

CONSTITUTION

OF THE

STATE OF NORTH DAKOTA

[Adopted Oct. 1, 1889; yeas, 27,441; nays, 8,107.]

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

ARTICLE 1.—DECLARATION OF RIGHTS.

§ 1. All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; and pursuing and obtaining safety and happiness.

§ 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

§ 3. The State of North Dakota is an inseparable part of the American union and the constitution of the United States is the supreme law of the land.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

§ 5. The privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion, the public safety may require.

§ 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

§ 7. The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law.

§ 8. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

§ 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and

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criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

§ 10. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

§ 11. All laws of a general nature shall have a uniform operation.

§ 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

§ 13. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

State v. Brass, 2 N. D. 482, 52 N. W. 408.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

Morton v. Tyler, 4 N. D. 278, 60 N. W. 302.

§ 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

§ 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

§ 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

§ 19. Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

§ 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

§ 21. The provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.

§ 22. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law,

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and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

§ 23. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

§ 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

ARTICLE 2.—THE LEGISLATIVE DEPARTMENT.

§ 25. The legislative power shall be vested in a senate and house of representatives.

§ 26. The senate shall be composed of not less than thirty nor more than fifty members.

§ 27. Senators shall be elected for the term of four years, except as hereinafter provided.

§ 28. No person shall be a senator who is not a qualified elector in the district in which he may be chosen, and who shall not have attained the age of twenty-five years, and have been a resident of the state or territory for two years next preceding his election.

§ 29. The legislative assembly shall fix the number of senators, and divide the state into as many senatorial districts as there are senators, which districts as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.

§ 30. The senatorial districts shall be numbered consecutively from one upwards, according to the number of districts prescribed, and the senators shall be divided into two classes. Those elected in the districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class. The senators of one class elected in the year 1890 shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the senators, as nearly as practicable, may be elected biennially.

§ 31. The senate, at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tempore, who may take the place of the lieutenant governor under rules prescribed by law.

§ 32. The house of representatives shall be composed of not less than sixty, nor more than one hundred and forty members.

§ 33. Representatives shall be elected for the term of two years.

§ 34. No person shall be a representative who is not a qualified elector in the district from which he may be chosen, and who shall not have attained the age of twenty-one years, and have been a resident of the state or territory for two years next preceding his election.

§ 35. The members of the house of representatives shall be apportioned to and elected at large from each senatorial district. The legislative assembly shall, in the year 1895, and every tenth year, cause an enumeration to be made of all the inhabitants of this state, and shall at its first regular session after each enumeration, and also after each federal census, proceed to fix by law the number of senators, which shall constitute the senate of North Dakota,

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and the number of representatives which shall constitute the house of representatives of North Dakota, within the limits prescribed by this constitution and at the same session shall proceed to reapportion the state into senatorial districts, as prescribed by this constitution, and to fix the number of members of the house of representatives to be elected from the several senatorial districts; provided, that the legislative assembly may at any regular session, redistrict the state into senatorial districts, and apportion the senators and representatives respectively.

§ 36. The house of representatives shall elect one of its members as speaker.

§ 37. No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state, except in the militia or the office of attorney at law, notary public or justice of the peace, and no person holding any office of profit or honor under any foreign government, or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three hundred dollars, shall hold any office in either branch of the legislative assembly or become a member thereof.

§ 38. No member of the legislative assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime, shall be eligible to the legislative assembly, or to any office in either branch thereof.

§ 39. No member of the legislative assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the governor, or governor and senate, during the term for which he shall have been elected.

§ 40. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measure or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person, member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

§ 41. The term of service of the members of the legislative assembly shall begin on the first Tuesday in January, next after their election.

§ 42. The members of the legislative assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house, they shall not be questioned in any other place.

§ 43. Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the

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fact to the house of which he is a member, and shall not vote thereon without the consent of the house.

§ 44. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly.

§ 45. Each member of the legislative assembly shall receive as a compensation for his services for each session, five dollars per day, and ten cents for every mile of necessary travel in going to and returning from the place of the meeting of the legislative assembly on the most usual route.

§ 46. A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner, and under such a penalty, as may be prescribed by law.

§ 47. Each house shall be the judge of the election returns and qualifications of its own members.

§ 48. Each house shall have the power to determine the rules of proceeding, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds, to expel a member; and shall have all other powers necessary and usual in the legislative assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

§ 49. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present.

§ 50. The sessions of each house and of the committee of the whole shall be open unless the business is such as ought to be kept secret.

§ 51. Neither house shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which the two houses shall be sitting, except in case of epidemic, pestilence or other great danger.

§ 52. The senate and house of representatives jointly shall be designated as the Legislative Assembly of the State of North Dakota.

§ 53. The legislative assembly shall meet at the seat of government at twelve o'clock noon on the first Tuesday after the first Monday in January, in the year next following the election of the members thereof.

§ 54. In all elections to be made by the legislative assembly, or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal.

§ 55. The sessions of the legislative assembly shall be biennial, except as otherwise provided in this constitution.

§ 56. No regular session of the legislative assembly shall exceed sixty days, except in case of impeachment, but the first session of the legislative assembly may continue for a period of one hundred and twenty days.

§ 57. Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other.

§ 58. No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose.

§ 59. The enacting clause of every law shall be as follows: "Be it Enacted by the Legislative Assembly of the State of North Dakota."

§ 60. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced.

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§ 61. No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.

State v. Woodmansee, 1 N. D. 246, 46 N. W. 970; State v. Haas, 2 N. D. 202, 50 N. W. 254; State v. Nomland, 3 N. D. 427, 57 N. W. 85; Eaton v. Guaranty Co., 11 N. D. 79, 88 N. W. 1029; Richards v. Stark County, 8 N. D. 392, 79 N. W. 863; Devitt v. Richland County, 8 N. D. 65, 76 N. W. 993.

§ 62. The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

§ 63. Every bill shall be read three several times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill unless a reading at length be demanded. The first and third readings shall be at length. No legislative day shall be shorter than the natural day.

§ 64. No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.

§ 65. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal.

§ 66. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly; immediately before such signing their title shall be publicly read and the fact of signing shall be at once entered on the journal.

