdemeanor.

\*§ 366a. 1. **Using obscene language—penalty.** If any person shall utter or speak any obscene or lascivious language or words in any public place, or in the presence of females, or in the presence of children under ten years of age, he shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of this territory he shall be liable to a fine of not more than one hundred dollars, or imprisonment for not more than thirty days, or both, at the discretion of said justice. (*Sess. Laws 1883, c. 87, § 1.*)

§ 367. **Seizure of indecent articles.** Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 368. **Their character summarily determined.** The magistrate to whom any obscene or indecent writing, paper, book,

picture, print, or figure is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he shall cause the same to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. But not more than two copies of any one writing, paper, book, picture, print, or figure shall be delivered to the district attorney.

§ 369. **Their destruction.** Upon the conviction of the accused, such district attorney shall cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 370. **Keeping bawdy house.** Every person who keeps any bawdy house, house of ill-fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene, or indecent purpose, is guilty of a misdemeanor.

§ 371. **Keeping disorderly house.** Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor.

§ 372. **Letting building for unlawful purposes.** Every person who lets any building, or portion of any building, knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building, or portion of a building, to be so used, is guilty of a misdemeanor.

Territory of Dakota v. Stone, 4 N. W. Rep. 697.

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## CHAPTER XXXIV.

### LOTTERIES.

§ 373. **Lottery defined.** A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid, or promised or agreed to pay, any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share of or interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, a raffle, or a gift enterprise, or by whatever name the same may be known.

§ 374. **Lottery a public nuisance.** Every lottery is unlawful, and a common public nuisance.

§ 375. **Drawing lotteries.** Every person who contrives, prepares, sets up, proposes, or draws any lottery is punishable by a fine equal to double the amount of the whole sum or value for which such lottery was made, and if such amount cannot be ascertained, then by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not exceeding one year, or by a fine of two thousand five hundred dollars, or by both such fine and imprisonment.

§ 376. **Selling lottery tickets.** Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting, or represented, or understood to be or represent any ticket, chance, share, or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

§ 377. **Buying lottery tickets.** Every person who buys, or in any manner whatever accepts or receives for himself or another, any ticket, chance, share, or interest, or any paper, certificate, or instrument, purporting, or represented, or understood to be or to represent any ticket, chance, share, or interest in or depending upon the event of any lottery, forfeits ten dollars, to be recovered by the county superintendent of public instruction of the county in which the offense was committed, for the use of common schools in said county.

§ 378. **Advertising lotteries.** Every person who, by writing or printing, by circulars or letters, or in any other way, advertises or publishes any account of any lottery, stating when or where the same is to be or has been drawn, or what are the prizes, or any of them therein, or the price of a ticket, or of any share or interest, or where it may be obtained, or in any way aiding or assisting the same, or adapted to induce persons to adventure therein, is guilty of a misdemeanor.

§ 379. **Offering property dependent on lottery.** Every person who offers for sale, distribution, or disposition in any way, any real or personal property, or things in action, or any interest therein, to be determined by lot or chance, that shall be dependent upon the drawing of any lottery within or out of this territory, and every person who sells, furnishes, or procures, or causes to be sold, furnished, or procured, in any manner whatsoever, any chance or share, or any interest whatever, in any property offered for sale, distribution, or disposition, in violation of this section, or any ticket or other evidence of any chance, share, or interest in such property, is guilty of a misdemeanor.

§ 380. **Lottery offices.** Every person who opens, sets up, or keeps, by himself, or by any other person or persons, any office or other

place for registering the numbers of any ticket in any lottery, or for making, receiving, or registering any bets or wagers upon the drawing, determination, or result of any lottery, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars.

§ 381. **Advertising lottery offices.** Every person who, by writing or printing, by circulars or letters, or in any other way, advertises or publishes any account of the opening, setting up, or keeping of any office or other place, for either of the purposes prohibited by the last section, is guilty of a misdemeanor.

§ 382. **Insuring lottery tickets.** Every person who insures or receives any consideration for insuring for or against the drawing of any ticket, share, or interest in any lottery, or for or against the drawing of any number or ticket, or number of any ticket, in any lottery; and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action, in the event that any ticket, share, or interest in any lottery, or any number, or ticket, or number of any ticket, in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day, or in any particular order; and every person who promises, agrees, or offers to pay any sum of money, or to deliver any property or thing in action, or to do, or forbear to do, anything for the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, —is guilty of a misdemeanor.

§ 383. **Advertising same.** Every person who, by writing or printing, by circulars, or letters, or in any other way, advertises or publishes any offer, notice, or proposal for any violation of the last section, is guilty of a misdemeanor.

§ 384. **Property offered.** All property offered for sale, distribution, or disposition, in violation of the provisions of this chapter, is forfeited to the people of this territory, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective district attorneys to demand, sue for, and recover, in behalf of this territory, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury, for the benefit of common schools.

§ 385. **Letting building.** Every person who lets or permits to be used any building, or portion of any building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.

§ 386. **Lotteries out of territory.** The provisions of this chapter apply in respect to lotteries drawn or to be drawn out of this

territory, whether authorized or not by the laws of the state where they are drawn, or to be drawn, in same manner as to lotteries drawn or to be drawn within this territory.

§ 387. **Advertisements.** The provisions of sections three hundred and seventy-eight and three hundred and eighty-one are applicable wherever the advertisement was published, or the letter or circular sent or delivered, through or in this territory, notwithstanding the person causing or procuring the same to be published, sent, or delivered was out of this territory at the time of so doing.

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## CHAPTER XXXV.

### GAMING.

§ 388. **Keeping gambling apparatus.** It is unlawful to maintain or keep any table, cards, dice, or any other article or apparatus whatever, useful, or intended to be used, in playing any game of cards, or faro, or other game of chance, upon which money is usually wagered.

§ 389. **Punishment.** Every person who knowingly violates the last section is guilty of a misdemeanor.

§ 390. **Apparatus a nuisance.** Every article or apparatus maintained or kept in violation of section three hundred and eighty-eight is a common and public nuisance.

§ 391. **Exacting payment.** Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro, or any other game at chance, or any bet or wager whatever, upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the county superintendent of public instruction of the county in which the offense was committed, for the benefit of common schools in said county.

§ 392. **Witness' privilege.** No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime; but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding.

§ 393. **Keeping gambling establishments.** Every person who keeps any building, or part of any building, or any vessel,

or float, to be used or occupied for gambling, and every owner, agent, or superintendent of any such place, who knowingly lets the same or allows it to be used or occupied for gambling, is guilty of a misdemeanor.

§ 394. **Keeping tables, etc., prohibited.** Every person who, for gambling purposes, keeps or exhibits any gambling table, establishment, device, or apparatus, or is guilty of dealing faro, or banking for others to deal faro, or acting as lookout or game-keeper for the game of faro, or any other banking game where money or property is dependent upon the result, or who sells or vends what are commonly called "lottery policies," or any writing, card, paper, or document in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or indorses a book or any other document for the purpose of enabling others to sell or vend lottery policies, is deemed a common gambler, and is punishable as for a misdemeanor.

§ 395. **Seizure of implements authorized.** Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter, is equally authorized and enjoined to seize any table, cards, dice, or other article or apparatus suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 396. **Implements destroyed or delivered.** The magistrate to whom anything suitable to be used for gambling purposes is delivered, pursuant to the foregoing section, shall, upon the examination of the accused, or, if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him, and whether it was actually employed by the accused in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes, and that it has been used by the accused in violation of this chapter, he shall cause it to be destroyed or be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice, in his judgment, require.

§ 397. **To be destroyed upon conviction.** Upon the conviction of the accused such district attorney shall cause any such thing suitable to be used for gambling purposes, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 398. **Persuading person to visit gambling places.** Every person who persuades another to visit any building or part of a building, or any vessel or float, used or occupied for the purpose of gambling, in consequence whereof such other person gambles therein,

is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property lost by him at play at such place, to be recovered in a civil action.

§ 399. **Duty of certain officers.** It is the duty of all sheriffs, police officers, constables, and prosecuting or district attorneys, to inform against and prosecute all persons whom they have credible reason to believe are offenders against the provisions of this chapter, and any omission so to do is punishable by a fine not exceeding five hundred dollars.

§ 400. **Duty of masters of vessels.** If any commander, owner, or lessee of any vessel or float knowingly permits any gambling for money or property on board such vessel or float, and does not, upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars, and in addition thereto is liable to any party losing any money or property by means of any gambling permitted in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

§ 401. **Racing of animals for wager.** All racing or trial of speed between horses or animals, for any bet, stake, or reward, except such as is allowed by special laws, is a common nuisance, and every person acting or aiding therein, or making or being interested in any such bet, stake, or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

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## CHAPTER XXXVI.

### PAWNBROKERS.

§ 402. **Pawnbroking without license.** Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above that allowed by law, except by authority of a license from a municipal corporation empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

§ 403. **Refusing to exhibit stolen goods.** Every pawnbroker, or person carrying on the business of a pawnbroker, and every junk dealer, who, having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods, or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

§ 404. **Selling before default.** Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge, and subsequently sold, is guilty of a misdemeanor.

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## CHAPTER XXXVII.

### OF OTHER INJURIES TO PERSONS.

§ 405. **Intoxicated physicians.** Every physician who, being in a state of intoxication, administers any poison, drug, or medicine, or does any other act, as such physician, to another person, by which the life of such other is endangered, is guilty of a misdemeanor.

See secs. 17, 259.

§ 406. **Willfully poisoning food.** Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the territorial prison not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 407. **Overloading passenger vessel.** Every person navigating any vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel that by means thereof such vessel sinks, or is overset, or injured, and thereby the life of any human being is endangered, is guilty of a misdemeanor.

§ 408. **Mismanagement of steam-boats.** Every captain or other person having charge of any steam-boat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor.

§ 409. **Steam-boilers.** Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, employed in any manufactory, rail-

way, or other mechanical works, who willfully or from ignorance or gross neglect creates or allows to be created such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

§ 410. **Fictitious copartnership.** Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner, except in the cases in which the continued use of a copartnership name is authorized by law, is guilty of a misdemeanor.

§ 411. **Counterfeiting trade-marks.** Every person who willfully forges, counterfeits, or procures to be forged or counterfeited any trade-mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trade-mark is affixed, or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

§ 412. **Keeping dies of trade-mark.** Every person who, with intent to defraud, has in his possession any die, plate, or brand, or any imitation of the trade-mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade-mark, or of selling the same when made, or affixing the same to any goods, and selling or offering the same for sale or disposal as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trade-mark of another with intent to sell, or offer for sale or disposal, any goods not the goods of the person to whom such trade-mark properly belongs, as genuine and original, is guilty of a misdemeanor.

§ 413. **Selling goods bearing counterfeit.** Every person who sells or keeps for sale any goods upon which any counterfeited trade-mark has been affixed, intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

§ 414. **Colorable imitations.** Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box, or other package containing any goods, any description of label stamp, brand, imprint, printed wrapper, label, or mark, which designates such goods by any word or token which is wholly or in part the same to the eye or to the ear as the word or any of the words or tokens used by any other person as his trade-mark, and every person who knowingly sells, or keeps, or offers for sale, any such bottle, case, box, other package, with any such label, stamp, brand, imprint, printed wrapper, ticket, or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling, or ex-

posing, or offering for sale such bottle, case, box, or other package was not the first to employ or use such words as his trade-mark, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

§ 415. **Trade-marks defined.** The words "trade mark," as used in the sections preceding, include every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description.

§ 416. **Goods defined.** The word "goods," as used in the sections preceding, includes every kind of goods, wares, merchandise, compound, or preparation which may be lawfully kept or offered for sale.

§ 417. **Affixing defined.** The offense of affixing a false trade-mark to goods is equally complete within the meaning of sections four hundred and eleven, four hundred and thirteen, and four hundred and fourteen, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper, or other package, or vessel, or any cover, or stopper thereof, in which such goods are put up.

§ 418. **Refilling or selling bottles.** Whenever any person engaged in manufacturing, bottling, selling in bottles, soda, mineral waters, porter, ale, cider, or small beer, has filed and published, in the manner authorized by law, a description of a name, mark, or label usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with intent to sell the same, any bottles stamped with such name, mark, or label, and every person who sells, disposes of, purchases, or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of, or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of, or trafficked in for every subsequent offense.

§ 419. **Keeping bottles with intent to refill.** Every person who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to refill, or use, or sell them in violation of the last section, is liable to the penalty therein prescribed.

§ 420. **Complaint—search—penalty.** Whenever any manufacturer or dealer designated by section four hundred and eighteen, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe, and does believe, that any of his bottles stamped and registered, as mentioned in such section, are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer, or vender of bottles, has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant, to discover and obtain the same, under the provisions of the law upon search warrants, which are hereby declared to fully relate to the purposes of this chapter; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession; and if such magistrate, on summary examination, finds that such person has been guilty of a violation of section four hundred and eighteen, such magistrate shall proceed to impose the fine therein prescribed, and, if the same be not paid, to commit such person to prison for a term not exceeding fifteen days.

\*§ 420a. **Misappropriation of casks, etc., deemed larceny.** If any person or persons shall willfully, and without the consent of the owner, appropriate to his or their own use, sell, destroy, or otherwise dispose of any such casks, barrel, keg, bottle, jug, box, fountain, or other package, not the property of himself or themselves, and having thereon the names, marks, or brands of any such manufacturer or dealer, the person or persons so offending shall be deemed guilty of larceny and be subject to all the provisions of the law applicable to such offense. (*Sess. Laws 1881, c. 110, § 3.*)

\*§ 420b. **Penalty for destroying casks, etc.** If any person shall unlawfully and maliciously obliterate, injure, or destroy the names, marks, or brands affixed to any cask, barrel, keg, bottle, jug, fountain, box, or other package used or intended to be used for the purpose aforesaid, and not the property of himself, the person so offending shall be deemed guilty of a misdemeanor and be subject to a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding sixty days, or both, as the court may deem proper. (*Id.* § 4.) See Civil Code Dak. § 576a.

