

of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same, as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in a civil action.

SECT. 38. Where the word "chapter" occurs in this act, it shall be construed to mean act.

Take effect,  
when.

SECT. 39. This act shall take effect from and after its passage, and approval by the governor.

Approved May 7, 1862.

W. JAYNE, *Governor.*

## ELECTIONS.

### CHAPTER 32.

AN ACT PRESCRIBING THE MANNER OF CONDUCTING ELECTIONS; OF THE CANVASS AND RETURN OF THE SAME.

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

#### GENERAL ELECTIONS.

General election, when held, and for what purposes.

SECTION 1. That a general election shall be held in the several election precincts in this territory, on the first Monday of September in each year, at which there shall be chosen so many of the following officers as are by law to be elected in each year; that is to say, a delegate to congress and other territorial officers, members of the territorial council and house of representatives, judges of probate, district attorney, and the following county and precinct officers, to wit: county commissioners, sheriffs, registers of deeds, coroners, justices of the

peace, constables, and all other county, precinct, and district officers not herein enumerated, or otherwise provided for.

SECT. 2. The county commissioners shall respectively, at their regular sessions in June preceding the general election, [appoint] three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at each precinct and for each of the polls of election as [provided] for in this act, and to set off and establish election precincts or districts; and the clerk of the said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notice, to serve the same upon each of the said judges of the election.

County commissioners to appoint judges, &c.

SECT. 3. The said judges shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election at any election precinct within their respective counties.

Judges to appoint clerks.

Judges to act, how long.

Clerk to act, how long.

Vacancies.

SECT. 4. The clerks of the several boards of county commissioners shall, at least forty days before any general election, and at least eight days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be, as nearly as circumstances will admit, as follows, to wit: "Notice is hereby given that on the — Monday, the — day of — next, at the house of —, in the town, district, or precinct of —, in the county of —, an election will be held for territorial, town, or district officers (naming the offices to be filled, as the case may be), which election will be opened at nine o'clock in the morning, and will continue open until four o'clock in the afternoon of the same day. Dated this — day of —, A. D. — (as the

Clerks of counties, to make out election notices — to contain what.

case may be). Signed, A B, clerk of the board of county commissioners.”

Sheriff to put them up, when and where.

SECT. 5. The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall put up in three most public places in each town or district, the notices referring to such precinct, town, or district, at least twenty days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the two others at two of the most public and suitable places in that vicinity or settlement.

If judges are not sworn, others how chosen.

SECT. 6. If any person appointed to act as judge of an election as aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town, district, or precinct as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies shall be and are hereby vested with the same power as if appointed by the board of county commissioners.

Judges and clerks to take what oath.

SECT. 7. Previous to votes being taken, the judges and clerks of the election shall severally take an oath in the following form, to wit: “I, A B, do solemnly swear (or affirm, as the case may be), that I will perform the duties of judge (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.”

Judges may administer oath, when.

SECT. 8. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerks of the election: and the person administering oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Polls open, how long, &c.

SECT. 9. At all elections to be held under this act, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the poll shall be closed. Thirty

minutes before the closing of the poll, proclamation shall be made in like manner, that the poll will be closed in half an hour; but the board may, in their discretion, adjourn the polls at twelve o'clock, noon, for one hour (proclamation of the same being made).

SECT. 10. The clerks of the election shall furnish the necessary poll books and stationery for conducting the same.

Clerks of election to furnish poll books and stationery.  
Of the form of ballot.

SECT. 11. Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election, in presence of the board. The ballot shall be a paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office, than there are persons to be chosen at the election to fill such office.

SECT. 12. The names of all persons voted for by any elector at any general election or special election, shall be on one ballot.

Names all on one ballot.

SECT. 13. It shall be lawful for any elector to vote for delegate to congress at any place of holding election within this territory; for members of the council and house of representatives at any place of holding an election in the district in which he may reside; for sheriff, coroner, county commissioner, and any other county officers, at any place of holding an election in the county in which he resides; but for constable and other town or precinct officers, he shall [not] vote out of the town or precinct in which he resides: *Provided*,  
That an elector qualified to vote for a part of, and not all, of the officers to be chosen at any election, shall present an open ticket, that the judges may determine the legality of such vote.

