

GENERAL AND PRIVATE LAWS,

MEMORIALS AND RESOLUTIONS,

OF THE

TERRITORY OF DAKOTA,

PASSED AT THE THIRD SESSION

OF THE

LEGISLATIVE ASSEMBLY

**COMMENCED AT THE TOWN OF YANKTON, DECEMBER 7, 1863, AND
CONCLUDED JANUARY 15, 1864.**

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AUTHENTICATION.

DAKOTA TERRITORY, } ss:
Secretary's Office, Yankton. }

I, JOHN HUTCHINSON, Secretary of Dakota Territory, do hereby certify that the Laws contained in this Volume were passed by the Legislative Assembly, at the third session thereof, begun and held at Yankton, on the Seventh day of December, A. D., eighteen hundred and sixty-three, and that they are true and correct copies of the original, now on file in this office.

IN TESTIMONY whereof I have hereunto set my hand and affixed the Great Seal of the Territory.

{ L. S. }

Done at Yankton this 14th day of
March, A. D., 1864.

JOHN HUTCHINSON,
Secretary of Dakota Territory.

GENERAL LAWS.

GENERAL LAWS
OF
THE TERRITORY OF DAKOTA.

AMENDMENTS

CHAPTER I.

**AN ACT AMENDING SECTION TWO OF CHAPTER
THIRTY-FIVE OF GENERAL LAWS OF 1862.**

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

Section 1. That section two of chapter 35 of general laws of 1862, entitled "an act to provide for an estray law," approved April 26, 1862, be amended so as to read as follows: It shall be the duty of any person taking up an estray, to send a description of the same to the Register of Deeds, within two weeks after taking it up; and the Register of Deeds shall immediately record the same in a book kept for that purpose. The taker up of any estray shall, within two weeks thereafter, procure the publication of the description of such animal in any one newspaper published within the county, and if no newspaper be published at the time in said county, publication may be made by posting up, in three public places in said county, the description of such animal.

Amending section two of chapter 35 of laws of 1862.

Concerning estrays.

Sec. 2. This act shall take effect from and after its passage.
Approved, January 11, 1864.

CHAPTER II.

AN ACT TO AMEND SECTION EIGHTEEN, CHAPTER SIX, OF THE CRIMINAL CODE.

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

Penalty for
falsely assum-
ing to be a civil
officer.

Section 1. If any person shall falsely assume or pretend to be a Justice of the Peace, Register of Deeds, Territorial Auditor, Territorial Treasurer, Sheriff, Deputy Sheriff, Coroner, Constable, or Judge of probate, or any Territorial, or county, or township officer, and shall take upon himself to act as such, or to require any person to aid or assist him in any matter pertaining to such officer, [he] shall be punished by imprisonment in the county jail not more than two years nor less than three months, and by fine not exceeding five hundred dollars nor less than fifty dollars.

Sec. 2. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 3. This act shall take effect from and after its passage and approval by the Governor.

Approved, January 6, 1864.

CHAPTER III.

AN ACT TO AMEND SECTION THIRTY-EIGHT OF CHAPTER TWENTY-THREE OF THE LAWS OF DAKOTA.

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

County commis-
sioners elected
for three years.

Section 1. That section thirty-eight, of chapter twenty-three of the laws of 1862, be so amended that all county commissioners shall hereafter be elected for the term of three years, one to be elected each year.

Sec. 2. That the several boards of county commissioners of this Territory, at their annual meeting in June next, shall draw lots before the register of deeds to ascertain who shall hold his term of office two years from the first day of January, 1865, who one year, and who the remainder of the year; and there shall be but one county commissioner elected at their next general election, and one each year thereafter.

Draw lots to decide.

Sec. 3. This act shall take effect from and after its passage.

Approved, January 15, 1864.

CHAPTER IV.

AN ACT REPEALING CERTAIN ACTS AND PARTS OF ACTS THEREIN NAMED.

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

Section 1. That an act entitled "An act to apportion the representation to the Red River District," approved April 21, 1862, be and the same is hereby repealed.

Apportionment repealed.

Sec. 2. That an act entitled "An act to establish certain counties, and for other purposes," approved April 24th, 1862, be and the same is hereby repealed.

County organization repealed.

Sec. 3. That section thirteen of an act entitled "An act prescribing the manner of conducting elections, of the canvass and return of the same," approved May 15, 1862, be and the same is hereby repealed.

Section 13 of election law repealed.

Sec. 4. That section eight of an act entitled "An act dividing the Territory of Dakota into Council and Representative Districts, and apportioning the councilmen and representatives therein," approved January 9, 1863, be, and the same is hereby repealed.

Section 8 of apportionment law repealed.

Sec. 5. That this act shall take effect from and after its passage and approval by the governor.

Approved, Dec. 17, 1863.

CHAPTER V.

AN ACT BEPEALING CHAPTER FIFTY-SEVEN OF
THE GENERAL LAWS OF 1862-63.

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

Bounty law for
wolf scalps re-
pealed.

Section 1. That chapter fifty-seven of the general laws of 1862-63, entitled "An act providing bounties for wolf scalps," approved January 3, 1863, be and the same is hereby repealed.

Sec. 2. This act shall take effect from and after its passage and approval by the Governor.

Approved, January 12, 1864.

APPRENTICES.

CHAPTER VI.

AN ACT CONCERNING APPRENTICES.

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

Shall serve for
the time speci-
fied.

Section 1. Every person bound by indenture, of his free will, with the consent of his father, or if the father be dead, of the mother or guardian, and signified by such parent or guardian signing the same, or by the probate court, as hereinafter directed, to serve as clerk or apprentice, in any profession, trade, or employment, until the age of twenty-one years, or, if a female, until the age of eighteen years, or for a shorter time, shall be bound to serve the time specified in such indenture.

May bind him-
self.

Sec. 2. Any infant, having no parent or guardian, may, with the approbation of the probate court, endorsed on the indenture, bind himself an apprentice until he arrives at the age of twenty-one years, or, if a female, at the age of eighteen years.

Sec. 3. Upon the execution of every indenture of apprenticeship, the person to whom the apprentice is bound, shall make an affidavit that he will faithfully perform the duties required by the indenture and enjoined on him by law, which affidavit shall be indorsed on the indenture. Master to make affidavit.

Sec. 4. When the father has no legal capacity to give consent, or when he shall willfully have abandoned his family for six months, without making suitable provisions for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father was dead. Mother to have power in certain cases.

Sec. 5. Acts of incapacity, desertion or drunkenness, shall be decided in the probate court, by a jury, before the indenture shall take effect, and an indorsement on the indenture, under the seal of the court, if a seal has been provided, that the same are proved, shall be sufficient evidence of the mother's power to give such consent; but if the jury do not find the charge of incapacity, drunkenness or desertion to be true, the person at whose instance such proceedings may have been had, shall pay all costs attending the same. Fathers incapacity to be decided; how.

Sec. 6. When any poor child is, or may be, chargeable to the county, or beg for alms, or when the parents of such children are poor, and their father an habitual drunkard, or if there be no father, when the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, it shall be lawful for the probate court to bind such child an apprentice, if a male, until he arrives to the age of twenty-one years, and if a female, to the age of eighteen years. Probate court to bind apprentice.

Sec. 7. Every orphan or minor, who has not estate sufficient for his or her maintenance, may be bound by his or her guardian, under the order and direction of the probate court, and the indenture of binding such infant, shall be as effectual as if such infant were of full age; and the counterpart of such indenture shall, for the benefit of the infant so bound, be deposited in the office of the judge of probate before whom such binding shall take place, who shall preserve the same. Guardian to appoint apprentice.

Sec. 8. It shall not be lawful for any master to remove an apprentice out of this territory, and in all indentures by the Shall not remove apprentice.

probate court, for binding out any orphan or poor child as an apprentice, there shall be inserted, among other covenants, a clause to the effect, that every master to whom such child shall be bound, shall cause such child to be taught to read and write, and the ground rules of arithmetic, the compound rules and the rule of three, and at the expiration of his, or her, time of service, shall give him, or her, a new bible, a dictionary, arithmetic, English grammar, and ten dollars worth of religious books, and two new suits of clothes; if a male, to be worth forty dollars, and, if a female, to be worth thirty dollars, and fifty dollars in current money of the United States.

Apprentice to
be recompensed
—how.

Sec. 9. The probate court shall see [that] the terms of the indenture, and the covenants therein contained, be fulfilled, and that such child be not ill used; and the said court is hereby required to inquire into, and redress any grievances that may occur in the premises, in such manner as is prescribed by law.

Sec. 10. The age of every apprentice shall be inserted in the indenture.

When inden-
tures shall be
void.

Sec. 11. All indentures entered into otherwise than according to law, shall be utterly void, so far as concerns the apprentice therein bound.

Apprentices to
make complaint

Sec. 12. The probate court shall receive the complaints of apprentices who reside within the county, against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, want of instruction in their trade or profession, or that they are in danger of being removed out of this territory, or the violation of the indentures of apprenticeship; and may hear and determine such cases by a jury, and make such order therein as will relieve the party injured, in future.

Apprentice to
be discharged;
when.

Sec. 13. The probate court shall have power, when circumstances require it, to discharge an apprentice from his apprenticeship; and in case any money or other thing has been paid, or contracted to be paid by either party, in relation to such apprenticeship, the court shall make such order concerning the same, as shall seem just and reasonable. If the apprentice so discharged shall have been originally bound by the probate

court, it shall be the duty of the court, if judged necessary, again to bind such apprentice.

Sec. 14. The court shall, in like manner, hear and determine the complaint of masters against their apprentices, for desertion without good cause, misconduct or ill behavior, and may punish such apprentice according to the nature and aggravation of his offence; and if the offence be willful desertion, without cause, the court may, in addition to other punishments, order the apprentice guilty thereof, to make restitution by the payment of a sum not exceeding ten dollars, for each month he may be so absent, to be collected as other debts, after such apprentice shall have become of full age. The awarding of costs in the proceedings under this section shall be in the discretion of the court.

Masters may complain.

Sec. 15. If any apprentice shall abscond or depart from the service of his master, without leave, or shall rebel against or assault his master, any judge of probate or justice of the peace, on complaint made, and sufficient cause shown, on oath, by the master, or any one in his behalf, shall issue a warrant directed to any sheriff or constable within this territory, or any discreet and responsible person, to be named in the warrant, to execute the same in any part of this territory.

If apprentice abscond; to be reclaimed; how.

Sec. 16. If, upon the return of any such warrant, the probate court shall not be in session, it shall be the duty of the person serving the same, to carry the apprentice before some judge or justice of the peace of said county, who shall take bail for the appearance of the apprentice at the next term of the probate court, to answer to the complaint of the master. The costs of the process, service and other proceedings, shall be paid, in the first instance, by the master; but the court, upon the final hearing, may order such apprentice to make restitution of such costs, by service, after the expiration of the time for which he shall have been bound.

Duty of justice.

Costs to be paid—how.

Sec. 17. Every person who shall consult, persuade, entice or assist any apprentice to run away or absent himself from the service of his master, shall forfeit not less than twenty nor more than five hundred dollars, to be sued for and recovered, with costs, by such master, in any court having jurisdiction thereof.

Penalty for enticing apprentice to abscond.

Penalty for harboring runaway apprentice.

Sec. 18. Every person who shall entertain, harbor, or conceal any apprentice, knowing such apprentice to be runaway or to have absented himself from the service of his master, without leave, shall forfeit one dollar for every day's entertainment, harboring or concealing, to be sued for, and recovered by action of debt, with costs, by such master, in any court having jurisdiction thereof.

Executor may bind apprentice.

Sec. 19. The executor, who, by the last will of a father, is directed to bring up his child to some trade or calling, shall have power, with the consent of the mother, if living, to bind such child by indenture in like manner as the father, if living, might have done, or shall raise such child according to such direction, if consented to by the mother.

Apprentice not to be removed beyond Territory.

Sec. 20. If it shall appear to any probate judge or justice of the peace, upon the oath of any competent person, that any master is about to remove, or cause to be removed, any apprentice out of this territory, such probate judge or justice of the peace shall issue his warrant and cause such master to be brought before him; and if, upon examination, it shall appear that such apprentice is in danger of being removed without this territory, the said judge or justice may require the master to enter into recognizance with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice shall not be removed without this territory, and that said master will appear, with the apprentice, before the probate court, at the time fixed by the probate judge, and abide the decision of the court thereon, which recognizance shall be returned to the probate court; and the court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice.

If master fails to give surety, another appointed as custodian.

Sec. 21. If the master, when brought before the judge or justice, fails to enter into recognizance when required so to do, such judge or justice shall commit the custody of such apprentice to some other proper person, who will enter into recognizance.

Apprentice to be re-indentured in certain cases.

Sec. 22. Whenever any master of an apprentice shall wish to remove out of this territory, or quit his trade or business, he shall appear with his apprentice before the probate court of

the proper county; and if the court be satisfied that the master has done justice to said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice from the service of such master, and again bind him, if necessary, to some other person.

Sec. 23. Whenever any person shall become bound as an apprentice to two or more persons, and one or more of them die before the expiration of such term of service, the indenture shall survive to and against such survivor, and, in case of the death of all masters in any such indenture, before the expiration of the term of service, the executor or administrator shall bring the indenture and apprentice named therein, before the probate court of the proper county, and such court shall, if necessary, again bind such apprentice to some other person.

Apprentice if bound to two or more persons.

Sec. 24. This act shall take effect from and after its passage and approval.

When to take effect.

Approved, January 7, 1864.

CHAPTER VII.

AN ACT RELATIVE TO THE OFFICE OF ASSESSOR AND COLLECTOR OF TAXES.

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

Section 1. [That] the Sheriff of each County in the Territory of Dakota be, and the same is hereby declared to be Assessor and Collector of Taxes in and for said County.

Who is assessor or.

Sec. 2. All Laws conflicting with the provisions of the first section of this act are hereby repealed.

All laws in conflict repealed.

Sec. 3. This act shall take effect from and after its passage.
Approved, January 12th, 1864.

CHAPTER VIII.

AN ACT AUTHORIZING THE GOVERNOR TO APPOINT AN AUDITOR AND A TREASURER OF THE TERRITORY OF DAKOTA.

WHEREAS, Justus Townsend, Auditor and S. G. Irish, Treasurer of the Territory of Dakota, have each removed without the limits of said Territory; and whereas, the said offices of treasurer and auditor are without incumbents, therefore—

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

Auditor and treasurer declared vacant.

Section 1. That the respective offices of auditor and treasurer of the Territory, be, and the same are hereby declared vacant.

Governor authorized to appoint auditor.

Sec. 2. That the governor of the Territory is authorized, and it is hereby made his duty, to appoint and commission an auditor of the Territory to fill the unexpired term of Justus Townsend.

Appoint treasurer.

Sec. 3. That the governor of the Territory is authorized, and it is hereby made his duty, to appoint and commission a treasurer of the Territory to fill the unexpired term of S. G. Irish.

Auditor how to qualify.

Sec. 4. The said auditor, after being appointed and commissioned as provided by section two, shall, before entering upon the discharge of the duties of his office, execute and file the bond and take the oath of office, required of the auditor by the laws of the Territory. After doing this he shall perform all the duties and enjoy all the emoluments of said office that are now and may hereafter be required and allowed by law; and shall hold his said office until his successor is elected and qualified.

Treasurer how to qualify.

Sec. 5. The said treasurer, after being appointed and commissioned as provided by section three, shall, before entering upon the discharge of the duties of his said office, execute and file the bond and take the oath of office required of the treasurer by the laws of the Territory. After doing this, he shall perform all the duties and enjoy all the emoluments of said of-

office that are now and may hereafter be required and allowed by law; and shall hold his said office until his successor is elected and qualified.

Sec. 6. And be it further enacted, That when the United States government shall reimburse to the Territory of Dakota ^{Militia to be paid how.} the amount expended by the Territory for the support of the militia force called into service in 1862, for the public defense, before said treasurer shall be authorized to receive and receipt for said money or any portion thereof, he shall execute and file a bond, (in addition to the one mentioned in section five) to the Territory of Dakota, in the penal sum of double the amount of money to be received as before mentioned, with good and sufficient sureties, to be approved by the governor, conditioned the same as the bond required of the treasurer of the Territory, as now provided by law.

Sec. 7. This act shall take effect from and after its passage and approval.

Approved, December 30th, 1863.

BOOKS AND DOCUMENTS

CHAPTER IX.

AN ACT PROVIDING FOR THE DISPOSITION OF BOOKS AND DOCUMENTS THEREIN MENTIONED.

WHEREAS, the Secretary of the Interior did on the 27th day of April, 1863, forward by Adams' express, eleven boxes containing books and documents addressed to the Old Settlers Historical association, Yankton, Dakota Territory, care of P. Choteau, Jr., & Co., St. Louis, Mo., and whereas, Gregory Brothers, of Yankton, receipted for and paid the charges on said boxes, amounting to the sum of \$125, and said boxes and contents have ever since remained in the charge of said Gregory Brothers, and the said amount of charges remains due to

them: And whereas, said Old Settlers Historical association exists only in name, therefore—

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

Historical Society to pay for the books.

Section 1. That it shall be lawful for the Historical Society of Dakota, by its proper officer or officers to pay to said Gregory Brothers, the sum of one hundred and twenty-five dollars, being the amount of charges due them on said boxes.

When, and what books shall be delivered.

Sec. 2. That whenever the said Historical Society of Dakota shall pay the amount of charges as mentioned in the preceding section, the said Gregory Brothers, or whoever may have charge of the boxes of books mentioned above, shall deliver the same upon demand, to the librarian of the Historical Society of Dakota, as follows: Box No. 1, containing American Archives, 9 volumes, executive documents 2d session 33d congress, 10 volumes; Japan expedition 2 volumes, and Owen's geological report, 2 volumes. Box No. 2, containing Jefferson's works, 9 volumes; Adam's works, 10 volumes; N. E. boundary, 1 volume; census of 1850, 1 volume; Gellers report, 2 volumes; meteorological observations, 1 volume; Greenhow's Oregon and California, 1 volume; message and documents 2d session 36th congress, 3 volumes, and message and documents 2d session 37th congress, 4 volumes. Box No. 3, containing American state papers, 17 volumes. Box No. 4, containing annals of congress, 42 volumes. Box No. 5, containing old congressional documents, 62 volumes. Box No. 6, containing old congressional documents, 60 volumes. Box No. 7, containing documents of 33d congress, 85 volumes. Box No. 8, containing documents of 1st session of 35th congress, 56 volumes. Box No. 9, containing documents of 2d session of 35th congress, 49 volumes. Box No. 10, containing documents of 1st session of 36th congress, 55 volumes; and box No. 11, containing documents of 2d session of 36th congress, 33 volumes; and said books when so recieved as aforesaid shall remain with and belong to the said Historical Society of Dakota, and said books shall be incorporated with and compose a part of the public library of said society.

Books shall belong to D. H. S.

When to take effect.

Sec. 3. This act shall take effect from and after its passage and approval.

Approved, January 14th, 1864

COUNTIES

CHAPTER X.

AN ACT LEGALIZING THE ELECTION OF C. F. PICOTTE AND OLE SAMSON, AS COUNTY COMMISSIONERS OF YANKTON COUNTY.

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

Section 1. That the election of Chas. F. Picotte and Ole Samson to the respective offices of county commissioners of Yankton county, at the election held in said county on the seventh day of September, 1863, is hereby legalized.

Sec. 2. This act shall take effect from and after its passage and approval by the governor.

Approved, December 24, 1863.

CHAPTER XI.

AN ACT ATTACHING THE COUNTIES OF LINCOLN AND MINNEHAHA TO THE COUNTY OF UNION FOR ELECTION AND JUDICIAL PURPOSES.

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

Section 1. That the counties of Lincoln and Minnehaha be, and are hereby attached to the county of Union for election and judicial purposes.

Sec. 2. That all acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect from and after its passage.

Approved, January 15, 1864.

CHAPTER XII.

AN ACT CHANGING THE BOUNDARY LINES OF CHARLES MIX COUNTY, AND ESTABLISHING THE BOUNDARY LINES OF BUFFALO COUNTY, AND FOR OTHER PURPOSES.

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

- Charles Mix county, boundaries.** Section 1. That the district of country embraced within the following described boundaries shall be and is hereby declared to be Charles Mix county, to wit : Commencing at the confluence of Choteau creek with the Missouri river, thence along the line between the Yankton Indian Reservation and the county of Bon Homme, to the northwest corner of said county, thence north to the northwest corner of the county of Hutchinson, thence due west to the Missouri river, thence down the main channel of said river to the point of beginning.
- County seat.** Sec. 2. The town of Arshambo is hereby declared to be the county seat of Charles Mix county.
- Buffalo county, boundaries.** Sec. 3. That so much of the Territory of Dakota as is embraced within the following boundaries be and the same is hereby established into a county to be known as the county of Buffalo, to wit : Beginning at the northeast corner of Hutchinson county, thence on a line due north to the line of the lands ceded by the Yankton Indians to the United States government, thence along said line of ceded lands to the Missouri river, thence down the main channel of said river, to the northwest corner of Charles Mix county, thence east along the north boundary line of Charles Mix county to the point of beginning.
- Counties attached for judicial purposes.** Sec. 4. The said counties of Charles Mix and Buffalo shall be and are hereby attached to the county of Bon Homme for judicial purposes.
- Apportionment.** Sec. 5. The said county of Charles Mix shall constitute the fifth council and representative district, and shall be entitled to a representation of one member of the council and two members of the house of Representatives, and the said county of

Buffalo shall be attached to the county of Charles Mix for election and revenue purposes.

Sec. 6. This act shall not effect the right of John J. Thompson to the seat he now occupies in the council, from said district.

Sec. 7. Be it further enacted that, all citizens residing on the Yankton, Winnebago and Santee Sioux reservations, shall have all the rights, privileges and franchises allowed by law to citizens of this Territory, residing on the ceded lands.

Sec. 8. And be it further enacted that all acts and parts of acts conflicting with the provisions of this act. are hereby repealed. Conflicting acts repealed.

Sec. 9. This act shall take effect from and after its [passage and] approval. When to take effect.

Approved, January 6, 1864.

CHAPTER XIII.

AN ACT SUPPLEMENTARY TO AN ACT DEFINING THE BOUNDARY LINES OF TODD AND GREGORY COUNTIES, AND FOR OTHER PURPOSES.

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

Section 1. That all citizens residing on the Ponca Indian reserve and Fort Randall military reservation, shall have the right to vote at the established precincts of Todd county, and shall have all the rights, privileges and franchises allowed by law to citizens residing on the ceded lands, *Provided*, that no enlisted man or soldier shall be entitled to vote unless he was a resident of the said Territory at the time of his enlistment. Citizens residing on reservations be allowed right of suffrage

Sec. 2. This act shall take effect and be in force from and after its passage and approval. This act shall not conflict with the present election law. When to take effect.

Approved, January 15, 1864.

CHAPTER XIV.

AN ACT FOR THE ESTABLISHMENT OF UNION COUNTY, TO LOCATE THE COUNTY SEAT OF THE SAME, [AND] LEGALIZE THE ACTS OF CERTAIN COUNTY OFFICERS OF COLE COUNTY.

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

Boundaries of Union county.

Section 1. That the district of country embraced within the following described boundaries, shall be and is hereby declared to be the county of Union, to wit:

Commencing at the confluence of the Big Sioux with the Missouri river, and following up the main channel of said Missouri river to range line between fifty and fifty-one west; thence north on said range line to the northern boundary line of township ninety-five, north; thence east on said line to the Big Sioux river; thence down the main channel of said river to the place of beginning.

County seat.

Sec. 2. And the county seat of Union county be and the same is hereby located on the point of the bluff on the south-east quarter of the northeast quarter of section twenty-nine, township ninety-two, north, range forty-nine, west.

Not impair right of persons to seats in Council, &c.

Sec. 3. Nothing in this act shall interfere with the rights to seats in the Council, of M. M. Rich, J. O. Taylor, and John Mathers; but the county of Union shall constitute the first Council and Representative district, the same as the county of Cole did before the passage of this act.

Legalizing acts of certain.

Sec. 4. All the acts of William Frisbie, William Mathers, and John R. Wood, as county commissioners, M. M. Rich, register of deeds, and A. R. Phillips, judge of probate for the county of Cole, are hereby legalized.

When to take effect.

Sec. 5. All acts and parts of acts in conflict with [the provisions of] this act are repealed.

Sec. 6. This act shall take effect from and after its passage.

Approved, January 7th, 1864.

CHAPTER XV.

AN ACT LEGALIZING THE ACTS OF CERTAIN COUNTY OFFICERS OF CLAY COUNTY.

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

Section 1. That the official acts of William Shriner, Judge of Probate; and John Burgman, Gustav Jacobson, Halver Burgess, county commissioners; Aaron Carpenter, sheriff; Franklin Taylor, register of deeds, of Clay county, be, and are hereby declared, legal. Acts of county officers legalized

Sec. 2. That this act shall take effect from and after its passage and approval by the governor. When to take effect.

Approved, December 24th, 1863.

 COURTS

CHAPTER XVI.

AN ACT CHANGING THE TIME OF HOLDING THE UNITED STATES DISTRICT COURT IN THE FIRST AND SECOND JUDICIAL DISTRICTS.

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

Section 1. That the United States district court in and for the first judicial district, shall be held at the town of Vermillion, in the county of Clay, on the first Tuesday of April and November of each year. First district court; where held.

Sec. 2. That the counties of Yankton and Jayne, shall constitute the second judicial district, and the United States dis- Second district court; where held.

What districts
attached.

district court in, and for the same shall be held at Yankton on the third Tuesday of April, and the third Tuesday of November of each year, and all that portion of ceded land in said Territory not embraced in any other district, is hereby attached to said second judicial district for judicial purposes.

Sec. 3. All acts and parts of acts conflicting with this act, are hereby repealed.

When take
effect.

Sec. 4. This act shall take effect from and after its passage.

Approved, January 15th, 1864.

DEPOSITIONS

CHAPTER XVII.

AN ACT IN RELATION TO DEPOSITIONS.

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

Military officer
to take depositions.