§ 421. **Defacing marks.** Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading, or other document tending to show the ownership, is guilty of a misdemeanor.

§ 422. **Same on logs, etc.** Every person who cuts out or defaces any mark made upon any log or lumber, whether such mark be recorded or not, or puts a false mark upon any log or lumber floating in any of the waters of this territory, or lying upon land, is guilty of a misdemeanor.

§ 423. **Unlawful detention.** Every officer who, without authority of law, detains any wrecked property, or the proceeds

thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement, or extortion in the discharge of his duties, or who violates any provision of the statutes relating to salvage, is guilty of a misdemeanor.

§ 424. **Fraud in partnership.** Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership is guilty of a misdemeanor.

§ 425. **Solemnizing unlawful marriages.** Every minister or magistrate who solemnizes any marriage, where either of the parties is known to him to be within the age of legal consent, or to be an idiot, or an insane person, or any marriage to which, within his knowledge, any legal impediment exists, is guilty of a misdemeanor.

§ 426. **Unlawful confinement of lunatics.** Every overseer of the poor, constable, keeper of a jail, or other person who confines any idiot, lunatic, or insane person, in any other manner, or in any other place, than is authorized by law, is guilty of a misdemeanor.

§ 427. **Taking usury.** Every person who, directly or indirectly, receives any interest, discount, or consideration, upon the loan or forbearance of any money, goods, or things in action greater than is allowed by law, is guilty of a misdemeanor.

\*§ 427a. **Certain counties exempt from usury law.** Section 427 of the Penal Code is hereby repealed in the counties of Lawrence, Pennington, Custer, Mandan, and Forsythe. (*Sess. Laws 1881, c. 136, § 1.*)

§ 428. **Reconfining persons.** Every person who, either solely or as a member of a court, in the execution of a judgment, order, or process, knowingly recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged from imprisonment upon a writ of deliverance, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits to the party aggrieved one thousand dollars, to be recovered in a civil action.

§ 429. **Concealing persons.** Every person having in his custody or power, or under his restraint, a party who, by the provisions of the law relating to *habeas corpus* would be entitled to a writ of *habeas corpus*, or for whose relief such writ has been issued, who, with intent to elude the service of such writ, to avoid the effect thereof, transfers the party to the custody, or places him under the power or control, of another, or conceals or changes the place of his confinement; or who, without lawful excuse, refuses to produce him, is guilty of a misdemeanor.

§ 430. **Assisting same.** Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor.

## CHAPTER XXXVIII.

## OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

§ 431. **Public nuisance defined.** A public nuisance is a crime against the order and economy of the territory, and consists in unlawfully doing any act or omitting to perform any duty required by the public good, which act or omission either :

1. Annoys or injures the comfort, repose, health, or safety of any considerable number of persons; or,
2. Offends public decency; or,
3. Unlawfully interferes with, obstructs, or tends to obstruct, any lake, or any navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; or,
4. In any way renders life or the use of property uncomfortable.

§ 432. **Unequal damage.** An act which affects a considerable number of persons in either of the ways specified in the last section is not less a nuisance because the extent of the damage is unequal.

§ 433. **Maintaining a nuisance—misdemeanor.** Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

§ 434. **Keeping gunpowder.** Every person who makes or keeps gunpowder or saltpeter within any city or village, and every person who carries gunpowder through the streets thereof, in any quantity or manner such as is prohibited by law or by any ordinance of such city or village, is guilty of a misdemeanor.

§ 435. **Throwing gas tar into public waters.** Every person who throws or deposits any gas tar, or refuse of any gas-house or factory, into any public waters, river, or stream, or into any sewer or stream emptying into any such public waters, river, or stream, is guilty of a misdemeanor.

\*§ 435a. **Perpetrating nuisance in Red River of the North—misdemeanor.** Any person who shall deposit, or cause to be deposited, upon the banks or in the waters of the Red River of the North, or its tributaries, between the city of Wahpeton, in the county of Richland, and the northern boundary line of this territory, any dead animal, offal, or other refuse matter, offensive to the sight or smell or deleterious to health, is guilty of a misdemeanor. (*Sess. Laws 1881, c. 103, § 1.*)

\*§ 435b. **Penalty.** If, upon conviction before any justice of the peace for the violation of this act, the party or parties so convicted shall be fined for the first offense fifty dollars and costs; for the second offense seventy-five dollars and costs,—one-half of which fine shall go to the informer. (*Id.* § 2.)

\*§ 435c. **James river—what shall be unlawful.** It shall be unlawful for any person or persons to place, or cause to be placed, any manure, carcasses of animals, or other deleterious substances into the Dakota or James river, or any of its tributaries, or upon the banks of the same, in such proximity that the said substance may be washed into said water-course. (*Sess. Laws 1883, c. 70, § 1.*)

\*§ 435d. **Penalty.** Any person offending against the provisions of section one [\*§ 435c] of this act shall be guilty of a misdemeanor, and shall be subject to a fine of not exceeding one hundred dollars, to be recovered before any justice of the peace or judge of the county in which the offense is committed. (*Id. § 2.*)

\*§ 435e. **Further penalty.** Upon conviction, the person or persons so convicted shall be ordered, by the judge or justice of the peace before whom the conviction is had, to remove the substances, and shall be liable to a fine of five dollars for each day he or they shall neglect to remove the same after being so ordered. The fines mentioned in this act shall be recovered upon complaint of any person, and disposed of as other fines. (*Id. § 3.*)

\*§ 435f. **Rapid creek—certain act unlawful.** It shall be unlawful for any person, persons, company, or corporation to place or cause to be placed, manure, butchers' offal, rubbish, carcasses of dead animals, or other deleterious substances into Rapid creek or any of its tributaries or upon the banks thereof in such proximity that said substances may be washed into said water-course. (*Sess. Laws 1883, c. 94, § 1.*)

\*§ 435g. **Penalty.** Any violation of the provisions of this act is a misdemeanor, and the person, persons, company, or corporation so violating are guilty thereof, and upon conviction shall be liable to a fine of not less than ten dollars nor more than one hundred dollars, and, in addition thereto, such offending person or persons shall be subjected to imprisonment in the county jail for the period of thirty days unless he or they cause such deleterious substance to be removed. (*Id. § 2.*)

\*§ 435h. **Act, how construed.** This act shall not be so construed as to interfere with or prevent any necessary or legitimate mining operation. (*Id. § 3.*)

\*§ 435i. **Justices to have jurisdiction.** Justices of the peace of the proper county shall have jurisdiction to try and determine all offenses arising under the provisions of this act, subject to appeal as in other criminal cause. (*Id. § 4.*)

Obstructing ditches. See Pol. Code, Dak. c. 23, pt. 2, § 92.

§ 436. **Violations of quarantine laws.** Every master of a vessel subject to quarantine or visitation by the health officer, by the provisions of any law of this territory now in force, or that hereafter may be enacted, arrives at any port, or at the boat-landing of any city or town in this territory, who refuses or omits either:

1. To proceed with and anchor or land his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo, and passengers to the examination of the health officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject; or,

3. To remain with his vessel at quarantine during the period assigned for her quarantine, and, while at quarantine, to comply with the directions and regulations prescribed by law, and with such as any

of the officers of health, by virtue of the authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew,

Is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 437. **Offenses by ship-master.** Every master of a vessel, hailed by a pilot or such officer as may be specified by law, who either :

1. Gives false information to such pilot or other officer, relative to the condition of his vessel, crew, or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required ; or,

2. Lands any person from his vessel, or permits any person, except a pilot or such officer specified by law, to come on board of his vessel, or unloads or transships any portion of his cargo before his vessel has been visited and examined by the proper health officers ; or,

3. Approaches with his vessel nearer any city or town within this territory than the place of quarantine to which he may be directed, is punishable by imprisonment in the county jail of the county in which the offense was committed, not exceeding one year, or by a fine not exceeding two thousand dollars, or both such fine and imprisonment.

§ 438. **Landing before visit of health officers.** Every person who being on board any vessel at the time of her arrival at any port within this territory, under the provisions of section four hundred and thirty-six, lands from such vessel, or unloads, or transships, or assists in unloading or transshipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 439. **Other restrictions.** Every person who goes on board of or has any communication, intercourse, or dealing with, any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both ; and, in addition thereto, he may be detained at quarantine so long as the health officers shall direct, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious, or pestilential disease, during such twenty days, he may be detained for such further time and at such place as the health officer shall direct.

§ 440. **Violating quarantine regulations.** Every person who, having been lawfully ordered by any health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

§ 441. **Obstructing health officer.** Every person who willfully opposes or obstructs any health officer, or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 442. **Violation of health law.** Every person who willfully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws, or by this Code, and every person who willfully violates, or refuses, or omits to comply with any lawful order, direction, prohibition, or regulation, prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 443. **Unlicensed piloting.** Every person not holding a license as a pilot under the laws of this territory, or under the laws of either the states of Missouri, Kansas, Iowa, or Nebraska, who pilots, or offers to pilot, any steam-boat to or from any port within this territory, is guilty of a misdemeanor.

§ 444. **Exceptions.** The last section applies only to vessels propelled by steam while engaged in conveying freight and passengers, or either, on the Missouri river.

§ 445. **Port warden.** Every person who, not being a port warden, assumes or undertakes to act as such, under or by the provisions of any law of this territory now in force or that may hereafter be enacted, and every person who issues any certificate of a survey on vessels, materials, or goods damaged, with the intent to avoid the provisions of the law, is guilty of a misdemeanor.

§ 446. **Apothecary, when liable.** Every apothecary or druggist, and every person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts any untrue label, stamp, or other designation of contents upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

§ 447. **Record and witness of poison sale—labels.** No druggist, apothecary, or other person dealing or trafficking in drugs or medicines, and no person employed as clerk or salesman by any apothecary or druggist, shall sell or give away any poison or poisonous substances, except to practicing physicians in their ordinary

practice of medicine, without recording in a book to be kept for that purpose the name of the person or persons receiving such poison, and his, her, or their residence, together with the name and residence of some person as witness to such sale, excepting upon the written order or prescription of some practicing physician, whose name must be attached to such order or prescription. No person shall sell, give away, or dispose of any poisonous substance without attaching to the phial, box, or parcel containing such poisonous substance a label with the word "poison" printed or written upon it in plain and legible characters.

§ 448. **Violation—misdemeanor.** Any person violating any of the provisions of section four hundred and forty-seven shall be deemed guilty of a misdemeanor.

§ 449. **Record to be public.** Every person whose duty it is, by section four hundred and forty-seven, to keep any book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said books, upon reasonable demand made during business hours, is punishable by fine not exceeding fifty dollars.

§ 450. **Laying out poisons.** Every person who shall lay out strychnine or other poison within the limits of any town, or within one mile of any dwelling-house, or any barn, stable, or out-building used at the time for the keeping or shelter of horses, cattle, sheep, or swine, or within one-half mile of any traveled thoroughfare on the ceded lands of this territory, is guilty of a misdemeanor: *provided*, nothing in this section shall be construed to prohibit the putting out, at any time, of poisoned grain for the purpose of killing gophers.

\*§ 450a. **Penalty for having in possession glandered animals.** It shall be and hereby is made unlawful for any person or corporation to own, have in possession, or in any manner keep, use, or control any horse, gelding, mare, ass, or mule inflicted with the disease commonly known as glanders; and each and every person or corporation that shall knowingly own, possess, or in any manner keep, use, or control any glandered horse, gelding, mare, ass, or mule shall be deemed guilty of a misdemeanor, and shall be punished accordingly, and all such diseased animals shall be summarily destroyed as hereinafter provided. (*Sess. Laws 1833, c. 65, § 1.*)

Bringing Cherokee or Texas cattle into territory. See Pol. Code Dak. Appendix, c. 34, \*§ 55.

§ 451. **Omitting to mark hay.** Every person who, in putting up or pressing any bundle of hay for market, omits to put the number of pounds in each bundle or bale so put up, for which he sells or offers to sell it for, is guilty of a misdemeanor.

§ 452. **Increased weight.** Every person who, by putting up in any bag, bale, box, barrel, or other package, any hops, cotton, hay, or other goods usually sold in bags, bales, barrels, or packages, by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or

package, is punishable by a fine of twenty-five dollars for each offense.

§ 453. **Adulterating food.** Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous, or malt liquor, or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered, for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps, or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor.

§ 454. **Disposing of tainted food.** Every person who knowingly sells, or keeps, or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwelcome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor.

§ 455. **Slung-shot.** Every person who manufactures or causes to be manufactured, or sells, or offers or keeps for sale, or gives or disposes of any instrument or weapon of the kind usually known as slung-shot, or of any similar kind, is guilty of a misdemeanor.

§ 456. **Carrying or using same.** Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another any instrument or weapon of the kind usually known as slung-shot, or of any similar kind, is guilty of a felony.

§ 457. **Concealed weapons.** Every person who carries concealed about his person any description of fire-arms, being loaded or partly loaded, or any sharp or dangerous weapon such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

§ 458. **Willful prairie fires.** Every person who shall willfully set on fire, or cause to be set on fire, any woods, marshes, or prairie, with intention to injure the property of another, shall be deemed guilty of a misdemeanor, and shall be liable for all damages done by such fire.

