

# GENERAL LAWS

AND

## MEMORIALS AND RESOLUTIONS

OF THE

# TERRITORY OF DAKOTA,

PASSED AT THE ELEVENTH SESSION OF THE

## LEGISLATIVE ASSEMBLY,

COMMENCED DEC. 7, 1874, AND CONCLUDED JAN. 15, 1875,

AT THE

## CITY OF YANKTON.

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PUBLISHED BY AUTHORITY.

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# GENERAL LAWS.

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# ADDENDUM.

## EXEMPTION OF PERSONAL PROPERTY.

[NOT OF GENERAL NATURE—No. 32.]

AN ACT to declare the true intent and meaning of the twentieth section of an act passed by the legislature of the Territory of Dakota, passed January fourteenth, eighteen hundred and seventy-five, entitled "An act making the conveyance of homesteads not valid unless the wife joins in the conveyance."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled:*

That the twentieth section of the act named in the title shall not be construed as an absolute repeal of chapter thirty-seven of the laws of Dakota, approved May twelfth, eighteen hundred and sixty two, but only as repealing so much of said chapter thirty-seven as is inconsistent with the first-named act, and no other effect shall be given to said twentieth section.

Approved, March 2, 1875.

DEPARTMENT OF STATE, }  
WASHINGTON, March 11, 1875. }

A true copy.

SEVELLON A. BROWN,  
*Chief Clerk.*

A U T H E N T I C A T I O N .

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DAKOTA TERRITORY,            )  
Secretary's office, Yankton)

I do hereby certify, that the laws contained in this volume are true and correct copies of the original enrolled bills, passed by the Legislative Assembly, at the eleventh session thereof, begun and held at Yankton, December 7th, A. D. 1874, now on file in my office.

Witness my hand and the seal of the Territory hereunto affixed, this twentieth day of  
January, in the year of our  
Lord one thousand eight  
hundred and seventy-five.

GEO. H. HAND,  
Secretary of Dakota Territory.

{L. S.}

# GENERAL LAWS.

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## ACTS LEGALIZED.

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### CHAPTER I.

#### ACTS OF DEPUTY CLERICAL OFFICERS IN TAKING ACKNOWLEDGMENTS.

AN ACT to legalize the acts of deputy clerks of the supreme and district courts, and of deputy registers of deeds.

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

SECTION 1. That all acknowledgments of deeds, mortgages and other instruments heretofore taken by any deputy clerk of the supreme or district courts of Dakota territory, or heretofore taken by any deputy register of deeds of said territory, are hereby legalized, and such acknowledgments and the proofs of the same are of full force and effect.

Acknowledgments taken by deputies legalized.

SEC. 2. The deeds, mortgages and other instruments, the acknowledgments of which have been taken and certified by said officers, and the records of the same, are hereby declared to be as legal and binding both in law and equity as though the same had been acknowledged before and such acknowledgment certified by a clerk of either of said courts or before a register of deeds.

Acknowledgments taken by deputies declared binding in law and equity.

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

When to take effect.

Approved, January 15, 1875.

## CHAPTER II.

AN ACT legalizing the acts of all deputy county clerks of each county in this territory in taking the acknowledgment of deeds, mortgages and other instruments in writing.

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

Acknowledgments by deputies declared legal.

SECTION 1. That all acknowledgments of deeds, mortgages and other instruments in writing taken by any and all deputy county clerks of any county in this territory, are hereby legalized, and all such acknowledgments shall have the same force and effect as if the deputy county clerk were duly authorized to take and certify to acknowledgments of deeds, mortgages, and other instruments in writing, by the laws of this territory.

Record of same to be due notice to all persons.

SEC. 2. That all deeds, mortgages, and other instruments in writing acknowledged by deputy county clerks, which now are, or shall hereafter be placed upon record, shall be, and they are hereby, declared to be duly recorded, and shall be notice to all persons the same as though said deeds, mortgages, and other instruments in writing, had been acknowledged before and certified by an officer competent to take and subscribe acknowledgments of such instruments, under the laws of this territory.

Deeds and other instruments so acknowledged, declared legal.