Section 1. Whenever any suit shall be pending before any justice of the peace in this Territory, against any person or persons in the military service of the United States, commenced during the absence of such person or persons from this Territory, and while engaged in said service, said justice shall, upon the application of counsel for the defendant, issue a commission, directed to some field or commissioned officer in said service, directing him to take the deposition of such defendant, to be used as testimony in such case before said justice, and said justice shall adjourn said case until a reasonable opportunity shall have been afforded for the taking and return of such depositions.

Officer to administer oaths.

Sec. 2. In every such case the justice may, upon the application of either party, also issue a commission for taking the deposition of any person engaged in the military service of

the United States, to be used as testimony in such case, which commission shall be directed as aforesaid, and the officer to whom any commission shall be issued, in pursuance of this act, is hereby authorized to administer the requisite oaths.

Sec. 3. All such depositions shall be taken by interrogatories, to be filed by the counsel regulating the taking thereof, of which reasonable notice shall be given to the adverse party, and cross-interrogatories by such adverse party, with like notice to the other side. Depositions; how taken.

Sec. 4. Any commission issued as aforesaid, with the interrogatories and cross-interrogatories, shall be forwarded to the commissioner who shall make return of his proceedings to such justice, and shall be entitled to the fees allowed by law for taking depositions. Duty of commissioners; fees, &c.

Sec. 5. This act shall take effect from and after its passage and approval. When to take effect.

Approved, January 14th, 1864.

DIVORCE

CHAPTER XVIII.

AN ACT RELATIVE TO DIVORCE.

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

Section 1. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings. Marriages to be null and void when.

Sec. 2. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting there- Court to declare marriage null and void—when.

to, or, when the consent of either party shall have been attained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void, from the time its nullity shall be declared by a court of competent authority.

Either party may file complaint, for certain causes.

Sec. 3. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the district court of the county where the parties, or one of them, reside, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for divorce; and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Marriage may be declared legal.

Sec. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a complaint in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a judgment or sentence of the court; and such judgment, unless reversed on appeal, shall be conclusive upon all persons concerned.

Not to be adjudged void in certain cases.

Sec. 5. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under age of legal consent, if it shall appear that the parties after they had attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void, after his or her restoration to reason, if it shall appear that the parties freely cohabited together, as husband and wife, after such insane person was restored to a sound mind.

Not to be void in case of idiocy or insanity—in certain cases.

Sec. 6. A marriage shall, in no case, be adjudged a nullity on the application of a party capable of contracting, who entered into the marriage state with any person under the age of legal consent, for that cause, nor shall the marriage of a person capable of contracting, with any idiot or insane person, for that cause, be annulled on the application of such person thus capable to contract, if he or she knew of such idiocy or insanity at the time of such marriage.

Sec. 7. A divorce from the bonds of matrimony may be ad-

judged and decreed by the several district courts, on suit brought in the county where the parties, or either of them, reside, for either of the following causes:

1. Adultery;
2. For impotency;
3. When either party subsequent to the marriage, has been sentenced to imprisonment in the penitentiary, and no pardon granted, after a divorce for that cause, shall restore to the party sentenced, to his or her conjugal rights;
4. Where the treatment of the wife by the husband has been cruel and inhuman, whether practiced by using personal violence, or by any other means, or when the wife shall be guilty to her husband;
5. When the husband or wife shall have been [an] habitual drunkard for the space of one year immediately preceding the filing of the complaint;
6. When it shall be made fully to appear that from any other reason or cause existing, the parties cannot live in peace and happiness together, and that their welfare requires a separation.

Sec. 8. No divorce shall be granted unless the complainant shall reside in this territory one year immediately preceding the time of exhibiting the complaint; except for adultery, alleged to have been committed whilst the complainant was a resident of this territory, or unless the marriage was solemnized in this territory, and the applicant shall have resided therein from the time of such marriage to the time of exhibiting the complaint.

Sec. 9. In any suit brought for divorce, on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

1. When the offence shall appear to have been committed by the procurement or with the connivance of the complainant;
2. When the adultery charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offence;
3. When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have

causes for divorce.

Non-resident not to obtain divorce only in certain cases.

Court may deny a divorce when.

been brought within three years after the discovery by the complainant of the offence charged.

Proceedings to procure divorce

Sec. 10. A complaint for divorce, or for affirming or declaring the marriage contract void, may be exhibited by the wife in her own name, or by her next friend; and in all cases the defendant may answer without oath or affirmation. Application for a divorce shall be made to the district court of any county in this territory, and the proceedings shall be as follows:

1. The applicant shall file in the office of the clerk of the district court of the county, a complaint in writing containing the names and ages of the parties, and the name of the court in which the action is brought.

What complaint shall contain.

Sec. 11. Such complaint shall also contain a statement of the facts constituting the cause or grounds of the complaint, in ordinary concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

Complaint to be served, &c.

Sec. 12. A copy of such complaint must be served upon the defendant, with a notice to appear and answer to the same within thirty days after the service thereof; or such other notice as the court or judge may direct, shall be given for such reasonable time as the court or judge may direct; and like notice of the taking depositions shall be given in all cases.

Either party may claim trial by jury.

Sec. 13. If either party shall claim a trial by jury of the facts set forth in the petition, the court shall thereupon order a jury to be empanelled, in the same manner as a jury is empanelled for the trial of any civil action; when the jury is completed, it must be sworn to investigate the truth of the matters contained in the complaint, and to find a true verdict thereon, according to the evidence.

Proceedings—how conducted.

Sec. 14. The proceedings, on the trial of a complaint for a divorce, shall be conducted in the same manner as in the trial of a civil action, unless the complaint [shall] be filed upon the equity side of the court, in which case the proceedings shall be so far as may be without contravening the provisions of this chapter, according to the practice and usages of courts of equity.

Husband required to pay costs.

Sec. 15. In every suit specified in this chapter which shall be brought, the court may in its discretion require the husband

to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency, and it may adjudge costs against either party, and award execution for the same.

Sec. 16. After the exhibiting of a complaint, in a suit to annul a marriage, or for a divorce, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pending of the suit. Powers of court

Sec. 17. The court may in like manner on the application of either party, make such order concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of such suit, and may make such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper. Court may make order concerning children and property.

Sec. 18. Upon pronouncing a sentence, or granting a decree of nullity of marriage, and also upon granting a divorce, the court may make such further order as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain; having due regard to the age and sex of such children. Power of court.

Sec. 19. The court may from time to time afterwards on the petition of either of the parents, revise and alter such orders concerning the care, custody and maintenance of the children, or any of them, and make a new order concerning the same, as the circumstances of the parents and the benefits of the children shall require. Court may modify and change its order.

Sec. 20. Whenever the nullity of a marriage or a divorce from the bonds of matrimony, for any cause excepting that of adultery committed by the wife, shall be ordered, and when the husband shall be sentenced to imprisonment for life, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead. Wife to be entitled to property—in certain cases

Sec. 21. Upon every such a dissolution of marriage as is specified in the preceding section, the court may make a further order for restoring to the wife the whole or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof; and also the value of any Powers of court

real estate of the wife disposed of by the husband and wife during the coverture, to be paid by her husband in money; and such court may require the husband to disclose, on oath, what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof remains in his hands.

Duty and power of court.

Sec. 22. The court shall have power to appoint a trustee or trustees, whenever the same shall be deemed expedient, to receive any sum or sums of money ordered to be paid to the wife, upon trust to invest the same, and pay over the income for the support and maintenance of the wife, or of the wife and minor children of the parties, or any of them, in such manner as the court shall direct, or to pay over to the wife the principal sum in such proportions and at such times as the court shall order; regard being had in all such cases to the situation and circumstances of such wife, and also the children, if there be any, provided for in the order; and such trustees shall give such bond with surety as the court shall require, for the faithful performance of their trusts.

Court may order disposition of property.

Sec. 23. Upon every divorce from the bond of matrimony for any cause, excepting that of adultery committed by the wife, if the estate and property restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, or if there be no such estate and property, the court may further order to her such part of the personal estate of the husband, and such alimony out of his estate as it shall deem just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case.

Wife entitled to dower, when not guilty.

Sec. 24. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he were dead, and shall be entitled to right of dower in all other cases where she is not the guilty party.

Court may make allowances—when.

Sec. 25. In the case last mentioned, the court may, by order, allow the wife, for her subsistence, as much of her said

personal or real estate, or of the income thereof, as such court shall judge necessary.

Sec. 26. After an order for alimony, or other allowance for the wife and children, or either of them, and also after an order for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may from time to time, on petition of either of the parties, revise and alter such order respecting the amount of such alimony or allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting any of the said matters which such court might have made in the original suit.

Court may make any order deemed essential.

Sec. 27. The court shall, in all cases subject to the provisions of this chapter, regulate the division and distribution of the estate, real and personal, between the parties, and the allowance for the alimony to the wife, or to her and the minor children committed to her care and custody, according to the provisions of this chapter. But nothing contained in this chapter shall authorize the court to divest any part of their title to, or interest in, any real estate, further than is expressly specified therein.

Court shall regulate distribution of estate.

Sec. 28. When a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimized; the issue of marriages declared null in law shall nevertheless be legitimate.

Children become legitimate—how.

Sec. 29. When an order of divorce has been granted, and the parties shall afterwards intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of divorce, alimony, and subsistence which will not effect the rights of third persons.

Court revoke all decrees and orders, in certain cases.

Sec. 30. If any persons after being divorced from the bond of matrimony for any cause whatever, shall cohabit together before intermarriage, they shall be liable to all the penalties provided by law against adultery.

Persons become liable.

Sec. 31. Whenever an order of divorce from the bond of matrimony is granted in this territory, by a court of competent authority, such order shall fully and completely dissolve the

Court may change the name of female.

marriage contract as to both parties. And in all suits for a divorce brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court in its order shall decree or appoint.

Conflicting acts
repealed

Sec. 32. All acts and parts of acts inconsistent with the [provisions] of this act are hereby repealed.

When take ef-
fect.

Sec. 3. This act shall take effect from and after its passage and approval.

Approved, January 15, 1864.

ELECTIONS

CHAPTER XIX.

AN ACT TO REGULATE ELECTIONS, TO PRESCRIBE THE QUALIFICATIONS OF VOTERS, TO PREVENT ILLEGAL VOTING, AND TO PRESCRIBE THE CANVASS AND RETURN OF THE SAME.

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

Elections shall
be conducted—
how.

Section 1. That all elections hereafter to be held for Territorial, district, county, precinct and other officers, shall be held and conducted in the manner prescribed in this act.

election—when
held.

Sec. 2. That a general election shall be held in the several election precincts in this Territory, on the second Tuesday in October 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 legislature, judges of probate, district attorney, county commissioners, sheriffs, coroners, reg-

What officers to
be chosen.

isters of deeds, treasurers, justices of the peace, constables, and all other territorial, district, county and precinct officers, not herein enumerated, that may, by law be provided for.

Sec. 3. The several boards of county commissioners shall respectively, at least thirty days prior to the general election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of 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 of districts, and the register of deeds shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice in writing thereof, directed to the judges so appointed, and it shall be the duty of the said sheriff, within ten 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 of election, &c.

Sec. 4. 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 elections, at any election precinct within their respective counties.

Judges choose clerks.

Judges and clerks to act how long.

Sec. 5. The register of deeds of the several counties shall, at least thirty 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, 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 second Tuesday, 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.

Duty of register of deeds.

Form of notice.

D....., (as the case may be.) Signed A. B., register of deeds."

Sheriff's duty.

Sec. 6. The sheriff, to whom such notice shall be delivered as aforesaid, shall put up in three of the most public places in each town or district, the notice referring to such district, precinct, town, 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 two others at two of the most public places in that vicinity or settlement.

Vacancy in election board—how filled.

Sec. 7. If any person appointed to act as judge of 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, for that election with the same power as if appointed by the board of county commissioners.

Form of oath of judges and clerks.

Sec. 8. Previous to votes being taken, the judges and the clerk 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."

Who shall administer oaths.

Sec. 9. 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 book.

Polls to be opened and closed—at what time.

Sec. 10. 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 four o'clock in the afternoon of the

same day, at which time the polls shall be closed. Thirty minutes before the closing of the polls, 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.)

Sec. 11. That any board of judges who shall willfully and knowingly reject any legal vote, shall be subject to a fine of fifty dollars to be collected before any justice of the peace, for the use of common schools, on the complaint and proof of any person.

Penalty for rejecting legal vote.

Sec. 12. 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.

Form of ballot.

Sec. 13. 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.

Sec. 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 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, conformably to the laws of the United States, and of this Territory on the subject of naturalization,) that you have resided 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

Voter challenged shall take oath.

Form of oath.

Judges may re-
ject vote—when

take such oath so tendered, his vote shall be rejected, and after taking such oath, if the judges have good reason to believe that the person so offering to vote is not a legal voter, they may reject the same.

Penalty for vot-
ing illegally.

Sec. 15. If any person so offering such vote shall take such 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 upon conviction thereof, be confined in the county jail of said county, not more than six months nor less than one month, and if there is no jail in said county, he shall be confined in the nearest place kept for such purpose in this Territory, he shall also forfeit and pay into the county treasury of the county in which such action was held, for the use of common schools, a sum not exceeding five hundred dollars nor less than fifty dollars.

Judges to pro-
vide ballot box.

Sec. 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 lock and key.

Duty of judges.

Sec. 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.

Judges to re-
ceive ballot, &c.

Sec. 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 number the same to correspond with the number on the poll list opposite the name of the person casting said vote, and deposit it in the box.

Clerk to keep
poll list.

Sec. 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.

Sec. 20. At each adjournment of the polls, the clerks shall,

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.

Clerk to prepare poll list.

Sec. 21. The ballot box shall then be opened and the poll list placed therein; and said box shall then be locked, 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.

Manner of proceeding.

Manner of proceeding.

Sec. 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 polls; 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.

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

Duty of judges to challenge.

Sec. 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, and should no constable attend at such elections, the judges of elections 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 exceeding twenty days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailor 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.

Judges may appoint constables, &c.

When canvass
shall commence

Sec. 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 may be public, and shall be continued without adjournment until completed.

Rules in can-
vassing.

Sec. 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 shall be 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.

Manner of purg-
ing in case of
excess.

Sec. 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 as many ballots, unopened, as shall be equal to such excess.

Form of canvass

Sec. 28. The ballot and poll list 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 _____, 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."

Sec. 29. The judges of election shall then enclose and seal ^{Disposition of poll books.} one of the poll books, and, under cover, direct the same to the register of deeds 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 register of deeds, at his office, within three days after the closing of the polls, and the other poll book, together with the ballots and ballot box, deposited with the chairman of the board of county commissioners; and the said poll book shall be subject to inspection at any time thereafter, in case of a contest, or upon the order of a judge of the probate or district court.

Sec. 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 register of deeds, or any other person deputed for that purpose, shall fail or neglect to deliver such poll book to the said register of deeds, within the time specified 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 schools in said county, to be recovered by a civil action in the name of the county commissioners, in the district court, and be confined in the county jail not less than six months. ^{Penalty for failing to deliver poll book.}

Sec. 31. On the twentieth day after the close of any election, or as soon as all the returns are received, the register of ^{Duty of register of deeds.} deeds, taking to his assistance a majority of the county commissioners of the county, or the probate judge and one county commissioner, 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 one sheet; and it shall be the

duty of the said register of deeds, 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 register at his office; *Provided*, That when a tie shall exist between two or more persons for the council or house of representatives, the register of deeds shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten day's notice; and it shall be the duty of the register of deeds 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.

Proceeding in case of tie.

Sec. 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 register whose duty it is to compare the polls, shall give notice to the several persons so having the highest and equal number of votes, to attend at the office of the proper register, at the time to be appointed by the said register, 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 register shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided.

Register to transmit abstract of votes.

Sec. 33. The register of deeds 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, to canvass the votes 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

Duty of territorial canvassers.

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 canvassers be a candidate to congress, such person shall take no part in the canvass of said votes.

In case of tie, governor or order new election.

Candidate to take no part in canvass.

Sec. 34. If the returns of election of any organized county in this territory shall not be received at the office of the secretary of the territory within thirty days after the day of election, the said secretary shall forthwith send a messenger to the register of deeds 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 the said register.

When returns not received in thirty days, Secretary to send messenger.

Sec. 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, sheriff, probate judge, register of deeds, 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 member 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 of election 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 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.

Proceedings in case of vacancy or resignation of any officer.

Duty of registers, where two counties are attached.

Sec. 36. When two or more counties are united in one council or representative district, the register of deeds of the county last established shall, within thirty days after the day of election, attend at the office of the register of deeds of the senior county, and in conjunction with the register of the senior county, or counties, shall compare the votes given in the several counties comprising such council or representative districts, and said registers shall immediately make out a certificate of the person or persons having the highest number of votes in such counties, for 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 register of deeds of the senior county, at his office.

Duty of Governor and register in case of vacancy.

Sec. 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 register of deeds, 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 register of deeds 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.

Pay of judges and clerks.

Sec. 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 the person carrying the poll books from the place of election to the register's office, the sum of five cents per mile for going and returning.

Relative to vacancies.

Sec. 39. If a vacancy, shall occur in the council or house of representatives in 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 such election who does not at the time reside within the limits of the organ-

ized 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.

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

Vacancies—returns how made

Sec. 41. No election returns shall be refused by any register of deeds 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 register, and a certificate given to the person or persons who may, by such returns, have the greatest number of votes.

Returns not refused owing to informality.

Sec. 42. If any judge or clerk of election, or register of deeds, 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, which money, when collected, shall be for the support of the common schools in said county.

Penalty for violating official duty.

Sec. 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.

When term of office shall commence.

Sec. 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.

Officers may qualify—when.

Highest number
of votes elects.

Sec. 45. 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.

Electors exempt
from civil pro-
cess.

Sec. 46. 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.

Duty of register
of deeds.

Sec. 47. The register of deeds shall not construe the statutes concerning the canvassing of the election returns, so as to decide all matters of law and fact himself, but the register aforesaid, and the persons called 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 name 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 at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office, and punished accordingly.

Duty of register
and other offi-
cers.

Sec. 48. It shall be the duty of the register of deeds, 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 election, the manner of conducting elections and the penalties imposed for offenses; also containing blanks for all entries required to be made in the said poll books, at the time the said register delivered notice 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 or cause the same to be delivered to the clerks on the day of election.

Manner of pro-
ceeding with
voters in mili-
tary service.

Sec. 49. Any citizen of Dakota Territory, who was, at the time of his enlistment, a qualified voter of the same, shall not be deprived of his right to vote because he is in the military service of the United States: *Provided,* He resided in and

was a qualified elector of said territory at the time he entered the military service. At least thirty days prior to any general election, provided for in this act, it shall be the duty of the governor to appoint one commissioner for each company of troops that Dakota may, at that time, have in the military service of the United States. And it is hereby made the duty of such commissioner or commissioners after being notified of his appointment, to visit the company for which they were appointed respectively: *Provided*, Said company of troops be, on the day of election, within the limits of the ceded lands of said territory; and on the day fixed by law for such election, said commissioner shall open an election polls, and receive the votes of all persons authorized to vote by this section for all of the following officers that are to be elected at said election, to wit: delegate to congress, territorial officers, county officers, and members of the council and house of representatives of the legislative assembly. Each voter under this section, will be authorized to cast his vote for members of the legislative [assembly;] and county officers of the district and county in which he was a legal voter at the date of his enlistment. The said commissioner shall keep poll books, and number and preserve the tickets, as required in other cases. Should any person, offering to vote, be challenged, or should the commissioner doubt the qualifications of such person, he shall administer to said person the following oath or affirmation: "You do solemnly swear (or affirm) that 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 the Territory of Dakota, on the subject of naturalization;) that you had resided in said Territory ninety days, and in (name the county for which he claims to vote) county twenty days next preceding the day on which you enlisted in the military service of the United States; that you are a member of company (give the letter) Dakota cavalry, or infantry, as the case may be, under captain (name the captain of said company), and that you have not voted at this election, so help you God;" and if any person so challenged, shall refuse to take such oath so tendered, his vote shall be rejected; and after taking such oath, if the commissioner is

Manner of proceeding with voters in military service.

Manner of proceeding with voters in military service,

still of the opinion that such person is not a qualified voter under the provisions of this section, he shall reject said vote; and any person who shall take such oath falsely, or who shall vote without possessing the qualifications required by this section, shall suffer the same punishment, and pay the same fines prescribed in other cases by this act. After all the officers and privates of said company, who are entitled to vote at said election, shall have had an opportunity to vote, the commissioner shall make out an abstract of all the votes cast for territorial officers, and delegate to congress, specifying the the name of the person voted for, the office, and the number of votes received by him. He shall in like manner make out an abstract of the votes cast for members of the legislature, and county officers, and shall certify the same under oath, which abstract he shall deliver to the Secretary of the Territory, within fifteen days after such election. And the territorial canvassers shall receive and count the returns so made for delegate to congress, and territorial officers, the same as other returns. And it shall be the duty of the Secretary of the Territory to make out an abstract of the returns for each county and district, and forward the same by mail to the several registers of deeds for whose counties returns have been made to him, by virtue of this section. And the county canvassers of the several counties shall receive and count the returns so made, the same as other returns.

Rights of voters

Sec. 50. And all legal voters in this Territory, residing in an organized county, 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 voters living in unorganized counties, shall vote in the organized counties to which their unorganized counties are respectively attached for election purposes.

Who shall be voters.

Sec. 51. Every free white male person above the age of twenty-one years, who shall have been a resident of the Territory ninety days, and twenty days in the county, next preceding the election, who is a citizen of the United States, or who has declared upon oath his intention to become such, and shall have taken an oath to support the constitution of the United States, and persons who have been declared by law to be citi-

zens of the Territory, 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 in the said Territory.

Sec. 52. That chapter thirty-two of the code, and all other acts or parts of acts conflicting with the provisions of this act, are hereby repealed. Conflicting acts repealed.

Sec. 53. This act shall take effect from and after its passage when take effect and approval.

Approved, January 14, 1864.

FEES OF OFFICERS.

CHAPTER XX.

AN ACT ESTABLISHING THE FEES OF OFFICERS.

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

Section 1. For the services mentioned in this chapter hereinafter, done or performed in the several counties of this Territory, by the officers thereof, or in any proceeding authorized by law, the fees hereinafter prescribed, shall be allowed. Fees of officers.

Sec. 2. The fees of the clerks of the district courts for any services herein specified to be rendered by them, shall be as follows: Fees of clerk of district court

For issuing and sealing every writ, when filled up by the clerk, one dollar; and each exemplification or certificate, when required, fifty cents.

Entering the return of every writ and filing such writ, fifteen cents per each folio.

Entering an appearance and retraxit, discontinuance, nonsuit, or default, twenty-five cents.

Entering every rule in term, founded on motion, fifteen cents for each folio; entering every other rule or order, fifteen cents

Fees of clerk
of district court

for each folio; for certified copies of rules, the same fees as for entering such rules.

Every report upon an assessment of damages, or other matter referred to him, fifty cents.

Every certificate, except papers copied and paid for by the folio, twenty-five cents; for calling and swearing a jury, fifty cents; for swearing each witness on trial, ten cents; for swearing officers who take charge of juries, ten cents.

Entering every recognizance, fifty cents.

Entering every cause in a calender for the court, and making a copy thereof for the bar, ten cents.

Receiving and entering a verdict, twenty-five cents.

Entering every cause or suit without process, fifty cents.

Certified copy of the minutes of a trial, when required, fifty cents.

Entering every final judgment, fifteen cents for each debtor.

Drawing a special jury in any case, fifty cents.

Reading and filing a habeas corpus, certiorari or writ of error, twenty-five cents.

For a subpoena, summons, or execution, when issued by a clerk on request, and sealing the same, fifty cents.

Filing a complaint or other pleading on affidavit, or other papers or proceedings, ten cents.

Copies and exemplifications of records and of pleadings to be returned on writ of error or certiorari; copies and exemplifications of all records, pleadings and proceedings furnished on request, fifteen cents for each folio.

Searching the records on file in his office, if a copy is not required, twenty-five cents for the records or files of each year, except for officers of the court.

Receiving and filing the papers of an insolvent, ten cents for each paper filed; copies of such papers, fifteen cents for each folio.

Entering an appeal from justices' courts, fifty cents.

For each blank writ furnished to attorneys with seal for the same, twenty-five cents.

Entering a surrender of bail, twenty-five cents.

Issuing a commission to take depositions, one dollar.

Issuing a venire facias, seventy-five cents; certificate of ju-

rors' or constables' attendance at court, to be paid from the county treasury, each fifteen cents. Fees of clerk of district court.

Entering forfeiture of recognizance, twenty cents.

Entering a discharge of bail, twenty cents.

For entering a declaration to become a citizen of the United States, fifty cents.

For a certified copy of such declaration, under the seal of the court, seventy-five cents.

For entering the final admission of an alien to the rights of citizenship, fifty cents.

For a certified copy thereof under seal of court, seventy-five cents.

For making docket entries of judgments, fifteen cents for each judgment debtor.

Filing and docketing a transcript of judgment from any other county, the same fees as for docketing those originally in his own county.

For docketing, entering the return of, and filing execution, one dollar.

Attendance on court for each day of actual session, to be paid from the county treasury, five dollars.

Sec. 3. The above fees of the clerk of the district court must be paid in advance, except when payment is due from the Territory or county, unless ample security is given, to be approved by the clerk for the payment thereof, when the suit is determined. Fees paid in advance—when.

Sec. 4. When security is given, as contemplated in the preceding section, if the money is not paid at the stipulated time, the security shall be treated as an authority to confess judgment for the proper amount. And the clerk must enter up judgment, either in term time or vacation, and issue execution thereon accordingly. Duty of clerk in certain cases.

Sec. 5. In criminal cases, when the defendant is adjudged to pay the costs, the clerks of the district courts must charge fees as follows: Fees in criminal cases.

On an indictment for a misdemeanor, five dollars; where there is a trial by the court, eight dollars; when by jury, two dollars. In cases of indictment for a felony, double the above

Fees in criminal cases. fees may be charged. In cases of appeals, the same fees in all respects, as are allowed in appeals in civil actions.

FEES OF JUDGES OF PROBATE.

Fees of Judge of probate. Sec. 6. For granting letters of administration, when not contested or approved, three dollars; when contested, five dollars.