\*§ 458a. **Penalty for setting fire to woods or prairies.** If any person or persons shall willfully, negligently, or carelessly set or cause to be set on fire any woods, marsh, or prairie in the counties of Lawrence, Pennington, Custer, Mandan, and Forsythe, or either of them, or if any person or persons having made any camp or other fire shall leave the said fire without having thoroughly extinguished the same, so that the fire shall spread and burn any wood, marsh, or prairie, the person or persons guilty of setting or causing to be set such fire, or leaving such camp or other fire without having thoroughly extinguished the same, so that the fire shall spread therefrom, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprison-

ment, in the discretion of the court, and shall also be liable in a civil action to any person or persons or corporation damaged by such fire to the amount of such damage. (*Sess. Laws 1881, c. 106, § 1.*)

\*§ 458*b*. **Responsibility of party to person damaged.** If the ranch, buildings, improvements, fencing, timber, marsh, or other property of any person, persons, or corporation shall be injured or destroyed by any such fire as described in the first section of this act, the person or persons who shall cause or allow the same, as therein provided, shall be responsible to the person, persons, or corporation injured thereby for all damage or injury caused or sustained by reason of such fire. (*Id.* § 2.)

\*§ 458*c*. **Responsibility where cattle range is injured.** If the cattle range or improvements of any person, persons, or corporation shall be injured or destroyed by any such fire as described in the first section of this act, or if the hay put up on any such range or the grass growing thereon shall be injured by any such fire as aforesaid, the person or persons who shall cause or allow the same as therein provided shall be responsible to the person, persons, or corporation owning or claiming the same and injured thereby, for all damage or injury caused or sustained by reason of any such fire. (*Id.* § 3.)

\*§ 458*d*. **Proof necessary to establish claim for damages.** In any action instituted in any court to recover damages under the provisions of this act it shall not be necessary for any person, persons, or corporation injured by any such fire to allege in their pleadings or prove on the trial of such action, title to the real property over which such fire has spread, but it shall be sufficient in any such action to allege and prove that the person, persons, or corporation so injured was or were in the occupancy or possession of any such ranch, buildings, improvements, fencing, timber, marsh, or other property, claiming the right to and occupying with cattle any such cattle range, it being the purpose and intention of this act to protect the possession as aforesaid of any person, persons, or corporation, whether such person, persons, or corporation have title to the land claimed or occupied by such person, persons, or corporation or not. (*Id.* § 4.)

§ 459. **Same by negligence — damages.** Every person who negligently or carelessly sets on fire, or causes to be set on fire, any woods, marshes, or prairies, or who, having set the same on fire, or caused it to be done, negligently or carelessly, or without full precaution or efforts to prevent, permits it to spread beyond his control, shall, upon conviction, be fined not exceeding one hundred dollars, and not less than ten dollars, and shall be liable to injured parties for all damages occasioned thereby. One-half of such fine shall, when collected, go to the informer.

§ 460. **Refusing aid at fires.** Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman, or company of firemen, to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

§ 461. **Penalty for maintaining ferry without license.** Every person who maintains any ferry for profit or hire upon any

waters within this territory, without having first obtained a license as provided by law, is guilty of a misdemeanor. And any license or lease granted by the board of county commissioners of the proper county shall be exclusive to the lessee or licensee for a distance of two miles from the place where such ferry is located, up and down such stream, either way; and any person who shall ferry, transport, or carry, or attempt to ferry, transport, or carry, any passengers, goods, chattels, or merchandise, or who shall have, keep, or maintain any scow, skiff, or boat, for the purpose of ferrying, transporting, or carrying any passengers, goods, chattels, or merchandise upon any water of this territory, within a distance of two miles of any licensed ferry, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding one hundred dollars, or thirty days imprisonment in the county jail, or by both fine and imprisonment; when such ferry is upon waters dividing two counties, the offenders may be prosecuted in either county. (*As amended, Sess. Laws 1879, c. 21.*)

§ 462. **Ferry bond.** Every person who, having entered into a bond or obligation, as provided by his ferry charter, or any general law on the subject of ferries, to keep and attend a ferry, violates the condition of such bond or obligation, is guilty of a misdemeanor.

§ 463. **Failure to ring locomotive bell.** Every person in charge, as engineer, of a locomotive engine, who omits to cause a bell to ring, or a steam-whistle to sound, at the distance of at least eighty rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding sixty days.

§ 464. **Drunken manager.** Every person who, while in charge, as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor.

§ 465. **Agent's neglect of duty.** Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant, of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, by which human life or safety is endangered, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

§ 466. **Guards of ice cuttings.** All persons and incorporated companies cutting ice in or upon any waters within the boundaries of this territory, for the purpose of removing such ice for sale, shall surround the cuttings and openings made with fences of bushes or other guards sufficient to warn all persons of such cuttings and openings.

§ 467. **How long maintained.** Such fences or guards must be erected at or before the time of commencing such cuttings or open-

ings, and must be maintained until ice has again formed in such openings to the thickness of at least six inches.

§ 468. **Misdemeanor.** Every person who violates the provisions of the last two sections is guilty of a misdemeanor.

§ 469. **Obstructing navigation.** Every person who, in any manner, obstructs the free navigation of any navigable water-course within this territory is guilty of a misdemeanor.

§ 470. **Exposing person with contagious disease.** Every person who willfully exposes himself or another person, being affected with any contagious disease, in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

§ 471. **Frauds to affect market price.** Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

§ 472. **False statements in newspapers.** Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

§ 473. **Eavesdropping.** Every person guilty of secretly loitering about any building, with intent to overhear discourse therein, and to repeat or publish the same to vex, annoy, or injure others, is guilty of a misdemeanor.

§ 474. **Racing upon highways.** Every person driving any conveyance drawn by horses upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

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## CHAPTER XXXIX.

### CRIMES AGAINST THE PUBLIC PEACE.

§ 475. **Disturbing lawful meetings.** Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting not unlawful in its character, other than such as are mentioned in sections fifty-four, seventy-four, and three hundred and sixty-three of this Code, is guilty of a misdemeanor.

§ 476. **Riot defined.** Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power

of execution, by three or more persons acting together, and without authority of law, is riot.

§ 477. **Punishment of riot.** Every person guilty of participating in any riot is punishable as follows:

1. If any murder, maiming, robbery, rape, or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.

2. If the purpose of the riotous assembly was to resist the execution of any statute of this territory, or of the United States, or to obstruct any public officer of this territory, or of the United States, in the performance of any legal duty, or in serving or executing any legal process, such person is punishable by imprisonment in the territorial prison, not exceeding ten years, and not less than two.

3. If such person carried, at the time of such riot, any species of fire-arms, or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in a territorial prison not exceeding ten years, and not less than two.

4. If such person directed, advised, encouraged, or solicited other persons who participated in the riot to acts of force or violence, he is punishable by imprisonment in the territorial prison for not less than three years.

5. In all other cases such person is punishable as for a misdemeanor.

§ 478. **Rout defined.** Whenever three or more persons, acting together, make any attempt or to do any act towards the commission of an act which would be riot if actually committed, such assembly is a rout.

§ 479. **Unlawful assembly.** Whenever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act towards the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace or excite public alarm, such assembly is an unlawful assembly.

§ 480. **Punishment.** Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

§ 481. **Warning to disperse.** Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 482. **Present after unlawful purpose.** Where three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the

change of purpose is made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

See sec. 92.

§ 483. **Refusing to arrest rioter.** Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly.

§ 484. **Combinations to resist process.** Every person who resists, or enters into a combination with any other person to resist, the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

§ 485. **Prize fight.** Every person who engages in, instigates, encourages, or promotes, any ring or prize fight, or any other premeditated fight or contention, whether as principal, aid, second, umpire, surgeon, or otherwise, although no death or personal injury ensues, is guilty of a misdemeanor.

§ 486. **Challenge to prize fight.** Every person who challenges another to engage in any such fight as is specified in the last section, every person who accepts any such challenge, every person who knowingly forwards, carries, or delivers any such challenge, and every person who bets, stakes, or wagers any money or property upon the result of any such fight, or who undertakes to hold any money or property so betted, staked, or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

§ 487. **What is a challenge.** Any words spoken or written, or any signs uttered or made to any person, expressing or implying, or intended to express or imply, a desire, request, invitation, or demand to engage in any fight, such as is mentioned in section four hundred and eighty-five, are deemed a challenge within the meaning of the last section.

§ 488. **Leaving territory to engage in.** Every person who leaves this territory with the intent to elude any of the provisions of the last three sections, and to commit any act out of this territory, such as is prohibited by them, and who does any act which would be punishable under these provisions, if committed within this territory, is punishable in the same manner as he would have been in case such act had been committed within this territory.

§ 489. **Place of trial.** Such person may be indicted and tried in any county within this territory.

§ 490. **Duty of peace officers.** It is the duty of all sheriffs, constables, policemen, and watchmen, who have reasonable grounds

to believe that any offense specified in section four hundred and eighty-five is about to be committed within their jurisdiction, to make complaint under the provisions of this act to some magistrate within their jurisdiction.

§ 491. **Neglect a misdemeanor.** Every sheriff, constable, policeman, or watchman, who willfully neglects the duty prescribed by the last section, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, he forfeits his office.

§ 492. **Forcible entry and detainer.** Every person guilty of using, or procuring, encouraging, or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and manner allowed by law, is guilty of a misdemeanor.

§ 493. **Returning to possession.** Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards, without authority of law, returns to settle or reside upon such lands, is guilty of a misdemeanor.

§ 494. **Unlawful intrusions.** Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or village, without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty, or other structure whatever, without such license or authority, and every person who places, erects, or occupies within the bounds of any street or avenue of such city or village any hut, hovel, shanty, or other structure whatever, is guilty of a misdemeanor. .

§ 495. **Discharging fire-arms.** Every person who willfully discharges any species of fire-arms, air-gun, or other weapon, or throws any other missile in any public place or in any place where there is any person to be endangered thereby, although no injury to any person shall ensue, is guilty of a misdemeanor.

§ 496. **Witness' privilege.** No person shall be excused from giving any evidence upon any investigation or prosecution for any of the offenses specified in this chapter, upon the ground that such testimony or evidence might tend to convict him of a crime. But such answer or evidence shall not be received against him upon any criminal proceeding or prosecution.

## CHAPTER XL.

## OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THE TERRITORY.

§ 497. **Embezzlements and false accounts by officers.** Every public officer, and every deputy or clerk of any such officer, and every other person receiving any moneys on behalf of or for account of this territory, or of any department of the government of this territory, or of any bureau or fund created by law, and in which this territory, or the people thereof, are directly or indirectly interested, who either:

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money received by him as such officer, clerk, or deputy, or otherwise, on behalf of this territory or the people thereof, or in which they are interested; or,

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any moneys so received by him on behalf of the territory, or the said people, or in which they are interested; or,

3. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

4. Willfully omits or refuses to pay over to this territory, or its officer or agent authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same, Is guilty of a felony.

§ 498. **Other violation.** Every officer or other person mentioned in the last section, who willfully disobeys any provisions of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor.

§ 499. **Officer's fraud.** Every public officer, being authorized to sell or lease any property, or make any contract, in his official capacity, who voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor.

§ 500. **Refusal to perform duty.** Every register of deeds, judge of the probate court, district attorney, county commissioner, sheriff, coroner, or county superintendent of public schools, who willfully fails or refuses to perform the duties of his office according to law, is guilty of a misdemeanor.

§ 501. **Obstructing collecting revenue.** Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which, or in any part of which, the people of this territory are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 502. **Other officers.** The provisions of section five hundred shall also apply to county treasurers, justices of the peace, and all other county and precinct officers.

§ 503. **Territorial officers.** Every territorial auditor, territorial treasurer, superintendent of public instruction for this territory, or any other territorial officer, who willfully neglects or refuses to perform the duties of his office, as prescribed by law, is guilty of a misdemeanor.

§ 504. **Auctioneer to have but one place.** No auctioneer, in any town or county of this territory, shall at one time have more than one place for carrying on the general business of an auctioneer.

§ 505. **Selling at other place.** No such auctioneer shall expose to sale by public auction any articles liable to auction duties at any other place than that so designated, except goods sold in original packages, as imported pictures, household furniture, libraries, stationery, and such bulky articles as have usually been sold in warehouses, or in the public streets, or on the wharves.

§ 506. **Punishment.** A violation of either of the last two sections is punishable by a fine not exceeding two hundred and fifty dollars for each offense.

§ 507. **Fraud in quality.** Every person carrying on, interested in, or employed about the business of selling property or goods by auction, who sells any goods or property in a damaged condition, which he offers as sound or in a good condition, is guilty of a misdemeanor.

§ 508. **Sales must be by day, except.** All sales of goods by public auction by a licensed auctioneer shall be made in the day time, between sunrise and sunset, unless otherwise authorized by the law under which he holds his license, excepting:

1. Books, prints, pictures, or stationery.
2. Goods sold in the original packages as imported, according to a printed catalogue, of which samples shall have been opened and exposed to public view at least one day previous to the sale. Every person who violates the provisions of this section is guilty of misdemeanor; and, in addition to the punishment prescribed therefor by law, is forever disqualified, after his conviction therefor, from being licensed to act as an auctioneer within this territory.

§ 509. **Omitting to account.** Every auctioneer, and every partner or clerk of an auctioneer, and every person whatever, in any way connected in business with an auctioneer, who willfully omits to render any semi-annual or other account, by law required to be rendered, at the time or in the manner prescribed by law, or who willfully omits to pay over any duties legally payable by him at the

time and in the manner prescribed by law; is guilty of a misdemeanor.

§ 510. **Auctioneer committing fraud.** Every auctioneer, and every partner or clerk of any auctioneer, and every person whatever, in any way connected in business with an auctioneer, who commits any fraud or deceit, or by any fraudulent means whatever seeks to evade or defeat the provisions of the laws of this territory relating to auctions, now in force, or that may hereafter be enacted, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable in treble damages to any party injured thereby.