SEC. 3. That deeds, mortgages, and other instruments in writing, the acknowledgments of which had been taken and certified by and before any deputy county clerk of any county in this territory, prior to the first day of January A. D. 1875, are hereby declared to be duly acknowledged and certified, and the record of the same shall be as valid and binding in law and equity, as though the same had been acknowledged before some officer duly authorized by the laws of this territory, to take and certify acknowledgments of deeds, mortgages, and other instruments in writing.

Conflicting acts repealed.

SEC. 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed so far as they apply to cases herein provided for by this act.

When to take effect.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

## CHAPTER III.

## ACTS OF W. S. SMITH, NOTARY PUBLIC.

AN ACT to legalize the acts of W. S. Smith as notary public of the Territory of Dakota.

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

SECTION 1. That all acknowledgments, deeds, mortgages and other instruments in writing, and all oaths administered by, and affidavits taken before W. S. Smith, notary public of the territory of Dakota, between the twelfth day of May, A. D. 1874, and the twelfth day of January, A. D. 1875, are hereby legalized, and such acknowledgment shall have the same force and effect as if the said W. S. Smith, as such notary public, was duly authorized to take and certify acknowledgments of deeds, mortgages and other instruments in writing, and to take and certify to the administering of oaths and affidavits, by the laws of this territory. Certain acts legalized.

SEC. 2. That all deeds, mortgages and other instruments in writing, acknowledged by said W. S. Smith as notary public, which now are, or shall hereafter be placed on record, shall be, and they are hereby declared to be duly recorded, and shall be notice to all persons, the same as though said deeds, mortgages and other instruments had been acknowledged before and certified by an officer competent to take and subscribe acknowledgments under the laws of this territory. Record declared to be legal.

SEC. 3. That deeds, mortgages and other instruments in writing, the acknowledgments of which had been taken and certified by and before W. S. Smith as notary public of this territory between the 12th day of May, 1874, and the twelfth day of January, A. D. 1875, are hereby declared to be acknowledged and certified, and the record of the same shall be as valid and binding in law and equity, as though the same had been acknowledged before some officer duly authorized by the laws of this territory to take and certify acknowledgments of deeds, mortgages and other instruments in writing. Record binding in law and equity.

SEC. 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, so far as they apply to the cases herein provided for by this act. Conflicting acts repealed.

SEC. 5. That this act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

## CHAPTER IV.

## ACTS OF COUNTY OFFICERS IN MOODY COUNTY.

AN ACT to legalize the acts of certain county officers in Moody county, Dakota Territory.

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

Certain official acts legalized.

SECTION 1. The acts of David Farabault, Morris Bebb and Mattison Hopkins as county commissioners of Moody county, in establishing places of holding elections, and in appointing judges of elections in the precincts of said county for the general election held in said county upon the 13th day of October, 1874, and the acts of M. D. L. Pettigrew, register of deeds, Morris Bebb, county commissioner, and A. G. Hopkins, probate judge, as a board of canvassers, in canvassing and making a return of the votes cast at the precincts established by the above mentioned board of county commissioners, and the official acts of M. D. L. Pettigrew, register of deeds, in issuing certificates of election to the person receiving the highest number of votes cast at the places of election established by the above mentioned board of county commissioners, be, and the same are hereby declared legal, and of the same effect as if there had been no informality in the organization of the said county of Moody, or in the appointment of the above mentioned county officers.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12, 1875.

## AMENDMENTS.

### CHAPTER V.

#### JURISDICTION OF JUSTICES OF THE PEACE.

**AN ACT** amending section 114 of an act entitled, "An act to establish the courts and define the jurisdiction of justices of the peace" of the laws of 1865-6, approved January 4th, 1866, and re-enacted by section 2, chapter 6, of the laws of 1872-3, approved January 9, 1873.

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

**SECTION 1.** That section 114 of an act entitled "An act to establish the courts and define the jurisdiction of justices of the peace," approved January 4th, 1866, and re-enacted by section 2, chapter 6, of the laws of 1872-3, approved January 9th, 1873, be and the same is amended so as to read as follows:

"Section 114. That no appeal shall be allowed by any justice of the peace, until the appellant, in addition to the requirements of section ninety and one hundred and three of this act, shall pay one dollar for the return of the justice."