Hearing any complaint, petition or action, two dollars.

Hearing any application for the appointment of a guardian, two dollars; appointing of a guardian, one dollar; and when one shall be appointed for more than one person at the same time, fifty cents for each person after the first, for whom such guardian shall be appointed.

Decree of probate of a will, when not contested, two dollars; when contested, five dollars.

Decree for settling an estate, ten dollars.

Partition of real estate, two dollars and fifty cents.

Warrant to appraise and divide an estate, two dollars.

Issuing a commission to examine and allow claims against an estate, two dollars.

Ordering an allowance to widows, or children under seven years of age, two dollars.

Approving securities of executors or others, one dollar.

Appointment of agents on real estate, one dollar and fifty cents.

Each order for sale of real estate to pay debts of an estate, two dollars.

Each order for sale of personal estate, one dollar.

Order for publication of any notice, or any ordinary order in proceeding before him, one dollar.

Granting reference of accounts of executors or administrators, or allowing report thereon, one dollar.

Disallowing applications for letters of administration or probate of will, to be paid by the party applying, two dollars.

For a warrant to set off dower, one dollar and fifty cents.

For proportioning an insolvent estate among the creditors, two dollars and fifty cents.

Order for distribution, two dollars.

Extending time for settling an estate, one dollar.

Examining and allowing claims against an estate, one dollar.

For ordering and drawing a quietus, one dollar.

Fees of judge of probate

For examining an inventory, if allowed, fifteen cents for each folio.

Administering an oath to an administrator or other person, certifying the same when necessary, twenty-five cents.

Examining and allowing accounts of executors, administrators, or other persons, ten cents per folio.

For each citation, summons or other process, twenty-five cents.

Approving and filing a bond given, or an appeal, fifty cents.

Each order to divide an estate among heirs, or to set off dower, fifty cents.

Entering and filing a caveat, twenty cents.

Entering the accounts of an executor, administrator, or guardian, fifteen cents for each folio.

Searching the records or files in his office, for each year, twenty-five cents.

Recording wills and the proof thereof, letters of administration, of guardianship, and every other matter required to be recorded, fifteen cents for each folio, and when any will or other matter, is in any other than the English language, twenty cents.

For a translation of any will from any other than the English language, twenty-five cents for each folio.

Copies and exemplifications of the probate of a will or of letters testamentary, or of administration, or of any other proceedings or order, had or made before him, or of any other papers filed or recorded in his office, transmitted on appeal, or furnished on request to any person, fifteen cents for each folio.

FEES OF EXECUTORS AND ADMINISTRATORS.

Sec. 7. For actual service, and in lieu of all other fees, two dollars per day and one dollar for each half day, and their actual and necessary disbursements for the benefit of the estate; but the probate court may allow the executors and administrators, in cases of unusual difficulty or responsibility, such further sum as the judge may deem reasonable.

Fees of executors and administrators.

FEES OF WITNESSES.

Fees of witnesses

Sec. 8. For attending in any suit or proceeding, per day, in a court of record, two dollars for each day, and one dollar for each half day.

For attending in any justices' court, or before any officer, person, or board authorized to take the examination of witnesses, two dollars for each day, and one dollar for each half day.

For traveling, at the rate of ten cents per mile in coming to the place of attendance, to be estimated from the residence of such witness, if within the Territory; or from the boundary line of this Territory, which such witness passed in coming, if his residence be out of the Territory.

For the secretary of the Territory, treasurer, auditor, clerk, register of deeds, county surveyor, or judge of probate, attending on a subpoena requiring the same with bills recorded, or other written evidence, shall be entitled to two dollars per day, and for traveling, at the rate of ten cents per mile, coming from the residence of such witness.

FEES OF SHERIFF.

Fees of sheriff.

Sec. 9. For serving a summons, replevin, or any process issued by a court of law, or a subpoena to appear and answer in chancery, one dollar when service is made on one defendant, and for the service on each additional, fifty cents.

For traveling, in making such services, ten cents per mile, only to be computed in all cases from the court house in the county where service is made, or from the place where the court has usually been held.

For taking a bond of plaintiff in replevin, or taking a bond on the arrest of a defendant, or in any other case where he is authorized to take the same, fifty cents.

For a certified copy of such bond, when requested, twenty-five cents.

For a note of every capias delivered to a defendant, on request, ten cents.

For a copy of every summons or complaint served by him, when made by the sheriff, ten cents for each folio.

For a copy of every other writ when demanded or required by law, fifteen cents.

For serving an attachment for the payment of money or an execution for the payment of money, or a warrant issued for the same purpose, and directed to him by the county treasurer or county commissioner for the collecting of the sum of two hundred and fifty dollars or less, four per cent. Fees of sheriff.

For any sum more than two hundred and fifty dollars, two per cent.

Advertising goods or chattels, lands or tenements, for sale on an execution, if the sale be made, one dollar.

If the execution be stayed or settled after advertising and before sale, fifty cents.

The fees allowed by law, and paid to any printer, by such sheriff, for publishing any advertisement for the sale of any real estate, for not more than six weeks, and for publishing the postponement of any such sale, shall be paid by the party requiring the same.

Fees herein allowed by the service of an execution, and advertising thereon, shall be collected by virtue of such execution, in the same manner as the sum therein denoted to be levied; but when there shall be several executions against the defendant at the time of advertising his property in the hands of the same sheriff, there shall be but one advertising fee charged on the whole, and the sheriff shall select on which execution he shall secure the same.

For every certificate on the sale of real estate, fifty cents, and for each copy thereof twenty-five cents, which together with the register's fees for filing the same, shall be collected as fees on execution.

For drawing and executing a deed pursuant to a sale of real estate, one dollar to be paid the grantee in such deed.

For serving a writ of possession, or of restitution, putting any person entitled into possession of premises, removing the occupant, one dollar, and the same compensation for traveling as is herein allowed on other writs.

Taking a bond for the liberties of the jail, fifty cents.

Summoning a jury upon a writ of inquiry, attending such jury and making and returning the inquisition, one dollar and fifty cents.

Summoning a special jury struck pursuant to an order of the

Fees of sheriff: court, and returning the panel, one dollar and twenty-five cents.

Bringing up a person upon a habeas corpus, to testify or answer in any court, one dollar, and for traveling each mile from the jail fifteen cents.

For attending any court with such prisoner, one dollar and fifty cents per day, and actual necessary expenses.

Bringing up a person upon a habeas corpus, with the cause of his arrest and detention, one dollar, and for each mile traveled from the jail, fifteen cents.

Attending before any officer with a prisoner for the purpose of having him surrendered in exoneration of his bail, or attending to receiv[ing] a prisoner so surrendered, who was not committed at the time, and receiving such prisoner in his custody in either case, one dollar and fifty cents.

Attending a trial when ordered by the court, one dollar and fifty cents per day, including the time occupied in going and returning.

Serving an attachment upon any ship, boat, or vessel in proceedings to enforce a lien thereon created by law, one dollar, with such additional compensation for his trouble and expenses in taking possession of and for serving the same as the officer issuing the same shall certify to be reasonable.

For making and returning an inventory, and appraisal of property attached in any case, one dollar and fifty cents for each day actually employed, and seventy-five cents for each half day, and for drafting the inventory, twenty-five cents for each folio, and for copying the same, ten cents for each folio.

For selling any ship, boat, or vessel, or the tackle, apparel and furniture thereof so attached, and for advertising such sale, the same fees as for sales on executions.

For giving notice of any general or special election to the inspectors of the different townships and wards in the county, twenty-five cents each, for each copy of notice, and ten cents for traveling one way, and expenses of publishing such notice as required by law, such fees and expenses to be paid by the county, as other contingent expenses thereof.

For any services which may be rendered by a constable, the fees as are allowed for such services to a constable.

For summoning grand or petit juries to attend the district court, fifty cents for each juror summoned. Fees of sheriff.

Serving a subpoena for a witness, fifty cents for each witness summoned, and ten cents for each mile actually traveled in going, but when two or more witnesses live in the same direction, traveling fee shall be charged only from the farthest.

For mileage on every execution, ten cents a mile for going, to be computed from the court house in [the] county.

For selling lands on a foreclosure of a mortgage by advertisement, and executing a deed to the purchaser, and for all services required on such sale. three dollars.

FEES OF CORONERS.

Sec. 10. For all services rendered by them, the same fees as Fees of Coroner are herein allowed to sheriff for similar services.

For confining a sheriff in any house on a civil process, one dollar, for each day, to be paid by such sheriff before he shall be entitled to be discharged from such confinement, unless otherwise ordered by the court.

FEES OF CONSTABLES.

Sec. 11. For serving a warrant or other writ, not being provided for, on each person named therein, twenty-five cents. Fees of constables.

For copy of every summons delivered on request, or left at the place of residence of the defendant, fifteen cents.

For serving a summons or subpoena on each party or name therein, twenty cents.

For serving an attachment, fifty cents.

For each copy of an attachment, twenty cents.

For each copy of inventory of property seized on an attachment, twenty cents.

For issuing summons on garnishee, fifty cents.

For a copy of an affidavit or other paper not otherwise enumerated, ten cents per folio.

For posting up each notice, twenty cents.

For each mile actually traveled to serve any process, to give or post up notice, ten cents.

Committing to prison, fifty cents.

For summoning a jury, one dollar.

FEES OF OFFICERS.

Fees of constables.

- For writing a list of the jurors, twenty cents.
- For attending a jury, fifty cents.
- On all sums made on execution and paid over, charged upon defendant, five per cent.
- For notifying a plaintiff of a service of a warrant or summons or attachment returnable, fifteen cents.
- For serving every writ of replevin, fifty cents.
- For summoning and swearing appraisers, and taking appraisement, one dollar.
- For taking and approving security in any case, twenty-five cents.

Sec. 12. When the services mentioned in the last section are performed by any other person, the same fees shall be allowed as constables receive, and no more.

FEES OF NOTARIES PUBLIC.

Fees of notary public.

- Sec. 13. For drawing a copy of protest of the non-payment of a promissory note, or bill of exchange, or of the non-acceptance of such bill, one dollar, in the case where by law such protest is necessary, but in no other case.
- For drawing a copy of any protest, fifty cents.
- For drawing a copy and serving every notice of non-payment of note, or non-acceptance of a bill, fifty cents.
- For drawing any affidavit or other paper or proceeding for which provision is not herein made, twenty-five cents for each folio, and copying the same, ten cents for each folio.
- For taking the acknowledgment of deeds, and for other services, authorized by law, the same fees as are allowed to other officers for similar services.

FEES OF JUSTICES OF THE PEACE.

Fees of justices of the peace.

- Sec. 14. For a summons, warrant, or subpoena twenty-five cents.
- For a venire for a jury, twenty-five cents.
- For a warrant in a criminal case, twenty-five cents.
- For taking a recognizance of bail, twenty-five cents.
- For administering an oath, fifteen cents.
- For certifying the same when administered out of court, fifteen cents.
- For a writ of attachment, twenty-five cents.

- For entering a judgment, twenty-five cents.
- For every judgment, fifteen cents.
- For every bond, recognizance, or security, directed by law to be taken and approved by the justice, twenty-five cents.
- For swearing a jury, twenty-five cents.
- For taking an examination, deposition, or confession, per folio, fifteen cents.
- For copy of proceedings of any paper, or examination in any case, when demanded, fifteen cents per folio.
- For entering a satisfaction of judgment, twenty five cents.
- For entering amicable suit, without process, twenty-five cents.
- For a transcript of judgment, twenty-five cents.
- For opening a judgment for re-hearing, twenty-five cents.
- For filing every paper required to be filed, ten cents.
- For issuing notice to take depositions, twenty-five cents.
- For taking recognizance, certifying oath or affidavit, and making return to an appeal, seventy-five cents.
- For making return to writ of certiorari, per folio, fifteen cents.
- For a search warrant, twenty-five cents.
- For every affidavit or other paper drawn by a justice, for which no allowance is made by law, per folio, fifteen cents.
- For a commitment to jail, twenty-five cents.
- For an order to bring up prisoner, twenty-five cents.
- For an order to discharge prisoner, issued to jailer, twenty five cents.
- For discharging a prisoner after a hearing on motion to discharge, twenty-five cents.
- For an execution, twenty-five cents.
- For every other writ, not herein enumerated, twenty-five cents.
- For taxing costs, fifteen cents.
- For marrying and making return thereof, one dollar and fifty cents, and such other sum as may be allowed by the party making the application.
- For holding an inquisition in cases of forcible entry and detainer, in addition to other fees, one dollar.

Fees of justices
of the peace.

For taking and certifying the acknowledgments of a deed, for each grantor named therein, twenty-five cents.

For traveling to perform any duty, when not otherwise provided for, and such travel is necessary, ten cents per mile for going only.

FEES OF REGISTER OF DEEDS.

Fees of register
of deeds.

For entering and recording any deed or other instrument, ten cents per folio, to be paid when the same is left for record.

For every certificate, twenty-five cents.

For copies of any records or papers, when required, ten cents for each folio.

For recording any deed or other paper in any other than the English language, twenty cents for each folio.

For every entry of a discharge of a mortgage, in the margin of the record, twenty-five cents.

For filing every other paper, and making an entry thereof, when necessary, ten cents.

Searching for every such paper on request, five cents for every such paper examined.

For searching the records, ten cents.

Table of fees to
be posted in of-
fice.

Sec. 16. Every officer whose fees are hereinbefore ascertained, limited and appointed, shall publish and set up in his office fair tables of his fees, according to this chapter, for the inspection of all persons who have business in such office.

Fees of this
chapter to apply
—when.

Sec. 17. The allowance of any fees by this chapter, shall not apply to any case where special provision is otherwise made by law for any particular service, but the fees for such service shall be such as are provided in the statute requiring the service or providing the compensation therefor.

The term folio—
how construed.

Sec. 18. The term folio, when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every figure necessarily used as a word; and any portion of a folio, when in the whole draft or paper there shall not be a complete folio, and when there shall be an excess over the last folio, shall be computed as a folio.

Officer shall not
receive greater
fee or reward.

Sec. 19. No judge, clerk, justice, sheriff, or any other officer whatever, or other person to whom any fees or compensation shall be allowed by law for any service, shall take or receive

any other or greater fee or reward for such services but such as is or shall be allowed by the laws of this Territory.

Sec. 20. Prospective costs may be charged and taxed for filing decree and for one execution. Prospective costs charged—when.

Sec. 21. Every officer upon receiving any fees for any official duty or service shall, if required by the person paying the same, make out in writing, and deliver to such person a particular account of such fees, specifying for what they respectively accrued, for which he shall receive payment by the folio, and shall give the same receipted to the party asking the same. Officer shall make out list of fees when required.

Sec. 22. That all acts and parts of acts, so far as they conflict with this act are hereby repealed. Conflicting acts repealed.

Sec. 23. This act shall take effect from and after its passage and approval. When take effect

Approved, January 14, 1864.

GUARDIANS

CHAPTER XXI.

AN ACT PROVIDING FOR THE APPOINTMENT OF GUARDIANS, AND PRESCRIBING THEIR DUTIES.

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

Section 1. The father is the natural guardian of the persons of his minor children. If he dies or is incapable of acting, the mother becomes the guardian. Who is natural guardian.

Sec. 2. The natural and actual guardian of any minor child may, by will, appoint another guardian for such minor. If, without such will, both parents be dead or disqualified to act as guardian, the probate court may appoint one. Who may appoint guardian.

Probate court
must appoint
guardian—when

Sec. 3. Although the parents are living and of sound mind, yet if the minor has property not derived from either of them, a guardian must be appointed by the probate court to manage such property.

Father or moth-
er may be ap-
pointed.

Sec. 4. The father, or, in case of his death, absence or incapacity, the mother may be appointed the guardian to take charge of the property of his or her minor child, if deemed, by the court, a suitable person for that purpose.

Minor may se-
lect guardian—
when.

Sec. 5. If the minor be over the age of fourteen years and of sound intellect, he or she, may select his, or her, own guardian, subject to the approval of the court.

Guardians must
give bond and
take oath.

Sec. 6. Guardians appointed to take charge of the property of the minor must give bond, with surety, to be approved by the court, in a penalty double the value of the personal estate, and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as such guardians, according to law. They must also take an oath of the same tenor, as the condition of the bond.

Guardians must
make out inven-
tory.

Sec. 7. Within forty days after their appointment, they must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the judge of probate of the proper county.

Guardians have
same power as
parents.

Sec. 8. Guardians of the persons of minors have the same power and control over them that parents would have if living.

Duty of guar-
dians.

Sec. 9. Guardians of the property of minors must prosecute and defend for their wards. They must, also, in other respects manage their interests, under the direction of the probate court; they may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards.

Concerning mi-
nor's property.

Sec. 10. When not in violation of the terms of a will by which a minor holds his, or her, real property, it may, under the direction of the probate court, be sold or mortgaged on the application of the guardian, either when such sale or mortgage is necessary for the minor's support or education, or when his, or her, interest will thereby be promoted by reason of the unpro-

ineffectiveness of the property, or of its being exposed to waste, or of any other peculiar circumstances.

Sec. 11. The petition for an order to dispose of or mortgage the property of the minor, must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor, at least ten days prior to the time fixed for such application.

Form of petition to dispose of minor's property.

Sec. 12. The probate court, in its discretion, may direct a postponement of the matter, and may order such further publication, through the newspapers or otherwise, as it may deem expedient.

Court may direct postponement.

Sec. 13. The court may, also, direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for.

Court may direct reference.

Sec. 14. Before any such sale or mortgage can be executed, the guardian must give security, to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold, or of the money to be raised by the mortgage, conditioned that he will faithfully perform his duty in that respect and account for and apply all moneys received by him under the direction of the court.

Guardian to give security—when.

Sec. 15. When the application for the sale of property is resisted, the court may, in its discretion, award costs to the prevailing party, and may when satisfied that there was no reasonable grounds for making the application, direct the costs to be paid by the guardian from his own funds.

Court may award costs.

Sec. 16. Deeds may be made by the guardian in his own name, but they must be returned to the court, and the sale or mortgage be approved before the same are valid.

Deed.—how made, &c.

Sec. 17. The same rules that are proscribed in the sale of real property by executors and administrators shall be observed in the sales under the provisions of this act as far as applicable.

What rules shall apply.

Sec. 18. A failure to comply with any order of the court in relation to the guardianship, shall be deemed a breach of the condition of the guardian's bond, which may, accordingly, be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor if needs-

In case of failure to comply with order of court—what penalty.

sary. The court may, also, commit him to jail until he complies with such order.

Guardians must
make returns
when.

Sec. 19. Guardians of the property of minors must account, on oath, annually, or oftener, if required by the court. It may, also, direct them to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the record.

Sec. 20. When a new guardian is appointed, the court may order the effects of the minor, which are in the hands of his predecessors, to be delivered up to such new guardian.

Relative to for-
eign guardians.

Sec. 21. The foreign guardian of any non-resident minor may be appointed the guardian of such minor by the probate court of the county wherein such minor has any property, for the purpose of selling or otherwise controlling that and all other property of such minor, within this territory.

How appointed.

Sec. 22. Such appointment may be made, upon his filing, in the office of the probate judge of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify, like other guardians, except as in the next succeeding section is prescribed.

Duty of court.

Sec. 23. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign State or Territory, if the court is satisfied with the sufficiency of the amount of the security, it may dispense with the filing of an additional bond.

Compensation
for guardian.

Sec. 24. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for which the allowance was made, must be entered upon the records of the court.

Court may ap-
point guardians
of half breeds.

Sec. 25. The probate court may, in like manner, as is provided for in other cases by this act, appoint guardians of the persons and guardians of the property of half-breed minors, or infants of mixed blood.

Same.

Sec. 26. Whenever it is made to appear to the satisfaction of the probate judge that a half-breed minor, or an infant of mixed blood, residing within said county, has real or personal property, or is in receipt of, or is entitled to, an annuity from the United States, or has script for an amount of land, it shall

be the duty of the probate court to appoint a suitable guardian of the property of said half-breed child.

Sec. 27. Guardians appointed under the provisions of sections twenty-five and twenty-six, shall have the same powers, and shall observe the same requirements as are provided for in other cases by this act. And all the business, in and out of court, appertaining to the guardianship, of the persons or property of half-breed minors, or infants of mixed blood, shall be conducted the same as is provided by this act in other cases, except that, it is hereby enacted that an Indian woman, or a half-breed woman, cannot be lawful guardian of the property of their children. Powers of guardians.

Sec. 28. This act shall take effect from and after its passage and approval. When take effect

Approved, January 6, 1864.

TERRITORIAL LIBRARY

CHAPTER XXII.

AN ACT IN RELATION TO THE TERRITORIAL LIBRARY.

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

Section. 1. That all the books, pamphlets, documents, maps, charts and other articles belonging to the library of the Territory of Dakota, be, and the same are hereby turned over to, and are placed under the charge of the librarian of the Historical Society of Dakota. Territorial library placed in charge of whom.

Sec. 2. That all acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed. Conflicting acts repealed.

Sec. 3. This act shall take effect from and after its passage and approval. When take effect

Approved, January 14th, 1864.

LICENSES

CHAPTER XXIII.

AN ACT CONCERNING LICENSES.

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

Who shall obtain licenses

Section 1. No auctioneer, peddler, or other person or persons, company or corporation, shall be permitted to sell, vend or retail, either at private sale or public auction, any goods, wares, or merchandise, without having first obtained a license for that purpose, as hereinafter provided.

Who shall grant licenses.

Sec. 2. The county commissioners of the respective counties in this Territory, shall have power to grant such license, on the payment into the county treasury, by the applicant for such license, of a sum to be assessed by said commissioners, not less than five, nor more than one hundred dollars.

Licenses shall give what authority.

Sec. 3. Such license shall authorize the person receiving [it] to vend, sell and retail goods, wares and merchandise within said county, for the space of one year from the time of granting the same.

Commissioners not in session, clerk to act.

Sec. 4. If the board of county commissioners shall not be in session when the application is made, the clerk of the county may grant a written permission to the applicant to vend, sell, and retail goods, wares and merchandise, until the end of the next session of the board of county commissioners, or, if said board take no action upon the case, for the term provided in the third section of this act; at the time of granting such license, the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury accordingly.

Duty of commissioners.

Sec. 5. When permission shall be granted by the clerk, in vacation as aforesaid, it shall be the duty of the board of county commissioners, at their next annual meeting thereafter, to examine such permit, and if approved, to proceed forthwith to assess the amount to be paid for licenses, to be paid as in the

case of original applications; but if the board of commissioners do not approve the same, the license shall be vacated, and no other sum shall be required to be paid than [that] fixed by the clerk.

Sec. 6. If any person or persons, company or corporation, shall, directly or indirectly, keep a store, or sell, vend or retail any goods, wares or merchandise, without being first duly authorized by license or permit, as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not exceeding two hundred dollars nor less than ten dollars.

Penalty for selling without license.

Sec. 7. The preceding section shall not be construed to extend to the sale of goods, wares and merchandise, by merchants who pay an annual tax upon merchandise, assessed according to the revenue laws of this Territory, nor to persons who sell commodities manufactured or raised by themselves in this Territory.

Preceding section—how construed.

Sec. 8. The board of county commissioners may grant licenses to keep saloons, hotels, public houses and groceries, upon the following conditions, to wit: first, the applicant shall pay into the county treasury, for the privilege granted, a sum not exceeding three hundred dollars nor less than twenty-five dollars, in the discretion of the board; second, the applicant shall execute a bond, in the penalty of five hundred dollars, with one or more securities, to be approved by the board, conditioned that the applicant will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in his house.

Maximum licenses to whom?

Sec. 9. Upon application for licenses to keep saloons or groceries, the board may reject or grant the same, at their discretion.

Sec. 10. The board of county commissioners shall have power, upon complaint being made to them, to revoke any license granted to keep any saloon or grocery, whenever they may be satisfied that the privileges granted have been abused, or that the person to whom the license was granted has violated the law.

Discretionary powers.

Sec. 11. Licenses granted to keep saloons or groceries, shall not authorize the persons obtaining the license to vend or sell spirituous or vinous liquors in more than one place or home,

same.

and every license shall describe the house and place intended to be occupied.

Grocery—to include what.

Sec. 12. A grocery shall be deemed to include all houses and places where spirituous or vinous liquors are retailed by less quantities than one quart.

Who shall grant licenses.

Sec. 13. The president and trustees of incorporated towns, shall have the exclusive privilege of granting licenses to saloons or groceries within their incorporated limits; and all sums of money which may be received for licenses, granted as aforesaid, shall be paid into the county treasury.

Shall not sell to Indians.

Sec. 14. No retailer of spirituous liquors, or other person or persons, shall sell, exchange or otherwise deliver to any Indian or Indians, within the boundaries of this Territory, any spirituous liquors, under the penalty of fifty dollars for every such offense, one-half thereof for the use of the county wherein the offense is committed, and the other half for the person informing.

Penalty for keeping disorderly house.

Sec. 15. Every person licensed to keep a saloon or grocery, who shall knowingly suffer any disorder, drunkenness, or unlawful games whatever, in his, her or their house, his, her or their license or licenses shall be suppressed by the board of county commissioners.

Duty of magistrates and other officers.

Sec. 16. Every magistrate, or other officer, to whom any fines or penalties, imposed by this act shall be paid, for the use of the county, shall, at the next meeting of the board of county commissioners, make a receipt for the amount thereof, and pay the same into the county treasury.

Who may be competent witnesses.

Sec. 17. Persons prosecuting or giving information under the provisions of this act, may be competent witnesses on the trial, notwithstanding their interest in the penalty to be recovered.

Penalties—how recovered.

Sec. 18. Penalties incurred by a violation of the provisions of this act, may be recovered by action of debt, or by indictment by summons, in the name of the people of the Territory of Dakota, for the use of the proper county, before any justice of the peace, or court of competent jurisdiction, of the proper county, upon complaint of any citizen of such county; and any justice of the peace or other officer, into whose hands such penalty shall properly come, shall, unless otherwise required by law, make a report of such recovery to the board of county

commissioners; and at the next regular meeting succeeding, the collector of such penalty shall pay into the county treasury the part thereof which shall be payable to such county, and the remainder to the person informing or prosecuting.