§ 511. **False bill of lading.** Every person whose duty it may be to deliver to any collector of tolls upon any canal that hereafter may be constructed and owned by this territory, a bill of lading of any property transported upon any such canal, who knowingly delivers a false bill of lading as true, or makes or signs a false bill of lading intending to be delivered as true, is punishable by imprisonment in the territorial prison not exceeding one year, or by a fine not exceeding five times the value of any property omitted in such bill, or both.

§ 512. **Weighmaster making false entry.** Every weighmaster upon any canal that may hereafter be constructed and owned by this territory, and every clerk of such weighmaster, who knowingly makes a false entry of the weight of any boat, or cargo of any boat, navigating such canal, or who knowingly makes a false certificate of the light weight of any boat, is guilty of a misdemeanor.

§ 513. **Injuring public buildings.** Every person who willfully burns, destroys, or injures any public building or improvement in this territory, is punishable by imprisonment in the territorial prison not exceeding five years.

§ 514. **Seizing military stores.** Every person who enters any fort, magazine, arsenal, armory, arsenal yard, or encampment, and seizes or takes away any arms, ammunition, military stores, or supplies belonging to the people of this territory, and every person who enters any such place with intent so to do, is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 515. **False statement about taxes.** Every person who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty of a misdemeanor.

## CHAPTER XLI.

## ARSON.

§ 516. **Arson defined.** Arson is the willful and malicious burning of a building, with intent to destroy it.

§ 517. **Building defined.** Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building" within the meaning of the last section.

§ 518. **Inhabited building.** Any building is deemed an "inhabited building," within the meaning of this chapter, any part of which has usually been occupied by any person lodging therein at night.

§ 519. **Night defined.** The words "night time" in this chapter include the period between sunset and sunrise.

§ 520. **Burning defined.** To constitute a burning, within the meaning of section five hundred and sixteen, it is not necessary that the building set on fire should be destroyed. It is sufficient that fire is applied so as to take effect upon the substance of the building.

§ 521. **Ownership.** To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in the possession of, or was actually occupying, such building, or any part thereof.

§ 522. **Variance in proof.** An omission to designate, or error in designating, in an indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building it is sufficiently identified to enable the prisoner to prepare his defense.

§ 523. **Malice.** Malice sufficient to constitute arson is inferred from proof that the prisoner committed an act of burning a building, and that some other person was rightfully in possession of or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupancy, or should have intended to injure any person.

§ 524. **No intent to destroy.** But the burning of a building under circumstances which shows beyond a reasonable doubt that there was no intent to destroy it, is not arson.

§ 525. **Contiguous buildings.** Where any appurtenance to any building is so situated with reference to such building, or where any building is so situated with reference to another building, that the burning of one will manifestly endanger the other, a burning of

the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other.

§ 526. **Degrees of arson.** Arson is distinguished into four degrees.

§ 527. **First degree.** Maliciously burning in the night-time an inhabited building, in which there is at the time some human being, is arson in the first degree.

§ 528. **Appurtenances to buildings.** No warehouse, barn, shed, or other outhouse is a subject of arson in the first degree, unless it is immediately connected with and forms part of an inhabited building.

§ 529. **Arson in second degree.** Maliciously burning in the day-time an inhabited building, in which there is at the time some human being, is arson in the second degree.

§ 530. **In night-time when same.** Maliciously burning in the night-time a building, not an inhabited building, but adjoining to or within the curtilage of an inhabited building in which there is at the time some human being, so that such inhabited building is endangered, even though it be not in fact injured by such burning, is arson in the second degree.

§ 531. **In day-time when third degree.** Maliciously burning in the day-time a building, the burning of which in the night-time would be arson in the second degree, is arson in the third degree.

§ 532. **In night-time.** Maliciously burning in the night-time any building, not the subject of arson in the first or second degree, including any house for public worship, school-house, or public building belonging to the people of this territory, or to any county, city, town, or village, any building in which have usually been deposited the papers of any public officer, and any barn, mill, or manufactory, is arson in the third degree.

§ 533. **Fourth degree defined.** Maliciously burning in the day-time any building, the burning of which in the night-time would be arson in the third degree, is arson in the fourth degree.

§ 534. **Punishment of arson.** Arson is punishable by imprisonment in the territorial prison, as follows:

1. Arson in the first degree, for any term not less than ten years.
2. Arson in the second degree, not exceeding ten years and not less than seven years.
3. Arson in the third degree, not exceeding seven years and not less than four years.

4. Arson in the fourth degree, not exceeding four years and not less than one year, or by imprisonment in a County jail not exceeding one year.

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## CHAPTER XLII.

### BURGLARY AND HOUSE-BREAKING.

§ 535. **Burglary in first degree.** Every person who breaks into and enters in the night-time the dwelling-house of another, in which there is at the time some human being, with intent to commit some crime therein, either :

1. By forcibly bursting or breaking the wall, or an outer door, window, or shutter of the window of such house, or the lock or bolt of such door, or the fastening of such window or shutter; or,

2. By breaking in any other manner, being armed with a dangerous weapon, or being assisted or aided by one or more confederates, then actually present; or,

3. By unlocking an outer door by means of false keys, or by picking the lock thereof,

Is guilty of burglary in the first degree.

§ 536. **In second degree.** Every person who breaks into any dwelling-house in the day-time, under such circumstances as would have constituted the crime of burglary in the first degree if committed in the night-time, is guilty of burglary in the second degree.

§ 537. **Same.** Every person who, having entered the dwelling-house of another in the night-time, through an open outer door or window, or other aperture not made by such person, breaks any inner door, window, partition, or other part of such house, with intent to commit any crime, is guilty of burglary in the second degree.

§ 538. **Same.** Every person who, being lawfully in any dwelling-house, breaks in the night-time any inner door of the same house, with intent to commit any crime, is guilty of burglary in the second degree.

§ 539. **Burglary, third degree.** Every person who breaks into any dwelling-house in the night-time, with intent to commit a crime, but under such circumstances as do not constitute the offense of burglary in the first degree, is guilty of burglary in the third degree.

§ 540. **Other burglaries in third degree.** Every person who breaks and enters, in the day or in the night-time, either :

1. Any building within the curtilage of a dwelling-house, but not forming a part thereof; or,

2. Any building, or any part of any building, booth, tent, railroad car, vessel, or other structure or erection in which any property is kept, with intent to steal therein, or to commit any felony,

Is guilty of burglary in the third degree.

§ 541. **Burglary in fourth degree.** Every person who breaks and enters the dwelling-house of another by day or by night, in such manner as not to constitute any burglary specified in the preceding section, with intent to commit a crime, is guilty of burglary in the fourth degree.

§ 542. **Same.** Every person who, having committed any crime in the dwelling-house of another, breaks in the night-time any outer door, window shutter, or other part of such house to get out of the same, is guilty of burglary in the fourth degree.

§ 543. **Punishment.** Burglary is punishable by imprisonment in the territorial prison as follows:

1. Burglary in the first degree, for any term not less than ten years.

2. Burglary in the second degree, not exceeding ten years and not less than five years.

3. Burglary in the third degree, not exceeding five years.

4. Burglary in the fourth degree, not exceeding three years.

§ 544. **Burglar's implements.** Every person who, under circumstances not amounting to any felony, has in his possession, in the night-time, any dangerous, offensive weapon or instrument whatever, or any picklock, crow, key, bit, jack, jimmy, nippers, pick, betty, or other implement of burglary, with intent to break and enter any building, or part of any building, booth, tent, railroad car, vessel, or other structure or erection, and to commit any felony therein, is guilty of a misdemeanor.

§ 545. **Entering other buildings.** Every person who, under circumstances not amounting to any burglary, enters any building, or part of any building, booth, tent, warehouse, railroad car, vessel, or other structure or erection, with intent to commit any felony, larceny, or malicious mischief, is guilty of a misdemeanor.

§ 546. **Dwelling - house defined.** The term "dwelling-house," as used in this chapter, includes every house or edifice, any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice.

§ 547. **Night-time defined.** The words "night time," in this chapter, include the period between sunset and sunrise.

CHAPTER XLIII.

FORGERY AND COUNTERFEITING.

§ 548. **Forgery of wills, etc.** Every person who, with intent to defraud, forges, counterfeits, or falsely alters :

1. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is, or purports to be, transferred, conveyed, or in any way charged or affected; or,

2. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or indorsement; or,

3. Any certificate of the proof of any deed, will, codicil, or other instrument, which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate,

Is guilty of forgery in the first degree.

§ 549. **Forgery of public securities.** Every person who, with intent to defraud, forges, counterfeits, or falsely alters :

1. Any certificate or other public security, issued or purporting to have been issued under the authority of this territory, by virtue of any law thereof, by which certificate or other public security the payment of any money, absolutely or upon any contingency, is promised, or the receipt of any money or property acknowledged; or,

2. Any certificate of any share, right, or interest in any public stock, created by virtue of any law of this territory, issued or purporting to have been issued by any public officer; or any other evidence of any debt or liability of the people of this territory, either absolute or contingent, issued or purporting to have been issued by any public officer; or,

3. Any indorsement or other instrument, transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest,

Is guilty of forgery in the first degree.

§ 550. **Of public and corporate seals.** Every person who, with intent to defraud, forges or counterfeits the great or privy seal of this territory, the seal of any public office authorized by law, the seal of any court of record, including judge of probate seals, or the seal of any corporation created by the laws of this territory, or of any state, government, or country, or any other public seal authorized or recognized by the laws of this territory, or of any other state, govern-

ment, or country, or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

§ 551. **Forgery of records and official returns.** Every person who, with intent to defraud, falsely alters, destroys, corrupts, or falsifies :

1. Any record of any will, codicil, conveyance, or other instrument, the record of which is, by law, evidence; or,
2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or,
3. The return of any officer, court, or tribunal to any process of any court,

Is guilty of forgery in the second degree.

§ 552. **Making false entries.** Every person who, with intent to defraud, falsely makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return, specified in the last section, is guilty of forgery in the second degree.

§ 553. **False certificates.** If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument, which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any other party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

§ 554. **False bank-note plates.** Every person who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposite, or other evidence of debt, issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this territory, or of any other state, government, or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold, or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold, or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures or words which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with the intent to use the same, or to permit them to be used, for such purpose, is guilty of forgery in the second degree.

§ 555. **Imitation of a genuine.** Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases :

1. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved ; or,

2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

§ 556. **Sale of forged evidences.** Every person who sells, exchanges, or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft, or other evidence of debt, or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange, or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange, or delivery for any consideration, with the like knowledge and intent, is guilty of forgery in the second degree.

§ 557. **Having in possession.** Every person who, with intent to defraud, has in his possession any forged, altered, or counterfeit negotiable note, bill, draft, or other evidence of debt, issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this territory, or of any other state, government, or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered, or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree.

§ 558. **Other forged instruments.** Every person who has in his possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited, or falsely altered, with intent to injure or defraud by uttering the same as true, or as false, or by causing the same to be so uttered, is guilty of forgery in the fourth degree.

§ 559. **Issuing spurious certificates.** Every officer and every agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government, or country, who, within this territory, willfully signs, or procures to be signed, with intent to issue, sell, or pledge, or to cause to be issued, sold, or pledged, or who willfully issues, sells, or pledges, or causes to be issued, sold, or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full-paid shares or otherwise, or of any interest in its prop-

erty or profits, or of any certificate or other evidence of such ownership, transfer, or interest; or any instrument purporting to be a certificate or other evidence of such ownership, transfer, or interest, the signing, issuing, selling, or pledging of which has not been duly authorized by the board of directors, or other managing body of such corporation or association having authority to issue the same,—is guilty of forgery in the second degree.

§ 560. **Reissuing canceled certificates.** Every officer and every agent of any corporation or joint-stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government, or country, who within this territory willfully reissues, sells, or pledges, or causes to be reissued, sold, or pledged, any surrendered or canceled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

§ 561. **False evidences of debt.** Every officer and every agent of any corporation, municipal or otherwise, of any joint-stock association formed or existing under or by virtue of the laws of this territory, or of any other state, government, or country, who within this territory willfully signs or procures to be signed, with intent to issue, sell, or pledge, or to cause to be issued, sold, or pledged, or who willfully issues, sells, or pledges, or causes to be issued, sold, or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association of any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling, or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation, having authority to issue the same, is guilty of forgery in the second degree.

§ 562. **Counterfeiting coin.** Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign government or country, with intent to sell, utter, use, or circulate the same as genuine, within this territory, is guilty of forgery in the second degree.

§ 563. **Same.** Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported, to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the third degree.

§ 564. **Forging process of court.** Every person who, with intent to defraud, falsely makes, alters, forges, or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate, or officer, or being or purporting to be any pleading, proceeding, bond, or undertaking

filed or entered in any court, or being or purporting to be any certificate, order, or allowance by any competent court or officer, or being or purporting to be any license or authority authorized by any statute; or,

2. Any instrument or writing being or purporting to be the act of another, by which any pecuniary demand or obligation is or purports to be created, increased, discharged, or diminished, or by which any rights or property whatever are or purport to be transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false making, altering, forging, or counterfeiting any person may be affected, bound, or in any way injured in his person or property,

Is guilty of forgery in the third degree.

§ 565. **False entries in public books.** Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the auditor of this territory, or in the office of the treasurer of this territory, or of any county treasurer, by which any demand or obligation, claim, right, or interest, either against or in favor of the people of this territory, or any county or town, or any individual, is, or purports to be, discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the third degree.

§ 566. **Forging passage tickets.** Every person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check, or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges, or delivers, or keeps or offers for sale, exchange or delivery, or receives, upon any purchase, exchange, or delivery, any such ticket, knowing the same to have been forged, counterfeited, or falsely altered,—is guilty of forgery in the third degree.