§ 67. No act of the legislative assembly shall take effect until July first, after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislative assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct.

In re Hendricks, 5 N. D. 114, 64 N. W. 110.

§ 68. The legislative assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

§ 69. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

1. For granting divorces.
2. Laying out, opening, altering, or working roads or highways, vacating roads, town plats, streets, alleys or public grounds.
3. Locating or changing county seats.
4. Regulating county or township affairs.
5. Regulating the practice of courts of justice.
6. Regulating the jurisdiction and duties of justices of the peace, police magistrates or constables.
7. Changing the rules of evidence in any trial or inquiry.
8. Providing for changes of venue in civil or criminal cases.
9. Declaring any person of age.
10. For limitation of civil actions, or giving effect to informal or invalid deeds.
11. Summoning or impaneling grand or petit juries.
12. Providing for the management of common schools.
13. Regulating the rate of interest on money.
14. The opening or conducting of any election or designating the place of voting.
15. The sale or mortgage of real estate belonging to minors or others under disability.

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16. Chartering or licensing ferries, toll bridges or toll roads.
17. Remitting fines, penalties or forfeitures.
18. Creating, increasing or decreasing fees, percentages or allowances of public officers.
19. Changing the law of descent.
20. Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever.
21. For the punishment of crimes.
22. Changing the names of persons or places.
23. For the assessment or collection of taxes.
Angell v. Cass Co., 11 N. D. 265, 91 N. W. 72. .
24. Affecting estates of deceased persons, minors or others under legal disabilities.
25. Extending the time for the collection of taxes.
26. Refunding money into the state treasury.
27. Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein.
28. Legalizing, except as against the state, the unauthorized or invalid act of any officer.
29. Exempting property from taxation.
30. Restoring to citizenship persons convicted of infamous crimes.
31. Authorizing the creation, extension or impairing of liens.
32. Creating offices, or prescribing the powers or duties of officers in counties, cities, townships, election or school districts, or authorizing the adoption or legitimation of children.
33. Incorporation of cities, towns or villages, or changing or amending the charter of any town, city or village.
34. Providing for the election of members of the board of supervisors in townships, incorporated towns or cities.
35. The protection of game or fish.

§ 70. In all other cases where a general law can be made applicable, no special law shall be enacted; nor shall the legislative assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Edmunds et al v. Herbrandson et al, 2 N. D. 270, 50 N. W. 970.

ARTICLE 3.—EXECUTIVE DEPARTMENT.

§ 71. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of two years and until his successor is elected and duly qualified.

§ 72. A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or the disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability be removed, shall devolve upon the lieutenant governor.

§ 73. No person shall be eligible to the office of governor or lieutenant governor unless he be a citizen of the United States, and a qualified elector of the state, who shall have attained the age of thirty years, and who shall have resided five years next preceding the election within the state or territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

§ 74. The governor and lieutenant governor shall be elected by the qualified electors of the state at the time and places of choosing members of the

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legislative assembly. The persons having the highest number of votes for governor and lieutenant governor respectively shall be declared elected, but if two or more shall have an equal and highest number of votes for governor or lieutenant governor, the two houses of the legislative assembly at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

§ 75. The governor shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the legislative assembly on extraordinary occasions. He shall at the commencement of each session communicate to the legislative assembly, by message, information of the condition of the state, and recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislative assembly and shall take care that the laws be faithfully executed.

§ 76. The governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. He shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime for which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

§ 77. The lieutenant governor shall be president of the senate, but shall have no vote unless they be equally divided. If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

§ 78. When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

§ 79. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign, but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members-elect shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members-elect, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislative assembly, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections, in the office of the secretary of state, within fifteen days after such adjournment.

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§ 80. The governor shall have power to disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items, and part or parts disapproved shall be void, unless enacted in the following manner: If the legislative assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

§ 81. Any governor of this state who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislative assembly shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislative assembly, or who threatens any member that he, the said governor, will remove any person or persons from office or position with intent in any manner to influence the action of said member, shall be punished in the manner now, or that may hereafter, be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this state.

§ 82. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, three commissioners of railroads, an attorney general and one commissioner of agriculture and labor, who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and duly qualified, but no person shall be eligible to the office of treasurer for more than two consecutive terms.

§ 83. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general, and commissioner of agriculture and labor, shall be as prescribed by law.

§ 84. Until otherwise provided by law, the governor shall receive an annual salary of three thousand dollars; the lieutenant governor shall receive an annual salary of one thousand dollars; the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads and attorney general shall each receive an annual salary of two thousand dollars; the salary of the commissioner of agriculture and labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the state treasury.

ARTICLE 4.—JUDICIAL DEPARTMENT.

§ 85. The judicial power of the State of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

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§ 86. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

§ 87. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; provided, however, that no jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial.

State v. Nelson County, 1 N. D. 88.

§ 88. Until otherwise provided by law three terms of the supreme court shall be held each year, one at the seat of government, one at Fargo, in the county of Cass, and one at Grand Forks, in the county of Grand Forks.

§ 89. The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

§ 90. The judges of the supreme court shall be elected by the qualified electors of the state at large, and except as may be otherwise provided herein for the first election for judges under this constitution, said judges shall be elected at general elections.

§ 91. The term of office of the judges of the supreme court, except as in this article otherwise provided, shall be six years, and they shall hold their offices until their successors are duly qualified.

§ 92. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot so that one shall hold his office for the term of three years, one for the term of five years, and one for the term of seven years from the first Monday in December, A. D. 1889. The lots shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of the territory and filed in his office, unless the secretary of state of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

§ 93. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof, and who shall hold their offices during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by rules of the supreme court not inconsistent with law. The legislative assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof.

§ 94. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this state or the Territory of Dakota three years next preceding his election.

§ 95. Whenever the population of the State of North Dakota shall equal 600,000 the legislative assembly shall have the power to increase the number of the judges of the supreme court to five, in which event a majority of said court, as thus increased, shall constitute a quorum.

§ 96. No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

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§ 97. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude "against the peace and dignity of the State of North Dakota."

State v. Hazledahl, 2 N. D. 521.