**SEC. 2.** That all acts and parts of acts in conflict with the provisions of this act be and the same is hereby repealed.

**SEC. 3.** That this act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

### CHAPTER VI.

#### ELK POINT CORPORATION.

**AN ACT** to amend section one (1) of article one (1) of chapter twelve (12) of the special and private laws of 1872-3, approved January 10th, 1873.

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

**SECTION 1.** That section one of article one of chapter twelve be amended so as to read as follows:

"That all that portion of territory contained in lots one and

two, of the northwest quarter, and lots one and two of the southwest quarter, of section number nineteen, of township ninety-one, north of the base line of range forty-nine, west of the fifth principal meridian, and the east half of the northeast quarter, and the northeast quarter of the southeast quarter, of section number twenty-four, (24) of township number ninety-one, north of the base line of range fifty, west of the fifth principal meridian, all situated in the county of Union, Dakota territory, is hereby declared to be a corporation by the name of the city of Elk Point."

Conflicting  
acts repealed.

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

When to take  
effect.

SEC. 3. That this act shall take effect and be in force from and after the date of its passage and approval.

Approved, January 14, 1875.

## CHAPTER VII.

### ORDER OF EXTINCTION OF OBLIGATIONS.

AN ACT amending the third subdivision of section 705 of the civil code.

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

Order of ex-  
tinction of ob-  
ligations.

SECTION 1. That the third subdivision of section 705 of the civil code be amended, after the word "ratable" to read as follows:

- (1.) Of interest due at the time of the performance;
- (2.) Of principal due at that time;
- (3.) Of the obligation earliest in date of maturity;
- (4.) Of an obligation not secured by a lien or collateral undertaking;
- (5.) Of an obligation secured by a lien or collateral undertaking.

Conflicting  
acts repealed.

SEC. 2. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

When to take  
effect.

SEC. 3. This act shall take effect and be in force from and after the date of its passage and approval.

Approved, January 14, 1875.

## CHAPTER VIII.

## POISONING BIRDS AND GOPHERS.

AN ACT to amend chapter 19 of the session laws of 1864-5,  
approved January 11th, 1865.

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

SECTION 1. That chapter 19 of the session laws of 1864-5,  
be and the same is hereby amended so as to authorize and  
allow any person, at any time, to put out poisoned grain for  
the purpose of killing black birds and gophers.

Persons al-  
lowed to pois-  
on blackbirds  
and gophers.

SEC. 2. This act shall take effect and be in force from and  
after its passage and approval.

When to take  
effect.

Approved, January 13, 1875.

## CHAPTER IX.

## FEES OF REGISTERS OF DEEDS.

AN ACT to amend section 14 of chapter 6 of the laws of 1868-9,  
approved January 14th, 1869.

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

SECTION 1. That section 14 of chapter 6 of the laws of 1868-9,  
be and the same is hereby amended so as to read as fol-  
lows:

Fees of reg-  
ister of deeds.

Issuing certificates of election, twenty-five cents:

For performing the duties of clerk of the county commis-  
sioners, and attending to the business of the county, such sal-  
ary per annum, to be paid by the county quarterly, as the  
commissioners of the county shall allow, not exceeding in  
any one year the sum of six hundred dollars;

For each certificate and seal in other cases, twenty-five cents:

For recording each certificate of marriage, twenty-five cents.

SEC. 2. This act shall take effect and be in force from and  
after its passage and approval.

When to take  
effect.

Approved, January 15, 1875.

## CHAPTER X.

## INCORPORATION OF TOWN SITES.

AN ACT to amend sections 15, 16, 22, 28, 42, 45 and 57, of chapter 14 of the laws of 1867-8, approved January 6, 1868, entitled "An act for the Incorporation of Towns, defining their powers, providing for the election of the officers thereof, and defining their duties," and for other purposes.

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

Section 15  
amended.

SECTION 1. That section 15 of chapter 14 of the laws of 1867-8, approved January 6, 1868, be and the same is hereby amended so as to read as follows:

What town  
officers to be  
elected.

Section 15. That there shall be elected at the first, and at every subsequent election, one trustee, from each district in said town, and also a clerk, assessor, treasurer, marshal and justice of the peace, who shall respectively hold their offices until the first Monday in May next following, or until their successors are elected and qualified: *Provided, however,* That nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person.