§ 567. **Forging United States stamps.** Every person who forges, counterfeits, or alters any postage or revenue stamp of the United States, or who sells, or offers, or keeps for sale, as genuine, or as forged, any such stamp, knowing it to be forged, counterfeited, or falsely altered, is guilty of forgery in the third degree.

§ 568. **Making false entries in corporate books.** Every person who, with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this territory, or in any book of accounts kept by any such corporation or its officers, and delivered, or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim, or credit is, or purports to be, discharged, diminished, increased, created, or in any manner affected, is guilty of forgery in the third degree.

§ 569. **Same.** Every person who, being a member or officer, or in the employment, of any corporation, association, or partnership, falsifies, alters, erases, obliterates, or destroys any account, or book of accounts, or records belonging to such corporation, association, or partnership, or appertaining to their business, or makes any false entries in such account or book, or keeps any false account in such business, with intent to defraud his employers, or to conceal any embezzlement of their money or property, or any defalcation, or other misconduct, committed by any person in the management of their business, is guilty of forgery in the fourth degree.

§ 570. **Counterfeit coin.** Every person who has in his possession any counterfeit of any gold or silver coin, whether of the United States or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate, or export the same as true or as false, or by causing the same to be uttered or passed, is guilty of forgery in the fourth degree.

§ 571. **Punishment of forgery.** Forgery is punishable by imprisonment in the territorial prison, as follows:

1. Forgery in the first degree, by imprisonment not less than ten years.

2. Forgery in the second degree, not exceeding ten years and not less than five.

3. Forgery in the third degree, not exceeding five years.

4. Forgery in the fourth degree, by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not exceeding one year.

§ 572. **Uttering forged instrument or coin.** Every person who, with intent to defraud, utters or publishes as true any forged, altered, or counterfeited instrument, or any counterfeit gold or silver coin, the forging, altering, or counterfeiting of which is hereinbefore declared to be punishable, knowing such instrument or coin to be forged, altered, or counterfeited, is guilty of forgery in the same degree as if he had forged, altered, or counterfeited the instrument or coin so uttered, except as in the next section specified.

§ 573. **Exception.** If it appears on the trial of the indictment that the accused received such forged or counterfeited instrument or coin from another, in good faith, and for a good and valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, the jury may find the defendant guilty of forgery in the fourth degree.

§ 574. **Fraudulently signing own name.** Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat, or diminish any pecuniary obligation, right, or interest, or to transfer or affect any property whatever, and utters or passes such instrument,

under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

§ 575. **Fraudulent indorsing own name.** Every person who, with intent to defraud, indorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is indorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the indorsement of a person bearing a different name from his own.

§ 576. **Erasures and obliterations.** The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest, or claim to property is or is intended to be created, increased, discharged, diminished, or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

§ 577. **Writing and written defined.** Every instrument partly printed and partly written, or wholly printed, with a written signature thereto, and every signature of an individual, firm, or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

§ 578. **Fictitious names.** The false making or forging of an evidence of debt, purporting to have been issued by any corporation, and bearing the pretended signature of any person, as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

§ 579. **Removing or destroying mortgaged chattels.** Every mortgagor of personal property, or his legal representatives, who, while his mortgage thereof remains in force and unsatisfied, willfully destroys, removes, conceals, sells, or in any manner disposes of or materially injures the property, or any part thereof, covered by such mortgage, without the written consent of the then holder of such mortgage, shall be deemed guilty of felony, and shall, upon conviction, be punished by imprisonment in the territorial prison for a period not exceeding three years, or in the county jail not exceeding one year, and by fine not exceeding five hundred dollars.

\*§ 579a. **Penalty for violating provisions of act to empower school-districts to issue bonds for building school-houses.** Any violation of the provisions of this act shall be deemed a misdemeanor, and punishable by a fine not exceeding one hundred dollars; and any conversion or misappropriation of the bonds or money that may be issued or obtained under the provis-

ions of this act shall be deemed a felony, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the territorial prison not exceeding two years, or by both such fine and imprisonment, in the discretion of the court before [which] any person is convicted. (*Sess. Laws 1881, c. 24, § 10.*)

False marks and brands. See Pol. Code Dak. Appendix, c. 34, \*§§ 41, 43.

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## CHAPTER XLIV.

### LARCENY.

§ 580. **Larceny defined.** Larceny is the taking of personal property, accomplished by fraud or stealth, and with intent to deprive another thereof.

"As to liability of insurance agents for funds of principal misappropriated." See Civil Code Dak. \*§ 510*ss.*

§ 581. **Larceny of lost property.** One who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny.

§ 582. **Grand and petit larceny.** Larceny is divided into two degrees—the first of which is termed grand larceny, the second petit larceny.

§ 583. **Grand and petit larceny.** Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding twenty dollars.
2. When such property, although of value not exceeding twenty dollars in value, is taken from the person of another.

Larceny in other cases is petit larceny.

§ 584. **Punishment of grand larceny.** Grand larceny is punishable by imprisonment in the territorial prison not exceeding five years.

§ 585. **Penalty for petit larceny.** Petit larceny shall be punishable by a fine of not less than ten dollars nor 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. (*As amended, Sess. Laws 1879, c. 35, § 2.*)

Jurisdiction of justice of peace. See \*§ 308*a.*

§ 586. **Grand larceny in house or vessel.** When it appears, upon the trial of an indictment for grand larceny, that the lar-

ceny alleged was committed in any dwelling-house or vessel, the offender may be punished by imprisonment in the territorial prison not exceeding eight years.

§ 587. **In night-time from person.** When it appears upon such trial, that such larceny was committed by stealing in the night-time, from the person of another, the offender may be punished by imprisonment in the territorial prison not exceeding ten years.

§ 588. **Larceny of written instrument.** If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, of which in any contingency might be collected thereon, or the value of the property, the title to which is shown thereby, or the sum which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen.

§ 589. **Value of passage ticket.** If the thing stolen is any ticket, or other paper or writing entitling, or purporting to entitle, the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance shall be deemed the value of such ticket.

§ 590. **Securities.** All the provisions of this chapter shall apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

§ 591. **Severed fixtures.** All the provisions of this chapter shall apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if such thing had been severed by another person at some previous time.

§ 592. **Stealing wrecked goods.** Every person who takes away any goods from any stranded or wrecked steam-boat or other vessel, or any goods floating on the water, or goods cast by the water upon the shore, or goods lodged upon drifts, snags, or other obstructions in a water-course, or goods found in any creek, or who knowingly becomes possessed of any such, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or the coroner of the county where the same were found, is guilty of a misdemeanor.

See \*§§ 420a, 420b.

§ 593. **Receiving stolen property.** Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever, that has been stolen from any other, knowing the same to have been stolen, is punishable by imprisonment in the territorial prison not exceeding five years, or in

the county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 594. **Fraudulent consumption of gas.** Every person, who, with intent to defraud, makes or causes to be made any pipe or other instrument or contrivance, and connects the same, or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter provided for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas-meter, or obstructs its action, is guilty of a misdemeanor.

§ 595. **Larceny out of territory.** Every person who steals the property of another in any other state or country, and brings the same into this territory, may be convicted and punished in the same manner as if such larceny had been committed in this territory; and such larceny may be charged to have been committed in any town or city into or through which such stolen property has been brought.

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## CHAPTER XLV.

### EMBEZZLEMENT.

§ 596. **Embezzlement defined.** Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

§ 597. **When officer guilty of.** If any person, being an officer, director, trustee, clerk, servant, or agent of any association, society, or corporation, public or private, fraudulently appropriates to any use and purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

"As to criminal liability of insurance agent for funds of principal misappropriated." See Civil Code Dak. \*§ 510ss.

§ 598. **When carrier or other guilty of.** If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose inconsistent with the safe-keeping of such property, and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the package in which such property is contained or has otherwise separated the items thereof or not.

§ 599. **When trustee, etc., guilty of.** If any person, being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or being otherwise intrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement.

§ 600. **Bailee guilty of.** If any person, being intrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same, or the proceeds thereof, to his own use, or secretes it, or them, with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package, or otherwise determined the bailment, or not.

§ 601. **Clerk or servant.** If any clerk or servant of any private person, or copartnership or corporation, except apprentices and persons within the age of eighteen years, fraudulently appropriates to his own use, or secretes, with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care, by virtue of his employment as such clerk or servant, he is guilty of embezzlement.

§ 602. **Distinct taking not necessary.** A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion, or use of property coming within the above prohibitions is sufficient.

§ 603. **Evidence of debt.** Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement, whether it has been actually delivered or issued as a valid instrument, or not.

§ 604. **Claim of title.** Upon any indictment for embezzlement it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision shall not excuse the retention of the property of another to offset or pay demand held against him.

§ 605. **Intent to restore no defense.** The fact that the accused intended to restore the property embezzled is no ground of defense, or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

§ 606. **Mitigation of punishment.** Whenever it is made to appear that prior to any information laid before a magistrate, charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property

alleged to have been embezzled, or any part thereof, such fact is not a ground of defense to the indictment, but it authorizes the court to mitigate punishment in its discretion.

§ 607. **Punishment.** Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

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## CHAPTER XLVI.

### EXTORTION.

§ 608. **Extortion defined.** Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

§ 609. **What threats constitute extortion.** Fear, such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,
2. To accuse him, or any relative of his, or member of his family, of any crime; or,
3. To expose, or impute to him, or them, any deformity or disgrace; or,
4. To expose any secret affecting him or them.

§ 610. **Punishment.** Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat such as is mentioned in the last section, is punishable by imprisonment in the territorial prison not exceeding five years.

§ 611. **Same.** Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this Code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

§ 612. **Obtaining signature.** Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge, or right of action were obtained.

§ 613. **Sending threatening letters.** Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in section six hundred and nine, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

§ 614. **Attempts to extort money.** Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section six hundred and nine, to extort money or other property from another, is guilty of a misdemeanor.

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## CHAPTER XLVII.

### FALSE PERSONATION AND CHEATS.

§ 615. **Falsely personating another.** Every person who falsely personates another, and in such assumed character, either:

1. Marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other person; or,

2. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

3. Subscribes, verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

4. Does any other act, whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person,

Is punishable by imprisonment in the territorial prison not exceeding ten years.

§ 616. **Falsely personating and receiving.** Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 617. **Personating officers and others.** Every person who falsely personates any public officer, civil or military, or any fireman,

or any private individual having special authority by law to perform any act affecting the rights or interest of another, or assumes, without authority, any uniform or badge, by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed, or annoyed, is guilty of a misdemeanor.

§ 618. **Obtaining property by false pretenses.** Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment.

§ 619. **For charitable purposes.** Every person who designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

§ 620. **False pretenses.** If the false token by which any money or property is obtained in violation of sections six hundred and eighteen and six hundred and nineteen, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in the territorial prison not exceeding seven years, instead of by the punishments prescribed by those sections.

§ 621. **Using false check.** The use of a matured check or other order for the payment of money, as a means of obtaining any signature, money, or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

§ 622. **Mock auctions.** Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the territorial prison not exceeding

three years, or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, and, in addition thereto, he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this territory.

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## CHAPTER XLVIII.

## FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 623. **Willfully destroying vessels.** Every captain or other officer or person in command or charge of any vessel who, within this territory, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the territorial prison for life.

§ 624. **Same.** Every person other than such as are embraced within the last section, who is guilty of any act therein prohibited, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three.

§ 625. **Intent to wreck vessel.** Every person guilty of fitting out any vessel, or lading any cargo on board of any vessel, with intent to cause or permit the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the territorial prison not exceeding ten years and not less than three.

§ 626. **Making false manifest.** Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, boat's register, or protest, with intent to defraud another, is punishable by imprisonment in the territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

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## CHAPTER XLIX.

## FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 627. **Destroying property insured.** Every person who willfully burns, or in any other manner injures or destroys any prop-

erty whatever, which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of such person or of any other, is punishable by imprisonment in the territorial prison not exceeding seven years, and not less than four.

§ 628. **False proofs.** Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes, or subscribes any account, certificate, survey, affidavit, proof of loss, or other book, paper, or writing, with intent to present or use the same, or to allow it to be presented or used, in support of any such claim, is punishable by imprisonment in the territorial prison not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

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## CHAPTER L.

### FALSE WEIGHTS AND MEASURES.

§ 629. **False weights and measures.** If any person, with intent to defraud, use a false balance, weight, or measure, in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped, or delivered, for sale or barter, or that is pledged, or given in payment, he shall be punished by fine not exceeding one hundred dollars, nor less than five dollars, or by imprisonment in the county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages.

§ 630. **Retaining same.** Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permit it to be used, in violation of the last section, shall be punished as therein provided.

§ 631. **Authorized to be seized.** Every person who is authorized or enjoined by law to arrest another person for a violation of sections six hundred and twenty-nine and six hundred and thirty is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 632. **May be tested and destroyed.** The magistrate to whom any weight or measure is delivered pursuant to the last sec-

tion, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law, and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require.

§ 633. **Shall be destroyed, when.** Upon the conviction of the accused, such district attorney shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 634. **Stamping false weight or tare.** Every person who knowingly marks or stamps false or short weight, or false tare on any cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

Penalty for false measurement of wheat. See Pol. Code, Dak. Appendix, c. 37, \*§ 6.

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## CHAPTER LI.

### FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

§ 635. **Fraudulent conveyance.** Every person who, being a party to any conveyance or assignment of any real or personal property, or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment, or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor.