Sec. 19. Appeals and writs of certiorari may be taken from the proceedings had under the provisions of this act, as in other cases. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed. Conflicting acts repealed.

Sec. 20. This act shall take effect and be in force from and after its passage. When take effect

Approved, January 11th, 1864.

LIENS

CHAPTER XXIV.

AN ACT TO CREATE A LIEN IN FAVOR OF FARMERS, AND OTHERS.

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

Section 1. That any farmer, ranchman, or herder of cattle, tavern keeper or livery stable keeper, to whom any horses, mules, cattle or sheep, shall be entrusted for the purpose of feeding, herding, pasturing or ranching, shall have a lien upon said horses, mules, cattle or sheep, for the amount that may be due for such feeding, herding, pasturing or ranching, and shall be authorized to retain possession of such horses, mules, cattle or sheep, until the said amount is paid: *Provided*, That the provisions of this act shall not be construed to apply to stolen stock. Farmers, &c. have a lien in certain cases.

Sec. 2. This act shall not be construed to give any farmer, ranchman or herder of cattle, tavern keeper or livery stable This act—how construed.

keeper, any lien upon horses, mules, cattle or sheep, put into their keeping, when said property was not owned by the person entrusting the same, for the purposes mentioned in the above section, at the time of delivering them into the possession of said farmer, ranchman, herder, tavern keeper or livery stable keeper.

When take effect,

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved, January 9th, 1864.

LIQUORS

CHAPTER XXV.

AN ACT TO PREVENT THE SALE OF SPIRITUOUS AND VINOUS LIQUORS TO MINERS, AND FOR OTHER PURPOSES.

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

Shall not sell liquor to minor.

Section 1. That no person or persons shall be permitted to sell, barter, or in any manner give to any minor child, or to any person known to be of unsound mind, any spirituous or vinous liquors.

Not sell on Sunday.

Sec. 2. That no person or persons shall be permitted, either directly or indirectly, to sell, barter or in any way or manner dispose of any intoxicating liquors, on the Sabbath day or Sunday; and any person or persons who shall violate the foregoing provisions of this act, shall, upon conviction thereof before any court having jurisdiction of the same, upon indictment, or upon any complaint before any justice of the peace, in the county where said offence was committed, shall forfeit to said county, for the use of common schools of said county, a sum not to exceed fifty dollars, nor less than ten dollars.

Sec. 3. This act shall take effect and be in force from and ^{When take effect.} after its passage.

Approved, January 15th, 1864.

LUNATICS

CHAPTER XXVI.

AN ACT CONCERNING LUNATICS.

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

Section 1. If information, in writing, be given to the pro- <sup>Probate court--
how to proceed
in case of lunat-
ics.</sup> bate court of any county within this Territory, that any person in such county is an idiot, lunatic, or person of unsound mind; and incapable of managing his or her affairs, and praying that an inquiry thereinto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury.

Sec. 2. Such information may also be given, in the vaca- <sup>Information--
how given.</sup> tion of said court, to the judge thereof; in which event he shall call a special term of the court, for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind or not.

Sec. 3. In proceedings under this act, the probate court may, <sup>Discretionary
power of court.</sup> in its discretion, cause the person alleged to be of unsound mind, to be brought before the court.

Sec. 4. Whenever any justice of the peace, sheriff, coroner <sup>Duty of civil
officers in cases
of lunatics.</sup> or constable, shall discover any person, resident of his county, to be of unsound mind, (as in the first section of this act mentioned,) it shall be the duty of such officers to make application to the probate court of said county, for the exercise of its jurisdiction; and thereupon the like proceed-

ings shall be had as in the case of information by unofficial persons.

Duty of court
in certain con-
tingencies.

Sec. 5. If upon inquiry, it be found by the jury that the subject of the inquiry is of unsound mind, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such person. The court may appoint two guardians, one to have charge of the person, and the other to have charge of the estate of such person of unsound mind.

Costs—how
paid.

Sec. 6. When any person shall be found to be insane, according to the preceding provisions, the costs of the proceedings shall be paid out of his or her estate, or, if that be insufficient, by the county.

Same.

Sec. 7. If the person alleged to be of unsound mind shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had, unless said person be an officer, acting officially, according to the provisions of this act, in which case the costs shall be paid by the county.

Powers of court

Sec. 8. The court may, if just cause appears at any time during the term at which an inquisition is had, set the same aside and cause a new jury to be impaneled to inquire into the facts; but when two juries concur in any cause, the verdict shall not be set aside.

guardian shall
give bond.

Sec. 9. Every guardian of a person of unsound mind, before entering upon the duties assigned him, shall enter into a bond to the Territory of Dakota, for the use of any person complaining, in such sum and with such security as the court shall approve, conditioned that he will take due and proper care of such insane person, or will manage and administer his estate and effects to the best advantage according to law, and will faithfully do and perform all such other acts, matters, and things touching his guardianship, as may be prescribed by law or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

Court may re-
quire additional
bond.

Sec. 10. The court may, at any time, require of any such guardian to give a new bond or additional security, as the circumstances of the case shall require, and if any order for that purpose be not complied with within a reasonable time, to be therein mentioned, the appointment of the guardian may be

revoked and another appointed who will give the bond and security required.

Sec. 11. Every bond given by such guardian shall be deposited with the probate judge, and a copy thereof, duly certified by such judge, shall be evidence in all respects as the original. Bond—where deposited.

Sec. 12. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published, at such time and in such manner as the probate court shall order. Guardian to publish notice.

Sec. 13. Every such guardian shall take charge of the person committed to his charge, or of the estate of such person of unsound mind, as the case may be, and provide for his or her support and maintenance, or to dispose of or manage the estate of such person, as directed by this act. Duty of guardian.

Sec. 14. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship. same.

Sec. 15. Within three months after his appointment such guardian shall make out and file, in the office of the probate judge, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such guardian. Guardian to make inventory

Sec. 16. Whenever any property belonging to such estate shall be discovered after the filing of any inventory, it shall be the duty of such guardian to file, as aforesaid, an additional inventory, containing a just and true account of the same from time to time, as the same shall be discovered. Shall file additional inventory

Sec. 17. All such inventories shall be made in the presence of, and attested by two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian. Inventory to be attested.

Sec. 18. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of or against his ward, to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor, and to adjust, settle and pay all demands due or becoming due from his ward, Duty of guardian.

LUNATICS.

so far as his effects and estate will extend, as hereinafter provided.

Court may make certain order.

Sec. 19. Every probate court by whom any person of unsound mind is committed to guardianship, may make an order for the restraint, support and safe keeping of such person, for the management of his or her estate, for the support and maintenance of his or her family and education of his or her children, out of the proceeds of such estate; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for the purposes above specified.

Duty of guardian in certain cases.

Sec. 20. Whenever the personal estate of any such person of unsound mind shall be insufficient for the discharge of his debts, the maintenance of himself or herself and family, or the education of his or her children, it shall be the duty of the guardian to apply, by petition, to the court by which he was appointed, praying for authority to mortgage, lease or sell the whole or so much of the real estate of such person of unsound mind as shall be sufficient and necessary to supply the deficiency.

Petition shall set forth—what.

Sec. 21. The petition shall set forth the particulars of the amount of the estate, real and personal, of such insane person, and of the debts by him or her owing, accompanied by a full true and perfect account of the guardianship of the petitioner, showing the application of the funds which may have come to his hands.

Duty of court.

Sec. 22. If it appears to the court, upon examination of the matter, that the personal estate is insufficient for the purposes above mentioned, and that the property has been applied, as far as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease or sale of the whole or such part of the estate as may be necessary or proper.

Same.

Sec. 23. The court making such order shall direct the time and terms of sale, or, if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which the proceeds shall be secured, and the income or produce thereof be appropriated.

When sale is ordered, guardian shall cause certain notice.

Sec. 24. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place, and terms of

sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper in or nearest to the county in which the premises to be sold are situated, if said newspaper be published within this Territory, and shall also put up like notices at six of the most public places in such county six weeks before the day of sale.

Sec. 25. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction to the highest bidder, and make report of his proceedings to the court at the term next succeeding the sale.

Lands to be sold to the highest bidder.

Sec. 26. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not, directly or indirectly, become the purchaser of the property sold, and that he was in no wise interested in the purchase thereof.

Report made and verified—how.

Sec. 27. If the court approved the proceedings, the guardian shall execute a deed or deeds to the purchaser or purchasers, reciting the order of sale, and conveying to the purchaser or purchasers all the estate, right, title and interest of such person of unsound mind to the estate sold.

If the court approve, guardian to execute deed.

Sec. 28. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be cancelled, and may renew the order of sale, as often as may be necessary, until the proceedings are approved.

If disapproved, sale is set aside.

Sec. 29. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose, until the court shall have approved the agreement made by the guardian under such order.

No deed given until sale approved.

Sec. 30. Every conveyance, mortgage, lease and assurance made under the order of a probate court, pursuant to the provisions of this act, shall be as valid and effectual as if the same had been executed by such insane person when of sound memory and understanding.

Conveyance shall be valid.

Sec. 31. Every guardian appointed under this act shall, once a year or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court.

Guardian shall render account—when.

Sec. 32. No contract of any person found to be of unsound

Contract not binding—when.

mind, as hereinbefore specified, which shall be made without the consent of his or her guardian, shall be valid or binding, and such guardian may sue for and recover any money or property which may have been sold or disposed of by his ward, without his consent.

Insane person exempt from civil or criminal action.

Sec. 33. No such insane person shall be held to bail, nor shall his or her body be taken in execution on any civil or criminal action.

Process to be served—how.

Sec. 34. In all actions commenced against such insane person, the process shall be served on his guardian; and on judgment against such person, or his or her guardian, as such, the execution shall be against his property only, and in no case against his or her body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto, by false pleading or otherwise.

Jury to inquire into cases of recovery from insanity.

Sec. 35. If any person shall allege, in writing, verified by oath or affirmation, that any person declared to be of unsound mind, has been restored to his or her right mind, the court by which the proceedings were had, shall cause the facts to be inquired into by a jury.

If true, person shall be discharged.

Sec. 36. If it shall be found that such person has been restored to his or her right mind, he or she shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hand, belonging or appertaining to him or her.

Disposition of estate, in case of death.

Sec. 37. In case of the death of any such insane person while under guardianship, the power of the guardian shall cease, and the estate shall descend and be distributed in the same manner as if such person had been of sound mind, and the guardian shall immediately settle his accounts, and deliver the estate and effects of his ward to his personal representatives.

Power of probate court.

Sec. 38. The several probate courts shall have power to remove such guardians, at any time, for neglect of duty, misconduct or mismanagement, or disobedience to any lawful order, and appoint others.

Guardian's duty on being removed.

Sec. 39. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

Sec. 40. The probate court shall have full power to control

the guardian of any such insane person, in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery. Power of court.

Sec. 41. If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next setting of the probate court of the county, who shall make such order for the restraint, support and safe keeping of such person as the circumstances of the case shall require. Insane person to be confined in certain cases

Sec. 42. If any such person, as in the last preceding section is specified, shall not be confined by the person having charge of him or her, or there being no person who has such charge, any judge of a court of record, or any justice of the peace may cause such insane person to be apprehended, and may employ any person to confine him or her, in some suitable place, until the probate court shall make further order therein, as in the preceding section specified. Same.

Sec. 43. The expense attending such confinement shall be paid by the guardian out of his or her estate, or by the person bound to provide for any support such insane person, or the same shall be paid out of the county treasury. Expenses—how paid.

Sec. 44. In all cases of appropriations out of the county treasury, for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such person, if there be any of sufficient ability to pay the same. County to recover expenses.

Sec. 45. This act shall take effect from and after its passage and approval. When take effect

Approved, January 11, 1864.

MARRIED WOMEN

CHAPTER XXVII.

AN ACT AUTHORIZING MARRIED WOMEN TO CONVEY REAL ESTATE BY POWER OF ATTORNEY.

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

Who may convey real estate.

Section 1. A husband and wife may convey, by their lawful agent or attorney, any estate or interest in any lands situated within this Territory, and all deeds of conveyance of any such lands, whether heretofore or hereafter made under a joint power of attorney from the husband and wife, shall be as binding, and have the same effect as if made and executed by the original parties.

Acknowledgment of a wife—how taken.

Sec. 2. When any married woman residing within this Territory shall hereafter join with her husband in a letter as a power of attorney to convey real estate, the acknowledgment of the wife shall be taken separately and apart from her husband, and she shall acknowledge that she executed the same freely and without any fear or compulsion from any one, but nothing herein contained shall be construed so as to impair the validity of any joint power of attorney heretofore executed, or any conveyance of real estate made under such joint power, when the acknowledgment of the wife shall not have been taken separate and apart from her husband.

When take effect

Sec. 3. This act shall take effect from and after its passage.
Approved, January 13th, 1864.

MILITIA ACCOUNTS

CHAPTER XXVIII.

JOINT RESOLUTIONS RELATIVE TO THE RE-AUDI-
TING OF THE MILITIA ACCOUNTS AGAINST THE
TERRITORY, FOR EXPENSES INCURRED DURING
THE FALL OF 1862.

*Be it resolved by the Legislative Assembly of the Ter-
ritory of Dakota :*

First, That the acts of R. M. Hagaman, as deputy auditor of this territory, be and are hereby declared to be illegal, and that all territorial warrants issued by him, for the territorial auditor, and on account of military accounts allowed by James Tufts, as commissioner, be and are hereby declared to be null and void. Certain acts . . .
clared illegal.

Second, That Samuel Grant, Samuel Lyon and John Owens, are hereby appointed, and constituted a board of commissioners to examine and re-audit all the militia accounts against the territory. Who are appoint-
ted commis-
sion-
ers.

Third, That it shall be the duty of said board of commissioners to meet at Yankton on the first Tuesday in February next, and proceed to examine and audit, or re-audit the militia accounts said to be in the hands of the territorial auditor, and that said board of commissioners may if they deem proper allow such of the said accounts, rendered for the service of the militia, as from their own knowledge, and from the papers accompanying the same may appear just, and that it shall be the duty of the territorial auditor or any person who has possession of the accounts which have been audited by said James Tufts, (commissioner,) to deliver to said board of commissioners the same, together with all the papers relating to said accounts audited as aforesaid. Duties of
missio-
ers.

Required to complete their duty—when.

Fourth, That said board of commissioners are hereby required to complete the auditing or re-auditing of the militia accounts against the territory by the first day of March next, and that it shall be lawful for them to issue subpoenas requiring the attendance of witnesses to give evidence for or against claims pending and before them, and that it shall be the duty of any sheriff in the territory to serve said subpoena, (in whose hands the same may be placed,) and further, the said commissioners are hereby empowered to compel the attendance of any witness who may reside within this territory, and any refusal on the part of the sheriff, or any witness, to serve as aforesaid any paper, or to attend upon said board of commissioners, may be punished by such person being fined in the sum of fifty dollars (\$50), at the discretion of the board of commissioners, who are authorized to impose said fine.

Fees to be allowed commissioners.

Fifth, That the same fees shall be allowed by the board of commissioners, to the sheriff or sheriffs, and to the witnesses, as are allowed by the laws of the territory for such service, which amounts shall be paid in the same manner as the accounts allowed by said commissioners for militia expenses, and the said board of commissioners shall be allowed by the auditor of the territory, three dollars per day each, during the time actually and necessarily engaged in performing the duties assigned them by these resolutions; which accounts are to be paid as provided hereinafter for the payment of the accounts audited by the said board of commissioners.

Who is chairman, and power of board.

Sixth, That Samuel Grant is hereby constituted the chairman of said board of commissioners, with full power and authority to administer oaths, and it shall be his duty to administer oaths to persons coming before said board of commissioners, either as claimant or witnesses, and that any person swearing falsely before said chairman of commissioners in relation to any claim account, or item of claim, or account, shall be deemed guilty of perjury and on conviction thereof, shall suffer all the pains and penalties prescribed by the laws of this territory for such an offense; and it shall also be lawful for said board of commissioners, if they deem it necessary, to call to their assistance any attorney, who shall be allowed the sum

of five dollars per day, payable in the same manner as the fees of the said commissioners.

Seventh, That after the auditing of the accounts aforesaid, ^{Commissioners to submit report.} it shall be the duty of the commissioners to submit a report of their action on all claims, together with a full account of their proceedings, to the territorial auditor, who shall provide a book and record in a proper manner, each and every account allowed, and in no instance shall he issue any warrant or certificate, which can be transferred, for any account or claim allowed by said board of commissioners, and further, no account so allowed shall be paid, unless an appropriation shall be made by congress for such purpose, and when any claim is paid pursuant to an appropriation by the General Government, the same shall be paid to no one but the original claimant, except in the case of the death of a claimant, when it shall be lawful for the legal representative of the deceased to receive and receipt for the account of the claims, and any person holding a claim which has been allowed as aforesaid, is required to demand payment, within eighteen months after an appropriation is made as aforesaid, from the person holding or disbursing the funds, or else he shall forfeit his right to receive the amount of his claim, and it shall be placed in the hands of the territorial treasurer for the sole benefit of the territory.

Eighth, That when the territorial auditor makes his next ^{Duty of Territorial auditor.} annual report, it shall be his duty to include in his report the report of said board of commissioners as made to him, and in itemizing, it shall be the duty of the board of commissioners, and the auditor to state not only the amount, but what the amount is for and it shall also be the duty of the territorial auditor to forward to our delegate in congress a statement under seal of his office, of the amount of the militia claims, which have been audited and allowed by said board of commissioners.

Ninth, That the governor of this territory, after the passage ^{Duty of governor.} and approval of these resolutions, and after the auditing of the accounts hereinafter referred to, is hereby requested to transmit to our delegate in congress a certified copy of these resolutions, and to urge upon him the justice of prompt and continued action until an appropriation is made by congress to re-

ward our citizen soldiers for their services rendered during our Indian troubles in the fall of 1862.

Original claimant—how construed.

Tenth, The term, "original claimant," shall be construed to mean that person who is adjudged by the said board of commissioners as having a just and valid claim, or, one whose claim may have been allowed by them.

Vacancies--how filled.

Eleventh, That in case John Owen or Samuel Lyon, or both of them fail to act, Samuel Grant, the territorial auditor and territorial treasurer shall have power to fill such vacancy vacancies.

Approved, January 15th, 1864.

REGISTER OF DEEDS

CHAPTER XXIX.

AN ACT LEGALIZING THE OFFICIAL ACTS OF LABAN H. LITCHFIELD, REGISTER OF DEEDS OF BON HOMME COUNTY.

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

Certain acts declared legal.

Section 1. That the official acts of Laban H. Litchfield, register of deeds of Bon Homme county, be and are hereby declared legal.

Certain acts declared illegal.

Sec. 2. That the acts of any and all other persons pretending to be the register of deeds of said county, be, and are hereby declared null and void.

Who shall be register.

Sec. 3. That the said Laban H. Litchfield, be, and is hereby declared to be the register of deeds of Bon Homme county, and to continue such until the next general election, and his successor is elected and qualified.

Sec. 4. This act shall take effect and be in force from and after its passage. When take effect.

Approved, December 30th, 1868.

CHAPTER XXX.

AN ACT TO DESIGNATE THE TITLE OF REGISTER OF DEEDS.

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

Section 1. That wherever the words, "clerk of the board of county commissioner, county clerk, or clerk of the county courts," occur in the laws of Dakota, it shall mean the register of deeds. ①certain words
--how construe

Sec. 2. This act to take effect from and after its passage. When take effect.
Approved, January 13th, 1864.

ROAD COMMISSIONERS

CHAPTER XXXI.

AN ACT LEGALIZING THE ACTS OF J. M. STONE AND J. B. GREENWAY, AS ROAD COMMISSIONERS OF YANKTON COUNTY.

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

Section 1. That the acts of J. M. Stone and J. B. Green-

Certain acts
legalized.

way, as road commissioners of Yankton county, in locating, marking and surveying that portion of the Territorial road required to be so located, marked and surveyed, within said county of Yankton, by chapter fifty-five of the session laws of 1862-63, approved, January 9th, 1863, be and are hereby declared legal.

When take effect

Sec. 2. That this act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, January, 13th, 1864.

ROADS

CHAPTER XXXII.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM HAMILTON'S RANCH, OPPOSITE FORT RANDALL, TO FORT SULLY.

Who to be commissioners.

Section 1. That John Mechling, Joseph V. Hamilton and Fillicia Fallas are hereby appointed commissioners to locate and establish a territorial road from Hamilton's, by the most practicable route, to Fort Sully.

Shall meet where.

Sec. 2. It shall be the duty of said commissioners, or a majority of them, to meet at Hamilton's, on or before the first Monday in June next, and proceed to lay out said road.

County to bear expense.

Sec. 3. Each county shall pay the expenses incurred in locating and surveying, marking and staking the same in said county.

When take effect

Sec. 4. This act shall take effect [and be in force] from and after its passage.

Approved, January 14, 1864.

CHAPTER XXXIII.

AN ACT LOCATING A TERRITORIAL ROAD FROM
VERMILION TO YANKTON.

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

Section 1. That Abram Van Osdel, J. Whitehorn, J. R. Hanson, Chas. F. Picotte and Ole Samson be, and they are hereby appointed commissioners to locate a territorial road, commencing at a point near Wm. Benedict's house, on section No. 15, in township No. 92 north, of range No. 52 west; thence westerly, by the nearest and most practicable route to the town of Yankton.

Sec. 2. It shall be the duty of the commissioners, or a majority of them to meet at the house of J. Whitehorn, on or before the first day of June, A. D. 1864, and proceed with a competent surveyor, to locate said road, and to select a person to fill the commission.

Sec. 3. Each county shall pay the expenses incurred in locating, surveying, marking and staking the same in said county. The surveyor shall receive three dollars per day while engaged in locating the same, and the commissioners two dollars per day.

Sec. 4. It shall be the duty of the commissioners to file in the office of the register of deeds, in each county through which said [road] passes, a plat of so much of said road as is contained in the respective counties.

Sec. 5. This act shall take effect from and after its passage and approval by the Governor.

Approved, December 24, 1863.

CHAPTER XXXIV.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM
YANKTON TO FORT RANDALL.

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

Who to be com-
missioners.

Section 1. That Washington Reed, J. W. Owens, and Jonathan Brown be, and are hereby appointed commissioners to locate and establish a Territorial road from Yankton, by the way of Smutty Bear Bottom, Bon Homme, Springfield, Brown's crossing of the Choteau, and Greenwood, to the Willows, opposite Fort Randall.

shall meet
here.

Sec. 2. It shall be the duty of said commissioners, or a majority of them, to meet at Yankton on or before the first Monday in July next, and proceed to locate said road.

county to bear
expenses.

Sec. 3. Each county shall pay the expenses incurred in locating the same within its own boundaries.

when take effect

Sec. 4. This act shall take effect from and after its passage.
Approved, December 22, 1863.

CHAPTER XXXV.

AN ACT TO LOCATE A TERRITORIAL ROAD FROM
PACQUETTE'S FERRY TO VERMILION.

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

Who to be com-
missioners.

Section 1. That Wm. Mathers, Isaiah Bowman and A. Carpenter be and are hereby appointed commissioners to locate, mark, survey and establish a territorial road from Pacquette's ferry, by way of Willow post office, Fourteen Mile House and Elk Point, to Vermilion.

Sec. 2. The said commissioners, or a majority of them, shall ^{Shall meet where.} meet at the house of Wm. Mathers on the first Monday in September, or sooner if convenient, and proceed to locate said road.

Sec. 3. The expenses incurred in surveying, marking, and ^{County to bear expense.} establishing said road, shall be paid by the several counties through which said road may pass, in proportion to the distance and time employed in locating said road through each county respectively.

Sec. 4. The commissioners and surveyor of said road shall ^{Per diem of commissioners and surveyor.} each receive two dollars per day for each day actually employed in surveying and establishing said road.

Sec. 5. After the road is surveyed and located, it shall be ^{Surveyor shall file plat.} the duty of the surveyor of said road, on or before the first Monday in October next, to file in the office of [the] register of deeds of each county through which said road may pass, a plat of so much of said road as passes through the said county.

Sec. 6. This act to take effect from and after its passage and ^{When take effect} approval by the governor.

Approved, December 30th, 1863.

CHAPTER XXXVI.

AN ACT LOCATING A TERRITORIAL ROAD IN CLAY COUNTY.

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

Section 1. That Frank Taylor, Miles Russell and Gustav ^{Who to be commissioners.} Jacobson be, and are hereby appointed commissioners to survey and locate a territorial road from the town of Vermilion, on the Missouri bottom, at or near Mr. Herrick's hotel, to intersect with the territorial road at or near Wm. Benedicts house, on section No. 15, in township No. 92 north, of range 52 west.

Shall meet
where.

Sec. 2. The said commissioners shall meet at the store of Miles Russell, on or before the first day of June, A. D. 1864, and shall proceed to locate said road. The surveyor employed by them shall be entitled to receive two and the commissioners one dollar per day for their services while actually employed in locating said road.

Surveyor to file
plat

Sec. 3. It shall be the duty of the surveyor to file a plat of the same in the office of the register of deeds of said county.

County to bear
expense.

Sec. 4. The expenses of locating the same shall be paid out of the treasury in said County.

When take effect

Sec. 5. This act shall take effect from and after its passage.
Approved, January 15, 1864.

CHAPTER XXXVII.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL ROAD FROM J. B. GREENWAY'S FERRY TO HOLDEN BRYNGELSONS.

Who to be com-
missioners.

Section 1. That Peter W. Johnson, Henry Anderson and John Stanage are hereby appointed commissioners to locate and establish a territorial road from the said J. B. Greenway's ferry on the east side of the Dakota River, by way of John Stanage's ferry, and from thence the most practicable route to Holden Bryngelson's.

Shall meet
where.

Sec. 2. It shall be the duty of said commissioners, or a majority of them, to meet at J. B. Greenway's, on or before the first Monday in June next, and proceed to lay out said road.

Yankton county
to pay expense.

Sec. 3. The county of Yankton shall pay the expenses incurred in locating and surveying, marking and staking the same.

When take effect

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved, January 15, 1864.

CHAPTER XXXVIII.