§ 98. Any vacancy happening by death, resignation or otherwise in the office of judge of the supreme court shall be filled by appointment, by the governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

§ 99. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

§ 100. In case a judge of the supreme court shall be in any way interested in a cause brought before said court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause.

§ 101. When a judgment or decree is reversed or confirmed by the supreme court, every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

§ 102. It shall be the duty of the court to prepare a syllabus of the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

§ 103. The district courts shall have original jurisdiction, except as otherwise provided in this constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same.

§ 104. The state shall be divided into six judicial districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this constitution.

§ 105. Until otherwise provided by law said districts shall be constituted as follows:

District No. One shall consist of the counties of Pembina, Cavalier, Walsh, Nelson and Grand Forks.

District No. Two shall consist of the counties of Ramsey, Towner, Benson, Pierce, Rolette, Bottineau, McHenry, Church, Renville, Ward, Stevens, Mountrail, Garfield, Flannery and Buford.

District No. Three shall consist of the counties of Cass, Steele and Traill.

District No. Four shall consist of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

District No. Five shall consist of the counties of Logan, LaMoure, Stutsman, Barnes, Wells, Foster, Eddy and Griggs.

District No. Six shall consist of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Williams, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian reservation lying north of the seventh standard parallel.

§ 106. The legislative assembly may whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years increase the number of said judicial districts and the judges thereof; such

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districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

§ 107. No person shall be eligible to the office of district judge, unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States, nor unless he shall have resided within the State or Territory of Dakota at least two years next preceding his election, nor unless he shall at the time of his election be an elector within the judicial district for which he is elected.

§ 108. There shall be a clerk of the district court in each organized county in which a court is holden who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

§ 109. Writs of error and appeals may be allowed from the decisions of the district courts to the supreme court under such regulations as may be prescribed by law.

COUNTY COURTS.

§ 110. There shall be established in each county a county court, which shall be a court of record open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

§ 111. The county court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law; provided, that whenever the voters of any county having a population of two thousand or over shall decide by a majority vote that they desire the jurisdiction of said court to be increased above that limited by this constitution, then said county court shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed one thousand dollars, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under state laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except that he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

JUSTICES OF THE PEACE.

§ 112. The legislative assembly shall provide by law for the election of justices of the peace in each organized county within the state. But the number of said justices to be elected in each organized county shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs, does not exceed two hundred dollars, and in counties where no county court with criminal jurisdiction exists they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The legislative assembly shall have power to abolish the office of

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justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere.

POLICE MAGISTRATES.

§ 113. The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns, and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages, shall be ex-officio justices of the peace of the county in which said cities, towns and villages may be located. And the legislative assembly may confer upon said police magistrates the jurisdiction to hear, try and determine all cases of misdemeanors, and the prosecutions therein shall be by information.

§ 114. Appeals shall lie from the county court, final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

MISCELLANEOUS PROVISIONS.

§ 115. The time of holding courts in the several counties of a district shall be as prescribed by law, but at least two terms of the district court shall be held annually in each organized county, and the legislative assembly shall make provision for attaching unorganized counties or territories to organized counties for judicial purposes.

§ 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.

§ 117. No judge of the supreme or district court shall act as attorney or counselor at law.

§ 118. Until the legislative assembly shall provide by law for fixing the terms of courts, the judges of the supreme and district courts shall fix the terms thereof.

§ 119. No judge of the supreme or district courts shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge. All votes or appointments for either of them for any elective or appointive office except that of judge of the supreme court or district court, given by the legislative assembly of the people, shall be void.

§ 120. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

ARTICLE 5.—ELECTIVE FRANCHISE.

§ 121. Every male person of the age of twenty-one years or upwards belonging to either of the following classes, who shall have resided in the state one year, in the county six months and in the precinct ninety days next preceding any election, shall be deemed a qualified elector at such election:

1. Citizens of the United States.
2. Persons of foreign birth who shall have declared their intention to become citizens, one year and not more than six years prior to such election, conformably to the naturalization laws of the United States.
3. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.

See amendments, article 2.

§ 122. The legislative assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime without regard to sex; but no law

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extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the state voting at a general election.

§ 123. Electors shall in all cases except treason, felony, breach of the peace or illegal voting, be privileged from arrest on the days of election during their attendance at, going to and returning from such election, and no elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

§ 124. The general elections of the state shall be biennial, and shall be held on the first Tuesday after the first Monday in November; provided, that the first general election under this constitution shall be held on the first Tuesday after the first Monday in November, A. D. 1890.

§ 125. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States.

§ 126. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of his being stationed therein.

§ 127. No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, unless restored to civil rights.

See amendments, article 2.

§ 128. Any woman having the qualifications enumerated in section 121 of this article as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office.

§ 129. All elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law.

ARTICLE 6.—MUNICIPAL CORPORATIONS.

§ 130. The legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money and contracting debts, and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

ARTICLE 7.—CORPORATIONS OTHER THAN MUNICIPAL.

§ 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

§ 132. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business has been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

§ 133. The legislative assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

§ 134. The exercise of the right of eminent domain shall never be abridged, nor construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of this state shall never be abridged, or so construed as to permit corporations

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to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the state.

§ 135. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

§ 136. No foreign corporation shall do business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

§ 137. No corporation shall engage in any business other than that expressly authorized in its charter.

§ 138. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

§ 139. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

See *State v. Miller*, 3 N. D. 433, 57 N. W. 193.

§ 140. Every railroad corporation organized and doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom, and the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; provided, the provisions of this section shall not be so construed as to apply to foreign corporations.

§ 141. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

§ 142. Railways heretofore constructed, or that may hereafter be constructed, in this state are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone, and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers, from one point to another in this state; provided, that appeal may be had to the courts of this state from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

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§ 143. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with the railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

§ 144. The term "corporation," as used in this article, shall not be understood as embracing municipalities or political subdivisions of the state unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

§ 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the state treasurer for the redemption of such notes or bills.

§ 146. Any combination between individuals, corporations, associations or other, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

ARTICLE 8.—EDUCATION.

§ 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the State of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

§ 148. The legislative assembly shall provide, at its first session after the adoption of this constitution, for a uniform system for free public schools throughout the state, beginning with the primary and extending through all grades up to and including the normal and collegiate course.