§ 636. **Fraudulent removal of property.** Every person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys, or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

§ 637. **Assignments — when prohibited.** Every person who, knowing that his property is insufficient for the payment of all his debts, assigns, transfers, or delivers any property for the benefit of any creditor or creditors, upon any trust or condition that any

creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

§ 638. **Frauds in bankruptcy.** Every person who, upon making or prosecuting any application for a discharge as an insolvent debtor, under the provisions of any law now in force, or that may hereafter be enacted, either :

1. Fraudulently presents, or authorizes to be presented on his behalf, such application, in a case in which it is not authorized by law ; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher, or other paper or document, knowing the same to contain any false statement ; or,

3. Fraudulently makes and exhibits or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher ; or,

4. Practices any fraud upon any creditor, with intent to induce him to petition for or consent to such discharge ; or,

5. Conspires with or induces any person fraudulently to unite as creditor in any petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

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## CHAPTER LII.

### FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND OTHER FRAUDS IN THEIR MANAGEMENT.

§ 639. **Fraud in subscriptions for stock.** Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed ; and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced,—is guilty of a misdemeanor.

§ 640. **Frauds in procuring organization.** Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book,

paper, voucher, security, or other instrument of evidence to any public officer, or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three years.

§ 641. **Unauthorized use of names.** Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association existing, or intended to be formed, with intent to permit the same to be published and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

§ 642. **Repealed.** See Civil Code Dak. \*§ 473bb.

§ 643. **Same in banks.** Every director of any corporation having banking powers who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended, either:

1. To make any loan, or discount, by which the whole amount of the loans and discounts of the corporation is made to exceed three times its capital stock then paid in and actually possessed; or,

2. To make any loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, to an amount exceeding in the aggregate one-third of the capital stock of such corporation then paid in and actually possessed,

Is guilty of a misdemeanor.

§ 644. **Loans not invalid.** Nothing in the last section shall render any loan made by the directors of any such corporation in violation thereof invalid.

§ 645. **Sale, etc., of bank notes.** Every officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges, or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association, or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 646. **Circulating excess of bank notes.** Every officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation, to an amount which, together with previous issues, leaves in circulation, or outstanding, a greater amount of notes than such corporation is allowed by law to

issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 647. **Officer making guaranty or indorsement.** Every officer or agent of any banking corporation who makes or delivers any guaranty or indorsement upon behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills, or obligations, in any sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

§ 648. **Overdrawing account.** Every officer, agent, teller, clerk, or servant of any bank, banking association, or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes, or funds of such bank, is guilty of a misdemeanor.

\*§ 648a. **Insolvent banker not to receive deposits—penalty for.** No bank, banking-house, exchange broker, or deposit office, or firm, company, corporation, or party engaged in the banking, broker, or deposit business, shall accept or receive on deposit, with or without interest, any moneys, bank bills or notes, or United States notes, or United States treasury notes, or currency, or other notes, bills, or drafts circulating as money or currency, when such bank, banking-house, exchange broker, or deposit office, firm, company, or corporation, or party is insolvent; and if any such bank, banking-house, exchange broker, or deposit office, firm, company, corporation, or party shall receive or accept on deposit any such deposits as aforesaid, when insolvent, any officer, director, cashier, manager, member, party, or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at the receiving or accepting on deposit therein or hereby, any such deposit as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment in the territorial prison for a term not to exceed ten years, or by imprisonment in the county jail, not to exceed one year, or by both fine and imprisonment, the fine not to exceed ten thousand dollars. (*Sess. Laws 1879, c. 5, § 1.*)

§ 649. **Omitting to enter receipt.** Every director, officer, or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, is guilty of a misdemeanor.

§ 650. **Destroying or falsifying books.** Every director, officer, agent, or member of any corporation or joint-stock association, who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the territorial prison not exceeding ten years and not less than three, or by

imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 651. **Publishing false reports.** Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, or publishes any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are mentioned in sections six hundred and forty and six hundred and forty-one, or willfully refuses or neglects to make or deliver any written report, exhibit, or statement required by law, is guilty of a misdemeanor.

§ 652. **Refusing to permit inspection.** Every officer or agent of any corporation having or keeping an office within this territory who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 653. **Insolvencies deemed fraudulent.** Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally, with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 654. **How punishable.** In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this Code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

§ 655. **Violation of duty.** Every director of any moneyed corporation who willfully does any act as such director which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director by law, the punishment for which act or omission is not otherwise prescribed by this Code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

§ 656. **Repealed.** See Civil Code Dak. \*§ 473bb.

§ 657. **Debt not invalid.** The last section does not affect the validity of a debt created in violation of its provisions as against the company.

§ 658. **Director presumed to have knowledge.** Every director of a corporation, or joint-stock association, is deemed to possess such a knowledge of the affairs of his corporation as to enable

him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

§ 659. **When presumed to have assented.** Every director of a corporation, or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 660. **Same—when absent.** Every director of a corporation, or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the fact constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

§ 661. **Foreign corporations.** It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another state, government, or country, if it was one carrying on business, or keeping an officer therefor, within this territory.

§ 662. **Director defined.** The term director, as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or known by law.

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## CHAPTER LIII.

### FRAUDS IN THE SALE OF PASSAGE TICKETS.

§ 663. **Passage tickets—to be sold by whom.** No person, except the persons designated in section six hundred and seventy, shall issue, or sell, or offer to sell, within this territory, any passage ticket, or any instrument given or purporting to give any right, either absolutely or upon any condition or contingency, to any passage or conveyance upon any vessel or railroad train, unless he is an authorized agent of the owners or consignees of such vessel, or of the company running such train, and no person is deemed an authorized agent of such owners, consignees, or company, within the meaning of this chapter, unless he has been by them duly appointed by an authority in writing, and which designates the name of the company,

line, vessel, or railroad for which such person is authorized to act as agent, together with the street and number of the street, and the city, town, or village in which his office shall be kept for the sale of passage tickets.

§ 664. **Same—restrictions.** No persons, except the persons designated in section six hundred and seventy, shall, within this territory, ask, take, or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railroad train, or for the procurement of any ticket, or instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to any passage or conveyance upon any vessel or railroad train, unless he is an authorized agent within the provisions of the last section; nor shall any person, as such agent, sell any such ticket or instrument, or ask, take, or receive any consideration for any such passage or conveyance, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the preceding section, nor for a sum exceeding the price charged at the time of such sale by the company, owners, or consignees of the vessel or railroad referred to in such ticket; nor shall any such ticket or instrument be issued or sold which purports to entitle a person to a passage by any mode of conveyance, or to any place of destination, or by any route, vessel, or train other than the one bargained for.

§ 665. **Unlawfully procuring tickets.** No person other than an agent appointed, as provided in section six hundred and sixty-three, shall sell, or offer to sell, or in any way attempt to dispose of, any order, certificate, receipt, or other instrument for the purpose, or under the pretense, of procuring any ticket or instrument mentioned in section six hundred and sixty-three, upon any company or line, vessel or railroad train therein mentioned. And every such order sold or offered for sale by any agent must be directed to the company, owners, or consignees, at their office.

§ 666. **Punishment.** Every person guilty of a violation of any of the provisions of the preceding sections of this chapter is punishable by imprisonment in the territorial prison not exceeding two years, or by imprisonment in a county jail not less than six months.

§ 667. **Conspiring to sell passage tickets.** All persons who conspire together to sell, or attempt to sell, to any person, any passage ticket or other instrument mentioned in sections six hundred and sixty-three and six hundred and sixty-five, in violation of those sections, and all persons who, by means of any such conspiracy, obtain, or attempt to obtain, any money or other property, under the pretense of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in the territorial prison not exceeding five years.

§ 668. **Conspirators may be indicted.** Persons guilty of violating the last section may be indicted and convicted for a conspiracy, notwithstanding the object of such conspiracy has been executed.

§ 669. **Certain offices declared disorderly houses.** All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this chapter, are punishable by imprisonment in a county jail for a period not exceeding six months, and not less than three months.

§ 670. **Who allowed to sell tickets.** The provisions of this chapter do not prevent the actual owners or consignees of any vessel from selling passage tickets thereon, nor do they prevent the purser or clerk of any vessel, or station master upon any railroad, or other ticket agent of any vessel or railroad, from selling in his office, on board of such vessel, or in any station on such railroad, any passage tickets upon such vessel or railroad, nor do they prevent any conductor upon any railroad from selling any passage tickets upon the trains of such railroad.

§ 671. **Delay in departure of vessels.** Whenever the departure of any vessel, for a passage on board of which, to a port without this territory, any ticket or instrument above mentioned has been sold, is delayed more than two days after the day of departure mentioned in such ticket, the person holding such ticket is entitled to his board and lodging in such vessel without any additional charge, from the second day after the day named for departure until the actual departure of such vessel and is also entitled to receive from the owners or consignees of such vessel fifty cents per day for each day of such detention. And in case of refusal on the part of the owners, consignees, or master of the vessel so detained to comply with this section, the person holding such ticket is entitled to recover back from the owners or consignees the amount of passage paid by him, together with his damages for such detention, not exceeding fifty dollars.

§ 672. **Passage tickets—requisites.** Every ticket or instrument issued as evidence of a right of passage upon the Missouri river, from any port in this territory to any port of any other state or territory, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for any such ticket or instrument, must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is

to terminate, the day of the month and year upon which the voyage is to commence, the name of the person or persons purchasing such ticket or instrument, or receiving such order, certificate, or receipt, and the amount paid therefor; and such ticket, or instrument, order, certificate, or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

§ 673. **Not filled out—misdemeanor.** Every person who issues, sells, or delivers to another any ticket, instrument, certificate, order, or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 674. **Requisites of indictment.** No indictment or conviction under any provision of the preceding sections of this chapter, for the sale, attempted sale, issuing, or delivering of any ticket, instrument, certificate, order, or receipt, is defective, because such ticket, instrument, certificate, order, or receipt is not made or filled out according to the requirements of the last section.

§ 675. **Company defined.** The term "company," as used in this chapter, includes all corporations, whether created under the laws of this territory or of those of any other state or nation.

§ 676. **Foreign railroad companies.** The provisions of this chapter do not permit railroad companies incorporated in any other state to sell passage tickets under this chapter in this territory; nor do they permit the owners or agents of any vessel to sell tickets for or on behalf of any such railroad company, unless such agent be a resident of this territory.

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## CHAPTER LIV.

### FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

§ 677. **Bills of lading.** Every person being the master, owner, or agent of any vessel, or officer, or agent of any railroad, express, or transportation company, or otherwise being or representing any carrier who delivers any bill of lading, receipt, or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 678. **Warehouse receipts.** Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 679. **Exceptions.** No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels, or brands were untrue.

§ 680. **Duplicate receipts.** Every person mentioned in sections six hundred and seventy-seven and six hundred and seventy-eight, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 681. **Selling goods so received.** Every person mentioned in sections six hundred and seventy-seven and six hundred and seventy-eight who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 682. **Bill of lading or receipt must be canceled, when.** Every person, such as mentioned in section six hundred and seventy-eight, who delivers to another any merchandise for which any bill of lading, receipt, or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the territorial prison not

exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 683. **Do not apply.** The last two sections do not apply where property is demanded by virtue of process of law.

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## CHAPTER LV.

### MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES, AND TELEGRAPHS.

§ 684. **Injuries to railroads.** Every person who maliciously, either:

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station-house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or tracks of any railroad, or of any branch, branchway, or turnout connected with any railroad,  
Is punishable by imprisonment in the territorial prison not exceeding four years, or in a county jail not less than six months.

§ 685. **Cases where death ensues.** Whenever any offense specified in the last section results in the death of any human being, the offender is punishable by imprisonment in the territorial prison for not less than four years.

§ 686. **Injuries to highways, etc.** Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of felony.

§ 687. **Obstructing highway.** Every person who shall knowingly and willfully obstruct, or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred dollars, and shall be liable for all damages to person or property by reason of the same.

See Pol. Code Dak. c. 23, pt. 2, § 74.

§ 688. **Toll-houses and turnpike gates.** Every person who maliciously injures or destroys any toll-house or turnpike gate is guilty of felony.

Penalty for running toll-gate. See Pol. Code Dak. c. 23, pt. 2, § 83.

§ 689. **Mile-boards and guide-posts.** Every person who removes or injures any mile-board, mile-stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

§ 690. **Injuring telegraph.** Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus therewith connected, or severs any wire thereof, or fraudulently intercepts any message in its passage over such wire, is guilty of a misdemeanor.

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## CHAPTER LVI.

### OF MALICIOUS MISCHIEF.

§ 691. **Malicious mischief.** Every person who maliciously injures, defaces, or destroys any real or personal property not his own, in cases other than such as are specified in the following sections, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

§ 692. **Following sections not restrictive.** The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the last section.

§ 693. **Poisoning cattle.** Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance, with intent that the same shall be taken by any such animal, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 694. **Killing, maiming, or torturing animals.** Every person who maliciously kills, maims, or wounds any animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

See Pol. Code Dak. Appendix, c. 34, \*§ 45.

§ 695. **Abusing stock.** Every person who shall willfully or negligently maltreat or abuse any domestic animal by exposure to heat or cold, or by deprivation of food or water, or by leaving hitched in the open air during cold weather or storm, or in the night-time, shall,

upon conviction, be fined not exceeding twenty-five dollars. Any officer finding an animal so maltreated or abused shall cause the same to be taken care of, and the charges therefor shall be a lien upon such animal, to be collected thereon as upon a pledge.

Driving off stock. Pol. Code Dak. c. 34, \*§ 29. Interfering with brands, Pol. Code Dak. c. 34, \*§ 44.

§ 696. **Fighting animals.** Every person who maliciously, or for any bet, stake, or reward, instigates, encourages, or promotes any fight between animals, or instigates or encourages any animal to attack, bite, wound, or worry another is guilty of a misdemeanor.

§ 697. **Keeping houses, pits, etc.** Every person who keeps any house, pit, or other place, to be used in permitting any fight between animals, or in any other violation of the last section, is guilty of a misdemeanor.