Section 16  
amended.

SEC. 2. That section 16 of chapter 14 of the laws of 1867-8, approved January 6, 1868, be and the same is hereby amended so as to read as follows:

Persons hav-  
ing highest  
number of  
votes to be  
elected.

Section 16. That the persons having the highest number of votes for the office of trustee shall be declared elected as such trustees, and the persons who receive the highest number of votes respectively for clerk, marshal, assessor, treasurer and justice of the peace, as designated by the ballot for such office shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall be the further duty of such inspectors to make a certified statement over their own signatures of the persons elected to fill the several offices in said town, and file the same with the register of deeds in the county thereof, within ten days after the date of such election, and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

Duty of in-  
spectors.

SEC. 3. That section 22 of chapter 14 of the laws of 1867-8, Section 22 amended. approved January 6, 1868, be and the same is hereby amended so as to read as follows:

Section 22. That the board of trustees shall have the following powers, viz: Powers of board of trustees.

First, To have a common seal, and alter the same.

Second, To purchase, hold, or convey any estate, real or personal, for the use of the corporation, so far as such purchase may be necessary to carry out the objects contemplated by this act.

Third, To organize fire companies, hook and ladder companies, to regulate their government, and the times and manner of their exercise, to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets; which are hereby declared to be appurtenances to the real estate, and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice, the trustees may procure and deliver the same to him; and in default of payment therefor, may recover of said owner the value of such ladder, or fire buckets, by suit before the justice of the peace of the town incorporated by the provisions of this act, and costs accrued thereby; to regulate the storage of gunpowder and other materials; to direct the construction of a place for the safe deposit of ashes; and may under any order by them, entered upon the proper book of the board, visit or appoint one or more fire wardens, to visit and examine at all reasonable hours, dwelling houses, lots, yards, enclosures and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stove pipes; to prevent out-fires, and the use of fireworks, and the discharge of fire-arms within the limits of said corporation, or such parts thereof as they may think proper; to compel the inhabitants of such town to aid in the extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this act provided; to construct and preserve reservoirs, wells, pumps and other water works, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires as they shall deem proper.

Powers of  
board of trust-  
ees.

Fourth, To declare what shall constitute a nuisance, and to prevent, abate and remove the same and take such other measures for the preservation of the public health, as they shall deem necessary.

Fifth, To restrain from running at large, cattle, swine, or other animals.

Sixth, To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame, and to authorize the seizure and destruction of gambling apparatus.

Seventh, To license, regulate or restrain auction establishments, traveling peddlers, public exhibitions and the sale of intoxicating liquors within the corporation.

Eighth, To establish and regulate markets, and build market houses, and direct the location of slaughter houses.

Ninth, To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair and to vacate the same.

Tenth, To appoint street commissioners, and also fire wardens, not exceeding three.

Eleventh, To prohibit incumbrance of the sidewalks, of said town, and riding or driving thereon, except to cross the same.

Twelfth, To provide means for keeping and preserving the peace and quietness of such town.

Thirteenth, To insure the public property of such town.

Fourteenth, To purchase, lay out and regulate cemeteries.

Fifteenth, To plant trees upon public grounds, and along the streets of such town, and provide for their culture and preservation, and to enclose any public square or other public ground within said corporation.

Sixteenth, To levy and collect annual taxes not exceeding fifty cents on the hundred dollars valuation, and twenty-five cents poll tax, on all property subject by law to taxation.

Seventeenth, To levy and collect annually, a tax of one dollar on each male dog, and two dollars on each female dog, owned and kept within such town.

Eighteenth, To make and establish such by-laws, ordinances and regulations not repugnant to the laws of this territory, as may be necessary to carry into effect the provisions of this act, and to repeal, alter or amend the same, as they

shall seem to the board of trustees of such town to require; but every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places, at least ten days before the same shall take effect.

SEC. 4. That section 28 of chapter 14 of the laws of 1867-8, approved January 6, 1868, be and the same is hereby amended so as to read as follows: Section 28 amended.