§ 149. In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

§ 150. A superintendent of schools for each county shall be elected every two years, whose qualifications, duties, powers and compensation shall be fixed by law.

§ 151. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific and agricultural improvements.

§ 152. All colleges, universities and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.

ARTICLE 9.—SCHOOL AND PUBLIC LANDS.

§ 153. All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common

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schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the state by escheat; the proceeds of all gifts and donations to the state for common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual fund for the maintenance of the common schools of the state. It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The state shall make good all losses thereof.

§ 154. The interest and income of this fund together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state, and shall be for this purpose apportioned among and between all the several common school corporations of the state in proportion to the number of children in each of school age, as may be fixed by law, and no part of the fund shall ever be diverted even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the state; provided, however, that if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to and become a part of the school fund.

§ 155. After one year from the assembling of the first legislative assembly the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other. No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the state shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words "coal lands" shall include lands bearing lignite coal.

§ 156. The superintendent of public instruction, governor, attorney general, secretary of state and state auditor shall constitute a board of commissioners, which shall be denominated the "Board of University and School Lands," and subject to the provisions of this article and any law that may be passed by the legislative assembly, said board shall have control of the appraisement, sale, rental and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the state treasurer, under the limitations in section 160 of this article.

§ 157. The county superintendent of common schools, the chairman of the county board, and the county auditor shall constitute boards of appraisal and under the authority of the state board of university and school lands shall appraise all school lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms and shall first select and designate for sale the most valuable lands.

§ 158. No land shall be sold for less than the appraised value and in no case for less than \$10 per acre. The purchaser shall pay one-fifth of the price in cash and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest

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subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall become null and void.

§ 159. All land, money or other property donated, granted or received from the United States or any other source for a university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal school or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses thereof.

§ 160. All lands mentioned in the preceding section shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools; but a distinct and separate account shall be kept by the proper officers of each of said funds; provided, that the limitations as to the time in which school land may be sold shall apply only to lands granted for the support of common schools.

§ 161. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

§ 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within the state, bonds of the United States, bonds of the State of North Dakota or in first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisers of school lands.

Board University and School Lands v. McMillan, 12 N. D. 280, 96 N. W. 280.

§ 163. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish, either directly or indirectly, the purchase price of said lands.

§ 164. The legislative assembly shall have authority to provide by law for the sale or disposal of all public lands that have been heretofore, or may hereafter be granted by the United States to the state for purposes other than set forth and named in sections 153 and 159 of this article. And the legislative assembly, in providing for the appraisement, sale, rental and disposal of the same, shall not be subject to the provisions and limitations of this article.

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§ 165. The legislative assembly shall pass suitable laws for the safe keeping, transfer and disbursement of the state school funds; and shall require all officers charged with the same or the safe keeping thereof to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan with or without interest or shall deposit in his own name, or otherwise than in the name of the State of North Dakota or shall deposit in any banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid, or purposely allow any portion of the same to remain in his own hands uninvested, except in the manner prescribed by law, every such act shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken or loaned, or deposited, or exchanged, or withheld, and shall be a felony; and any failure to pay over, produce or account for, the state school funds or any part of the same entrusted to any such officer, as by law required or demanded, shall be held and be taken to be prima facie evidence of such embezzlement.

ARTICLE 10.—COUNTY AND TOWNSHIP ORGANIZATION.

§ 166. The several counties in the Territory of Dakota lying north of the seventh standard parallel, as they now exist, are hereby declared to be counties of the State of North Dakota.

§ 167. The legislative assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

§ 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties to be affected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

Schaffner v. Young, 10 N. D. 245, 86 N. W. 733.

§ 169. The legislative assembly shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

§ 170. The legislative assembly shall provide by general law for township organization under which any county may organize, whenever a majority of all the legal voters of such county, voting at a general election shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election; and the affairs of said county may be transacted by the chairmen of the several township boards of said county and such others as may be provided by law for incorporated cities, towns or villages, within such county.

§ 171. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such a manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county and the affairs of said county shall then be

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transacted by a board of county commissioners as is now provided by the laws of the Territory of Dakota.

§ 172. Until the system of county government by the chairmen of the several township boards is adopted by any county the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members whose terms of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business, as shall be provided by law.

§ 173. At the first general election held after the adoption of this constitution, and every two years thereafter, there shall be elected in each organized county in the state, a county judge, clerk of court, register of deeds, county auditor, treasurer, sheriff and state's attorney, who shall be electors of the county in which they are elected, and who shall hold their office until their successors are elected and qualified. The legislative assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

ARTICLE 11.—REVENUE AND TAXATION.

§ 174. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year, not to exceed in any one year four mills on the dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt.

§ 175. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

§ 176. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation; and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; but the legislative assembly may, by law, provide for the payment of a per centum of gross earnings of rail road companies to be paid in lieu of all state, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said corporations shall be exempted from taxation in the same manner, and on the same basis as other real estate is taxed, except roadbed, right-of-way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article relating to assessment of railroad property shall cease to be in force.

See amendments, article 5.

Rolph v. City of Fargo, 7 N. D. 640, 76 N. W. 242.

Minneapolis Northern Elevator Co. v. Traill County, 9 N. D. 213, 82 N. W. 727.

§ 177. All improvements on land shall be assessed in accordance with section 179, but plowing shall not be considered as an improvement or add to the value of land for the purpose of assessment.

§ 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party.

§ 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed,

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rails and rolling stock of all railroads operated in this state shall be assessed by the state board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts.

§ 180. The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

§ 181. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE 12.—PUBLIC DEBT AND PUBLIC WORKS.

§ 182. The state may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota at the time of the adoption of this constitution. Every such debt shall be authorized by law for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax discontinued until such debt, both principal and interest, shall have been fully paid. No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense in case of threatened hostilities; but the issuing of new bonds to refund existing indebtedness, shall not be construed to be any part or portion of said two hundred thousand dollars.

§ 183. The debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein; provided, that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such assessed value beyond said five per cent limit. In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount of existing indebtedness, whether contracted prior or subsequent to the adoption of this constitution shall be included; provided, further, that any incorporated city may become indebted in any amount not exceeding four per centum on such assessed value without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district, or any other political subdivision shall be void.

