

Sec. 3. That the District Court in and for the first judicial district, shall be held in the town of Vermillion, in the county of Clay, on the fourth Monday of June and the fourth Monday of October in each year. In first district

Sec. 4. That the District Court in and for the county of Union in the first judicial district, shall be held at the county seat of Union county, on the second Tuesday of March and the third Tuesday of November in each year. In county of Union.

Sec. 5. All acts and parts of acts, so far as they conflict with the provisions of this act, are hereby repealed. Acts repealed.

Sec. 6. This act shall take effect and be in force from and after its passage. When to take effect.

Approved, January 8th, 1866.

ELECTIONS

CHAPTER 14.

An Act providing for Elections and to prescribe the Canvass and Return of the same.

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

Section 1. That all elections hereafter to be held for territorial, district, county, precinct, city, and other officers provided by law, shall be held and conducted in the manner prescribed in this act. Elections held according to provisions of this act.

Sec. 2. 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 named officers as are by law to be elected in each year, that is to say : A delegate to Congress, territorial officers, members of the legislative assembly, judges of probate, district attorneys, sheriffs, county commissioners, coroners, registers of deeds, treasurers, justices of the peace, constables, When general election held and what officers chosen.

and all other territorial, district, county, precinct and city officers, not herein enumerated, that may by law be provided for.

Who to appoint
judges of elec-
tion Election
precincts.

Sec. 3. The several boards of county commissioners shall, respectively, at least thirty days prior to the general election in each year, 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 when necessary, to set off and establish election precincts or districts, and the register of deeds of the several counties shall make out and deliver to the sheriff, coroner, or other person that may be designated by the board of county commissioners of each county, immediately after the appointment of said judges of election, a notice in writing thereof, directed to the judges of election so appointed; and it shall be the duty of such sheriff, coroner, or other person appointed as provided in this section, within ten days after receiving such notice, to serve the same upon each of the said judges of election.

Clerks of
elections.

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 herein before 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.

Vacancies of
judges, how
filled.

Register to
give notice.

Sec. 5. The registers of deeds of the several counties shall, at least thirty days before any general election, and at least ten days previous to any special election, make out and deliver to the sheriff, coroner, or other person to be designated by them, of their respective counties, 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

Form of notice.

be,) which election will be opened at nine o'clock in the morning and will continue open until four o'clock in the afternoon of the same day.

Dated this day of A. D. (as the case may be.)

Signed, A. B., register of deeds.

Sec. 6. The sheriff, coroner or other person 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.

Notices posted twenty days before general, and eight before special election.

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.

When judge fail to act.

Sec. 8. Previous to votes being taken, the judges and the clerks of the election shall severally take an oath, in the following form, to wit: "I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

Judges and clerks to take oath. Form of oath.

Sec. 9. In case there shall be no judge of a court 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 adminis-

Who authorized to administer oath.

tering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

When polls to be opened and closed, &c.

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.)

Penalty against judge refusing to receive legal vote.

Sec. 11. 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.

Ballot and what to contain.

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.

Ballot at general election.

Sec. 13. The names of all persons voted for by any elector at any general election or special election, shall be on one ballot.

When person challenged.

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 qualifications 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

Form of oath.

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 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, before receiving his vote they shall require him to subscribe the oath, which shall be written out and preserved with the poll books for future reference.

Person refusing to take oath.

When required to sign oath.

Sec. 15. If any person so offering such vote shall take such oath, knowing it to be false, he shall be deemed guilty of willful 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, and knows himself to be disqualified, 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.

Perjury and punishment therefore.

Penalty for illegal voting. Fine to go to school fund.

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.

Ballot box.

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.

Id.

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 deposit it in the ballot box.

Manner of voting.

Poll list.

Sec. 19. Each clerk of election shall keep a poll list which shall contain the names of all the persons voting at such election in their numerical order.

Adjournment
and comparing
lists.

Sec. 20. At each adjournment of the polls for dinner, 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.