AN ACT TO ESTABLISH A TERRITORIAL ROAD,
COMMENCING AT PACQUETTE'S FERRY ON THE
BIG SIOUX RIVER, BY WAY OF RICHLAND, COM-
MERCE CITY TO SIOUX FALLS.

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

Section 1. That W. W. Brookings, Isaiah T. Gore, and N. G. Curtis be, and are hereby appointed commissioners to locate, mark, survey and establish a territorial road starting at Pacquette's ferry, on the Big Sioux river, thence, via Richland and Commerce City, to Sioux Falls. Who to be commissioners.

Sec. 2. The said commissioners, or a majority of them, shall have until the first day of November next to locate, survey and establish said road. When road to be established.

Sec. 3. Should any of the above commissioners fail to serve, those serving shall have power to appoint substitutes, whose duties shall be the same as herein given to the other commissioners. Vacancies--how filled.

Sec. 4. The expenses incurred in surveying, marking and establishing of said road, shall be paid by the several counties through which the road may pass, in proportion to the distance and the time employed in locating said road through such county respectively. Expense--how paid.

Sec. 5. The commissioners and surveyor of said road, shall each receive two dollars per day for every day actually employed in surveying and locating said road. Per diem of commissioners and surveyor.

Sec. 6. After the said road shall be located, it shall be the duty of the surveyor of said road, on or before the tenth day of December next, to file in the office of register of deeds of Cole county, a plat of so much of said road as passes through said county; and in the office of register of deeds of the county to which the counties of Lincoln and Minnehaha are attached for legislative and judicial purposes, so much of said road as passes through said counties, and in no case shall the county Surveyor to file plat.

to which said counties are attached, be responsible for the expenses incurred.

Approved, December 30, 1864.

CHAPTER XXXIX.

AN ACT LOCATING A TERRITORIAL ROAD FROM THE BIG SIOUX RIVER TO YANKTON.

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

Who to be com-
missioners.

Section 1. That J. O. Taylor, Sidney Goucher and William Shriner be, and [are] hereby appointed commissioners to locate a territorial road commencing at the Big Sioux river, at some point on sec[ti]on twenty-eight (28), town ninety-two north, range 49 west; thence by way of the terminus of the bluffs between Brule Creek and the Big Sioux river, by the most practicable route to intersect the county road already laid through Clay county, intersecting the territorial road through Yankton county, located by an act approved January 9, 1863.

Get certain road
declared to be
territorial road

Sec. 2. Said county road through Clay county is hereby declared a territorial road, and said commissioners shall have power to change the location of said road, as they may think practicable, between the southwest corner of William Shriner's claim and Knut Week's claim on the west side of the Vermilion river.

Surveyor to file
plat.

Sec. 3. After said road is surveyed, it shall be the duty of the surveyor of said road, on or before the first Monday in October, A. D. 1864, to place in the office of the register of deeds of each county through which said road shall pass, a plat of so much of said road as passes through said county.

Expenses—how
paid.

Sec. 4. The commissioners and surveyor locating said road shall each receive two dollars per day for each day so employ-

ed. Clay county shall pay only for the time spent in changing the location of the road between William Shriner's claim and the claim of K. Weeks.

Sec. 3. This act shall take effect from and after its passage. When take effect
Approved, January 12, 1864.

CHAPTER XL.

AN ACT REGULATING THE WIDTH OF ROADS.

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

Section 1. That the width of all territorial and county roads Territorial
roads—width of not otherwise specified, shall be sixty-six feet.

Sec. 2. All acts and parts of acts conflicting with this act Conflicting acts
repealed. are hereby repealed.

Sec. 3. This act shall take effect from and after its passage. When take effect
Approved, January 14th, 1864.

SCHOOLS

CHAPTER XLI.

AN ACT FOR THE REGULATION AND SUPPORT OF COMMON SCHOOLS.

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

Who to constitute board of education.

Section 1. The governor, secretary, and treasurer are hereby constituted a board of education for the Territory of Dakota.

Board to hold meetings--when and where.

Sec. 2. Said board shall hold an annual meeting at the capital of the territory, commencing on Tuesday of the second week of the session of the legislature ; and such special meetings during the year as the board may, in their judgment, deem necessary.

Board to appoint superintendent of public instruction.

Sec. 3. Immediately after the passage of this act, and thereafter, at the annual meeting, said board shall appoint a suitable and competent person to be the superintendent of public instruction, for the Territory of Dakota, and secretary of said board, whose duties shall be : first, to keep a record of all the official duties of said board ; second, to exert himself constantly and faithfully to promote the highest interests of education in the Territory, by and with the advice of the board of education, and to this end he shall confer with county superintendents, and visit schools in connection with them, and furnish and distribute to them blank forms for collecting statistics of the various schools in the territory. He shall prepare and present to the board of education, on the first day of their annual session, a report of his official doings, for the preceding year, and a statement of the condition of the common schools of the Territory ; of the expenditure of the school moneys therein ; and such suggestions for improving their organization and modes of instruction, together with such other information in regard to systems of schools in other states and countries, as he shall deem proper.

Duties of superintendent.

Sec. 4. Said board of education shall, from time to time, as they shall judge proper, recommend to the legislature such alterations, revisions, or amendments of existing laws, relating to common schools and seminaries of learning, as in their judgment are demanded, in order to the perfecting of a system of general education in the Territory, and they shall annually, when required by a resolution of the House of Representatives so to do, make a report of their official doings and of the state and condition of the schools in the Territory, to the Legislature.

Board to report
to legislature—
when.

Sec. 5. Said board may at any time fill a vacancy in the office of superintendent of public instruction.

To fill vacancy.

Sec. 6. The compensation to the members of said board and the superintendent of public instruction, for their services, shall be as follows: To each member of the board for each day's necessary attendance on the meetings of the same, the sum of three dollars, and the same mileage as is now provided by law for members of the legislature; to the secretary the sum of three dollars per day for the time spent in the discharge of his official duties, and the expenses of procuring blank forms and postage; all of which allowances shall be paid by the treasurer of the Territory, on the certificate of the Governor.

Compensation
to members and
superintendent.

Sec. 7. The board of election shall select a list of books for the different branches usually taught in common schools, which list shall constitute the text books for district schools, and shall cause such list to be published in all the newspapers in Dakota; and on and after such publication, no other books but those prescribed in the list by said board, shall be used in any of the district schools in this Territory.

Board to select
text books.

Sec. 8. The superintendent of public instruction shall annually prepare and present, and have ready for distribution, on or before the first day of the annual meeting of the board of education, a sufficient number of copies of his annual report, to be distributed as follows: three copies to each member of the board of education, one copy to each member of the legislature, one copy to each county superintendent, one copy to each school district officer, and one copy to each teacher in the Territory whose certificate of qualifications has not expired.

Superintendent
to prepare re-
port.

COUNTY SUPERINTENDENTS.

Sec. 9. The several counties in this Territory shall, at their

County superin-
tendent—how
elected.

annual election, elect a competent person to be superintendent of common schools within such county, who shall hold his office during the school years commencing on the first of November, or until his successor is elected and qualified; who shall receive for his services two dollars for each day spent in the discharge of his legal duties, and a reasonable sum for his annual report to the superintendent of public instruction; and every superintendent of schools shall make out in detail his account for official services, stating the date and time spent, as well as the kind of service rendered, and make oath or affirmation to the correctness of the same, before some justice of the peace in the county in which he resides, which oath or affirmation shall be certified by said justice before such superintendent's account shall be presented to the Territorial auditor for allowance, who shall audit and allow the same, or so much thereof as is just and reasonable, and the same shall be paid out of the territorial treasury upon the order of the auditor, who is empowered to draw orders for the same; but no order shall be drawn to any superintendent until he shall have filed with the auditor, the receipt of the superintendent of public instruction for the statistical returns of the preceding school year, in pursuance of the requirements of section — of this act.

He shall take
oath and give
bond.

Sec. 10. The county superintendent of public instruction shall have charge of the common school interests of the county. He shall, before he enters upon the discharge of the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States, and the act organizing this Territory, and faithfully to discharge the duties of his office, which oath or affirmation shall be filed in the office of the register of deeds. He shall also execute a bond with approved security, payable to the board of county commissioners, for the use of common schools in said county, in a sum to be fixed by the said commissioners. Said bond must be approved by the register of deeds, and filed in his office.

Commissioners
to divide county
into districts.

Sec. 11. It shall be the duty of the board of county commissioners to divide the county into a convenient number of districts, and divide the same when the interests of the inhabitants of the several districts may require it; and shall describe and number the school districts of the county, and a copy of

the paper or papers containing such description shall be delivered by the register of deeds to the county superintendent of public instruction.

Sec. 12. It shall be the duty of the judge of probate, on the first Monday of April in each year, to furnish the county superintendent of public instruction with the amount of money in the county treasury, belonging to the school fund, and he shall pay the same upon the order of the said superintendent.

Judge of probate to notify superintendent of amount of money yearly.

DUTIES OF THE COUNTY SUPERINTENDENT.

Sec. 13. It shall be the duty of the county superintendent of public instruction, on the second Monday of April, in each year, or as soon thereafter as he shall receive the statement of the judge of probate, certifying the amount of money in the county treasury, for the use of common schools for the current year, to apportion such amount to the several districts or parts of districts within the county, in proportion to the number of white children residing in each, over the age of five, and under the age of twenty-one years, as the same shall appear from the last annual reports of the clerks of the respective districts, and he shall draw his order on the county treasurer in favor of the several district treasurers for the amount apportioned to each district: *Provided*, No district shall be entitled to receive any portion of the common school fund in which a common school has not been taught at least three months during the year.

Superintendent to apportion money to districts, when.

Provided

Sec. 14. It shall be the duty of the county superintendent to visit all such common schools within their respective towns as shall be organized according to law, at least once in each year, and oftener if they shall deem it necessary. At such visitation the superintendents shall examine into the state and condition of such schools, as respects the progress of the school in learning and the order and government of the schools; and they may give advice to the teacher of such schools as to the government thereof, and course of study to be pursued therein, and shall adopt all requisite measures for the inspection, examination and regulation of the schools, and for the improvement of the scholars in learning. Every superintendent of common schools shall also make out his account for official services in the manner hereinbefore required, and deliver a

Visit schools—when.

copy of the same to the county clerk, in which such superintendent was elected or appointed, on or before the day previous to the annual county election next after the election or appointment of such superintendent, and the same shall be filed and kept in the office of the county clerk.

See to annual report.

Sec. 15. He shall see that the annual reports of the clerks of the several school districts in his county are made correctly and in due time.

Shall examine teachers and give certificate.

Sec. 16. He shall examine annually all persons offering themselves as teachers of common schools in his county, in regard to moral character, learning, and ability to teach school; and he shall give to each person examined and found qualified to teach, a certificate signed by him, officially; and any person receiving such certificate, shall be declared a qualified teacher, within the meaning of this act.

When school district is formed.

Sec. 17. Whenever a school district shall be formed in any county, the county superintendent of public instruction of such county shall within fifteen days thereafter, prepare a notice of the formation of such district, describing its boundaries, and stating the number thereof, and appointing a time and place for the district meeting. He shall cause the notice thus prepared to be posted in at least five public places in the district, at least ten days before the time appointed for such meeting.

Shall perform other lawful duties, and deliver books, &c., to successor.

Sec. 18. The county superintendent of public instruction shall perform all other duties of his said office that now are or hereafter may be prescribed by law; and he shall deliver to his successor, within ten days after the expiration of his term of office, all the books and papers appertaining to his office.

In case of vacancy in office of superintendent.

Sec. 19. If a vacancy occurs in the office of county superintendent of public instruction, by death, resignation or otherwise, notice thereof shall be given by the register of deeds, to the board of county commissioners, who shall, as soon as practicable, appoint some suitable person to fill the vacancy, and the person receiving such appointment shall, before entering upon the discharge of the duties of his office, file his oath or affirmation in the register of deeds' office, as hereinbefore provided, and he shall discharge all the duties of the office of county superintendent of public instruction until a successor

is elected and qualified. He shall also give a like bond to that required by this act to be given by the county superintendent of public instruction.

Sec. 20. The county superintendents shall make full and complete annual returns to the superintendent of public instruction, between the first and tenth day of November, in each year, of the number of children between the ages of five and twenty, in the school districts within their respective counties; also, the number of qualified teachers employed, the length of time each district school has been taught during the year, the amounts expended in each district, out of any moneys raised for educational purposes, and for what purpose such amount was expended, the amounts raised in each county and district by taxation or otherwise for educational interests, and any other items that may be of service to the superintendent of public instruction, in preparing his annual report.

Powers of
school district
meeting

Sec. 21. The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

1. To appoint a chairman to preside at said meeting in the absence of the director.

2. To adjourn from time to time.

3. To choose a director, clerk, and treasurer, who shall possess the qualifications of voters as prescribed [in] the next section of this act, at the first and each annual meeting thereafter.

4. To designate by vote a site for a district school house.

5. To vote a tax annually, not exceeding one half of one per cent. on taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site: *Provided*, Provide. When not included within the limits of an incorporated town or village, said site shall not contain less than one acre, and to build, hire or purchase such school house, and to keep in repair and furnish the same, with the necessary fuel and appendages.

6. To vote a district tax annually, not exceeding one-fourth of one per cent. on the taxable property in the district for the pay of teachers' wages in the district.

7. To authorize and direct the sale of any school house, site, or other property belonging to the district, when the same shall no longer be needful for the use of the district.

8. To vote such tax as may be necessary to furnish the school house with blackboards, outline maps, and apparatus necessary for illustrating the principle of science, or to discharge any debts or liabilities of the district, lawfully incurred: *Provided*, The said tax shall not exceed one fourth of one per cent. per annum.

Proviso.

9. To give such direction and make such provision as may be deemed necessary in relation to the prosecution or defence of any suit or proceeding in which the district may be a party.

10. To alter or repeal their proceedings from time to time as occasion may require, and to do any other business contemplated in this act.

Persons entitled to vote.

Sec. 22. The following persons shall be entitled to vote at any district meeting: all persons possessing the qualifications of electors, as defined by the act organizing this territory, and the laws of the territory, and who shall be residents of the district at the time of offering to vote at such election.

If person is challenged as unqualified.

Sec. 23. If any person offering to vote at a school district meeting shall be challenged as unqualified by any legal voter, the chairman presiding shall declare to the person challenged the qualifications of a voter, and if such challenge be not withdrawn, the chairman, who is hereby authorized, shall tender to the person offering to vote, the following oath or affirmation: "You do solemnly swear (or affirm) that you are an actual resident of this district, and that you are qualified by law to vote at this meeting." Any person, taking such oath or affirmation, shall be entitled to vote on all questions voted upon at such meeting.

Of the formation of school districts.

Sec. 24. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected; they shall signify their acceptance to the county superintendent, in writing, which he shall file in his office. Every person duly elected to the office of director, clerk, or treasurer of any school district, who shall refuse or neglect, without sufficient cause, to accept of such office and serve therein, or who, having entered upon the duties of his office, shall neglect or refuse to perform any duty required of him by the provisions of this act, shall forfeit the sum of ten dollars.

Sec. 25. The officers of each school district shall be a di-

rector, clerk, and treasurer, who shall constitute the district board, and who shall hold their respective offices until the annual meeting next following their election or appointment, and until their successors are elected and qualified.

Officers and term of office.

Sec. 26. Every school district, organized in pursuance of this act, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and style of school district No..... (such number as may be designated by the county commissioners), county (the name of the county in which the district is situated), Territory of Dakota, and in that name may sue and be sued, and be capable of contracting and being contracted with, and holding such real or personal estate as it may come in possession of by will or otherwise, or as is authorized to be purchased by the provisions of this act.

Districts considered bodies corporate, with what powers.

Sec. 27. An annual meeting of each school district shall be held on the last Saturday of September of each year, at such hour as the board of directors shall name. Special meetings may be called by any member of the district board, or by any five legal voters, but notice of such special meeting, stating the purposes for which it is called, shall be posted in at least three public places within the district, ten days previous to the time of meeting.

Annual and special meetings.

Sec. 28. Whenever the time for holding an annual meeting in any district shall pass without said meeting being held, the clerk, or, in his absence, any other member of the district board within twenty days after the time for holding said annual meeting shall have passed may give notice of a special meeting by putting up written notices thereof in three public places within the district, at least five days previous to the time of meeting; but if such meeting shall not be notified within twenty days as aforesaid, the county superintendent may give notice of such meeting in the manner provided for forming new districts, and the officers chosen at such special meeting shall hold their offices until the next annual meeting, and until their successors are elected and qualified.

When time passes without meeting.

Sec. 29. The qualified voters at each annual meeting, or at any special meeting duly called, may determine the length of time a school shall be taught in their district for the then en-

Powers of meeting.

suing year, which shall not be less than three months, and whether such school shall be taught by a male or female teacher, or both, and whether the school money to which the district may be entitled shall be applied to the support of the summer or winter term of the school, or a certain portion to each, but if such matters shall not be determined at the annual or any special meeting, it shall be the duty of the district board to determine the same.

Duties of director. Sec. 30. The director of each district shall preside at all district meetings, and shall sign orders drawn by the clerk, authorized by a district meeting, or by the district board, upon the treasurer of the district for moneys collected or received by him to be disbursed therein. He shall appear for and in behalf of the district in all suits brought by or against the district, unless other direction shall be given by the voters of such district, at a district meeting.

Duties of clerk. Sec. 31. The clerk of each district shall record the proceedings of his district in a book provided by the district for that purpose, and enter therein copies of all the reports made by him to the county superintendent, and he shall keep and preserve all records, books and papers belonging to his office, and deliver the same to his successor in office.

In case of his absence. Sec. 32. The said clerk shall be clerk of the district board of all district meetings when present; but if such clerk shall not be present at such district meeting, the voters present may appoint a clerk of such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

Clerk to give what notice, and when. Sec. 33. It shall be the duty of the clerk to give at least ten days notice previous to any annual or special district meeting, by posting up notices thereof at three or more public places in the district, one of which notices shall be affixed to the outer door of the school house, if there be one in the district, and said clerk shall give the like notice of every adjourned meeting, when such meeting shall have been adjourned for a longer period than one month. Every notice for a special district meeting shall specify the objects for which such meeting is called, and no business shall be acted upon at any special meeting, not specified in said notice.

Sec. 34. The clerk of the district shall draw orders on the treasurer of the district, for moneys in the hands of such treasurer, which have been apportioned to or raised by the district to be applied to the payment of teachers' wages, and apply such money to the payment of teachers' wages as shall have been employed by the district board, or by the citizens of the district, and the said clerk shall draw orders on the said treasurer for moneys in the hands of such treasurer to be disbursed for any other purpose ordered by a district meeting, or by the district board agreeably to the provisions of this act.

To draw orders for money.

Sec. 35. It shall be the duty of the clerk to make out tax lists of all taxes legally authorized by the district, and annex to such tax lists a warrant under the hand of said clerk, directed to the treasurer of said district, requiring said treasurer to collect the sums therein named.

To make out tax lists.

Sec. 36. The clerk of each district shall, between the first and fifteenth days of September in each year, make out and transmit a report in writing to the county superintendent of public instruction, showing:

Make out what reports, and when.

1. The number of white children, male and female, designated separately, residing in the district or parts of districts, on the last day of August previous to the date of such report, over the age of five and under the age of twenty-one years.

2. The number of white children attending school during the year, their sex, and branches studied.

3. The length of time a school has been taught in the district by a qualified teacher, the name of the teacher, the length of time taught, and the wages paid.

4. The amount of money received from the county treasurer within the year, and the manner in which the same has been applied.

5. The amount of money raised by the district, in such year, and the purposes for which it was raised.

6. The kind of books used in the school, and such other facts and statistics in regard to the district schools as the county superintendent may require.

Sec. 37. Whenever school district shall lie partly in two or more counties, the clerk of such district, in making his annual report, shall carefully designate the number of children resi-

When district lies in more than one county

dent in the parts of the counties composing the district, and shall report to the county superintendent of public instruction of each of the counties in which such district may be partly situated.

Treasurer to execute bond.

Sec. 38. The treasurer shall execute to the district a bond in double the amount of money, as near as can be ascertained, to come into his hands as treasurer of the district during the year, with sufficient securities to be approved by the director and clerk, conditioned to the faithful discharge of the duties of said office. Such bond shall be filed with the district clerk, and in case of the breach of any condition thereof, the director shall cause a suit to be commenced thereon, in the name of the district, and the money collected shall be applied by such director to the use of the district, as the same should have been applied by the treasurer, and if such director shall neglect or refuse to prosecute, then any householder of the district may cause such prosecution to be instituted.

If he fails to give bond.

Sec. 39. If the treasurer shall fail to give bond as required in this act, or from sickness or any other cause, shall be unable to attend to the duties of said office, the district board shall appoint a treasurer, who shall possess all the powers of the district treasurer, and shall, before entering upon the duties of said office, give a bond as the district treasurer is required to give.

Powers and duties of treasurer

Sec. 40. The treasurer of each district shall apply for and receive from the county treasurer all school moneys apportioned to his district, and shall collect all district taxes assessed in pursuance of the provisions of this act and pay over on the order of the clerk, signed by the director of such district, all moneys so received or collected by the said treasurer.

If he refuses to pay over money to successor.

Sec. 41. If any district treasurer shall refuse or neglect to pay over any money in the hands of such treasurer belonging to the district, it shall be the duty of his successor in office to prosecute without delay the official bond of such treasurer, for the recovery of such money.

If school money lost by neglect.

Sec. 42. If by the neglect of any treasurer any school moneys shall be lost to any school district, which might have been received from the county treasurer, or collected from the district tax assessed, said treasurer shall forfeit to such district the full amount of the moneys so lost.

Sec. 43. The treasurer shall present to the district at each annual meeting, a report in writing, containing a statement of all moneys collected by him from the county treasurer during the year from assessments in the districts, and the disbursements made, and exhibit the vouchers therefor, which report shall be recorded by the clerk, and [if] it shall appear that any balance of money is in his hands at the time of making such report, he shall immediately pay over such balance to his successor.

Treasurer to
make annual re-
port of moneys,
&c.

DISTRICT BOARD.

Sec. 44. The district board shall purchase or lease such a site for a school-house as shall have been designated by voters at a district meeting, in the corporate name thereof, and shall build, hire, or purchase such school-house, as the voters of the district in a district meeting shall have agreed upon, out of the funds provided for that purpose, and make sale of any school-house site or other property of the district, and, if necessary, execute a conveyance of the same in the name of their office, when lawfully directed by the voters of such district at any regular or special meeting, and shall carry into effect all lawful orders of the district.

District board's
duties relating
to school house,
&c.

Sec. 45. The district board shall have the care and keeping of the school-house, and other property belonging to the district. They shall have power to make such rules and regulation relating to the district library, as they may deem proper, and to appoint some suitable person to act as librarian, and to take charge of the school apparatus belonging to the district.

Other duties.

Sec. 46. The district board shall have power to admit scholars from adjoining districts, and remove scholars for disorderly conduct.

May admit and
remove schola.

Sec. 47. The district board in each district shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing, and shall specify the wages per week or month, as agreed upon by the parties, and such contract shall be filed in the district clerk's office.

Of contracting
with teachers.

Sec. 48. The district board shall provide the necessary appendages for the school-house, during the time a school is

Shall provide
necessary ap-
pendages.

taught therein, and shall keep an accurate account of all expenses thus incurred, and present the same for allowance at any regular district meeting.

Schools, free to whom.

Sec. 49. The district schools established under the provisions of this act, shall at all times be equally free and accessible to all the white children resident therein over five and under the age of twenty-one years, subject to such regulations as the district board in each may prescribe.

What branches shall be taught.

Sec. 50. In every school district there shall be taught orthography, reading, writing, English grammar, geography and arithmetic, if desired, during the time the school shall be kept, and such other branches of education as may be determined by the district board.

If a vacancy in district board.

Sec. 51. If a vacancy should occur in the district board, in any district, the county superintendent shall appoint some suitable person to fill such vacancy.

DISTRICT TAXES.

Duty of county assessor.

Sec. 52. It shall be the duty of the county assessor of each county, at the time of making the annual assessment, to levy a tax of one dollar on each elector in the county for the support of district schools, to be collected at the time and the manner prescribed by law for the collection of taxes; which said tax, when collected, shall be distributed to the several school districts in each county in proportion to the number of electors therein; and shall be drawn from the county treasury, in the manner prescribed in section — of this act.

Taxes—how assessed.

Sec. 53. All taxes raised and collected in any school district for any of the purposes authorized in this act, shall be assessed on the same kind of property as taxes for county purposes are assessed.

Duty of clerk in making out tax lists.

Sec. 54. The clerk of the school district, in making out any tax list, shall enter therein the names of all persons liable to pay a school [tax,] the amount of personal property to be taxed to each such person, and a description of all taxable real estate in the district, distinguishing that owned by non-residents of the district, and he shall set opposite to each description of taxable property, the valuation of the same, and the amount of tax charged upon such property, and to each per-

son respectively, or tract of land owned by non-residents; and such description and valuation of taxable property, shall be ascertained as far as possible from the last assessment roll of the county.

Sec. 55. Whenever any real estate in any school district shall not have been separately valued in the assessment roll of the county, and the value of such real estate cannot be definitely ascertained from such assessment roll, the district board of such district shall estimate the value of the same and apportion the taxes thereon.

When real estate not separately valued.

Sec. 56. The warrant annexed to any tax list shall be under the hand of the clerk of the district, and shall command the treasurer of such district to collect from each of the persons and corporations named in said tax list, and of the owners of the real estate described therein, the several sums set opposite to the persons and corporations so named, and to the several tracts of land owned by non-residents, within forty days from the date thereof, and within twenty days from the date of such warrants, to personally demand such tax of the persons charged therewith; and that if any tax shall not be paid within thirty days thereafter, to collect the same by distress and sale of property in the same manner as county taxes, and the said treasurer shall execute the said warrant and return the same to the clerk at the expiration of the time limited therein, for the collection of such tax list.

Warrant to be under hand of clerk, and contain what.

Sec. 57. The warrant issued by the clerk of any school district, for the collection of any district tax authorized by any of the provisions of this act, may be executed anywhere within the limits of the county, and such warrants shall have the like force and effect as a warrant issued for the collection of county taxes; and the treasurer of the district, to whom any such warrants may be delivered for collection of a tax list, shall possess the like powers in the execution of the same as are provided by law for the collection of county taxes.