Section 28. That the clerk, assessor, treasurer, marshal and justice of the peace, shall within ten days after their election or appointment, each and severally give bonds payable to the town of ———, with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year. Certain officers to give bonds.

SEC. 5. That section 42 of chapter 14 of the laws of 1867-8, approved January 6, 1868, be and the same is hereby amended so as to read as follows: Section 42 amended.

Section 42. That the marshal of such town shall be a peace officer, and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees, or enforcing the by-laws and ordinances of said town. Powers of marshal.

SEC. 6. That section 45 of chapter 14 of the laws of 1867-8, approved January 6, 1868, be, and the same is hereby amended so as to read as follows: Section 45 amended.

Section 45. That the trustees, clerk, assessor, treasurer, marshal and justice of the peace, shall respectively receive for their services, such compensation as the board of trustees in their by-laws may decide; and said board shall cause to be paid other officers of such town for their services a just and reasonable compensation. Compensation of town officers.

SEC. 7. That section 57 of chapter 14 of the laws of 1867-8, approved January 6, 1867, (1868) be and the same is hereby amended so as to read as follows: Section 57 amended.

Section 57. That any person or persons violating the provisions of any ordinance of a town organized under this act to which there may be a penalty affixed, shall be presented before the justice of the peace of such town, and that the justice of the peace of such town shall have exclusive jurisdiction, Proceedings for violation of ordinances.

and it shall be his duty to hear and determine all offenses against the ordinances of the town.

Sections to  
be added.

SEC. 8. That the following sections be added to chapter 14 of the laws of 1867-8, approved January 6, 1868:

How ordi-  
nances may be  
proven.

Section 60. That all ordinances of the town may be proven by the ordinance book of the town or the certificate of the clerk of the town under seal of the town; and when printed in a newspaper or published in a book or pamphlet form, and purporting to be published or printed by authority of the town, shall be read and received in all courts and places without further proof.

Taxes assess-  
ed to be a lien.

Section 61. That all taxes assessed by the board of trustees of towns incorporated under the provisions of this act, for the grading, paving, or otherwise improving the streets of the town, or for building or repairing sidewalks of the town, shall be a lien on the lots or pieces of ground subject to the same, from the time the amount thereof shall have been ascertained, and in case any error or irregularity should occur in levying or collecting any such tax, proceedings may be taken anew, so as to obviate any such error or irregularity.

Taxes, how  
collectable, and  
penalty when  
delinquent.

Section 62. Such special tax shall be due and may be collected as the improvements are completed in front of, or along or upon any block, lot, or piece of ground, or at the time the improvement is completed according as shall be provided in the ordinance levying the tax. Such tax, if not paid within thirty days after becoming due, shall have added thereto a penalty of ten per cent., and shall bear interest from the day of sale, at the rate of twenty-five per cent. per annum, to be computed on the tax, penalty and costs of sale.

What costs  
may be includ-  
ed in tax.

Section 63. The cost and expenses of grading, filling, paving, macadamizing, culverting, curbing and (ditching), or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane, as may be deemed best by the board of trustees of such town.

Marshal's du-  
ty in relation  
to taxes.

Section 64. When the special tax is levied, it shall be the duty of the marshal of such town to calculate the amount of the tax on any block, lot, or piece of ground, and file a statement thereof with the town clerk, who shall, as soon as the tax is due on any block, lot, or piece of ground, issue a cer-

tificate describing it, its number and lot and block, and stating the amount of tax due thereon, and the name of the person entitled to the same, and the purpose for which said tax was levied; and such certificate so given shall be the tax warrant of the contractor, and shall be by the clerk placed in the hands of the marshal, and he shall keep a record of all such warrants and enter on the margin of such records, all amounts paid, and by whom paid.

Section 65. That whenever complaint shall be made to the justice of the peace of a town organized under the provisions of this act, upon the oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which such justice of the peace has jurisdiction; said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal, or some person specially appointed by such justice of the peace for that purpose.

Duty of justice on complaint being made.

Section 66. That when any person shall be brought before such justice of the peace upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

Duty of justice when defendant appears.

Section 67. That upon good cause shown, such justice of the peace may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into bond with sufficient security, conditioned that he will appear before such justice of the peace at the time and place appointed, then and there to answer the complaint alleged against him.