Birkholz v. Dinnie, 6 N. D. 511, 72 N. W. 931.

§ 184. Any city, county, township, town, school district, or any other political subdivision incurring indebtedness shall at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

§ 185. Neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for

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necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

State v. Nelson County, 1 N. D. 88, 45 N. W. 33.

§ 186. No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts or demands against the state, or any county or other political subdivision, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer or officers, whose duty it may be to audit the same.

§ 187. No bond or evidence of indebtedness of the state shall be valid unless the same shall have indorsed thereon a certificate, signed by the auditor and secretary of state, showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision shall be valid unless the same have indorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond, or evidence of debt, is issued pursuant to law and is within the debt limit.

Darling v. Taylor, 7 N. D. 538, 75 N. W. 766.

ARTICLE 13.—MILITIA.

§ 188. The militia of this state shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

§ 189. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

§ 190. The legislative assembly shall provide by law for the establishment of volunteer organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this state except the army of the United States, without the proclamation of the governor of the state.

§ 191. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

§ 192. The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law.

§ 193. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.

ARTICLE 14.—IMPEACHMENT AND REMOVAL FROM OFFICE.

§ 194. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

§ 195. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.

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§ 196. The governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

§ 197. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

§ 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

§ 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

§ 201. No person shall be liable to impeachment twice for the same offense.

ARTICLE 15.—FUTURE AMENDMENTS.

§ 202. Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

ARTICLE 16.—COMPACT WITH THE UNITED STATES.

§ 203. The following article shall be irrevocable without the consent of the United States and the people of this state:

1. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

2. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by

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this state on lands or property therein belonging to, or which may hereafter be purchased by the United States, or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the act of congress granting the same.

3. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," the states of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held at Bismarck in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to wit:

This agreement shall take effect and be in force from and after the admission into the union, as one of the United States of America, of either the State of North Dakota or the State of South Dakota.

The words "State of North Dakota," wherever used in this agreement, shall be taken to mean the Territory of North Dakota in case the State of South Dakota shall be admitted into the union prior to the admission into the union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement, shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the union prior to the admission into the union of the State of South Dakota.

The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the Territory of Dakota, approved March 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

The State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota, that is to say, the State of North Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is \$266,000; also, bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is \$96,700; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is \$93,600; also, refunding capitol building warrants dated April 1, 1889, \$83,507.46.

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is \$210,000; also, bonds issued on account

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of the school for deaf mutes, at Sioux Falls, South Dakota, the face aggregate of which is \$51,000; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is \$75,000; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is \$94,300; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is \$97,500; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is \$49,400; also, bonds issued on account of the school of mines at Rapid City, South Dakota, the face aggregate of which is \$33,000; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is \$30,000; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is \$25,000; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is \$45,000.

The states of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred, on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

The State of South Dakota shall pay to the State of North Dakota \$46,500, on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the territory situated or located within the boundaries of the other state.

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one-half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota, shall be credited to the State of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations, since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the legislative assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this Territory," being chapter 107 of the session laws of 1889 (that is, the part of such sums going to the territory), shall be equally divided between the states of North Dakota and South Dakota, and all taxes heretofore or hereafter paid

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into said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota; each state shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the Territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each state shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state, as provided in this article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged it. And the State of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the Territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said State of North Dakota as its own debt or liability.

§ 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the president of the United States; provided, legal process, civil and criminal, of this state, shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

§ 205. The State of North Dakota hereby accepts the several grants of land granted by the United States to the State of North Dakota by an act of congress, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on equal footing with the original states, and to make donations of public lands to such states," under the conditions and limitations therein mentioned; reserving the right, however, to apply to congress for modification of said conditions and limitations in case of necessity.

ARTICLE 17.—MISCELLANEOUS.

§ 206. The name of this state shall be "North Dakota." The State of North Dakota shall consist of all the territory included within the following boundary, to-wit: Commencing at a point in the main channel of the Red River of the North, where the forty ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the State of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

§ 207. The following described seal is hereby declared to be and hereby constituted the Great Seal of the State of North Dakota, to-wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left a bow crossed with three arrows, and

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an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto "Liberty and Union, Now and Forever, One and Inseparable;" the words "Great Seal" at the top, the words "State of North Dakota" at the bottom "October 1st" on the left and "1889" on the right. The seal to be two and one half inches in diameter.

§ 208. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting from forced sale to all heads of families a homestead, the value of which shall be limited and defined by law, and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

§ 209. The labor of children under twelve years of age shall be prohibited in mines, factories and workshops in this state.

§ 210. All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

§ 211. Members of the legislative assembly and judicial department, except such inferior officers as may be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of.....according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury), if an affirmation, and no other oath, declaration, or test shall be required as a qualification for any office or public trust.

§ 212. The exchange of "black lists" between corporations shall be prohibited.

§ 213. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property and shall not be liable for the debts of her husband.

ARTICLE 18.—CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

§ 214. Until otherwise provided by law, the member of the house of representatives of the United States apportioned to this state, shall be elected at large.

Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and the representatives shall be apportioned as follows:

The first district shall consist of the townships of Walhalla, St. Joseph, Neche, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton, in the county of Pembina, and be entitled to one senator and two representatives.

The second district shall consist of the townships of St. Thomas, Hamilton, Cavalier, Akra, Beaulien, Thingvalla, Gardar, Park, Crystal, Elora and Lodema, in the county of Pembina, and be entitled to one senator and two representatives.

The third district shall consist of the townships of Perth, Latona, Adams, Silvesta, Cleveland, Morton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River and Glenwood, in the county of Walsh, and be entitled to one senator and two representatives.

The fourth district shall consist of the townships of Forest River, Walsh Center, Grafton, Farmington, Ardock, village of Ardock, Harrison, city of Grafton, Oakwood, Martin, Walshville, Pulaski, Acton, Minto and St. Andrews, in the county of Walsh, and be entitled to one senator and three representatives.

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The fifth district shall consist of the townships of Gilby, Johnstown, Malan, Wheatfield, Hegton, Arvilla, Avon, Northwood, Lind, Grace, Larimore, and the city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta, in the county of Grand Forks, and be entitled to one senator and two representatives.