May be executed, where.

Sec. 58. Whenever any error may be discovered in any district tax list, the district board may order any money which may have been improperly collected on such tax list, to be refunded, and may authorize the clerk of the district to amend and correct such error in said tax list.

When money improperly collected.

When district tax collected of tenant.

Sec. 59. Whenever any district tax, lawfully assessed, shall be paid by any person on account of any real estate whereof he is only a tenant, such tenant may charge and collect of the owner of such estate the amount of tax so paid by him, unless some agreement to the contrary shall have been made by the tenant,

Register of deeds to make what report to district clerks.

Sec. 60. It shall be the duty of the register of deeds of each county, as soon as the annual assessment roll shall be completed in each year, to make out for each district in such county, a description of all taxable property therein, with the valuations affixed thereto, as the same shall appear in the last assessment roll, which shall be certified by him and delivered to the clerk of each school district in the county.

GRADED SCHOOLS.

Graded schools, how formed.

Sec. 61. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a graded school in which instruction shall be given in the higher branches of education, the clerks of the several districts shall, upon written application of five voters of the respective districts, call a meeting of the voters of such districts, at some convenient place, by posting up written notices thereof in like manner as provided for calling district meetings, and if a majority of the voters, of each of the two or more districts shall vote to unite for the purpose herein stated, they shall at that meeting or at an adjourned meeting, elect a board of directors, consisting of a director, clerk, and treasurer.

Their board have same powers as the regular.

Sec. 62. The board of directors, provided in the preceding section, shall, in all matters relating to the graded schools, possess all the powers and discharge all the like duties of the district board of directors as prescribed in this act.

Entitled to equitable share of school funds.

Sec. 63. The union district thus formed, shall be entitled to an equitable share of the school funds, to be drawn from the treasurer of each district so uniting, in proportion to the number of white children attending the said graded school for each district.

May levy taxes for what.

Sec. 64. The said union district may levy taxes for the purpose of purchasing a building, or furnishing proper buildings for the accommodation of the school, or for the purpose of defray-

ing necessary expenses and paying teachers, but shall be governed in all respects by the law herein provided for levying and collecting district taxes.

Sec. 65. The clerk of the union district shall report in writing to the treasurer of each school district uniting in the union district, the number of scholars attending the graded school, from his district, their sex, and the branches studied, and the said district treasurer shall apportion the amount of school money due the union school district and pay the same over to the treasurer of the union district on order of the clerk and director thereof.

Clerk to make report to treasurers of district

Sec. 66. The clerk of the union district shall make a report to the county superintendent of public instruction, and discharge all the duties of clerk, in like manner as the clerk of the district.

Sec. 67. The treasurer of the union district shall perform all duties of treasurer, and give the bond as prescribed in this act, in like manner as the district treasurer.

To make report to county superintendent.

Sec. 68. The public schools of any city, town, or village, which may be regulated by special law set forth in the charter of such city, town [or] village, shall be entitled to receive their proportion of the public fund: *Provided*, The clerk of the board of education in such city, town, or village, shall make due report within the time and manner prescribed in this act, to the county superintendent of public instruction.

Public schools regulated by special law, have their share of school moneys.

Proviso.

Sec. 69. Any single district shall possess power to establish graded schools, subject to the provisions of this act, in like manner as two or more districts united.

Single districts may establish graded schools.

Sec. 70. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures, or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall pay the same to the said district treasurer, as prescribed in this act. He shall also collect the delinquent taxes on real estate in any district, in the same manner as county taxes are collected, whenever such delinquent tax list shall have been lawfully reported and returned to him, and he shall pay the same over to the treasurer of the district to which delinquent taxes are due, and if any county treasurer shall refuse to deliver

Duties of county treasurer relating to school moneys.

over to the order of the county superintendent any money in his possession, or shall use, or permit to be used for any other purpose than is specified in this act, any school money in his possession, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

MISCELLANEOUS.

Teachers to
make what re-
port.

Sec. 71. It shall be the duty of the teacher of every district school or graded school, to make out and file with the district clerk at the expiration of each term of the school, a full report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the text books used, the branches taught, and the number of pupils engaged in the study of each of said branches. Any teacher who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school, at the discretion of the district board.

If clerk make
false report.
Penalty.

Sec. 72. Every clerk of a district court who shall willfully sign a false report to the county superintendent of his county, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Clerk or treas-
urer refusing to
deliver records,
&c to successor.
Penalty.

Sec. 73. Every school district clerk or treasurer who shall neglect or refuse to deliver to their successor in office all records and books belonging severally to their officer, shall be subject to a fine not exceeding fifty dollars.

When final judg-
ment rendered
against school
district.

Sec. 74. When any final judgment shall be obtained against any school district, the district board shall levy a tax on the taxable property in the district, for the payment thereof; such tax shall be collected as other school district taxes, but no execution shall issue on judgment against a school district.

Justices have
jurisdiction in
what cases.

Sec. 75. Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars, and the parties shall have the right of appeal as in other cases.

Sec. 76. No school officer mentioned in this act shall re-

ceive any compensation for his services out of the territorial or school district fund.

School officers not to receive pay out of school moneys.

Sec. 77. Any person duly elected at the annual district school meeting to either of the district offices mentioned in this act, who shall omit or refuse to serve as such officer, shall forfeit the sum of ten dollars for such omission or refusal; which amount may be recovered by the district in civil action before any justice of the peace in the county where such district is located; and shall be appropriated to the support of schools in the district by whom such action was prosecuted.

Fines and penalties, how collected.

Sec. 78. All fines and penalties not otherwise provided for in this act, shall be collected by an action in any court of competent jurisdiction.

Sec. 79. All acts and parts of acts, inconsistent with this act, upon the subject of education, are hereby repealed.

Acts repealed.

Sec. 80. That the forms now in use, and which are appended to chapter 81, entitled "An act for the regulation and support of common schools," of the laws of 1862, are hereby adopted a part of this act, and shall be substantially followed in all cases where they apply.

What forms adopted.

Sec. 81. This act shall take effect from and after its passage.

Take effect when

Approved, January 15, 1864.

FORMS.

FORM OF NOTICE FOR THE FIRST SCHOOL DISTRICT MEETING.

To———, a householder, in school district number ——.

The county commissioners have formed school district number ——, in the county of ——, of which the following is a description ——, and you are hereby directed to post this notice in at least five public places in the said district, notifying the voters of the district to attend the first meeting there-

Form of notice for annual district meeting.

of, which is appointed to be held at the house of _____, in said district, on the _____ day of _____, 186—, at _____ o'clock, _____.

This _____ day of _____, 186—.

_____, County Sup't Pub. Instruction.

FORM OF NOTICE FOR ANNUAL DISTRICT MEETING.

Notice is hereby given to the voters of school district number _____, of _____ county, that the annual meeting of said district will be held at _____, on the _____ day of _____, 186—, at _____ o'clock, _____.

This _____ day of _____, 186—.

_____, District Clerk.

FORM OF ORDER ON DISTRICT TREASURER.

Form of order :
on district
treasurer.

To _____, treasurer of school district number _____, county of _____ :

Pay to the order of _____, the sum of _____ dollars out of any money in your hands, not otherwise appropriated, belonging to said district.

This _____ day of _____, 186—.

_____, District Clerk.

_____, Director.

FORM OF BOND OF DISTRICT TREASURER.

Form of bond of
district treasurer.

Know all men by these presents: that we, _____ treasurer of school district number _____, county of _____, and _____ his surety, are held and firmly bound unto the said school district, for the sum of _____ dollars, to be paid to the school district, for the payment of which we bind ourselves severally and jointly, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____, A. D. 186—.

The condition of the above obligation is such, that if the said _____, treasurer as aforesaid, shall faithfully discharge the duties of his office as treasurer of school district number _____, county of _____, as prescribed by law, then this obligation to be void, otherwise to be and remain in full force.

_____ [SEAL.]

Signed, sealed, and delivered in presence of

_____ [SEAL.]

FORM OF WARRANT FOR THE COLLECTION OF DISTRICT TAX.

To _____, the treasurer of school district number _____, county of _____.

Form of warrant for the collection of district tax

This is to authorize and require you to demand, within twenty days from the date of this warrant, of every person or corporation named in the annexed duplicate of school tax of said district, the sum wherewith such person or corporation stands charged; and if any such tax be not paid within thirty days from the date of this warrant, you are required to proceed and collect the same as authorized by law, by distress and sale of property, and make due return according to law.

Given under my hand, this _____ day of _____, A. D., 186—.

_____, District Clerk.

[FORM OF] VOUCHERS.

Received _____, 186—, of _____, treasurer of school district number _____, county of _____, _____ dollars for services rendered as teacher in the said school district, for the term of _____ months.

Form of vouchers.

_____, Teacher.

FORM OF CONTRACT BETWEEN DISTRICT AND TEACHER.

It is hereby agreed between school district number _____, county of _____, and _____, teacher, that the said _____

Form of contract between district and teacher.

is to teach the common school of said district for the term of _____ months, for the sum of _____ dollars per _____, commencing on the _____ day of _____, 186—; and for such services properly rendered, the said school district is to pay _____ the amount that may be due, according ta this contract, on or before the _____ day of _____, 186—.

_____, District Clerk.

This _____ day of _____, 186—.

_____, Teacher.

FORM OF ANNUAL REPORT OF DISTRICT TREASURER.

Form of annual report of district treasurer.

I _____, treasurer of school district number _____, county of _____, submit the following report of all moneys received and disbursed by me since the last annual meeting:

Amount received from my predecessor,	. . . . .	\$. _____
Amount received from county treasurer,	. . . . .	\$. _____
Amount raised by tax in district and collected	. . . . .	\$. _____
Total amount received,	. . . . .	\$. _____
Paid out, on order of district clerk (date of order),	. . . . .	\$. _____
On order of district clerk, _____,	. . . . .	\$. _____
Balance on hand,	. . . . .	\$. _____

This _____ day of _____, A. D. 186—.

_____, Treasurer.

[FORM OF] REPORT OF DISTRICT CLERK TO THE COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION.

Form of report of district clerk to the county superintendent of public instruction.

_____ school district number _____, county of _____.

Number of white children residing in the district over five and under the age of twenty-one years:

Males,	. . . . .	_____
Females,	. . . . .	_____
Total number,	. . . . .	_____

Number who have attended school during the year:

Males,	_____
--------	-----------	-------

Females, —
 Total number, —
 Number of months a school has been taught, —
 ——— months by Mr. ———, —
 ——— months by Miss ———, —
 Wages paid Mr. ———, —
 Amount of school money received from ———, county
 treasurer, \$ —
 Amount raised by district tax for teachers' wages \$ —
 Amount raised by district tax for building school-
 house, \$ —
 Amount raised by district tax for furnishing school-
 house, \$ —
 Amount paid for teachers' wages, \$ —
 Amount expended for building school-house, \$ —
 Amount expended for furnishing school-house, \$ —
 This ——— day of ———, 186—.

—— ———, District Clerk.

—— ———
 Add a copy of teacher's report.

SCHOOL TEACHER'S CERTIFICATE.

DAKOTA TERRITORY, }
 ——— county, }

———, A. D. 186—.

This is to certify that ——— has been examined and found competent to give instruction in orthography, writing, arithmetic, English grammar, geography, and ———, and having exhibited satisfactory testimonials of good moral character, is authorized to teach these branches in any common school within this county.

*School teachers
 certificates.*

—— ———,
 Sup. of Pub. Instruction of ——— county.

FORM OF DEED.

This indenture, made the ——— day of ———, one thousand eight hundred and sixty——, between ———, and ———, his

Form of deed.

Form of deed.

wife, of the county of _____, Dakota Territory, parties of the first part, and _____ of district board of district number _____, county and territory aforesaid, witnesseth, That the said parties of the first part, in consideration of _____ dollars to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey to the said parties of the second part, their successors in office, and assigns forever (here describe the premises), with the appurtenances and all the estate, title, and interest of the said parties of the first part therein. And the said parties of the first part do hereby covenant and agree with the said parties of the second part, that at the time of the delivery hereof, the said parties of the first part were the lawful owners of the premises above granted, and seized thereof, in fee-simple absolute, and they will warrant and defend the above-granted premises, in the peaceful possession of the said parties of the second part, and their successors and assigns forever.

_____ [SEAL.]
 _____ [SEAL.]

Sealed and delivered in presence of

THE TERRITORY OF DAKOTA, }
 _____ county. }

Personally appeared before me a _____, within and for the county above named, _____ and _____ his wife, to me known to be the person whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed; and the said _____ being at the same time, by me, made acquainted with the contents of the above deed, apart from her husband, acknowledged that she executed the same voluntarily, and that she is still satisfied therewith.

Witness my hand and seal this _____ day of _____, A. D. 186—.

REVENUE.

REVENUE

CHAPTER XLII.

AN ACT TO PROVIDE FOR RECORDING THE
STAMPS OF THE UNITED STATES INTERNAL REV-
-ENUE, AND FOR OTHER PURPOSES.

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

Section 1. Whenever, to any written instrument, which may, Officer to record
revenue stamps by the provisions of law, be recorded in any public office, there shall have been affixed any stamp or stamps of the United States Internal Revenue, the officer whose duty it is to record such written instrument shall also record such stamp or stamps in connection with the record of such instrument.

Sec. 2. Whenever to any record, document, or other paper, Certified copy
to be evidence. a certified copy of which is by law evidence, there shall have been affixed a stamp or stamps of the United States Internal Revenue, a certified copy of such stamp is hereby declared to be evidence, if the copy of such stamp or stamps shall be certified by the proper clerk or officer, to be a correct transcript of the written or printed part thereof.

Sec. 3. Any public officer who shall be required by law to Officer affixing
stamp to re-
ceive pay there-
for. affix to any certificate, or other instrument in writing made or issued by him, any stamp, shall be entitled to charge and collect the price thereof, in addition to any fees or other compensation which he is now by law entitled to charge or receive, to be paid by the person for whose benefit such certificate or other instrument in writing is made or issued by such officer.

Sec. 4. This act shall take effect from and after its Take effect when passage and approval by the Governor.

Approved, January 3, 1864.

RESOLUTIONS AND MEMORIALS.

CAPITOL BUILDING

CHAPTER XLIII.

A MEMORIAL AND JOINT RESOLUTION PRAYING FOR AN APPROPRIATION TO ERECT A CAPITOL BUILDING FOR DAKOTA TERRITORY.

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:

Asking an appropriation for the erection of a capitol building.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent, that while Congress has uniformly made appropriations for the erection of suitable capitol buildings for the several organized territories. not a dollar, thus far, has been appropriated for Dakota for that purpose.

Your memorialists would further represent, that the buildings occupied at this time, by the Legislative Assembly and the several federal officers of this Territory, are rented of private individuals, and are temporary wooden tenements, in every way unsuitable and unfit for the purposes for which they

are occupied, and very liable at all times to be destroyed by ^{same.} fire, together with their valuable contents.

And your memorialists would further represent, that the legislative, executive, and judicial records, files, libraries, furniture and valuables of said Territory are without suitable protection, and liable to injury and total destruction owing to the want of adequate provision for their preservation and safe keeping.

Your memorialists would therefore pray that you will appropriate the sum of forty thousand dollars for the erection of a capitol building at the place that now is or may hereafter be designated as the seat of government of said Territory. And we, your memorialists, as in duty bound, will ever pray.

Be it resolved by the legislative assembly of the Territory of Dakota, That his excellency the governor be and is requested to forward an authenticated copy of this memorial and resolution to our delegate in congress, who is hereby requested to lay the same before the congress of the United States, and urge immediate and favorable action thereon.

Approved, January 14, 1864.

BRIDGES

CHAPTER XLIV.

A MEMORIAL TO CONGRESS ASKING AN APPROPRIATION FOR THE CONSTRUCTION OF BRIDGES IN THE TERRITORY OF DAKOTA.

To the Honorable the Senate and House of Representatives of the United States :

We your memorialists, the legislative assembly of the Territory of Dakota would most respectfully represent to your honorable bodies that an appropriation be made by congress

Asking an appropriation to construct bridges.

Same.

for the purpose of constructing bridges across the principal rivers in this territory, over which the great thoroughfare from the south east to the north west in the valley of the Missouri passes and over which road all the United States troops and trains belonging thereto must pass to reach the upper country and also, a great portion the Indian goods furnished by the government, to the different Indian reservations on the said Missouri river, as well as the military forts and posts, already established on said river.

Your memorialists, would further represent, that the present necessities are greater growing out of the Indian troubles and the consequent military operations for the subjugation of the hostile tribes who roam in the valley of said river.

And that our sister territory, Nebraska, has been favored in like manner, which greatly facilitated the travel, and consequently the settlement of said territory, and enhanced the value of the public lands in the same.

Your memorialists would further represent that it is an assistance which all other territories have been favored with, except Dakota, we therefore, ask what we believe will result in a great saving to the general government, and at the same time confer substantial benefits upon the people of Dakota.

And as in duty bound will ever pray.

Approved, January 14th, 1864.

DELEGATE

CHAPTER XLV.

TO THE HONORABLE HOUSE OF REPRESENTATIVES, IN UNITED STATES CONGRESS ASSEMBLED.

Be it resolved by the Legislative Assembly of the Territory of Dakota :

That Hon. Wm. Jayne did, on the 1st day of September, A. D. 1862, receive a majority of all the legal votes cast for delegate to Congress, and that he is the duly elected delegate of this Territory, and that he should be immediately restored to his rights, that our Territory may have a representation in Congress of its own free choice.

Hon. Wm Jayne
declared to be
elected delegate
to Congress.

Approved, January 15, 1864.

MAIL SERVICE

CHAPTER XLVI.

A MEMORIAL TO THE POSTMASTER GENERAL, ASKING FOR AN INCREASE OF "SPEED" AND "MAIL SERVICE" ON MAIL ROUTE NO. —, FROM SIOUX CITY IOWA, TO FORT RANDALL, DAKOTA TERRITORY.

To the Honorable Postmaster General, Washington, D. C.:

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully solicit you to order the following in-

Asking for in-
crease of speed
and mail service.

same.

crease of speed and service on mail route No. —, between Sioux City, Iowa, and Fort Randall, Dakota Territory, to wit:

The departure of the mails from said places, respectively, at 5 o'clock, A. M., on Mondays, Wednesdays, and Fridays of each week, arriving at 6 o'clock P. M., on said days at Yankton, and leaving Yankton at 5 o'clock, A. M., on Tuesdays, Thursdays and Saturdays, and arriving at Fort Randall and Sioux City respectively, at 6 o'clock, P. M. the same day.

Your memorialists respectfully represent, that in their judgment the wants of the people of this Territory demand the foregoing service, from the fact that the country is being densely populated between Sioux City and Fort Randall, and the quantity of mail matter transported on said route has been rapidly increasing during the past year, which fact is undoubtedly noticeable by the returns made to the Post Office department from the postmasters on said route.

Your memorialists do further represent, that said service will obviate the present delay of eastern and southern mail matter arriving at Sioux City and destined to post offices on said route, and will afford to the people of this Territory that direct and speedy communication with the east and south which is believed by your memorialists to be due to them. For which, as in duty bound, we will ever pray.

Approved, December 22, 1863.

PACIFIC RAIL ROAD

CHAPTER XLVII.

A MEMORIAL TO CONGRESS RESPECTING THE PACIFIC RAILROAD.

To the Honorable Senate and House of Representatives of the United States in Congress assembled:

Asking for an amendment to the Pacific railroad bill.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully pray your honorable body to so

amend section fourteen of "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," in relation to the construction of the branch of said Pacific Railroad commencing at Sioux City, Iowa, as will enable the company constructing this branch to connect with the trunk line at some convenient point west of the one hundredth meridian of longitude.

Asking for an amendment to the Pacific railroad bill.

Your memorialists further beg leave to state to your honorable body, that by amending the bill as above contemplated, you will enable the company constructing the branch referred to, to so change its direction as to become of vast importance to our new Territory, which seems now entirely cut off from any participation in the benefits to be derived from the construction of this great national thoroughfare; and further, in enabling the company to avail itself of the valleys of the Missouri and Niobrara rivers, in the construction of the branch road under consideration, a saving of nearly one hundred and fifty miles is effected in distance, and many millions of dollars in cost of construction, and wood and water at convenient distances is at hand to operate said road on this line for many years to come.

Your memorialists would further most respectfully pray your honorable body to grant to the Missouri and Niobrara Valley railroad company, the privileges and encouragement as is granted in the bill approved July 1st, 1862, to other railroad companies constructing the branch lines from the Missouri west, to the intersection of the trunk line of the great Pacific Railroad. All of which your memorialists, as in duty bound, will ever pray.

Approved, January 13th, 1864.

PRISON

CHAPTER XLVIII.

A MEMORIAL AND JOINT RESOLUTION PRAYING FOR AN APPROPRIATION TO BUILD A TERRITORY- RIAL PRISON.

*To the Honorable Senate and House of Representatives of the
United States in Congress assembled:*

Asking an ap-
propriation to
construct a ter-
ritorial prison.

Your memorialists, the Legislative assembly of the Territory of Dakota, would most respectfully represent, that the existence of good society requires the punishment of evil doers. Savages, as well as civilized communities, are compelled to restrain or destroy those who violate their laws. Their trial should be impartial, and their punishment humane and certain. Without a reasonable certainty of the punishment of offenders, individuals and communities smarting under the unredressed violation of these rights, will take the redress of grievances into their own hands. Mobs will take the place of courts, the trial of the accused will be dispensed with or become a mockery—putting in peril the innocent with the guilty—and severe and cruel punishment will be inflicted for minor offences, thus undermining the very foundations of society. It is clear, therefore, that we should have a secure territorial prison, in which to incarcerate those who may be convicted of crimes. Congress has uniformly made appropriations for the erection of prisons for the organized territories, and we know no reason for making Dakota an exception.

Your memorialists would further represent, that, as yet in our infancy, we have no secure county prison; and that, in having a secure place for the confinement of criminals, would deter many from evil doing, and rid the country of many unfit to run at large.

Your memorialists would therefore earnestly petition you to appropriate the sum of twenty thousand dollars for the erection of a territorial prison in said Territory; and we would further state that the saving to the general government of the large amounts annually expended in the Territory for guarding and keeping criminals, would soon make up the amount your memorialists petition for, and for which we shall ever pray.— Therefore, be it

Resolved, By the Legislative assembly of the Territory of Dakota, that our delegate in congress be, and is hereby requested to use his influence to procure the objects indicated in the above memorial and resolution.

Resolved, That his excellency the Governor, be requested to forward an attested copy of the above memorial and resolution to our delegate in Congress, who is hereby instructed to lay the same before the Congress of the United States, and urge immediate and favorable action on the same.

Approved, January 13, 1864.

PUBLIC LANDS

CHAPTER XLIX.

JOINT RESOLUTIONS RELATIVE TO THE PUBLIC LANDS IN DAKOTA.

WHEREAS, The policy, thus far, pursued by the present national administration in withholding from market, and from the grasp of greedy speculators, the public lands within the territory of Dakota, thereby allowing the same to be located and improved by actual tillers of the soil, is eminently calculated to encourage immigration, and promote the settlement, development and general improvement and prosperity of this territory; be it, therefore,

Relative to the public lands in Dakota.

same.

Resolved, by the legislative assembly of the territory of Dakota, That by the wise and fostering policy above mentioned, the President of the United States, the Secretary of the Interior, and the Commissioner of the General Land Office, merit, and are hereby petitioned to receive the heartfelt thanks of the people of Dakota.

Resolved, That our delegate in congress be, and is hereby requested, to present President Lincoln, Secretary Usher, and Commissioner Edmunds, each, with a copy of the above resolution, and in the name of the people of this territory, to petition them to withhold the public domain within said territory from sale, and to reserve the same sacredly, for the use and benefit of the thousands of poor, industrious families who may desire to secure happy homes within our borders, by availing themselves of the just and liberal provisions of the homestead law.

Resolved, That his excellency the governor, be, and is requested to transmit three authenticated copies of the foregoing resolutions to our delegate in congress.

Approved, January 14th, 1864.

STATE OF THE UNION

CHAPTER L.

JOINT RESOLUTION ON THE STATE OF THE UNION.

Relative to the
state of the
Union.

WHEREAS, The National Government is endeavoring to put down a rebellion which had its origin in the determination of Southern politicians, to extend the dominion of slavery, and to diminish the area of Freedom; for the accomplishment of which they sought to control by political strategy, or by force,

the policy, foreign and domestic, of the general government and On the state of the Union.
Whereas, they found a pretext for a resort to arms in the election of a Republican President of the United States; Therefore,

Be it resolved by the Legislative Assembly of the Territory of Dakota :

First, That while we are desirous of an early and honorable adjustment of our National difficulties, we are opposed to any hollow truce or compromise which shall give a present peace at the expense of the future safety or honor of the Nation; that we are opposed to a cessation of this conflict, until the roar of rebel artillery is silenced, until the sword of every rebel is sheathed, and the rebellion effectually put down, and the authority of the government in full force and vigor, is fully established and acknowledged in every State and Territory of the United States.

Second, That we have full confidence in the patriotism and ability of the chief magistrate of the Nation, that he deserves to be called a statesman whom no man in christendom is able to teach, one whom the world cannot bribe; who lives for his country, devoting to her interests all his ability, lofty patriotism and manly courage.

Third, That we consider the administration of Abraham Lincoln, and his constitutional advises in the condut of the war against the rebellion, in its intercourse with foreign powers, and in its general supervision of the domestic affairs of the country, as having been characterized by eminent wisdom and success. That it has met the unprecedented difficulties it has had to encounter with firmness and prudence, and that it ought to receive the cordial and earnest support of every American citizen.

Fourth, That we fully endorse the policy set forth in the late message and proclamation of the President, for the re-construction of loyal state governments in the rebellious states.

Fifth, That we regard citizens of the free North, who do not consider our nationality worth all the price we can pay for it; be that price what it may, and who by their opposition to the na-

Same.

tional administration would paralyze the energies of the Federal Government, as worse than traitors in arms.