Proceedings where trial is postponed.

Section 68. That it shall be the duty of such justice of the peace to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary; and when a trial shall be continued by such justice of the peace, he may verbally notify such witnesses as may be present at the continuance, to attend before him to testify in the cause set for trial; and such verbal notice shall be as valid as a summons.

Justice to summon witnesses.

Section 69. That all trials before such justice of the peace, shall be governed by the criminal procedure applicable to justices' courts.

Trials—how governed.

Section 70. That in all trials for offenses under the ordinances of the town incorporated under and by the provisions of this act, if the defendant is found guilty, such justice of

When defendant found guilty justice to render judgment.

the peace shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with; in no case to exceed one day, for every seventy-five cents of the fine and costs assessed against said defendant.

Duty of justices.

Section 71. That such justice of the peace shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear and determine any and all cases cognizable before him; and he shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday, except to receive complaints, issue process and take bail.

Sunday duties.

Appeals to be allowed and conditions.

Section 72. That in all cases before such justice of the peace, an appeal may be taken by the defendant to the district court of the county in which such town is situated; but no appeal shall be allowed unless such defendant shall, within ten days enter into recognizance with sufficient securities, to be approved by such justice of the peace, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof if it should be determined against the appellant.

On conviction—how punished.

Section 73. That any person convicted before such justice of the peace of an offense under the ordinances of the town, shall be punished by fine as may be regulated by ordinances.

Powers of justice.

Section 74. That the justice of the peace of the town organized under the provisions of this act, shall have power to enforce obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court, or to process issued, or orders made by him in the same manner and to the same extent as provided for courts of justice of the peace. On the trial of any case in said court, it shall be the duty of such justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial: *Provided*, The truth of the matter be fairly stated, and thereupon said exceptions shall be entered in the record of such trial, and become a part thereof; and any final conviction, sentence, or judgment of said court may be examined by the district court of the county in which such town is situated, on writ of error, which may be allowed by the district court or the judge thereof, for sufficient cause, and proceedings may be stayed as

Bill of exceptions.]

may be deemed reasonable, and the revising court shall, in such proceedings take judicial notice of all the ordinances of such town. Cases before such justices of the peace, arising under town ordinances, shall be tried and determined by such justice of the peace without the intervention of a jury, unless the defendant demand a trial by jury; and when a demand shall be so made, the trial shall be by jury of twelve citizens of such town, having the qualifications of jurors, who shall be summoned by the marshals of such town upon a venire issued by such justice of the peace. That the venire for a jury shall contain eighteen names, three of whom shall be stricken off the list by the defendant, and three by the marshal of such town; the remaining twelve names shall constitute a jury for the trial of a cause. If there is any challenges for cause, such justice of the peace shall try the question in a summary manner, who may examine the challenged jurors under oath.

When jury must be had.

Section 75. That such jurors shall be paid fifty cents for their services as jurors in each case.

Fees of jurors.

Section 76. That in case the defendant is found guilty, the costs of the jury shall be taxed against him as a part of the costs of the case, and the amount thereof shall be a part of the judgment.

Costs taxed to defendant.

Section 77. That in all cases not herein specially provided for, the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal cases.

Proceedings — how governed.

SEC. 9. That all acts and parts of acts in conflict with the provisions of this act is hereby repealed.

Conflicting acts repealed.

SEC. 10. That this act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 9, 1875.

## CHAPTER XI.

### CONCERNING REVENUE.

AN ACT to amend sections 24, 27, 28, 29, 31, 32, 33 and 35 of chapter 25 of the session laws of 1868-9 entitled, "An act concerning revenue," approved January 12th, 1869.

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

SECTION 1. That sec. 24 of said chapter 25 be amended as

Section 24 of chapter 25 amended.

follows: by striking out the word "April," where it occurs in the first line and insert in lieu thereof the word "July."

Section 27  
amended.

SEC. 2. That sec. 27 of said chapter 25 be amended as follows: by striking out the word "April" where it occurs in the fifth line and insert in lieu thereof the word "July."

Section 28  
amended.

SEC. 3. That sec. 28 of said chapter 25 be amended as follows: by striking out the word "May" where it occurs in the third line, and insert the word "August" in lieu thereof.