§ 698. **Wounding or trapping birds in cemetery.** Every person who, within any public cemetery or burying ground, wounds or traps any birds, or destroys any bird's nest, or removes any eggs or young birds from any nest, and every person who buys or sells, or offers or keeps for sale, any bird which has been killed or trapped in violation of this section, is punishable by a fine of five dollars for each offense, recoverable by a civil action in any justice's court within the county where the offense is committed, brought in the name of any person making a complaint. Such fine shall be applied to the support of common schools of such county.

Violation of game laws. Pol. Code Dak. Appendix, c. 41.

§ 699. **Burning buildings, grain, etc.** Every person who willfully burns any building not the subject of arson, any stack of grain of any kind, or of any hay, any growing or standing grain, grass, trees, or fence, not the property of such person, is punishable by imprisonment in the territorial prison not exceeding four years, and not less than one year, or by imprisonment in a county jail not exceeding one year.

§ 700. **Injuring houses of worship.** Every person who willfully breaks, defaces, or otherwise injures any house of worship, or any part thereof, or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware, or other chattel kept therein for use in connection with religious worship, is guilty of felony.

§ 701. **Using gunpowder, etc.** Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building by means of which the life or safety of any human being is endangered, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three.

§ 702. **Endangering human life.** Every person who places in, upon, under, against, or near to any building, any gunpowder or other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of felony.

§ 703. **Malicious injuries to freeholds.** Every person who willfully commits any trespass, by either:

1. Cutting down or destroying any kind of wood or timber standing or growing upon the lands of another, or driving or riding through, into, or across any cultivated hedge or tree-row, or any grove of ornamental trees, or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or,

2. Carrying away any kind of wood or timber that has been cut down, and is lying on such lands; or,

3. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or,

4. Digging, taking, or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone, being a part of the freehold, or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny if the thing so severed or carried away were personal property; or,

5. Digging, taking, or carrying away from any land in any incorporated city or town of this territory, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council, or other governing body of such city or town, or owner of the fee thereof, any earth, soil, or stone, under such circumstances as would render the trespass a larceny if the thing so severed or carried away were personal property,

Is guilty of a misdemeanor. (*As amended, Sess. Laws 1879, c. 42.*)

§ 704. **Injuring timber, fences, etc.** Every person who shall wantonly or maliciously cut, dig up, or injure any timber set out, planted, cultivated, or growing naturally, or who shall wantonly or maliciously open, let down, throw down, or prostrate any fence, gate, or bars belonging to any inclosure of any description of cultivated and growing timber, or tears down, or opens any such fence, gate, or bars, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment, and shall be liable in damages to the party injured.

§ 705. **Injuring standing crops, etc.** Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits, or vegetables, the property of another, in any case for which a

punishment is not otherwise prescribed by this Code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

§ 706. **Fruit and melons.** Every person who, maliciously or mischievously, enters, in the day-time, the inclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy, or carry away, or having lawfully entered or gone upon, does afterwards wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, shall be punished by fine not exceeding one hundred dollars, and not less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 707. **Same—night-time.** Every person who shall maliciously or mischievously enter the inclosure, or go upon the premises, of another in the night-time, and knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit, melons, or flowers of any tree, shrub, bush, or vine, or having entered the inclosure, or gone upon the premises of another, in the night-time, with the intent to knock off, pick, destroy, or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 708. **Injuring fruit trees, etc.** Every person who shall maliciously or mischievously bruise, break, or pull up, cut down, carry away, destroy, or in anywise injure any fruit or ornamental tree, shrub, vine, or material for hedge, being, growing, or standing on the land of another, shall be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 709. **Removing or altering landmarks.** Every person who either:

1. Maliciously removes any monuments of stone, wood, or other material, erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

2. Maliciously defaces or alters the marks upon any tree, post, or other monument, made for the purpose of designating any point, course, or line in any such boundary; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks,

Is guilty of a misdemeanor.

§ 710. **Interfering with piers and dams.** Every person who, without authority of law, interferes with any pier, boom, or dam, lawfully erected or maintained upon any waters within this

territory, or hoists any gate in or about said dams, is guilty of a misdemeanor.

§ 711. **Destroying dam.** Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes, or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a misdemeanor.

§ 712. **Removing or injuring piles.** Every person who maliciously draws up, or removes, or cuts, or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty, or lock, is punishable by imprisonment in the territorial prison not exceeding five years, and not less than two, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 713. **Removing buoy.** Every person who willfully removes any buoy placed in the Missouri river by any lawful authority is guilty of a misdemeanor.

§ 714. **Masking or removing signal light.** Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive, or any railway or train of cars, into danger, is punishable by imprisonment in the territorial prison not exceeding ten years, and not less than three years.

§ 715. **Injuring written instruments.** Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

§ 716. **Same of election returns.** Every messenger appointed by authority of law, to receive and carry any report, certificate, or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates, or destroys the same, or does any other act which prevents the delivery of it as required by law, and every person who takes away from such messenger any such report, certificate, or certified copy, with intent to prevent its delivery, or who willfully does any injury, or other act, such as is above specified, is punishable by imprisonment in the territorial prison not exceeding five years, and not less than two years.

§ 717. **Sealed letters.** Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without like authority, publishes any letter, knowing it to have

been opened in violation of this section, or any part thereof, is guilty of a misdemeanor.

§ 718. **Penalty for betraying contents of telegram.** Every person who discloses the contents of any telegraphic dispatch, or any part thereof, addressed to another person, without the permission of such person, [except upon the lawful order of a court, or the judge thereof,] to his loss, injury, or disgrace, is guilty of a misdemeanor. (*As amended, Sess. Laws 1883, c. 109.*)

§ 719. **Secreting same.** Every person having in his possession any telegraphic dispatch addressed to another, maliciously secretes, conceals, or suppresses the same, is guilty of a misdemeanor.

§ 720. **Injuring works of art or improvement.** Every person who willfully injures, disfigures, or destroys, not being the owner thereof, any monument, work of art, or useful or ornamental improvement, within the limits of any village, town, or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

§ 721. **Destroying works of literature or art.** Every person who maliciously cuts, tears, disfigures, soils, obliterates, breaks, or destroys any book, map, chart, picture, engraving, statue, coin, model, apparatus, specimen, or other work of literature or art, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is punishable by imprisonment in the territorial prison for not exceeding three years, or in a county jail not exceeding one year.

§ 722. **Breaking gas or water pipes.** Every person who willfully breaks, digs up, or obstructs any pipe or main for conducting gas or water, any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.

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## CHAPTER LVII.

### OF MISCELLANEOUS CRIMES.

§ 723. **Illegally granting license.** Every officer or other person whose duty it is made by law to grant license to sell intoxicating liquors, or any one who grants any such license contrary to the provisions of the Political Code, shall be deemed guilty of a misdemeanor.

§ 724. **Liquor to Indian.** Every person who shall give, barter, sell, or in any manner dispose of, any intoxicating liquor to any Indian, shall be guilty of a misdemeanor.

§ 725. **Public intoxication.** Every person being found intoxicated in any public place is punishable, upon conviction before a justice of the peace, by a fine of ten dollars.

§ 726. **Selling liquors to minors, etc.** Every person found guilty of selling any intoxicating liquors, by agent or otherwise, to minors, unless upon the written order of their parents, guardians, or family physicians, or to persons intoxicated, or who are in the habit of getting intoxicated, is punishable by a fine not exceeding one hundred and fifty dollars, and not less than twenty dollars, for each offense.

See Pol. Code Dak. c. 35, § 17.

§ 727. **Selling liquor to paupers.** Every person who sells or gives to any person, knowing him to be a pauper, or inmate of any poor-house or alms-house, any strong or spirituous liquor or wine, without authority from the superintendent or physician of such poor-house or alms-house, is punishable by a fine of twenty-five dollars.

Selling liquor to habitual drunkard. Pol. Code Dak. c. 35, § 4.

§ 728. **Selling liquor upon Sunday.** Every innkeeper or person licensed to sell liquors who sells or gives away any strong or spirituous liquor or wine upon Sunday is guilty of a misdemeanor.

§ 729. **Same on boat.** Every master or other person engaged in navigating any steam-boat, who allows any liquors mentioned in the last section to be sold on his boat on Sunday while stopping at any wharf, landing, city, or town in this territory, is guilty of a misdemeanor.

See, also, Pol. Code Dak. c. 35, §§ 11, 15, 16.

\*§ 729a. **Unlawful to sell opium for certain purposes.** It shall be unlawful for any person, by himself, by agent, or otherwise, to either directly or indirectly sell or give away, in any quantity, opium or any other commodity whatever of which opium is an ingredient, to be smoked or used in, upon, or about the premises where sold: or to either directly or indirectly sell or give away such opium or other commodity of which opium is an ingredient, to be smoked or used in any adjoining room, building, or premises or other place of popular resort connected with said premises where sold, or to be used for the purposes of smoking in any place or in any building or upon any premises whatever. (*Sess. Laws 1879, c. 43, § 1.*)

\*§ 729b. **Penalty for violating section one.** Any person or persons violating the provisions of section one of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars and costs, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment; and said buildings, rooms, and premises shall be considered a public nuisance and liable to be abated as in other cases, and justices of the peace shall have jurisdiction to hear, try, and determine any case arising under this act. (*Id.* § 2.)

**\*§ 729c. Duty of judge of district court and ministerial officers.** The district court or the judge thereof may at any time, upon satisfactory proof that the smoking or use of opium is permitted or carried on in any building or premises, order and cause such building and premises to be abated as a public nuisance; and it is hereby made the especial duty of all ministerial officers to enter complaint in each case of the violation of this act, and they are hereby required to ascertain, by inquiry and examination, as to any such violations. (*Id.* § 3.)

**§ 730. District attorneys and their partners.** Every attorney who directly or indirectly advises in relation to, or aids or promotes the defense of, any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as district attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, he forfeits his license to practice.

See Pol. Code Dak. Appendix, c. 15, § 10.

Town clerk—neglect to make return. Pol. Code Dak. c. 23, pt. 1, § 70. Town treasurer—neglect of duty. Pol. Code Dak. c. 23, pt. 1, § 75. Township officers—auditing account not verified. Pol. Code Dak. c. 23, pt. 1, § 90. Violation of law fixing seat of government. Pol. Code Dak. Appendix, c. 1, \*§ 15.

**§ 731. Prosecutors advising defense.** Every attorney who, having prosecuted, or in any manner aided or promoted, any action or proceeding in any court as district attorney or other public prosecutor, afterwards directly or indirectly advises in relation to or takes any part in the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, he forfeits his license to practice.

**§ 732. Attorneys may defend themselves.** The two last sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted, either civilly or criminally.

**§ 733. Intimidating laborers.** Every person who, by any use of force, threats, or intimidation, prevents, or endeavors to prevent, any hired foreman, journeyman, apprentice, workman, laborer, servant, or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or to induce such hired person to relinquish his work or employment, or to return any work he has in hand before it is finished, is guilty of a misdemeanor.

§ 734. **Intimidating employers.** Every person who, by any use of force, threats, or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants, or other persons employed by him, or their rate of wages, or time of service, is guilty of a misdemeanor.

§ 735. **Conspiracy and mobs against mines.** In all cases where two or more persons shall associate themselves together for the purpose of obtaining possession of any lode, gulch, or placer claim then in the actual possession of another, by force and violence, or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim, or quartz mill, or other mining property, or not being upon such property, but within hearing of the same, shall make any threats, or make use of any language, sign, or gesture calculated to intimidate any person or persons at work on said property from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months and not less than thirty days, and by fine not exceeding two hundred and fifty dollars, such fine to be discharged either by payment or by confinement in such jail until such fine is discharged, at the rate of two dollars and fifty cents per day. On trials under this section, proof of a common purpose of two or more persons to obtain possession of property, as aforesaid, or to intimidate laborers, as above set forth, accompanied or followed by any of the acts above specified, by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same.

§ 736. **Taking saw-logs.** Any person who shall willfully and without authority take any saw-logs that may be on any river, or on the land adjoining or near a river, which may have floated down said river, or onto said land, and shall remove or attempt to remove the same, or who shall cut or split said logs, or otherwise destroy or injure them, shall be deemed guilty of a misdemeanor, and upon conviction, where the value of the logs exceed one hundred dollars, be punished by imprisonment in the county jail not more than one year, nor less than three months, and by fine not to exceed one hundred and not less than ten dollars; and where the value of the logs is one hundred dollars or less, the punishment shall be by fine not exceeding eighty and not less than twenty dollars.

§ 737. **Receiving same.** Any person who shall purchase, receive, or secrete saw-logs, so taken or removed, or who shall cut or otherwise injure logs so taken or removed, knowing them to have been so taken or removed, shall be punished as prescribed in the preceding section.

§ 738. **Concealing estray—lost goods.** Any person who shall attempt to conceal any estray or any lost goods, found or taken up by him, or shall efface any marks or brands thereon, or carry the same beyond the limits of the territory, or knowingly permits the same to be done, or shall willfully fail to cause the same to be advertised, sold, or otherwise dealt with as provided by the statute on estray and lost goods, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one hundred dollars, nor less than ten dollars, one-half to be paid to the informer and the other half into the county treasury.

§ 739. **Woman or child—hours of labor.** Every owner, stockholder, overseer, employer, clerk, or foreman of any manufactory, workshop, or other place used for mechanical or manufacturing purposes, who, having control, shall compel any woman or any child under eighteen years of age, or permit any child under fourteen years of age, to labor in any day exceeding ten hours, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine not exceeding one hundred and not less than ten dollars.

§ 740. **Harboring Indians.** Every person who shall harbor or keep on or about his premises or place of abode, within any organized county in this territory any Indian or Indians who have not adopted the manners and habits of civilized life, or who induces or encourages any such Indian or Indians to camp, remain, or hunt for any time or for any purpose within any village or settlement of white people, or in the vicinity of such village or settlement, within any organized county in this territory, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not less than twenty-five dollars for each Indian so kept, harbored, or induced to remain, and shall stand committed until such fine and costs are paid: *provided* the aggregate of such fine, upon each conviction, shall not exceed one hundred dollars.

