

# PREFACE TO REVISED CODES OF 1905

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In publishing this volume of the revised codes of North Dakota it is deemed proper to give briefly a sketch of the enactment and codification of the codes of the territory of Dakota and state of North Dakota.

The legislative assembly of the territory of Dakota at its first session in 1862 adopted a code of civil procedure taken from Ohio. In 1868 this code was repealed, and the code of civil procedure of New York was adopted in its place. At that session there was also adopted a code of criminal procedure. This code was repealed in 1869 and a code of criminal procedure that had been prepared by a New York commission for that state adopted in its stead. This code was again amended and re-enacted in 1875. A justices' code was adopted in 1862, which was repealed and a new code adopted in 1863. This was again repealed in 1866, and another complete code on the subject enacted. A penal code was adopted at the second session of the legislative assembly in 1863, which was repealed in 1865 and the code drafted by the New York commission for that state, adopted in its place. A probate code was adopted in 1865. A civil code taken from that prepared by the New York commission was adopted in 1865, and took effect January 12, 1866. The New York commission referred to was composed of David Dudley Field, William Curtis Noyes and Alexander W. Bradford. It was created in 1857 and reported to the New York legislature in 1865. Of these the penal code alone became a law in that state and it was not adopted until 1882. The territory of Dakota was the first English speaking community to adopt a codification of its substantive law.

In 1875 an act was passed providing for a commission of three to revise and compile the codes of the territory of Dakota, which commission consisted of P. C. Shannon, Granville G. Bennett and Bartlett Tripp. They prepared the revision of 1877. In 1887 E. W. Caldwell and Charles H. Price were appointed commissioners pursuant to chapter 83 of the laws of 1887, and prepared the compilation of 1887, known as the compiled laws. This compilation was in 1889 declared by the legislative assembly to be admissible in the courts of the territory as legal evidence of the statutes therein printed.

Upon the admission of the state of North Dakota it became necessary to adapt the laws then in force in the territory to the constitution of the state, and harmonize the various laws passed by succeeding sessions of the legislative assembly since the revision of 1887. Under chapter 82 of the laws of 1891 the governor appointed as commissioners R. M. POLLOCK, P. H. ROURKE and J. G. HAMILTON who upon organization appointed J. F. PHILBRICK secretary. This commission reported to the legislative assembly in January, 1893, showing in detail those provisions of our statutory law which should be continued in force and those which should be repealed. No legislative action was taken upon this report, but chapter 74 of the laws of 1893, passed at the same session, authorized the appointment by the governor of a new commission on codification, and CHARLES F. AMIDON, BURKE CORBET and GEORGE W. NEWTON were appointed as such commissioners. On organization they appointed CHARLES J. FISK as secretary. When the legislative assembly convened in January, 1895, this commission reported bills providing seven different codes, which comprised the entire statutory law of the state. A special joint committee of the house and senate was appointed, to whom all

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these bills, together with all other bills making changes in existing laws, were referred. Many changes were made by the committee and the legislative assembly in the reported bills of the commission. All laws in force in the state of North Dakota, previous to the taking effect of the enactments of the legislative assembly of 1895, and in conflict therewith, were specifically repealed by reference to sections and chapters. After the adjournment of the legislative assembly, the revised codes of 1895 were printed by the commission, and by virtue of the governor's proclamation, which had been provided for by law, they became the complete body of laws in force in the state of North Dakota.

The edition of the revised codes of 1895 being exhausted, the legislative assembly in 1899 provided for a new codification to be known as the revised codes of 1899, the secretary of state being authorized to supervise such codification and publication. In pursuance of this authority R. N. Stevens, a member of the Burleigh county bar, and M. H. Jewell, editor of the Bismarck Tribune, were employed to compile and edit this edition.

The edition of the revised codes of 1899 being exhausted the legislative assembly, by chapter 41, laws of 1905, authorized a new codification to be known as the revised codes of 1905, giving the secretary of state authority to supervise such codification and publication. Under the law of 1905 it was provided that this edition of the revised codes should contain, by appropriate references, annotations to each section, so far as construed by the supreme courts of the territory of Dakota and the states of North and South Dakota. This involved an enormous amount of work not included in former revisions of the codes and has required more time than originally contemplated. The contract for codification, annotation and publication, under the supervision of the secretary of state, was awarded to M. H. Jewell, who associated with him, in charge of the annotation features, R. N. Stevens, and in general codification J. G. Hamilton, member of a former revision commission, and R. D. Hoskins, clerk of the supreme court of this state. This volume is the result of their work.

An effort has been made to improve and greatly expand the index to this volume. The cross-indexing has been elaborated and by a system of sub-catch lines in boldface type it is believed that the subject desired may be located much more readily in this volume than in any other similar work published. The main subjects are printed in capital letters, the sub-titles or "catchlines" in boldface and the subdivisions thereof alphabetically arranged so as to present quickly to the eye the various divisions or minor subjects. For instance the subject of liability of directors of corporations for creating debts illegally appears in the index as follows:

### **CORPORATIONS.**

directors, action against, for what.....	7366-7368
liability, bonds, for illegally issuing.....	4225
debts, for creating illegally.....	4221
number .....	4208
officers, election of .....	4209

The first word in each line is the "catch word" of the subject matter and relates and must be construed in connection with the line above having a different indenture. Thus, in the example cited above, line three transposed would read: "Liability of directors for illegally issuing bonds." Line three is indented to the right, and the first word, "liability," relates to "directors." Line four cites another section, but relates to the same subject, and when coupled with the "catch words" of lines preceding, rounds out the sentence: "Liability of directors of corporations for creating debts illegally." In lines five and six the "catch words" "number" and "officers, election of," relate to "directors," and are therefore indented the same as "liability" in line three, relating to the same subdivision. Thus a vast amount of verbiage and

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repetition is omitted and the scheme of the index is simplified. The "catch words" also being arranged alphabetically, obviates the necessity of looking through the entire references made under a main head to find what is desired. Where citations are made to collateral subjects the section numbers have been enumerated wherever it has been possible to do so. In some instances, however, the collateral subject referred to embraces so many different sections in different chapters of the code that it has been found impossible to give, in the index, the numbers of the sections. These citations enable one to turn immediately to the sections in the code comprising the subject matter referred to.

At the end of each section is indicated the origin and history of the provision embraced therein—the former session law, chapter and section, or code, from which the subject matter was taken or by which it was revised. Reference is made to revised codes of 1899, except where a section originated with or was changed by the revision of 1895.

Abbreviations used: "R. C.," revised codes; "Pol. C.," political code; "Civ. C.," civil code; "C. Civ. P.," code of civil procedure; "Pro. C.," probate code; "Jus. C.," justices' code; "Pen. C.," penal code; "C. Cr. P.," code of criminal procedure.

Under the provisions of the law authorizing this codification, after proclamation by the governor, the revised codes of 1905 shall be in full force and effect and be received as evidence of the laws of this state in all courts thereof. An effort has been made to avoid errors in this codification but inasmuch as codification only and not revision was authorized, there appear some conflicting provisions which as occasion may demand the courts must construe.

E. F. PORTER,  
Secretary of State.