Sixth, That it is a source of embodied satisfaction to us, that congress has redeemed in good faith all the pledges made by the Republican party to the people; that the public domain has been set apart and consecrated in free homes; that the Pacific railroad has been established; that slavery hereafter can never be extended into any territory of the United States, and beyond the redemption of those pledges, new greatness and glory have been added to the nation, by the issuance of the President's emancipation proclamation, and by making our National Capitol free forever; and that the principles thus established in the conduct of the government are essential to its future administration.

Seventh, That we recognize in the co-operation of the pure and patriotic men who have united in sharing the burdens, and defending the principles of the administration of the general government, a disinterested love of country, outweighing the trammels of party organization and during the acknowledgments of our favored land. That we regard true soldiership displayed in the defence of our benign and venerated government as one of the highest types of greatness; and that the conduct of our troops within the past year fully entitles them to receive the encomium that they have already reached the unfailing figure of all that is great in the area of war.

Eighth, That while we express our admiration and thanks to the brave men who have entered into this fierce struggle in defense of the government, and we would not be unmindful of the bereaved friends of those over whose trampled and buried remains, nought but the vollying musketry has sounded a requiem, but would offer our condolence, conscious that the tears of a grateful people will ever keep their memories green.

Ninth, That after the passage and approval of these resolutions, the governor of this territory is hereby requested to forward an enrolled copy of the same to the President of the United States.

Approved, January 12, 1864.

UNIVERSITY

CHAPTER LI.

A MEMORIAL TO CONGRESS ASKING AN APPROPRIATION OF LANDS FOR THE UNIVERSITY OF DAKOTA.

To the Honorable the Senate and House of Representatives of the United States :

We, your memorialists, the legislative assembly of the territory of Dakota, would represent, that while the appropriation of public lands, as provided by the act organizing this territory, for the support of common schools, is large and munificent, and will, in time, place the common schools of our territory upon a good and lasting financial basis; but as these lands can only be made available after the territory shall become a state, many years must elapse before the people can derive any benefit from said appropriation. And as there is needed, for the more advanced education of our youth, a university of high grade; and as we believe that such an institution is as essential to the interests and wellbeing of our people as are the common schools; and we would further represent, that as initiatory steps have already been taken toward the organization and incorporation of the university of Dakota, but as suitable buildings have not been provided for the use of said university, and as no appropriation has yet been made for its endowment, we, your memorialists, would, therefore, most respectfully, petition you to appropriate twenty thousand acres of public lands in this territory, to be selected and disposed of for the endowment of the university of Dakota; and also, the appropriation of five thousand acres of public lands in this territory, to be selected and disposed of, and the proceeds thereof used in the erection of university buildings, at the town of Vermillion.

Asking an appropriation of lands for the University of Dakota.

And your memorialists will ever pray.

State of the
Union.

Be it resolved, That our delegate in congress be, and is hereby instructed to use his best endeavors to procure the appropriations specified in the above memorial.

Approved, January 13, 1864.

PRIVATE LAWS

OF THE

TERRITORY OF DAKOTA,

PASSED AT THE SECOND SESSION

OF THE

LEGISLATIVE ASSEMBLY,

COMMENCED AT THE TOWN OF YANKTON, DECEMBER 7, 1863, AND
CONCLUDED JANUARY 15, 1864.

PUBLISHED BY AUTHORITY.

YANKTON, DAKOTA TERRITORY,
G. W. KINGSBURY, PRINTER, DAKOTIAN OFFICE.

—1864.—

PRIVATE LAWS.

BRIDGES

CHAPTER LII.

AN ACT AUTHORIZING FELIX LEBLANC AND GONZAQUE BOURET TO BUILD AND KEEP A TOLL BRIDGE.

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

Section 1. That Felix LeBlanc and Gonzaque Bouret, their heirs, executors, administrators and assigns, be and are hereby authorized, and shall have the exclusive right and privilege, for the period of ten years from and after the approval of this act, to build a toll bridge over the Dakota river, within the limits hereinafter mentioned, and to keep the same to pass, for pay, persons and property across said river.

Felix LeBlanc
and Gonzaque
Bouret to have
privilege of
keeping toll
bridge.

Sec. 2. Said bridge shall be built at or near a point on said river, eighty rods below the place where the south line of section six, in township ninety-three, range fifty-four, strikes said river, in the county of Yankton; and the exclusive franchise granted by this act, shall extend from the said point, one and one half miles up, and three miles down said river. And it shall be unlawful for any person or persons, corporation or corporations, to build a bridge over said river for the purpose of crossing persons and property thereon, for pay, within the

limits specified by this section, and for the period of time named in section one: *Provided*, That nothing in this act shall be so construed as to prevent any person or persons, corporation or corporations, from building a free bridge at any place over said river, nor to prevent any person or persons, corporation or corporations from establishing and running a ferry free or for pay, within said limits, at any point where his or their land fronts on said river.

Proviso.

When to be completed.

Sec. 3. Said bridge shall be completed on or before the first day of August, A. D. 1864.

How constructed.

Sec. 4. Said bridge shall, when completed, be substantial, safe and secure, with easy and convenient approaches, and a substantial railing, at least three feet high, on each side, extending along the entire length of the bridge and approaches; and the whole structure shall be kept in good repair for the safe crossing of teams, persons and animals, during the time that it is used as a toll bridge.

When owner fails to keep bridge in repair

Proviso.

Sec. 5. Whenever the owner or owners of said bridge shall fail to keep the same in repair and condition required by the preceding section, the franchise, rights and privileges granted by this act, shall cease: *Provided*, That if said bridge be, at any time, destroyed or damaged by high water, floating ice, or fire, the owner or owners thereof shall have reasonable time to rebuild or repair the same.

File bond.

Sec. 6. Before said bridge shall be used as a toll bridge, the owner or owners thereof shall execute and file in the office of the register of deeds of Yankton county, a bond to the Territory of Dakota, for the use of the public, or any person complaining, in the penal sum of one thousand dollars, with good and sufficient surety or sureties, to be approved by said officer, conditioned that the owner or owners of said bridge shall observe and fulfil all the requirements of this act. The county commissioners of Yankton county may, at any time, when deemed necessary, require additional security, and may require a new bond, conditioned as above, in any sum not exceeding five thousand dollars.

Liability to pay damages, in what cases

Sec. 7. Any person or persons, corporation or corporations, who shall suffer injury or loss to person or in property, from any violation, on the part of the owner or owners of said

bridge, or either of the stipulations or requirements of this act, or from any negligence or improper conduct of the person or persons in charge of said bridge; or from the unsafe condition of the bridge; or who shall feel aggrieved by being charged, for crossing said bridge, a higher rate than is allowed by the following section, may have a remedy by a civil action for damage on the bond required by this act, in any court within this Territory, having jurisdiction of the same; and the judgment obtained in such court, upon such action, together with all attending costs, shall be collected as is now or may at any time be provided by law, in actions for debt: *Provided*, however, that any exemption laws then in force, shall not apply to executions issued on judgments rendered for damage and costs under the provisions of this act. Proviso.

Sec. 8. Said bridge owners are hereby authorized, after the completion of the bridge, to place a toll gate at either end thereof, where they may charge and receive the following rates of toll for crossing said bridge, to wit: Rates of toll.

For each vehicle drawn by two horses, mules or oxen, twenty-five cents.

For each additional horse, mule or ox, attached to said vehicle, ten cents.

For each vehicle drawn by one horse, mule or ox, fifteen cents.

For each hog or sheep, two cents.

For each head of horses, mules or cattle, other than enumerated as aforesaid, ten cents.

And for each man and horse, ten cents.

And said bridge owner or owners shall give prompt and ready attention at the said toll gate, at all hours of each day from sunrise to sunset.

Sec. 9. Said bridge owner or owners, shall keep posted up at or near said toll gate, in a conspicuous place, in view of the passing public, a bill of the rates allowed by the preceding section. Rates to be posted.

Sec. 10. The said bridge authorized to be built and kept by this act, shall not be a floating bridge, or a temporary bridge formed by attaching together two or more boats, rafts, or other floating structures; but it shall be a substantial frame bridge, How constructed.

well put together, resting upon secure bents, and of sufficient height to elevate the stringers, or the timbers supporting the floor, above high water mark.

Not interfere
with rights of
other parties.

Sec. 11. That nothing in this act shall prevent any person or corporation, when they shall have obtained a charter for the same, from building a bridge on the Dakota river, where any county or territorial road shall strike said river on their land.

Take effect when

Sec. 12. This act shall take effect from and after its passage and approval.

Approved, January 6, 1864.

CHAPTER LIII.

AN ACT INCORPORATING A BRIDGE COMPANY AT VERMILION, AND FOR OTHER PURPOSES.

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

Certain persons
incorporated as
bridge company

Section 1. That William Shriner, G. W. Pratt, Samuel Lyon, John Russell, B. W. Collar, Ahira Partridge, P. H. Jewell, A. Carpenter, S. B. Mulholland, John Burgman, A. W. Puett, Hugh Compton, Ole Bottolfson, C. Week, B. Bothun, and E. M. Bond, be and the same are hereby declared to be a body corporate, to be known as the Vermilion Bridge Company.

Their powers.

Sec. 2. Said company is hereby vested with all the powers usually conferred upon like corporations, which are necessary and essential for the well being of said company.

same.

Sec. 3. Said company is, by this act, empowered and authorized to construct and maintain a bridge on the Vermilion river, at a point near the northeast corner of the claim of L. E. Phelps, and are to enjoy the right of maintaining a bridge at said point until such time as the same shall be unfit for use for six months at any one time.

Bridge to be
free.

Sec. 4. Said bridge is to be kept open for the free use of

the traveling public, save and except the citizens of Clay county, who are to enjoy the same privileges of residents of other localities: *Provided*, That they pay an equal share of the expenses incurred in the construction of the same, with the members of said company.

Sec. 5. Said bridge company shall enjoy the exclusive right and privilege of keeping and maintaining a bridge on said river until such time as the right hereby conferred is forfeited by the provisions of the third section of this act. Have exclusive right.

Sec. 6. That the said Vermilion river is, and the same is hereby declared to be navigable five miles from its confluence with the Missouri river. Vermilion river declared to be navigable—how far.

Sec. 7. This act shall take effect and be in force from and after its passage. Take effect when

Approved, January 12, 1864.

CITIZENSHIP

CHAPTER LIV.

AN ACT CONFERRING THE RIGHTS OF CITIZENSHIP UPON ZEFFIER RENCONTER, A RENCONTER, CHARLES J. BRAZEAU, PETER GRANT AND BATIS DUFONT.

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

Section 1. That Zeffier Renconter, A. Renconter, Charles J. Brazeau, Peter Grant and Batis Dufont, of the Territory of Dakota, be and are hereby declared to be citizens of the Territory of Dakota and entitled to all the rights and privileges of other citizens of said Territory. Certain persons declared citizens.

Sec. 2. That this act shall take effect and be in force from and after its passage and approval by the Governor. When take

Approved, December 22, 1863.

FERRIES

CHAPTER LV.

AN ACT GRANTING TO JOHN CAIN AND CORNELIUS CAIN A FERRY CHARTER ON THE MISSOURI RIVER.

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

John Cain and
Cornelius Cain
have ferry priv-
ileges.

Section 1. That John Cain, Cornelius Cain, their heirs, administrators, and assigns, shall have the exclusive privilege for the period of fifteen years, of keeping and maintaining a ferry on the Missouri river, at a point where the range line between ranges 50 and 51 west, intersects the Missouri river, and said privilege shall extend three miles above, and a like distance of three miles below said point.

Their duties.

Sec. 2. The said grantees shall at all times keep a good and sufficient boat or boats in good repair, for the accomodation of all persons wishing to cross at said ferry, and shall give prompt and ready attention to all persons, teams or freight, on all occasions from sunrise to sunset, except when the navigation of said river is rendered dangerous, by reason of high water, floating ice, fogs, or tempestuous weater.

Rates of ferri-
age

Sec. 3. The rates charged for crossing said ferry, shall not exceed the following, to wit :

For two horses, mules or oxen, with wagon and driver, one dollar.

For each additional pair of horses, mules or oxen, forty cents.

For each two horses, or mules, and buggy, with driver, one dollar.

For each one horse, or mule, and buggy, with driver, seventy-^{same.} five cents.

For each led horse or mule, twenty-five cents.

For loose cattle, per head, twenty cents.

For each footman, fifteen cents.

For sheep and hogs, per head, ten cents.

For each hundred weight of merchandise, ten cents.

For each thousand feet of lumber, one dollar.

Sec. 4. The said grantees, shall, within six months after ^{File bond.} the passage of this act, file or cause to be filed in the office of register of deeds, in the county of Cole, a bond to said register, in the penal sum of five hundred dollars, with one or more sureties, to be approved by said register of deeds, conditioned that they will fulfill all the duties imposed upon them by the provisions of this act, and in case of a failure or neglect to do so, they shall forfeit all the benefits that might have accrued to them by this act.

Sec. 5. Any persons who shall sustain any injury from the negligence or default of said grantees or the ferryman in their ^{Person sustain injury.} employ, may have a remedy by a civil action upon the bond required in this act.

Sec. 6. This act shall be in force from and after its pas- ^{When take effect} sage.

Approved, January 13th, 1864.

CHAPTER LVI.

AN ACT GRANTING TO J. B. GREENWAY AND HIS HEIRS AND ASSIGNS, THE RIGHT TO KEEP AND MAINTAIN A FERRY ON THE DAKOTA RIVER.

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

Section 1. That J. B. Greenway, his heirs and assigns, ^{J B Greenway to have ferry privilege.} shall have the exclusive right and privilege for the period of

five years from and after the approval of this act, to keep and run a ferry across the Dakota river, at a point on said river, where said Greenway has now a ferry, near the south boundary of sec. 34, in township 94 north, range 55 west of the 5th principal meridian, Dakota; and said ferry franchise shall extend from said point up and down said river as far as the present farm of said Greenway extends on said river.

Title

Sec. 2. That the said Greenway, his heirs or assigns, shall keep a good and reliable boat at said ferry, and give ready attention to it at all times.

Rates.

Sec. 3. That the rates charged for crossing at said ferry shall not exceed the following, to wit:

For two horses, mules or oxen and wagon or carriage, thirty cents.

For each additional horse, mule or ox, ten cents.

For one horse and buggy, twenty cents.

For man and one horse, fifteen cents.

For each loose horse or mule, and for each head of cattle, ten cents.

Sheep or swine, ten cents.

Sec. 4. That [said] Greenway, his heirs and assigns, shall not be responsible for any accidents at said ferry except accidents occasioned by the negligence of the ferryman or ferrymen in charge of said ferry.

Take effect when

Sec. 5. This act shall take effect from and after its passage.

Approved, January 12, 1864.

CHAPTER LVII.

AN ACT GRANTING TO OLE SAMPSON A FERRY CHARTER ACROSS THE MISSOURI RIVER OPPOSITE ST. HELENA, NEBRASKA TERRITORY.

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

Section 1. That Ole Sampson, his heirs, executors, administrators and assigns, [shall] have the exclusive privilege, for the

Edwy Strahm to have ferry-privilege.

period of twenty years, of keeping and maintaining a ferry across the Missouri river opposite St. Helena, Nebraska territory, and for the distance of three miles above and below said point on the Missouri river.

Sec. 2. That said Ole Sampson, his heirs, executors admini-^{Duties.}strators or assigns, shall at all times, keep a safe and good boat or boats in good repair, for the accommodation of all persons wishing to cross said ferry; and shall give prompt and ready attention to all passengers, freight or teams on all occasions, from sunrise to sunset, except in tempestous weather.

Sec. 3. The rates charged for crossing said ferry shall not ^{Rates of ferris-}exceed the following [rates,] to wit:

For two horses, mules or oxen and wagon with driver, one dollar.

For each additional pair of horses, mules, or oxen, thirty cents.

For each two horses or mules and buggy with driver, seventy-five cents.

For each one horse or mule with buggy and driver fifty cents.

For each led horse, or mule twenty-five cents.

For loose cattle, per head, fifteen cents.

For sheep and hogs, per heach, ten cents.

For each hundred pounds of freight or merchandise, ten cents.

For each thousand feet of lumber, one dollar.

Sec. 4. This act shall take effect from and after its passage ^{Take effect when} and approval.

Approved, December 30, 1863.

CHAPTER LVIII.

AN ACT GRANTING TO ANDREW PETERSON, HIS
HEIRS AND ASSIGNS THE RIGHT TO KEEP AND
MAINTAIN A FERRY ON THE VERMILLION RIV-
ER,

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

**Andrew Peter-
son to have fer-
ry privileges.** Section 1. That Andrew Peterson, his heirs and assigns, shall have the exclusive right and privilege, for the period of five years from and after the passage of this act, to keep and run a ferry across the Vermillion River, within the boundary lines of land now claimed by him as a homstead.

Fair duties. Sec. 2. That the said Peterson, his heirs or assigns shall keep a good and reliable boat at said ferry, and give ready attention to it at all times from sunrise to sunset.

**Rates of ferri-
age.** Sec. 3. That rates charged for crossing at said ferry shall not exceed the following, to wit :

For two horses, mules or oxen and wagon or carriage, twenty-five cents.

For each additional horse or mule or ox, ten cents.

For one horse and buggy, twenty cents.

For man and one horse, fifteen cents.

For each horse or mule, and for each head of cattle, ten cents.

Sheep or swine five cents.

**How responsi-
ble.** Sec. 4. That said Peterson, his heirs and assigns, shall not be responsible for any accidents at said ferry, except accidents occasioned by the negligence of the ferryman, or ferrymen in charge of said ferry.

Take effect when Sec. 5. This act shall take effect from and after its passage.
Approved, January 13, 1864.

CHAPTER LIX.

AN ACT GRANTING TO JOHN STANAGE A CHARTER
FOR A FERRY ON THE DAKOTA RIVER.

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

Section 1. That John Stanage, his heirs, executors, administrators, and assigns, shall have the exclusive right and privilege of keeping and maintaining a ferry on the Dakota river, in the county of Yankton, at a point on said river, commencing where his ferry now is situated, opposite his dwelling house on his homestead claim, to wit: The northeast quarter of the northeast quarter, and lot number one of section one, in township ninety-three, range fifty-five, and the west half of the north west fractional quarter of section six, in township ninety-three, range fifty-four; and from the point above named the said franchise shall extend up and down said river as far as the above described land extends on said river.

Sec. 2. That the franchise hereby granted shall continue for a period of twenty-five years from and after the date of the approval of this act.

Sec. 3. That said John Stanage, or his heirs, executors, administrators, or assigns shall, within eight months after the passage and approval of this act, file, or cause to be filed, in the office of the register of deeds of the said county of Yankton, a bond to said county, for the use of the public, in the penal sum of five hundred dollars, with sufficient security, to be approved by said register of deeds; said bond to be conditioned that he, the said John Stanage, his heirs, executors, administrators, or assigns, will fulfill the duties that are imposed upon him, or them, in this act; and in case of his, or their, neglect or failure to file the bond as required by this section, he, or they, shall forfeit all the benefits that might have accrued to him, or them, from this charter.

Duties.

Sec. 4. That said John Stanage, his heirs, executors, administrators, or assigns, may, at any time after the passage and approval of this act, put the said ferry in operation, after which he, or they, shall keep a safe and sufficient boat, or boats, at said ferry, for the accommodation of all persons wishing themselves, their teams, stock, freight, or lumber crossed over said river at said ferry; and shall give prompt and ready attention to all passengers, teams, freight, stock, and other articles ready to be crossed, at all times, from sunrise to sunset, excepting in winter, and when the crossing of said river is rendered unsafe and dangerous from high water, floating ice, or tempestuous weather.

If person sustain injury.

Sec. 5. That any person or persons, corporation or corporations who shall suffer any damage or injury to person or property, at said ferry, from the negligence or default of the person or persons in charge of said ferry, or from a defect in the boat, or boats, at said ferry, or who have been charged a higher rate at said ferry than is allowed by the following section, may have a remedy by a civil action upon the bond required in this act, in any court, of competent jurisdiction.

Rates of ferris-
age.

Sec. 6. That the rates charged at said ferry shall not exceed the following:

For each foot passenger, five cents.

For each horse or mule and rider, fifteen cents.

For loose horses or mules, per head, ten cents.

For sheep or swine, per head, five cents.

For loose cattle, per head, ten cents.

For two horses, two mules, or two ox team, with or without load twenty-five cents.

For each additional span of horses, mules, or oxen ten cents.

For each single horse and carriage, twenty-five cents.

On all freight, merchandise, lumber or other articles, not on vehicles, at the rate of five cents per one hundred pounds.

And fifty cents per one thousand feet of lumber.

To post up
rates.

Sec. 7. That said John Stanage, his heirs, executors, administrators, or assigns, are required to keep posted up, at or near said ferry, in view of the passing public, a bill of the rates allowed by this act.

Sec. 8. That this act shall take effect from and after its passage and approval by the Governor.

Approved, December 24th, 1863.

CHAPTER LX.

AN ACT GRANTING TO SABY STRAHM A CHARACTER FOR A FERRY ON THE MISSOURI RIVER. AT YANKTON.

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

Section 1. That Saby Strahm, his heirs, executors, administrators and assigns, shall have the right and privilege of establishing and maintaining a ferry on the Missouri river, at a point on said river, between the foot of Broadway and Douglas avenue, in the town of Yankton, in the county of Yankton ; with the exclusive privilege of carrying persons and property across the Missouri river, at said point for the period of fifteen years from and after the date of the passage and approval of this act. And said ferry franchise shall extend from said point four miles up and four miles down said river. And it shall be unlawful for any other person or persons to run a ferry for pay within said limits, after said Saby Strahm, his heirs, executors, administrators or assigns, shall have complied with the requirements of this act.

Saby Strahm to have ferry privileges.

Sec. 2. That said Saby Strahm, his heirs, executors, administrators or assigns, shall, on or before the first day of June A. D. 1864, place or cause to be placed at said ferry a safe and suitable boat or boats, and shall convey across said river all passengers, teams, live stock, freight and other property, that may be on either side of said river and ready to be conveyed across ; and shall run or cause the said boat or boats to be run, at all times when required, from sunrise to sunset, except in winter, or when the crossing of said river is dangerous and un-

Duties.

safe on account of floating ice, high water, foggy and tempestuous weather.

File bond.

Sec. 3. That said Saby Strahm, his heirs, executors, administrators, or assigns, shall, on or before the first day of June, A. D. 1864, execute and file in the office of the register of deeds in and for the county of Yankton, in the territory of Dakota, a bond with ample security, to be approved by said officer, in the penal sum of two thousand dollars, conditioned that said Saby Strahm, his heirs, executors, administrators or assigns, shall faithfully fulfill and discharge the duties of ferrymen, and that he or they will conduct and run said ferry agreeable to the provisions and stipulations of this act. And in case that the said Saby Strahm, his heirs, executors, administrators or assigns, shall fail to comply with the requirements, or either of them, of this and the preceding section of this act, then he or they shall forfeit all the rights and privileges granted to him and them by this act. And after default has been made as mentioned in this section, then any other person or persons who shall file the bond, furnish the boat or boats, and run the ferry agreeable to the requirements of this act, he or they shall have all the rights and privileges that are by this act conferred upon said Saby Strahm, his heirs, executors, administrators and assigns.

Rates to be posted.

Sec. 4. That the said ferry owner or owners shall cause a written or printed bill of the rates allowed by the following section of this act, to be posted up in a conspicuous place at or near said ferry landing, on both sides of said river, and said bill of rates shall be kept up in view of the passing public.

Rates of ferrisage

Sec. 5. That the owner or owners, of said ferry privilege shall be allowed to charge the following rates for crossing at said ferry :

For two horses, mules or oxen and wagon, with or without load, one dollar.

For two horses or mules and buggy, with driver, one dollar.

For each additional pair of horses, mules or oxen in a team, fifty cents.

For one horse or mule with buggy and driver, one dollar.

For each led horse or mule, twenty-five cents.

For loose cattle, per head, twenty-five cents:

For sheep and swine, per head, ten cents.

For freight per hundred, ten cents.

For lumber per M feet, one dollar.

And for each foot passengor, fifteen cents.

Sec. 6. That any person or persons, corporation or corporations, feeling aggrieved or being damaged in person or property by the negligence or by the willful act or acts of said ferry owner or owners, or his or their employees, or by the violation, on the part of said ferry owner or owners, or his or their employees, of all or either of the provisions of this act, or by being charged a higher rate of ferriage than is allowed by this act, may have a cause of civil action upon the bond required by this act, in any court of justice within this territory of competent jurisdiction, and all amounts of damage that may be decreed by such court, together with the costs of suit, shall be collected as provided by law in other civil actions.

Persons sustaining injury may recover damages, how,

Sec. 7. That chapter 6 of the Private Laws of 1862 and 63, entitled "An act to authorize F. Chapel and J. S. Presho to establish and run a ferry across the Missouri river, at Yankton," approved January 3, 1863, be and the same is hereby repealed.

certain act repealed.

Sec. 8. That the legislative assembly hereby reserves to itself the right to alter, change, modify or repeal at pleasure the franchise hereby granted.

Rights reserved.

Sec. 4. That this act shall take effect from and after its passage and approval by the Governor.

Take effect when

Approved, December 24th, 1863.

CHAPTER LXI.

AN ACT GRANTING TO CHARLES E. ROWLEY AND HIS HEIRS, A CHARTER FOR A FERRY ACROSS THE MISSOURI RIVER.

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

Charles E. Rowley to have ferry privileges.

Section 1. That Charles E. Rowley, his heirs, executors, administrators, or assigns, shall have the exclusive privilege for the period of twenty years, of keeping and maintaining a ferry across the Missouri river at a point at the centre of section thirteen, township No. twenty-three north, range No. fifty-nine west, in the town of Bon Homme, in said territory, and for a distance of two miles above and two miles below said point.

His duties.

Sec. 2. That said Rowley shall at all times, keep good and safe boats in good repair for the accommodation of all persons wishing to cross said ferry, and shall give prompt and ready attention to all passengers and teams on all occasions from sunrise to sunset, except when the navigation of said river is dangerous on account of ice running in said river, or foggy, or tempestuous weather.

Rates of ferrisage.

Sec. 3. The owners of said ferry privilege shall be allowed to charge the following rates:

For two horse, mules or oxen and wagon with driver, with or without load, one dollar.