Section 29  
amended.

SEC. 4. That sec. 29 of said chapter 25 be amended as follows: by striking out the word "May" where it occurs in the fifth line, and insert the word "August" in lieu thereof.

Section 31  
amended.

SEC. 5. That sec. 31 of said chapter 25 be amended as follows: by striking out the word "June" where it occurs in the first line, and insert the word "September" in lieu thereof.

Section 32  
amended.

SEC. 6. That sec. 32 of said chapter 25 be amended as follows: by striking out the word "July" where it occurs in the first line, and insert the word "October;" also the word "July" in the fourth line, and insert the word "October" in lieu thereof.

Section 33  
amended.

SEC. 7. That sec. 33 of said chapter 25 be amended as follows: by striking out the word "July" where it occurs in the fifth line, and insert the word "October" in lieu thereof.

Section 35  
amended.

SEC. 8. That sec. 35 of said chapter 25 be amended as follows: by striking out the word "October" where it occurs in the fifth line, and insert the word "December" in lieu thereof.

When assess-  
ment shall be  
made.

SEC. 9. In no case shall the assessor commence assessing before the first Monday in April.

When to take  
effect.

SEC. 10. This act shall take effect from and after its passage and approval.

Approved, January 6, 1875.

## CHAPTER XII.

### IN RELATION TO TOWN SITES.

AN ACT amending the general laws of 1868-9 relating to town sites.

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

SECTION 1. That section one of chapter 27 of the general laws of 1868-9, being an act entitled An act supplementary to an act entitled an act in relation to town sites entered as

Section 1 of  
chapter 27 of  
general laws of  
1868 amended.

such under the act of congress, approved March 2d, 1867, approved December 18th, 1867, be amended by adding thereto, after the words "re-survey of said town:" *Provided, however,* That when any tract, or piece or parcel of land filed upon as a town site under the provisions of this act shall become an incorporated city, town, or village, prior to the entry of said land, it shall be the duty of the officer so filing upon said land to transfer said land when entered, to the corporate authorities of said city, town, or village, who shall therefore [thereupon] proceed to deed the same to the several occupants thereof according to their respective interests, and to hold the residue [residue] in trust for the use and benefit of the inhabitants thereof.

SEC. 2. This act shall be in force and take effect from and after the date of its passage. When to take effect.

Approved. January 15, 1875.

## CHAPTER XIII.

### FORECLOSURE OF MORTGAGES.

AN ACT amending chapter 15, "An act providing for the foreclosure of mortgages," approved January 11, 1865.

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

SECTION 1. That chapter 15 of the laws of 1864-5, approved January 11, 1865, entitled "an act providing for the foreclosure of mortgages," be and the same is amended as follows: By striking out the last clause of section 11 of said chapter, which clause reads as follows: "But no mortgagor shall be entitled to retain the possession of the mortgaged premises after the sale thereof as provided in this act." Last clause of section eleven stricken out.

SEC. 2. That section twenty-three (23) of said chapter 15 be and the same is hereby amended so as to read as follows: Action[s] for the foreclosure or satisfaction of mortgages may be brought in the district court of the county or subdivision, of a judicial district where the mortgaged premises or some portion thereof are situated, and in case any defendant is not a resident of the county or subdivision, process may be served on him in any other county or subdivision within the Where actions for foreclosure may be brought

territory; or if he be a non-resident of the territory, or absent or concealed the same proceedings may thereupon be had as are provided by the code of civil procedure in such cases.

Power of the court.

SEC. 3. That section 24 of said chapter 15 be amended so as to read as follows: Whenever an action shall be brought for the foreclosure or satisfaction of a mortgage the court shall have power to render a judgment against the mortgagor for the amount of the mortgage debt due at the time of the rendition of such judgment, and the costs of the action, and to order and decree a sale of the mortgaged premises, or such part thereof as may be sufficient to pay the amount so adjudged to be due, and cost[s] and costs of sale, and shall have the power to order and compel the delivery of the possession of the premises to the purchaser; but in no case shall the possession of the premises so sold, be delivered to the purchaser until after the expiration of one year from such sale; and the court may direct the issuing of an execution for the balance that may remain unsatisfied after applying the proceeds of such sale.