The sixth district shall consist of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconer, Harvey, Turtle River, Ferry, Rye, Blooming, Meckinock, Lakeville and Levant, in the county of Grand Forks, and be entitled to one senator and two representatives.

The seventh district shall consist of the first and second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Okleville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentru, Marcus, Michigan, Union and Washington, in the county of Grand Forks, and be entitled to one senator and two representatives.

The eighth district shall consist of the county of Traill and be entitled to one senator and four representatives.

The ninth district shall consist of the township of Fargo and the city of Fargo, in the county of Cass, and the fractional township number 139 in range 18, and be entitled to one senator and two representatives.

The tenth district shall consist of the townships of Noble, Wisner, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, Warren, Norman, Elm River, Harmony, Durbin, Addison, Davenport, Casselton and the city of Casselton, in the county of Cass, and be entitled to one senator and three representatives.

The eleventh district shall consist of the townships of Webster, Rush River, Hunter, Arthur, Amenia, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walberg, Watson, Page, Rich, Ayr, Buffalo, Howes, Eldrid, Highland, Rochester, Lake, Cornell, Tower, Hill, Clifton and Pontiac, in the county of Cass, and be entitled to one senator and three representatives.

The twelfth district shall consist of the county of Richland and be entitled to one senator and three representatives.

The thirteenth district shall consist of the county of Sargent and be entitled to one senator and two representatives.

The fourteenth district shall consist of the county of Ransom and be entitled to one senator and two representatives.

The fifteenth district shall consist of the county of Barnes and be entitled to one senator and two representatives.

The sixteenth district shall consist of the counties of Steele and Griggs and be entitled to one senator and two representatives.

The seventeenth district shall consist of the county of Nelson and be entitled to one senator and one representative.

The eighteenth district shall consist of the county of Cavalier and be entitled to one senator and two representatives.

The nineteenth district shall consist of the counties of Towner and Rolette and be entitled to one senator and one representative.

The twentieth district shall consist of the counties of Benson and Pierce, and be entitled to one senator and two representatives.

The twenty-first district shall consist of the county of Ramsey, and be entitled to one senator and two representatives.

The twenty-second district shall consist of the counties of Eddy, Foster and Wells, and be entitled to one senator and two representatives.

The twenty-third district shall consist of the county of Stutsman, and be entitled to one senator and two representatives.

The twenty-fourth district shall consist of the county of LaMoure, and be entitled to one senator and one representative.

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The twenty-fifth district shall consist of the county of Dickey, and be entitled to one senator and two representatives.

The twenty-sixth district shall consist of the counties of Emmons, McIntosh, Logan and Kidder, and be entitled to one senator and two representatives.

The twenty-seventh district shall consist of the county of Burleigh and be entitled to one senator and two representatives.

The twenty-eighth district shall consist of the counties of Bottineau and McHenry, and be entitled to one senator and one representative.

The twenty-ninth district shall consist of the counties of Ward, McLean, and all the unorganized counties lying north of the Missouri river, and be entitled to one senator and one representative.

The thirtieth district shall consist of the counties of Morton and Oliver, and be entitled to one senator and two representatives.

The thirty-first district shall consist of the counties of Mercer, Stark and Billings, and all the unorganized counties lying south of the Missouri river, and be entitled to one senator and one representative.

ARTICLE 19.—PUBLIC INSTITUTIONS.

§ 215. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the act of congress, approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe, subject to the limitations provided in the article on school and public lands contained in this constitution:

First. The seat of government at the city of Bismarck, in the county of Burleigh.

Second. The State University and the School of Mines at the city of Grand Forks, in the county of Grand Forks.

Third. The Agricultural College at the city of Fargo, in the county of Cass.

Fourth. A State Normal School at the city of Valley City, in the county of Barnes; and the legislative assembly in apportioning the grant of eighty thousand acres of land for normal schools made in the act of congress referred to shall grant to the said normal school at Valley City as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Fifth. The Deaf and Dumb Asylum at the city of Devils Lake, in the county of Ramsey.

See amendments, article 3.

Sixth. A State Reform School at the city of Mandan, in the county of Morton.

Seventh. A State Normal School at the city of Mayville, in the county of Traill; and the legislative assembly in apportioning the grant of lands made by congress, in the act aforesaid for state normal schools, shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Eighth. A State Hospital for the Insane and Institution for the Feeble Minded in connection therewith, at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for "other educational and charitable institutions" to the benefit and for the endowment of said institution.

See amendments, article 4.

§ 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions," as is allotted by law, viz:

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First. A Soldiers' Home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second. A Blind Asylum, or such other institution as the legislative assembly may determine, at such place in the county of Pembina as the qualified electors of said county may determine at an election to be held as prescribed by the legislative assembly, with a grant of thirty thousand acres.

Third. An Industrial School and School for Manual Training, or such other educational or charitable institution as the legislative assembly may provide, at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Fourth. A School of Forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

Fifth. A Scientific School, or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres; provided, that no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this constitution.

ARTICLE 20.—PROHIBITION.

§ 217. No person, association or corporation shall within this state, manufacture for sale or gift, any intoxicating liquors, and no person, association or corporation shall import any of the same for sale or gift, or keep or sell or offer the same for sale, or gift, barter or trade as a beverage. The legislative assembly shall by law prescribe regulations for the enforcement of the provisions of this article and shall thereby provide suitable penalties for the violation thereof.

State v. Swan, 1 N. D. 5, 44 N. W. 492.

See amendments, article 1 (new article).

SCHEDULE.

§ 1. That no inconvenience may arise from a change of territorial government to state government, it is declared that all writs, actions, prosecutions, claims and rights of individuals and bodies corporate shall continue as if no change of government had taken place, and all processes which may, before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Dakota shall be as valid as if issued in the name of the state.

§ 2. All laws now in force in the Territory of Dakota, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations or be altered or repealed.

§ 3. All fines, penalties, forfeitures and escheats accruing to the Territory of Dakota shall accrue to the use of the states of North Dakota and South Dakota and may be sued for and recovered by either of said states as necessity may require.