Certain officers may be voted for, where.

Proviso.

SECT. 14. If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election, or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged, the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath:  
"You do solemnly swear (or affirm, as the case may be), that

If person offering to vote is challenged.

Form of oath.

you are twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to become a citizen, conformable to the laws of the United States and this territory, on the subject of naturalization); that you have resided in the United States two years, and in this territory ninety days, and in this county twenty days next preceding this election; that you have not voted at this election;" and if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected.

If oath falsely taken. Penalty.

SECT. 15. If any person so offering such vote shall take such oath, his vote shall be received; and if any person shall take the said oath, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury; and shall, on conviction, suffer such punishment as now is, or shall hereafter be, prescribed by law for persons guilty of perjury. And if any person shall vote at any election, who is not a qualified voter, he shall forfeit and pay for the use of the county in which such election shall take place, a sum not exceeding fifty, nor less than twenty-five dollars, to be sued for and recovered in the name of the county commissioners, by a civil action before any justice of the peace in such county, for the use of common schools.

If person vote illegally. Penalty.

Ballot-box to be kept by judges.

SECT. 16. There shall be provided and kept by the judges of each election precinct (at the expense of the county in which such precincts are situated), a suitable ballot-box, with a lock and key.

Of the ballot-box.

SECT. 17. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

Ballot, how received.

SECT. 18. When a ballot shall be received, one of the judges, without opening the same, or permitting it to be opened or examined (except to ascertain whether it be a single ballot), shall deposit it in the box.

Clerks to keep poll list.

SECT. 19. Each clerk shall keep a poll list, which shall

contain the names of all the persons voting at such election in their numerical order.

SECT. 20. At each adjournment of the polls, the clerk shall, Poll lists made to correspond. in presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SECT. 21. The ballot-box shall then be opened and the poll list placed therein; and such box shall then be locked, Of the keeping of ballot-box and key. and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

SECT. 22. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the person having the box shall carefully keep it without opening it, or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition, deliver it to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked. Same

SECT. 23. It shall be the duty of each judge of election to challenge every person offering to vote, whom he shall know Duty of judge to challenge suspected voter. or suspect not to be qualified as an elector.

SECT. 24. For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable or constables residing in the town, district, or precinct, who shall be designated for the purpose by the judges of the election, to attend all elections within such town, district, or precinct, and should no constable attend at such elections, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct in a disorderly or riotous manner, and shall persist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not For the preservation of order at elections.

exceeding six days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute said order, and receive such person or persons so committed as though it had been issued by a magistrate in due form of law.

Canvass to be made immediately and in public.

SECT. 25. As soon as the poll of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public and continued without adjournment until completed.

Canvass, how commenced and conducted.

SECT. 26. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistakes that may be found therein until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if upon a comparison of the count with the poll lists, and the appearance of such ballots, a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

If ballots exceed number on poll lists.

SECT. 27. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box after being purged as above, and one of the judges shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

Form of poll books and when made out.

SECT. 28. The ballot and poll lists agreeing or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as nearly as circumstances will admit, in the following form, to wit: "At an election held at the house of A B, in the town, district, or precinct, in the county of —, and Territory of Dakota, on the — day of —, A. D. —, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A B had — votes for delegate to congress; C D had — votes [for] member of the legislative council; E F had — votes for member of the house of representatives; G H had — votes for coroner; I J had — votes for sheriff; K L had — votes for county commissioner (and in like manner for any other person voted for). Certified by us, A B, C D, E F, judges of election. Attest: G H, I K, clerks of election.