Closing ballot
box.

Sec. 21. The ballot box shall then be opened and the poll list replaced 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.

Re-opening
of polls.

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.

When judge to
challenge.

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.

Preserving the
peace.

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 refusing 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

Fine.

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

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

Canvassing
votes.

Sec. 26. The canvass shall commence by a comparison of the poll list from the commencement, and a correction of any mistake 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 be 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
canvassing.

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.

When ballots
exceed number
on poll lists.

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 num-

Counting votes.

Form of entry
in poll book.

ber 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."

One poll book to be deposited with register, either with county commissioners.

Sec. 29. The judges of election shall then enclose and seal 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 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.

Penalty for not delivering poll book to register

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 offense, 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.

Who to make abstract, and manner of making it.

Sec. 31. On the twentieth day after the close of any election, or as soon as all the returns are received, the register of 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 ab-

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 days 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. And immediately after canvassing the returns and making the abstracts of votes as provided in this section, the register of deeds shall make a certified copy of each abstract, and forward the same to the Secretary of the Territory.

Register to make certificates,

In case of tie.

Pay of Judges and clerks.

Register to furnish Secretary of Territory.

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's duty in case of tie.

Sec. 33. 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

Board of canvassers, their duties.

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

Duty of secretary when returns not received.

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 of the territory 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.

What officers receiving certificate may resign.

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, it shall be the duty of the register of deeds of the county in which the vacancy has occurred, to officially notify the governor thereof; whereupon 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

Vacancy in legislature.

Duty of governor and register in such cases.

When special election not to be ordered.

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.

Vacancy in office of delegate.

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 district, 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 register when two or more counties comprise one district.

Sec. 37. Should any vacancy happen in the office of members of the council or house of representatives of the legislative assembly, while in session, by death, resignation, removal, or otherwise, it shall be the duty of the Governor immediately upon receiving official notification of the same, to proceed in the same manner as is prescribed for other cases in the thirty-fifth section of this act.

Vacancy in legislative while in session.

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.

Pay of officers of elections.

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 organized county

Vacancy in council or house in certain cases.

or district in which such vacancy occurred: *Provided*, That nothing herein contained shall be so construed as to permit any person to vote so residing within the limits, who has not the other qualifications of an elector.

Duty of register in elections for vacancies.

Sec. 40. In cases of elections to fill vacancies, as provided for in this act, immediately after receiving the election returns from the several precincts, the register of deeds shall, as provided in this act, proceed to canvass the votes returned, and without delay forward to the secretary of the territory the copies of the abstracts of the same.

No returns refused when.

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.

Informality, &c.

Penalty when officers violate this act.

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 common schools in said county.

When term of office commence,

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. But if the office to which he was elected be vacant at the time of election, even if he was not elected to fill a vacancy, he shall forthwith qualify, as prescribed by law, and enter upon the duties of his office.

When to enter on duties in case of vacancy.

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; if appointed, they shall hold the same until their successors are elected and qualified.

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. Highest number of votes elects.

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. Civil process not served on elector, when.

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. How canvassers to construe vot.

Sec. 48. It shall be the duty of the register of deeds, of such 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 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. Register to provide books and blanks. Delivering same

Sec. 49. 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 Voting for delegate, where.

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 entitled to vote and hold office.

Sec. 50. 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 citizens 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.

Acts repealed.

Sec. 51. All acts and parts of acts, conflicting with the provisions of this act, are hereby repealed.

When to take effect.

Sec. 52. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6th, 1866.

FENCES

CHAPTER 15.

An Act to Establish a Fence Law.

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

What deemed a lawful fence.

Section 1. That a fence constructed by placing the end of posts firmly in the ground, not to exceed twelve feet apart, and by firmly securing thereto rails, poles, or boards, either by morticing the posts and inserting the ends of the rails, poles, or boards therein, or by sufficiently nailing, spiking, or pinning them to said posts; *Provided*, That there shall not be less