§ 741. **Voting unlawfully at town meeting.** Every person who votes at any annual township meeting in a township in which he does not reside, or who offers to vote at any annual township meeting after having voted at an annual township meeting held in another township within the same year, is guilty of a misdemeanor.

§ 742. **Injurious acts not expressly forbidden.** Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency,

and is injurious to public morals, although no punishment is expressly prescribed therefor by this Code, is guilty of a misdemeanor.

Violation of laws for preservation of game and fish. See Pol. Code Dak. Appendix, c. 41.

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## CHAPTER LVIII.

### GENERAL PROVISIONS.

§ 743. **Acts punishable in different ways.** An act or omission which is made punishable in different ways by different provisions of this Code, or other penal statute, may be punished under either of such provisions, except that in the cases specified in sections seven hundred and fifty-four to seven hundred and fifty-seven, inclusive, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one; and an acquittal, or conviction and sentence, under either one, bars a prosecution for the same act or omission under any other.

§ 744. **Acts punishable under foreign law.** An act or omission declared punishable by this Code is not less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared in this Code.

§ 745. **Foreign conviction or acquittal.** But whenever it appears upon the trial of an indictment that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of another state, government, or country, founded upon the act or omission in respect to which he is upon trial, this is a sufficient defense.

§ 746. **Contempts punishable as crimes.** A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

§ 747. **Mitigation of punishment.** But where it is made to appear at the time of passing sentence upon a person convicted upon indictment that such person has already paid a fine or suffered an imprisonment for the act which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.

§ 748. **Aiding in misdemeanor.** Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

§ 749. **Sending letter, when complete.** In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post-office, or any other place, or delivered to any person with intent that it shall be forwarded. And the party may be indicted, and tried in any county wherein such letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.

§ 750. **Omission to perform duty.** No person is punishable for an omission to perform an act where such act has been performed by another person acting in his behalf, and competent by law to perform it.

§ 751. **Attempts to commit crimes.** No person can be convicted of an attempt to commit a crime when it appears that the crime intended or attempted was perpetrated by such person in pursuance of such attempt.

§ 752. **Failures punishable.** Every person who attempts to commit any crime, and in such attempt does any act towards the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempt, as follows:

1. If the offense so attempted be punishable by imprisonment in the territorial prison for four years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the territorial prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction for the offense so attempted.

2. If the offense so attempted be punishable by imprisonment in the territorial prison for any time less than four years, the person guilty of such attempt is punishable by imprisonment in a county jail for not more than one year.

3. If the offense so attempted be punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted be punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment, and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

§ 753. **Restriction.** The last two sections do not protect a person who in attempting unsuccessfully to commit a crime accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 754. **Second offenses.** Every person who, having been convicted of any offense punishable by imprisonment in the territorial prison, commits any crime after such conviction, is punishable therefor as follows :

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction an offender would be punishable by imprisonment in the territorial prison for any term exceeding five years, such person is punishable by imprisonment in the territorial prison for a term not less than ten years.

2. If such subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the territorial prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the territorial prison for a term not exceeding ten years.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if committed, would be punishable by imprisonment in the territorial prison, then the person convicted of such subsequent offense is punishable by imprisonment in the territorial prison for term not exceeding five years.

§ 755. **Attempts to conceal death of child.** Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, is punishable by imprisonment in the territorial prison not exceeding five years, and not less than two.

§ 756. **Second offenses — how punished.** Every person who, having been convicted of petit larceny, or of any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the territorial prison, commits any crime after such conviction, is punishable as follows :

1. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the territorial prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the territorial prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest time prescribed upon a conviction for such first offense.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the territorial prison, then such person is punishable by imprisonment in such prison for a term not exceeding five years.

§ 757. **Foreign conviction.** Every person who has been convicted in any other state, government, or country of an offense which, if committed within this territory, would be punishable by the laws of this territory by imprisonment in the territorial prison, is punishable for any subsequent crime committed within this territory, in the manner prescribed in the last three sections, and to the same extent as if such conviction had taken place in any court of this territory.

§ 758. **Two or more terms of imprisonment.** When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

§ 759. **Imprisonment for life.** Whenever any person is declared punishable for a crime by imprisonment in the territorial prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life or for any number of years, not less than such as are prescribed. But no person can in any case be sentenced to imprisonment in the territorial prison for any term less than one year.

§ 760. **Sentence—how to be limited.** In cases where convicts sentenced to be imprisoned in the territorial prison for a longer period than one year, it is the duty of the court before which the conviction is had to limit the time of the sentence so that it will expire between the month of March and the month of November, unless the exact period of the sentence is fixed by law.

§ 761. **Juvenile offenders.** Whenever any person under the age of sixteen years is convicted of an offense punishable by imprisonment in the territorial prison, the court before whom such conviction was held, may, in its discretion, sentence the person so convicted to imprisonment in the county jail of the county in which such conviction was had.

§ 762. **Fine may be added to imprisonment.** Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars in addition to the imprisonment prescribed.

§ 763. **Civil rights suspended.** A sentence of imprisonment in the territorial prison for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public

offices, and all private trusts, authority, or power, during the term of such imprisonment.

§ 764. **Civil death.** A person sentenced to imprisonment in the territorial prison for life is thereafter deemed civilly dead.

§ 765. **Person of convict protected.** The person of a convict sentenced to imprisonment in the territorial prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

\*§ 765a. **Penalty for cruelty to convict.** If any officer or other person treat any prisoner in a cruel or inhuman manner he shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment. (*Sess. Laws 1879, c. 36, § 6.*)

\*§ 765b. **Penalty for annoying convict.** The officer having such prisoner in charge shall protect him from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and he may use such means as are necessary and proper therefor; and any person persisting in insulting and annoying, or communicating with, any prisoner after being first commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days. (*Id.* § 7.)

§ 766. **Forfeitures.** No conviction of any person for crime works any forfeiture of any property, except in the cases of any outlawry, for treason, and other cases in which a forfeiture is expressly imposed by law.

§ 767. **Witness' testimony—perjury.** The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

§ 768. **Certain terms defined.** Wherever the terms mentioned in the following sections are employed in this Code they are deemed to be employed in the senses hereafter affixed to them, except where a different sense plainly appears.

§ 769. **Willfully defined.** The term "willfully," when applied to the intent [with] which an act is done or omitted, implies simply a purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

§ 770. **Neglect, negligence, etc.** The term "neglect," "negligence," "negligent," and "negligently," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

§ 771. **Corruptly defined.** The term "corruptly," when so employed, imports a wrongful design to acquire some pecuniary or other advantage to the person guilty of the act or omission referred to.

§ 772. **Malice and maliciously defined.** The terms "malice" and "maliciously," when so employed, import a wish to vex, annoy, or injure another person, established either by proof or presumption of law.

§ 773. **Knowingly defined.** The term "knowingly," when so applied, imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

§ 774. **Bribe defined.** The term "bribe" signifies any money, goods, right in action, property, thing of value, or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

§ 775. **Vessel defined.** The word "vessel," when used with reference to shipping, includes ships of all kinds, steam-boats and steam-ships, canal-boats, and every structure adapted to be navigated from place to place.

§ 776. **Peace officer defined.** The term "peace officer" signifies any sheriff, coroner, constable, policeman, watchman of any incorporation, city, or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace.

§ 777. **Magistrate defined.** The term "magistrate" signifies any justice of the peace, judge of probate court, mayor of any incorporated city or town, and such other officer or officers whose duty it is made by law to examine and punish violations of the public peace.

§ 778. **Signature defined.** The term "signature" includes any name, mark, or sign, written with intent to authenticate any instrument or writing.

§ 779. **Writing.** The term "writing" includes printing.

§ 780. **Real property defined.** The term "real property" includes every estate, interest, and right in lands, tenements, and hereditaments.

§ 781. **Personal property.** The term "personal property" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments, by which any pecuniary obligation, right, or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged, or diminished.

§ 782. **Property defined.** The term "property" includes both real and personal property.

§ 783. **Person defined.** The word "person" includes corporations, as well as natural persons.

§ 784. **Same.** Where the term "person" is used in this Code to designate the party whose property may be the subject of any offense, it includes this territory, any other state, government, or country, which may lawfully own any property within this territory, and all public and private corporations, or joint associations, as well as individuals.

§ 785. **Singular includes plural.** The singular number includes the plural, and the plural the singular.

§ 786. **Gender.** Words used in the masculine gender comprehend as well the feminine and neuter.

§ 787. **Present tense.** Words used in the present tense include the future, but exclude the past.

§ 788. **Intent to defraud.** Whenever, by any of the provisions of this Code an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever.

§ 789. **Civil remedies.** The omission to specify or affirm in this Code any liability to any damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 790. **Proceeding to impeach or remove.** The omission to specify or affirm in this Code any ground of forfeiture of a public office or other trust or special authority conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

§ 791. **Military punishments.** This Code does not affect any power conferred by law upon any court-martial or other military authority or officer to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians, and vagrants.

§ 792. **Fines, etc., to county general fund.** All fines, forfeitures, and pecuniary penalties, prescribed as a punishment, by any of the provisions of this Code, when collected, shall, when not otherwise specially provided, be paid into the treasury of the proper county, to be added to the county general fund.

§ 793. **Costs to be taxed.** In all cases of conviction, the costs of the prosecution shall be taxed against the defendant, and enforced as other judgments in criminal causes.

Approved February 7, 1877.

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## CHAPTER LIX.

**An Act to Protect the Citizens of Dakota Territory, and Elevate the Standing of the Medical Profession. [Chapter 14, Laws 1868-69.]**

§ 1. **Who may practice medicine.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* It shall be unlawful for any person within the limits of said territory, who has not attended two full courses of instruction, and graduated at some school of medicine, either of the United States or some foreign country, or who cannot produce a certificate of qualification from some state or county medical society, and is not a person of good moral character, to practice medicine in any of its departments, for reward or compensation, or attempt to practice medicine, or prescribe medicine or medicines, for reward or compensation, for any sick person within the said territory of Dakota: *provided*, that in all cases when any person has been continuously engaged in the practice of medicine for a period of ten years or more he shall be considered to have complied with the provisions of this act.

§ 2. **Punishment prescribed.** Any person living in the territory of Dakota, or any person coming into said territory, who shall practice medicine, or attempt to practice medicine, in any of its departments, or perform, or attempt to perform, any surgical operation upon any person within the limits of said territory, in violation of section one of this act, shall, upon conviction thereof, be fined not less than fifty nor more than one hundred dollars for such offense; and, upon conviction for a second violation of this act, shall, in addition to the above fine, be imprisoned in a jail within said territory for a term not less than thirty days; and in no case wherein this act shall have been violated shall any person so violating receive a compensation for services rendered: *provided*, that nothing herein contained shall in any way be construed to apply to any person practicing dentistry.

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

Approved January 15, 1869.

## CHAPTER LX.

**An Act to Regulate the Time for Burning Prairies.**

§ 1. **Prairie fires forbidden.** *Be it enacted by the Legislative Assembly of the Territory of Dakota:* That if any person or persons shall set or cause to be set on fire any woods, marsh, or prairie, or any grass or stubble lands, in the months of September, October, November, December, January, February, March, April, May, or June, except as hereinafter provided, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined a sum not more than one thousand dollars nor less than ten dollars, and imprisonment in the county jail a period not longer than six months, one or both, at the discretion of the court, and shall also be liable in a civil action to any person or persons damaged by such fire to the amount of such damages.

Territory v. Scott, 2 Dak. 212; 6 N. W. Rep. 435.

§ 2. **Fires permitted, when.** For the purposes of destroying any grass or stubble that may be on any piece of land at the time any person or persons commence to break or plow the same, it shall be lawful for such person or persons to set the same on fire at any time of the year: *provided*, that at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over, at least fifty feet in width, completely encompassing the place where such fire is set.

§ 3. **Accidental damages.** If any fire set as provided in section two of this act should, by accident, and without any fault or neglect of the person or persons setting the same, get beyond his or their control, such person or persons shall be liable, as provided in section one of this act, for all damages done by said fire, but not otherwise. But if such fire should by negligence, carelessness, or be intentionally permitted to spread beyond the bounds of such strip of land mentioned in section two, then the person or persons setting such fire shall be liable both civilly and criminally, as provided in section one of this act.

§ 4. **Grasshopper destruction.** It shall be lawful for any person or persons, at any time between the twentieth day April and the twentieth day of June, to set on fire, for the destruction of grasshoppers, any marshes, prairies, grass, or stubble lands owned or occupied by him, her, or themselves, or any marshes, prairies, grass, or stubble lands adjacent thereto: *provided*, that the person or persons desiring to set such fire shall give at least twenty-four hours' notice to all persons residing within one and a half miles of the place where the fire is to be set, and shall state, at the time of

giving said notice, the time when, and the place where, such fire will be set. Such person or persons shall take all necessary precaution before the setting of such fire to prevent damage by the same.

§ 5. **Fire limited.** Fire set under the provisions of section four of this act shall not be allowed to spread beyond the control of the person or persons setting the same, and shall be subdued and extinguished the same day on which it is set.

§ 6. **Penalty.** Any person or persons violating the provisions of section five shall be liable in a civil action to any person or persons damaged by such fire to the amount of such damage, and in case any person or persons shall negligently, carelessly, willfully, maliciously, or intentionally violate any of the provisions of section five, such person or persons shall be liable, both civilly and criminally, the same as though they had violated the provisions of section one of this act.

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

Approved February 17, 1877.