SECT. 29. The judges of election shall then inclose and seal one of the poll books, and under cover direct the same to the clerk of the board of county commissioners of the county in which such election was held, and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to said clerk of the board of county commissioners, at his office three days after the [closing] of the polls, and the other poll book, together with the ballot-box, deposited with one of the judges of election, to be determined by lot if not otherwise agreed; and the said poll book shall be subject to the inspection of any elector at any time thereafter, who may wish to examine the same.

Disposition of  
poll books.

SECT. 30. If any judge or clerk of election, after being deputed by the judges of election at which he shall have served as judge or clerk, to carry the poll books of such election to the clerk of the board of county commissioners, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, safe with the seals unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars for the use of the common school in said county, to be recovered by a civil action, in the name of the county commissioners, in the district court.

If judge or  
clerk fails in safe  
transmission of  
poll book. Pen-  
alty.

SECT. 31. On the twentieth day after the close of any election, or sooner if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, shall proceed to open said returns and make abstracts of the votes in the following manner: the abstract of the votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for the county and precinct officers, shall be on another sheet; and it shall be the duty of the said clerk of county

General county  
canvass, how  
made.

Certificates made out and delivered, when.

Proviso.

Clerk of county to make out certificate of compensation due judges and clerks.

How to be paid.

In case of tie, decided by lot.

Clerk of county board to transmit copy of abstracts to secretary of the territory.

commissioners immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county, and precinct officers, respectively, and to deliver said certificate to the person entitled to it, on his making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons, for the council or house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

SECT. 32. If the requisite number of county officers shall not be elected by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected a certificate of his election, as hereinbefore provided.

SECT. 33. The clerk of the board of commissioners, immediately after making the abstracts of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of the territory, at the seat of government, and it shall be the duty of the secretary of the territory, with the chief justice and the governor, or a majority of them, to proceed within fifty days after the election — and sooner, if all the returns be received — to canvass the votes given for delegate to congress, and other territorial officers, and the governor shall grant a certificate of election to the person having the highest number of votes, and shall

also issue a proclamation, declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall by proclamation order a new election: *Provided*, That if either of the persons mentioned in this section as canvasser be a candidate for delegate to congress, such person shall take no part in the canvass of said votes.

SECT. 34. If the returns of election of any county in this territory shall not be received at the office of the secretary of the territory within forty days after the day of election, the said secretary shall forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish said messenger with a certified copy of such returns; and the said messenger shall be paid out of the treasury the sum of ten cents per mile for each mile he shall necessarily travel in going to and returning from the office of said clerk.

SECT. 35. Any person who shall receive a certificate of his election as a member of the council or house of representatives of the legislative assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of [the] members of the council or house of representatives of the legislative assembly by death, resignation, or otherwise, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district, to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *Provided*, That if there be no session of the legislative assembly, between the happening of such vacancy or vacancies and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and whenever any such vacancy shall happen in the office of sheriff, either by death, resignation, or otherwise, the clerk of the board of commissioners of the county in which such vacancy shall happen, shall immediately notify the board of county commissioners of the proper county, who shall forthwith appoint some suitable person to be sheriff of

Proviso.

If returns not received by secretary.

Persons elected may resign, and the governor may order new election.

Proviso.

Other vacancies, how filled.

the county during or until the next general election, and when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

When two or more counties are united in one district.

SECT. 36. When two or more counties are united in one council or representative district, the clerk of the board of county commissioners of the county last established shall, within twenty days after the day of election, attend at the office of the clerk of board of county commissioners of the senior county, and in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties comprising such council or representative district, and said clerks shall immediately make out a certificate of the person or persons having the highest number of votes in such counties, for a member or members of the council or house of representatives of the legislative assembly, which certificate shall be delivered to the person entitled to it, on his application to the clerk of the board of county commissioners of the senior county at his office.

When vacancy in council or house.