§ 4. All recognizances, bonds, obligations or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state; all bonds, obligations or other undertakings executed to this territory, or to any officer in his official capacity, shall pass over to the proper state authority, and to their successors in office, for the use therein respectively expressed, and may be sued for and recovered accordingly; all criminal prosecutions and penal actions which have arisen, or may arise before the organization of the judicial department, under this

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constitution, or which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

§ 5. All property, real and personal, and credits, claims and choses in action belonging to the Territory of Dakota at the time of the adoption of this constitution, shall be vested in and become the property of the states of North Dakota and South Dakota.

§ 6. Whenever any two of the judges of the supreme court of the state, elected under the provisions of this constitution shall have qualified in their offices, the causes then pending in the supreme court of the territory on appeal or writ of error from the district courts of any county or subdivision within the limits of this state, and the papers, records and proceedings of said court shall pass into the jurisdiction and possession of the supreme court of the state, except as otherwise provided in the enabling act of congress, and until so superseded the supreme court of the territory and the judges thereof shall continue, with like powers and jurisdiction as if this constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this constitution shall have qualified in his office, the several causes then pending in the district court of the territory within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the state for such county, except as provided in the enabling act of congress, and until the district courts of this territory shall be superseded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the territory.

§ 7. Until otherwise provided by law, the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts respectively of the state.

§ 8. Whenever this constitution shall go into effect, the books, records and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the county court of the same county, and the said county court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. And until the election and qualification of the judges of the county courts provided for in this constitution, the probate judges shall act as the judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein, until the said court shall have procured a proper seal.

§ 9. The terms "probate court" or "probate judge," whenever occurring in the statutes of the territory, shall, after this constitution goes into effect, be held to apply to the county court or county judge.

§ 10. All territorial, county and precinct officers, who may be in office at the time this constitution takes effect, whether holding their offices under the authority of the United States or of the territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this constitution, until their successors shall be elected and qualified in accordance with the provisions of this constitution, and official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted; and such officers for their term of service, under this constitution, shall receive the same salaries and compensation as is by this constitution or by the laws of the territory, provided for like officers; provided, that the county and precinct officers shall hold their offices for the term for which they were elected. There shall be elected in each organized county in this state, at the election to be held for the ratification of this constitution, a clerk of

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the district court, who shall hold his office under said election until his successor is duly elected and qualified. The judges of the district court shall have power to appoint state's attorneys in any organized counties where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until his successor is elected and qualified.

§ 11. This constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

§ 12. Immediately upon the adjournment of this convention the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of the constitutional convention shall issue a proclamation, which shall be published and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people on the first Tuesday in October, 1889, of all the state and district officers created and made elective by this constitution. This constitution shall be submitted for adoption or rejection at said election to a vote of the electors qualified by the laws of this territory to vote at all elections. At the election provided for herein the qualified voters shall vote directly for or against this constitution and for or against the article separately submitted.

§ 13. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given for the period of twenty days in the manner provided by law. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns for all state and district officers, and members of the legislative assembly, shall be made to the canvassing board hereinafter provided for.

§ 14. The governor, secretary and chief justice, or a majority of them, shall constitute a board of canvassers to canvass the vote of such election for all state and district officers and members of the legislative assembly. The said board shall assemble at the seat of government of the territory on the fifteenth day after the day of such election (or on the following day if such day falls on Sunday), and proceed to canvass the votes on the adoption of this constitution and for all state and district officers and members of the legislative assembly in the manner provided by the laws of the territory for canvassing the vote for delegate to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the territory an abstract certified by them, of the number of votes cast for or against the adoption of the constitution, and for each person for each of said offices, and of the total number of votes cast in each county.

§ 15. All officers elected at such election shall, within sixty days after the date of the executive proclamation admitting the State of North Dakota into the union, take the oath required by this constitution, and give the same bond required by the law of the territory to be given in case of like officers of the territory and districts, and shall thereupon enter upon the duties of their respective offices; but the legislative assembly may require by law all such officers to give other or further bonds as a condition of their continuance in office.

§ 16. The judges of the district court who shall be elected at the election herein provided for shall hold their offices until the first Monday in January, 1890, and until their successors are elected and qualified. All other state officers, except judges of the supreme court, who shall be elected at the election herein provided for, shall hold their offices until the first Monday in January, 1891, and until their successors are elected and qualified. Until otherwise

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provided by law the judges of the supreme court shall receive for their services the salary of four thousand dollars per annum, payable quarterly; and the district judges shall receive for their services the salary of three thousand dollars per annum, payable quarterly.

§ 17. The governor-elect of the state immediately upon his qualifying and entering upon the duties of his office shall issue his proclamation convening the legislative assembly of the state at the seat of government, on a day to be named in said proclamation, and which shall not be less than fifteen nor more than forty days after the date of such proclamation. And said legislative assembly after organizing shall proceed to elect two senators of the United States for the State of North Dakota; and at said election the two persons who shall receive a majority of all the votes cast by the said senators and representatives shall be elected such United States senators. And the presiding officers of the senate and house of representatives shall each certify the election to the governor and secretary of the State of North Dakota; and the governor and secretary of state shall certify the election of such senators as provided by law.

§ 18. At the election herein provided for there shall be elected a representative to the fifty-first congress of the United States by the electors of the state at large.

§ 19. It is hereby made the duty of the legislative assembly at its first session to provide for the payment of all debts and indebtedness authorized to be incurred by the constitutional convention of North Dakota, which shall remain unpaid after the appropriation made by congress for the same shall have been exhausted.

§ 20. There shall be submitted at the same election at which this constitution is submitted for rejection or adoption, Article 20, entitled "Prohibition," and persons who desire to vote for said article shall have written or printed on their ballots "For Prohibition," and all persons desiring to vote against said article shall have written or printed on their ballots "Against Prohibition." If it shall appear according to the returns herein provided for that a majority of all the votes cast at said election for and against prohibition are for prohibition, then said Article 20 shall be and form a part of this constitution and be in full force and effect as such from the date of the admission of this state into the union. But if a majority of said votes shall appear according to said returns to be against prohibition, then said Article 20 shall be null and void and shall not be a part of this constitution.