For two horses, mules and buggy, with driver, one dollar.

For each additional pair of horses, mules or oxen in a team, fifty cents.

For one horse or mule with buggy and driver, one dollar.

For each led horse or mule twenty-five cents.

For loose cattle per head, fifteen cents.

For sheep and swine, ten cents.

For freight per hundred, ten cents.

And for lumber, per thousand feet, one dollar.

To file bond.

Sec. 4. Said Rowley shall, on or before the fourth day of

July, one thousand eight hundred and sixty-four, file, or cause to be filed in the office of the register of deeds of Bon Homme county, a bond with one or more sureties, to be approved by the county commissioners of said county, in the penal sum of five hundred dollars, conditioned that they will fulfill all the duties that are imposed upon them by this act.

Sec. 5. any person who shall sustain any injury from the negligence of the ferryman or ferrymen in their employ, may have a remedy by an action upon the bond required in this act. Person sustaining injury.

Sec. 6. This act shall take effect from and after its passage and approval by the governor. When take effect

Approved, January 7, 1864.

CHAPTER LXII.

AN ACT GRANTING TO ANTHONY ROPALLE, JOHN DILLON, JAMES F. SMALL, AND CHARLES MCCARTHY A CHARTER FOR A FERRY ACROSS THE MISSOURI RIVER, NEAR THE MOUTH OF PONCA CREEK.

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

Section 1. That Anthony Ropalle, John Dillon, James F. Small, and Charles McCarthy, their heirs, executors, and assigns, shall have, for a period of twenty-five years from and after the passage of this act, the exclusive privilege of establishing, maintaining, and keeping a ferry on the Missouri river, for the purpose of crossing the same at the place hereinafter designated. Certain parties to have ferry privileges.

Sec. 2. That such exclusive right to keep such ferry shall extend a distance of five miles up, and five miles down the Missouri river, from a point at or near the mouth of Ponca Creek, and it shall be unlawful for any other person or persons to establish or keep a ferry within the said limits. Limits defined.

Sec. 3. The above named persons, or their legal representa- Their duties.

tives, shall, as soon as practicable proceed to build and establish at their place of crossing, a good and sufficient ferry boat, and shall give prompt and ready attention from sunrise until sunset of each day, to crossing all persons and their property with the least possible delay, except when the navigation of the said river is dangerous.

File bond.

Sec. 4. The above named persons, heirs, and assigns, shall, before running said ferry boat, file with the clerk of the board of county commissioners, a bond to said county, for the use of any person complaining, in the penal sum of five hundred dollars, with one or more good and sufficient sureties, to be approved by said officer, conditioned that they will well and faithfully fulfill all the duties imposed on them in this act.

Rates of ferryage.

Sec. 5. The owners above named shall be allowed and it shall be lawful for them to charge the following prices for crossing at said ferry, viz :

For each pair of horses, mules, or oxen and wagon, one dollar.

For each additional pair of horses, mules, or oxen, fifty cents.

For each horse, or mule and buggy, seventy-five cents.

For each led horse, or mule twenty-five cents.

For loose cattle, per head, fifteen cents.

For footmen, ten cents.

For cwt. of freight, ten cents.

For M feet of lumber, one dollar.

Rates to be posted.

Sec. 6. A list of the above rates shall be placed, by the said owners, on the ferry boat, or some conspicuous place near the landing ; and if the said owners shall tax and receive from any person a greater sum than is herein allowed for ferrying, he or they shall, upon conviction thereof, forfeit and pay to the party aggrieved the sum of ten dollars for each offence, and suit for the recovery of the same may be commenced by action of debt before a justice of the peace in the name of the party so aggrieved.

Recover damages—when.

Sec. 7. Any person or persons crossing or ferrying any person or property across said Missouri river within the above named limits, for compensation, shall be deemed guilty of an infringement of the privilege herein granted, and any person or

persons so offending shall forfeit and pay to the owners of said ferry, or their legal representatives, ten dollars for each person, or article of property, so carried over said river, to be recovered in an action of debt in the name of the owners of said ferry, or their legal representatives.

Sec. 8. The legislature hereby reserves the right to repeal or amend this said charter.

Sec. 9. This act shall take effect and be in force from and ^{when take effect} after its passage and approval.

Approved, January 14th, 1864.

CHAPTER LXIII.

AN ACT GRANTING TO C. M. DAVIS, N. WALL, AND W. M. BARNUM AND ASSOCIATES, A CHARTER FOR A FERRY ON THE MISSOURI RIVER AT OR NEAR THE MOUTH OF THE YELLOW STONE RIVER.

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

Section 1. That C. M. Davis, N. Wall, W. M. Barnum, and ^{who to have} their associates and assigns, shall have the exclusive privilege ^{ferry privileges} of keeping a ferry across the Missouri River in the Territory of Dakota, for the distance of fourteen miles on said river, commencing at a point on said river ~~at~~ or near the mouth of the Yellow Stone, and extending seven miles above and seven miles below said point, subject to such rates of toll as are, or may be hereafter imposed by the Legislative Assembly of Dakota.

Sec. 2. This act shall take effect from and after its passage. ^{Take effect when}
Approved, January 15, 1864.

CHAPTER LXIV.

AN ACT GRANTING TO ABRAM VAN OSDEL, AND HIS HEIRS AND ASSIGNS, THE RIGHT TO KEEP AND MAINTAIN A FERRY ON THE DAKOTA RIVER.

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

Abram Van Osdel to have ferry privileges.

Section 1. That Abram Van Osdel, his heirs and assigns, shall have the exclusive right and privilege, for the period of twenty-five years from and after the passage and approval of this act, to keep and run a ferry across the Dakota river at a point on said river where said grantee has now a ferry, situated on lot No. three, (3) of section thirteen, township ninety-three [north] range fifty-five west; and said ferry franchise shall extend from said point, up and down said river, as far as the present homestead claim of said Van Osdel extends on said river.

His duties.

Sec. 2. That the said Van Osdel, his heirs or assigns, shall keep a good and reliable boat at said ferry, and give ready attention from sunrise to sunset of each day, except at times when the crossing of said river would be rendered dangerous by ice, high water or tempestuous weather.

Rates of ferry.

Sec. 3. That the rates charged for crossing at said ferry shall not exceed the following [rates], to wit:

For two horses, mules, or oxen and wagon, or carriage, thirty cents.

For each additional horse, mule or ox, 10 cents.

For one horse and buggy, 20 cents.

For man and one horse, 15 cents.

For each loose horse or mule, and for each head of cattle, 10 cents.

Sheep or swine, 5 cents.

How responsible.

Sec. 4. That said Van Osdel, his heirs and assigns, shall not be responsible for any accident at said ferry, except accidents

occasioned by the negligence of the ferryman or ferrymen in charge of said ferry.

Sec. 5. This act shall take effect from and after its passage ^{Take effect when} and approval by the governor.

Approved, December 21st, 1863.

HISTORICAL SOCIETY

CHAPTER LXV.

AN ACT INCORPORATING THE HISTORICAL SOCIETY OF DAKOTA.

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

Section 1. That Newton Edmunds, Philemon Bliss, Melancthon Hoyt, William E. Gleason, Henry C. Ash, D. T. Bramble, M. K. Armstrong, Henry E. Gregory, James Tufts, J. K. Fowler, J. R. Hanson, J. W. Evans, W. N. Collamer, Charles F. Picotte, John Hutchinson, William Jayne, A. W. Hubbard, J. B. S. Todd, B. M. Smith, George N. Propper, Sam'l Grant, James M. Allen, John M. Allen, John W. Boyle, G. M. Pinney, C. P. Booge, William Tripp, George P. Waldron, B. C. Fowler, M. M. Mattheison, Willian H. Wordebaugh, Charles E. Hedges, Walter E. Burleigh, A. J. Faulk, Hugh Compton, Franklin Taylor, Lassa Bothun, George W. Kingsbury, James M. Stone, Enos Stutsman, J. Shaw Gregory, John J. Thompson, John Mathers, John O. Taylor, Milton M. Rich, Daniel P. Bradford, Ezra M. Bond, Ole Bottolfson, Wilmot W. Brookings, Henry Brooks, Halvor Burgess, N. G. Curtis, Albert Gore, B. A. Hill, J. B. Hubbell, Peter Kegan, John Lawrence, Knud Larson, L. H. Litchfield, Asa Mattison, G. W. Pratt, Washington Reed, P. H. Risling, Duncan Ross, William Shriner, E. W. Wall, Jessy Wherry, A. W. Puett, Mahlon

Names of members of corporation

Same.

Gore, Charles F. Rossteuscher, A. K. Curtis, Almon Gore, David Fisher, and their associates and successors, be and are hereby constituted a body politic and corporate, to all intents and purposes, by the name of the "Historical Society of Dakota;" and by that name may sue and be sued, plead and be impleaded, answer and be answered unto; may purchase, receive and own books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and other materials and collections illustrative of the Territory, and of the history of Dakota, amounting in value to a sum without limit; and may purchase, receive, hold and convey real property, to any amount, not exceeding twenty thousand dollars, and may lease, grant, mortgage, sell and convey, or otherwise dispose of the same for the use and benefit of the society; and to receive donations and to apply the same as the donor or donors may direct; and to devise and keep a common seal, with the right to alter the same at pleasure; and to make, adopt and enforce such constitution, by-laws, rules and regulations as the society may choose, not repugnant to the laws of the Territory or of the United States, and to enjoy all the privileges and franchises incident to a corporation.

Objects of the society.

Sec. 2. That the object of the society hereby incorporated shall be to collect, embody, arrange, and preserve in an authentic form, a library of all kinds of useful books, ancient and modern, suitable for a public library; also pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and a collection of natural history and other materials illustrative of the Territory and of the history of Dakota; to rescue from oblivion the memory of its early pioneers, to obtain and preserve varieties of their exploits, perils, and hardy adventures; to secure facts and statements relative to the history, genius and progress or decay of our Indian tribes; to exhibit faithfully the antiquities and the past and present resources of Dakota; also, to publish such of the collections of the society as the society shall, from time to time, deem of value and interest.

Copies of territorial documents to be delivered to society.

Sec. 3. That there shall be delivered to said society twenty-five bound copies of all documents, published by order of the Territory, for the purpose of effecting exchanges with similar societies in other States and Territories.

Sec. 4. That on the first day of January, 1864, there shall be a meeting of the members of said society in the hall of representatives, at Yankton, at which meeting a majority of the members named in section one of this act, shall constitute a quorum for the transaction of business, at which time there shall be elected one president, two vice presidents, one secretary, one treasurer, and one librarian of said society, who shall hold their respective offices for such term as may be fixed by the constitution or by-laws that may be adopted by said society.

Officers—how elected.

Sec. 5. The society may, by constitution or by-laws, provide for the election or appointment of such other officers as may be deemed necessary.

Other officers—election of, how provided for.

Sec. 6. The society may, at its first or any subsequent meeting, adopt a constitution or by-laws, or both, providing a complete government for the society, regulating the duties of officers; the time and place of meeting, rate of membership, monthly or annual dues, and all other matters necessary for the order, success and stability of the society, which constitution or by-laws may be amended or repealed in the manner prescribed by the same.

May adopt constitution and by-laws.

Sec. 7. All the books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and collections of natural history belonging to the society; also, all the furniture, instruments and effects belonging to the library and other rooms and offices of the society; and also, the building or buildings belonging to and used by the society, and the lot or lots of ground upon which the said building or buildings are situated, all the property, real and personal, mentioned in this section, now owned by the society, or that may be hereafter acquired by the same, shall, while it is the property of said society, be exempt from seizure or sale on execution or other process for debt; and shall also be exempt from territorial, county, city or school tax.

Property of society to be exempt from execution, &c.

Sec. 8. The meeting provided for in section 4, shall be at the hour of seven o'clock, P. M., on the day named.

Meeting, at what hour held.

Sec. 9. And be it further enacted, that D. T. Bramble, as president of "The Old Settlers Historical Association," is hereby authorized to transfer and turn over to the Historical Society of Dakota, all books, documents, pamphlets, &c., owned or

D. T. Bramble to transfer books, &c.

claimed by the said "Old Settlers Historical Association."
 Take effect when Sec. 10. This act shall take effect from and after its passage
 and approval.
 Approved, December 24, 1863.

MASONIC LODGE

CHAPTER LXVI.

AN ACT TO INCORPORATE SAINT JOHNS LODGE NO. 166, OF ANCIENT, FREE AND ACCEPTED MA- SONS.

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

Incorporation
 of "St John's
 Lodge."

Section 1. That Malancthon Hoyt, Worshipful Master, D. T. Bramble, Senior Warden, and John Hutchinson, Junior Warden, of Saint Johns Lodge, number 166, of Ancient, Free and accepted masons, and their successors in office, be, and are hereby created a body politic and corporate, by the name and style of "Saint Johns Lodge number 166 of Ancient, Free and Accepted Masons," and by such name and style may sue and be sued, contract and be contracted with, plead and be impleaded, answer and be answered, defend and be defended against, in all courts and places whatsoever, to make and have a common seal, with power to alter the same at pleasure, to purchase and hold real and personal property, so far as may be necessary for the proper management of its affairs, and to do all other acts which natural persons might or could do.

Sec. 5. This act shall take effect from and after its passage.
 When take effect Approved, January 9, 1864.

RAIL ROADS

CHAPTER LXVII.

AN ACT TO INCORPORATE THE MINNESOTA AND
DAKOTA RAILROAD COMPANY.

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

Section 1. That the persons hereinafter named, to wit:— Who are consti-
tuted company.
Newton Edmunds, H. D. Huff, J. O. Taylor, Charles E. Hed-
ges, F. O. J. Smith, Walter A. Burleigh, St. A. D. Balcombe,
J. Shaw Gregory, John M. Wood, Charles F. Picotte, Wilmot
W. Brookings, J. M. Allen, G. D. Hill, Thomas Wilson,
William Frisbie, A. K. Muir, Geo. M. Pinney, Amos Cogswell,
John W. Boyle, J. H. Baker, William Mathers, Charles
Elandreau, M. M. Rich, J. N. Arnold, Enos Stutsman, A. P.
Mapes, John Lawrence, John De Graf, Hugh Compton, James
Tufts, William Shriner, Geo. W. Mitchell, John J. Thomp-
son, John Hutchinson, John Pattee, L. H. Litchfield, B. A.
Hill, Knud Larson, L. B. Bothun, G. W. Kingsbury, Albert
Gore, William Jayne, A. W. Hubbard, Preston Hotchkiss,
John Mathers and G. W. Pratt, be and the same are hereby
made and constituted a body corporate and politic, by the
name and style of the Minnesota and Dakota Railroad Compa-
ny, with perpetual succession, and by that name and style,
shall be capable, in law, of taking, purchasing, holding, leas-
ing, selling, and conveying real and personal estate and prop-
erty, so far as the same may be necessary for the purposes
hereinafter mentioned; and in their said corporate name to sue
and be sued, to have a common seal, which they may alter or
renew at pleasure, to have a capital stock of one million of

dollars, to be divided into shares of ——— dollars each, which said capital may be increased from time to time by a vote of a majority of the directors of the corporation, the sum of six millions of dollars: *Provided*, That the sum be requisite to the completion and fulfillment of the objects and purposes of the corporation hereby created; and the aforementioned persons shall be, and constitute the first board of directors, and may have and exercise all the powers, rights, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth.

How board to be organized.

Sec. 2. Said directors shall organize the board as soon as practicable after the passage of this act, by electing one of their number president, and by appointing a secretary and treasurer, which organization shall be certified by said directors, or a majority of them, and such certificate shall be recorded in the record book of said company; and said record shall be sufficient evidence of the facts therein stated, and said directors shall hold their offices until the first Monday of January, 1865, and until their successors shall be elected and qualified, as hereinafter provided. All vacancies in said board may be filled by a vote of a majority of the directors present at any regular meeting of the board, or at a special meeting called for that purpose.

Powers of company

Sec. 3. The said company are hereby authorized and empowered to locate, and, from time to time, to alter, change, re-locate, construct, re-construct, and fully to finish, perfect, and maintain a railroad, with one or more tracks, commencing at a point on the boundary line between the State of Minnesota and the Territory of Dakota, where said line shall or may be intersected by a railroad running west from the State line of Minnesota; thence to Sioux Falls; thence to some practicable point on the Missouri river, between the town of Vermilion and Fort Randall, inclusive of said town of Vermilion and Fort Randall; and said company are further authorized to use and operate said railroad, and shall have power and authority to regulate the time and manner in which persons, goods, and effects shall be transported on the same, and to prescribe the manner in which said railroad shall be used, and the rate of toll for the transportation of persons and property under their

charge, and shall have power to provide all necessary stock and materials for the operation of said railroad, and shall have power to erect and maintain all necessary depots, stations, shops, and other buildings, and machinery for the accommodation, management and operation of said road.

Sec. 4. Said directors shall, as soon after the passage of this act as practicable, open books for the purpose of receiving subscriptions to the capital stock of said company, at such places along the line of said road and elsewhere, as said directors shall determine, under the direction of such agents as said directors shall appoint; and said books shall be kept open, from time to time, until the amount of said capital stock shall be subscribed, or until said directors shall determine to close the same.

Sec. 5. Said company may at any time, take voluntary relinquishments for the right of way for said road, the necessary depots, water stations, wood yards and out buildings, and may receive, and are hereby authorized to receive, any grant or grants of land which may hereafter be made by the Congress of the United States to this Territory, to encourage and aid in the building and equipment of this line of road, and such connections as may be provided by said Territory or future State; and if the land through which the road shall pass belongs to a minor, in whole or in part, the guardian of such minor shall have power to convey to said company on fair and equitable terms; but every such conveyance by the guardian shall be subject to the approval of the court having probate jurisdiction in the county in which said lands are situated.

Sec. 6. If any owner of a tract of land through which said road may pass, refuses to relinquish the right of way for said road to said company, or if the owner be an infant or person of unsound mind, or a non-resident of the Territory, the facts of the case shall be clearly stated in writing to the judge of the district court of the county in which said land is situated, either in vacation or term time, and the judge shall appoint three disinterested citizens of the county, as commissioners, to view such lands, who shall take into consideration the value of the lands and the advantages and disadvantages of the road to the same, and shall report, under oath, what damage shall be done to said land, or any improvements thereon, stating the amount

of damages assessed, and shall return a plat of the land thus condensed. Written notice of such application to the judge shall be given to the owner of such land five days before making such application, if such owner resides within the county where-said land is situated. If such owner is a non-resident of said county, he may be served by actual notice, or by publication for four weeks in some newspaper published nearest to said land; provided, such newspaper shall be a paper published within the territorial limits of the Territory of Dakota.

Same

Sec. 7. The persons to view and value such lands, shall file their report in the office of the clerk of the district court of the county where such lands are situated, and if no valid objection be made to said report within ten days, the court shall enter judgment against said company for the amount of damages assessed, and shall make an order vesting in said company the fee simple title to the lands described in said plat and report, as given to the use of the road. Objections to such report must be filed within ten days from the time the same was filed, which objections may be examined by said judge in term time or vacation; and he may hear testimony, and by judgment confirm said report, or may set aside the same and appoint three other viewers, who shall proceed in the same manner and make their report, until the same shall be confirmed. In all such cases the court shall adjudge the costs of the proceedings according to the equity of the cases; and the said court shall have power to make such orders, and take such other steps as will promote the ends of justice between the owner of said lands and said company.

Company may occupy right of way in certain cases

Sec. 8. In case of refusal of said right of way, by the owner of land, the said company may occupy the same for the purpose of constructing the said road, upon filing good and sufficient bonds, conditioned to pay all damages that may be adjudged against them, with the judge of the district court of the county where the land is situated, and upon his approval of the same.

Empowered to borrow money

Sec. 9. The said company are authorized and empowered to borrow, from time to time, such sums of money, not exceeding at any one time, double the amount of stock subscribed, and upon which not less than five per cent. shall have been paid in:

as may be necessary for constructing, completing, and furnishing or operating said railroad, and to issue and dispose of their bonds in denominations of not less than one hundred dollars for any amount so borrowed, and to pay a rate of interest therefor, not exceeding ten per cent. per annum, and to pledge and mortgage the said road and its appendages, or any part thereof, or any other property or effects, rights, credits, or franchise of the said company, as security for any loan of money and interest thereon, and to dispose of the bonds issued for said loan at such rates and on such terms as a majority of the directors may determine, and may make such bonds convertible into the capital stock of said company at the option of the holders.

Sec. 10. The said company may, annually, or semi-annually, make such dividends among the stock holders as they may deem proper; said dividend to be declared out of the net profits, receipts, or income of said company; and after first having deducted from said net profits a reasonable amount, to be set apart for a sinking fund for the ultimate liquidation of the indebtedness of said company. The rights, privileges and immunities accruing to the following named [aforementioned] persons and their successors in office, by the provisions of this bill, are declared to be perpetual.

Sec. 11. Said company have power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well ordering and securing the affairs and interests of said company: *Provided*, That the same be not repugnant to the Constitution of the United States and the laws of this Territory. This act, and all by-laws that may be adopted by the directors of said company, and all additions thereto, and alterations thereof, shall, from time to time, be printed in a convenient form, and be distributed among the stock holders of said company.

Sec. 12. The stock of said company shall be deemed personal estate, and shall be transferable in the manner and under such restrictions and conditions as may be provided by the by-laws of said company. And it is hereby further provided, that twenty per cent. of the original capital stock of said company shall be denominated unassessible stock, which stock shall not

be liable, by any by-laws or rules, and regulations of said company, to be assessed for the construction, equipment or management of said road, or in any manner taxed by said corporation. The balance of said original stock, and all other stock created under the privileges of this charter, by said company, shall be chargeable and liable to be assessed, pro rata, for the expenses incurred in the construction and equipment of said road.

Majority may
call meeting of
stockholders

Sec. 13. It shall be lawful for a majority of the persons named in this act, or their successors, by giving thirty days notice, stating the objects, to call a meeting of the stockholders of said company, and the secretary of said company shall certify said call, and record the same, as well as all matters that may be transacted under said call in a suitable book provided for such purpose.

May unite with
other roads

Sec. 14. Said company shall have power to unite its road, in whole or in part, with the transit railroad of Minnesota, or any other railroads either in this Territory or in the States of Minnesota, Wisconsin, Iowa, Illinois, Indiana, Michigan, Ohio, New York, or the Territory of Nebraska, and to grant to any such company or companies the right to construct, operate or use this line of road, and to lease its right of way and franchise, together with its equipments, rolling stock, furniture and materials used in constructing or operating said road, and authorize such railroad company or companies to complete, finish, use and operate such line of roads so purchased or leased, upon such terms as may be mutually agreed between the said company or companies, or may consolidate the capital stock with the capital stock of any rail road company or companies, with which it shall intersect, and shall have power to place the road of said company and its capital stock so consolidated, under the direction of a board of directors of not less than five persons, who shall be chosen from the stockholders of the company so consolidated, not less than two of which shall have been members and stockholders of the company so consolidated previous to its consolidation as aforesaid.

Notices to be
published

Sec. 15. Notice shall be published in at least one newspaper printed in the Territory, for the election of directors and calls for instalments be made upon the capital stock, and all meet-

ings of stockholders, all matters intended for the action of stockholders by the directors or stockholders authorized to call meetings, shall be published in the notice given for the meeting before which said matters will be brought.

Sec. 16. The said corporation shall be bound to repair all public highways or bridges which may be injured in constructing said railroad, and shall restore them, as far as practicable, to as good condition as they were before they were injured.

Shall repair
highways and
bridges

Sec. 17. Said company are hereby authorized to take and receive from the several subscribers to said capital stock, money, labor, materials and locomotives, or other articles adapted to the construction or operation of said railroad, or any property that, in the opinion of the board of directors, may be exchanged or converted to such use, and upon receiving full payment in manner aforesaid, of such subscription of stock, may be issued to such subscriber or subscribers certificates therefor.

To receive sub-
scriptions

Sec. 18. The company shall be allowed five years from the passage of this act for the commencement of said road; and in case said road shall not be completed in ten years thereafter, the privileges herein granted shall be forfeited.

Time allowed
for commence-
ment and com-
pletion

Sec. 19. This act shall be construed beneficially for all purposes herein specified or intended, and shall be deemed and taken as a public act.

Sec. 20. This act shall take effect and be in force from and after its passage.

Take effect when

Approved, January 9, 1864.

REPEALS

CHAPTER LXVIII.

AN ACT REPEALING CHAPTER 23, OF THE PRIVATE LAWS OF 1862.

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

Chapter 23 re-
pealed

Section 1. That chapter 23 of the private laws of 1862, entitled "An act to incorporate the town of Springfield," approved, April 30, 1862, be and the same is hereby repealed.

When take effect

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved, January 9th, 1864.

CHAPTER LXIX.

AN ACT REPEALING CHAPTER 20, OF THE PRIVATE LAWS OF 1862.

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

Chapter 20 re-
pealed.

Section 1. That chapter 20, of the private laws of 1862, entitled "An act to incorporate the town of Bon Homme," approved, April 10th, 1862, be and the same is hereby repealed.

Take effect who

Sec. 2. This act shall take effect from and after its passage.
Approved, January 9, 1864.

CHAPTER LXX.

AN ACT TO REPEAL CHAPTER TEN OF THE PRIVATE LAWS OF 1862.

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

Section 1. That chapter ten, of the private laws, of 1862, Chapter 10 repealed. entitled "An act granting to George C. Granger, and his heirs, a charter to keep a ferry across the Missouri river, approved, April 21st, 1862," be and the same is hereby repealed.

Sec. 2. This act shall take effect and be in force from and Take effect when after its passage.

Approved, January 9th, 1864.

CHAPTER LXXI.

AN ACT TO REPEAL CHAPTER TWELVE, OF THE PRIVATE LAWS.

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

Section 1. That chapter twelve of the private laws, of 1862, Chapter 12 repealed. entitled "An act granting to C. M. Cooper and R. M. Johnson, and their heirs, a charter to a ferry across the Missouri," approved, April 30th, 1862, be, and the same is hereby repealed.

Sec. 2. This act shall take effect and be in force from and When take effect after its passage.

Approved, December 9, 1863.

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