SECT. 37. When any vacancy shall happen in the office of member of the council or house of representatives of the legislative assembly, by death, resignation, or otherwise, it shall be the duty of the clerk of the board of county commissioners, if the county only compose such council or representative district, as soon as he shall be informed thereof, to notify the governor of such vacancy, and if there be more than one county comprised within such council or representative district, it shall be the duty of the clerk of the board of commissioners of the senior county in such district, so to notify the governor; the governor, immediately upon receiving such notification, shall proceed in the same manner as is prescribed for other cases in the thirty-fifth section of this act.

Compensation of officers of election.

SECT. 38. There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, two dollars per day, and to the person carrying the poll books from the place of election to the clerk's office, the sum of five cents per mile for going and returning; this provision to extend to the unorganized counties, and to

be paid out of the treasury of the county to which they are attached.

SECT. 39. If a vacancy shall occur in the council or house of representatives of this territory, for any cause, and if the county or counties comprising the district in which such vacancy has happened, shall have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at any such election who does not at the time reside within the limits of the original county or district in which such vacancy may have occurred: *Provided*, That nothing herein contained shall be so construed as to permit any person to vote so residing within the same limits, who has not the other qualifications of an elector.

If counties divided after election of member whose seat is vacant.

Proviso.

SECT. 40. In cases of elections to fill vacancies as provided for in this act, the returns shall be made by the clerks of the boards of county commissioners of the different counties, within twenty days after the election, to the office of the clerk of the board of county commissioners of the original county composing the district, and certificates of election shall be made out and signed by the clerks of the boards of county commissioners of the different counties in which such election may have been held.

Returns, how made in such elections.

SECT. 41. No election returns shall be refused by any clerk of the board of county commissioners for the reason that the same may be returned or delivered to him in any other than the manner directed in this act; nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election or making returns thereof; but all returns shall be received, and the votes canvassed by such clerks, and a certificate given to the person or persons who may, by such returns, have the greatest number of votes.

Clerk shall not refuse election returns on account of informality.

SECT. 42. If any judge or clerk of election as [or] clerk of the board of county commissioners, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county,

If officers of election violate provisions of this act. Penalty.

which money, when collected, shall be for the support of common schools in said county.

Commencement of regular term of office.

SECT. 43. The regular term of office for all county, town, or precinct officers, when elected for a full term, shall commence on the first day of January next succeeding their election.

Commencement of term in case of vacancies filled.

SECT. 44. Any of the territorial, county, district, or precinct officers that may be elected or appointed to fill vacancies, may qualify and enter upon the duties of their office immediately thereafter; and when elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; but if appointed, they shall hold the same until their successors are elected and qualified.

No civil process served on day of election.

SECT. 45. During the day on which any general, special, town, precinct, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

Person having highest number of votes deemed elected.

SECT. 46. In all elections for the choice of any officer, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected to that office.

Concerning construction of statutes.

SECT. 47. The clerk of the board of county commissioners shall not construe the statutes, concerning the opening of election returns, so as to decide all matters of law and fact himself, but the clerk aforesaid, and the two justices he shall call to his assistance, shall constitute a board, a majority of whom shall decide all matters of disagreement, and the said board shall disregard technicalities and misspelling, the use of initial letters or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they are intended, but they shall not count votes polled in any place but established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office, and punished accordingly.

County clerk to provide uniform poll books, containing what. How distributed.

SECT. 48. It shall be the duty of the clerk of the board of county commissioners of each organized county in this territory, to provide uniform poll books for the use of his county, each poll book containing a copy of the law prescribing the qualifications of electors, and so much of this act as relates to the duties of judges and clerks of elections, the manner of

conducting elections, and the penalties imposed for offences; also containing blanks for all entries required to be made in said poll books; and at the time the said clerk delivers notices for an election to the sheriff of his county, as provided for in this act, he shall also deliver to the sheriff two copies of said poll books for an election precinct; and the sheriff shall deliver the same into the hands of one of the judges of election; and the judges of election, receiving the said poll books, shall deliver, and [or] cause the same to be delivered, to the clerks on the day of election.