§ 21. The agreement made by the joint commission of the constitutional conventions of North Dakota and South Dakota concerning the records, books and archives of the Territory of Dakota, is hereby ratified and confirmed; which agreement is in the words following, that is to say:

The following books, records and archives of the Territory of Dakota shall be the property of North Dakota, towit: All records, books and archives in the offices of the governor and secretary of the territory (except records of articles of incorporation of domestic corporations, returns of election of delegates to the constitutional convention of 1889 for South Dakota, returns of elections held under the so-called local option law, in counties within the limits of South Dakota, bonds of notaries public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situate within the limits of South Dakota, all which records and archives are a part of the records and archives of said secretary's office; excepting also, census returns from counties situate within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situate within the limits of South Dakota, all of which are a part of the records and archives of said governor's office.) And the following records, books and archives shall also be the property of the State of North Dakota, towit:

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Vouchers in the office or custody of the auditor of this territory relating to expenditures on account of public institutions, grounds or buildings situate within the limits of North Dakota. One warrant register in the office of the treasurer of this territory, being a record of warrants issued under and by virtue of chapter 24 of the laws enacted by the eighteenth legislative assembly of Dakota Territory. All letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota. Paid and cancelled coupons in the same office representing interest on bonds which said state of North Dakota is to assume and pay. Reports of gross earnings of the year 1888 in the same office, made by corporations operating lines of railroad situated wholly or mainly within the limits of North Dakota. Records and papers of the office of the public examiner of the second district of the territory. Records and papers of the office of the district board of agriculture. Records and papers in the office of the board of pharmacy of the district of North Dakota.

All records, books and archives of the Territory of Dakota which it is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota and the cost of such copies shall be borne equally by said states of North Dakota and South Dakota, that is to say:

Appropriation Ledger for years ending November 1889-90—one volume.

The Auditor's Current Warrant Register—one volume.

Insurance Record for 1889—one volume.

Treasurer's Cash Book—"D."

Assessment Ledger—"B."

Dakota Territory Bond Register—one volume.

Treasurer's Current Ledger—one volume.

The originals of the foregoing volumes which are to be copied shall at any time after such copying shall have been completed be delivered on demand to the proper authorities of the State of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota, shall remain at the capitol of North Dakota until demanded by the legislature of the State of South Dakota, and until the State of North Dakota shall have had a reasonable time after such demand is made to provide copies or abstracts of such portions thereof as the said State of North Dakota may desire to have copies or abstracts of.

The State of South Dakota may also provide copies or abstracts of such records, books and archives, which it is agreed shall be the property of North Dakota, as said State of South Dakota shall desire to have copies or abstracts of.

The expenses of all copies or abstracts of records, books and archives which it is herein agreed may be made, shall be borne equally by said two states.

§ 22. Should the counties containing lands which form a part of the grant of lands made by congress to the Northern Pacific Railroad company be compelled by law to refund moneys paid for such lands or any of them by purchasers thereof at tax sales thereof, based upon taxes illegally levied upon said lands, then and in that case the State of North Dakota shall appropriate the sum of twenty-five thousand dollars (\$25,000) or so much thereof as may be necessary to reimburse said counties for the amount so received from said illegal tax sales and paid by said counties into the treasury of Dakota Territory.

§ 23. This constitution shall, after its enrollment, be signed by the president of this convention and the chief clerk thereof, and such delegates as desire to sign the same, whereupon it shall be deposited in the office of the secretary of the territory, where it may be signed at any time by any delegate

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who shall be prevented from signing the same for any reason at the time of the adjournment of this convention.

§ 24. In case the territorial officers of the Territory of Dakota, or any of them who are now required by law to report to the governor of the territory, annually or biennially, shall prepare and publish such reports covering the transactions of their offices up to the time of the admission of the State of North Dakota into the union; the legislative assembly shall make sufficient appropriations to pay one-half of the cost of such publication.

§ 25. The governor and secretary of the territory are hereby authorized to make arrangements for the meeting of the first legislative assembly, and the inauguration of the state government.

§ 26. The legislative assembly shall provide for the editing, and for the publication, in an independent volume, of this constitution, as soon as it shall take effect, and whenever it shall be altered or amended, and shall cause to be published in the same volume the Declaration of Independence, the Constitution of the United States and the Enabling Act.

Done at Bismarck, Dakota, in open convention, this 17th day of August, A. D. 1889.

F. B. FANCHER, President.

JOHN G. HAMILTON, Chief Clerk.

AMENDMENTS TO THE CONSTITUTION OF NORTH DAKOTA.

ARTICLE 1.

The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

ARTICLE 2.

§ 121. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state one year and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election:

First—Citizens of the United States.

Second—Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.

§ 127. No person who is under guardianship, non compos mentis or insane shall be qualified to vote at any election; nor any person convicted of treason or felony unless restored to civil rights; and the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting or refusing to vote at any general election.

ARTICLE 3.

§ 76. The governor shall have power in conjunction with the board of pardons, of which the governor shall be ex officio a member and the other members of which shall consist of the attorney general of the state of North Dakota, the chief justice of the supreme court of the state of North Dakota, and two qualified electors who shall be appointed by the governor, to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction of treason the governor shall have the power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. The governor shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by the board of pardons, stating the name of the convict, the crime for which he is convicted, the sentence and its date and the date of remission, commutation, pardon or reprieve, with their reasons for granting the same.

ARTICLE 4.

§ 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads, and the franchise and all other property of all express companies, freight line companies, car equipment companies, sleeping car companies, dining car companies, telegraph or telephone companies or corporations operated in this state and used directly or indirectly in the carrying of persons, property or messages, shall be assessed by the state board of equalization at their actual value, and such assessed value shall be apportioned to the counties, cities, towns, villages, townships and districts in which such railroad companies, express companies, sleeping car companies, dining car companies, telegraph and telephone companies are located, or through which they are operated, as a basis for the taxation of such property, in proportion to the number of miles of such property within such counties, cities, towns, villages, townships and districts, or over which any part of such property is used or operated within such counties, towns, villages, townships and districts. But should any railroad allow any portion of its roadway to be used for any purpose other than the operation of a railroad thereon, such portion of its roadway, while so used, shall be assessed in the manner provided for the assessment of other real property.

ARTICLE

Addenda to section 176:
The legislative assembly may further provide that grain grown within the state and held therein in elevators, warehouses and granaries may be taxed at a fixed rate.