SECT. 49. Any citizen of Dakota Territory, who is a qualified voter, shall not be deprived of his vote because he is in the military service of the United States: *Provided*, He resided in said territory at the time when he enlisted. The officers and privates of any company or part of company of Dakota volunteers, who are in the military service of the United States, shall be permitted to vote at the polls in any authorized precinct at any authorized election, for any of the following named officers, to wit: delegate to congress and all territorial officers: *Provided*, Such officer or officers are required by law to be elected at such election; but no officer or private of such military company or companies shall be allowed to vote at such election for any precinct or county office, nor for members of the legislative assembly, unless such volunteer, officer, or private be in the county in which he resided at the time of his enlistment. In case any company or detachment of Dakota volunteers in the service of the United States be without the limit of an organized county, or more than five miles distant from an authorized precinct on the day of an election authorized by law, the officers and privates of said company or part of company may elect three judges of election, which judges shall appoint two clerks; and the judges shall take and administer such oaths as are required in this act; and the polls shall be opened and conducted in like manner as prescribed in this act for elections in authorized precincts; and when the board shall have been organized as aforesaid, and the polls proclaimed open, all such volunteer officers and privates then present, shall be allowed to vote in like manner and for such officers as prescribed in this section, and return shall be made of such election to the secretary of this territory.

Citizen of Dakota in military service, not deprived of vote.  
Proviso.

May vote for what officers.

Proviso.

May establish polls, in what cases.

Returns, how made.

Legal voters may vote for delegate to congress at any authorized precinct in territory.

SECT. 50. And all legal voters in this territory, residing on ceded lands or unceded lands, shall have the right to vote for delegate to congress, at any election precinct established by law, in any organized county in this territory, and all legal voters living in unorganized counties shall vote in the organized counties to which their unorganized counties are respectively attached for election and representative purposes; and no soldier, officer, or private, other than those who resided in this territory previous to and at the time of their enlistment, shall be entitled to vote at any election in said territory.

Soldiers not formerly residing in Dakota cannot vote.

Qualifications of voters.

SECT. 51. Every free white male person above the age of twenty-one years, who shall have been a resident of the territory ninety days prior to any election, and who is a citizen of the United States, or has declared on oath his intention to become such, and shall have taken an oath to support the constitution of the United States, shall be entitled to vote; and all persons possessing the qualifications mentioned in this section, and who have resided in this territory nine months, shall be eligible to any office within said territory.

Eligibility to office.

Take effect, when.

SECT. 52. This act shall take effect from and after its passage.

Approved May 15, 1862.

W. JAYNE, *Governor*

### CHAPTER 33.

AN ACT TO DESIGNATE THE TIME OF HOLDING THE GENERAL ELECTION, AND TO PROVIDE FOR THE ELECTION OF A DELEGATE TO CONGRESS.

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

Date of general election.

SECTION 1. That the time for holding the general election, in the Territory of Dakota, shall be on the first Monday of September in each year.

Election of delegate to congress in 1862.

SECT. 2. That at the general election in the year one thousand eight hundred and sixty-two, there shall be elected a delegate to serve in the Congress of the United States, after the term of the present delegate shall have expired, and every

two years thereafter a like election for delegate to congress shall take place.

SECT. 3. That when any vacancy shall happen in the office of delegate to congress from this territory, it shall be the duty of the governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

In case of vacancy in that office.

SECT. 4. This act to take effect from and after its passage.

Take effect, when.

Approved April 21, 1862.

W. JAYNE, *Governor.*

## ENTRIES AND DETAINERS.

### CHAPTER 34.

AN ACT TO PROVIDE A REMEDY FOR FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

*Be it enacted by the Legislative Assembly of the Territory of Dakota :*

SECTION 1. No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases not with strong hands nor with a multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

To make no other than lawful entry.

SECT. 2. Any justice of the peace shall have authority to inquire as hereinafter directed, as well against those who may make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully and forcibly detain the same; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that said lands, tenements, or other possessions are unlawfully detained by force and strong hands, or that the same, after a lawful entry, are so held or detained unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Justice may inquire into manner of entry.