After action commenced, certain proceedings cannot be had.

SEC. 4. That section 25 of said chapter 15 be amended so as to read as follows: After such action shall be commenced while the same is pending, no proceedings at law shall be had for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

Section 26 amended.

SEC. 5. That section 26 of said chapter be amended by substituting the word "plaintiff" for complaint ["complainant,"] and the word "action" for "bill," and by adding to the end of said section the words "by execution or other process."

What complaint to state in action for foreclosure.

SEC. 6. That section 27 of said chapter be amended so as to read as follows: In an action for the foreclosure or satisfaction of a mortgage, the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof; and if there has, whether any and what part thereof has been collected.

Section 28 amended.

SEC. 7. That section 28 of said chapter be amended by substituting the word "complaint" for the word "bill."

Who to make sale under decree of foreclosure.

SEC. 8. That section 29 of said chapter be amended so as to read as follows: All sales of mortgaged premises under an order and decree of foreclosure shall be made by a referee, sheriff or deputy sheriff of the county who [where] the court

in which the judgment or decree is rendered is held, or other person appointed by the court, and shall be made in the county or subdivision where the premises or some part of them are situated, and shall be made upon the like notice and in the same manner as provided by law for the sale of real property upon execution.

SEC. 9. That section 30 of said chapter 15 be amended so as to read as follows: Whenever any real property shall be sold under an order or decree or judgment of foreclosure under the provisions of this act, or upon the foreclosure of a mortgage by proceedings in court, it shall be the duty of the officer or other person making the sale, to give to the purchaser or purchasers a certificate in writing, under seal, duly acknowledged, setting forth a description of each tract or parcel of the premises sold, the sum paid therefor and the time when the purchaser or purchasers will be entitled to a deed for the same unless they shall be redeemed as provided in this act, and such certificate may be recorded in the register of deeds office of the county where the lands or premises are situated, and the same or a certified copy thereof, certified by such register, shall be taken and deemed evidence of the facts therein recited and contained; and at the expiration of the time for the redemption of such mortgaged premises, if the same shall not be redeemed, the person or office[r] making the sale, or his successor or other person appointed by the court shall make to the purchaser or purchasers, or their heirs or assigns, a deed or deeds to such premises which shall vest in the purchaser the same estate that was vested in the mortgagor at the time of the execution and delivery of the mortgage, or at any time thereafter; and such deed shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all the parties to the action in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Duty of officer making sale of real property.

SEC. 10. That section 33 of said chapter 15 be amended by substituting in the first line thereof the words "an action shall be commenced" for the words "a bill shall be filed," and by substituting the word "action" for the word "bill" in the fifth line of said section.

Section 33 amended.

SEC. 11. That section 34 of said chapter 15 be amended so as to read as follows: If after an order or decree for the sale

When proceedings to be stayed.

of mortgaged premises shall be entered in such action against a defendant, he shall bring into court the principal and interest due, with costs, the proceedings in such action shall be stayed, until a further default, and in case of a subsequent default in the payment of any of the installments or any part thereof of such mortgage the court may enforce by order or other process the collection of such subsequent installment.

**Section 35  
amended.**

SEC. 11. [12.] That section 35 of said chapter be amended by substituting the word "plaintiff" for the word "complainant" in the third line, and by adding the words "or reform [referee]" after the word "master" in the 4th line.

**Appeals.**

SEC. 12. [13.] Appeals may be taken in actions for the foreclosure of mortgages as in other actions.

**When to take  
effect.**

SEC. 13. [14.] This act shall take effect and be in force from and after its passage and approval.

Approved, January 12, 1875.

## CHAPTER XIV.

### TO PROVIDE FOR LOCATING HIGHWAYS.

AN ACT to amend section 27 of chapter 13 of the session laws of 1867-8.

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

**Defining the  
width of high-  
ways.**

SECTION 1. That section twenty-seven of chapter thirteen of the session laws of 1867-8, approved January 8th, 1868, entitled "An act to provide for the opening, vacating and change of highways," be and the same is hereby amended by striking out the word "eighty" in the first line of said section and inserting in lieu thereof the word "sixty-six."

**When to take  
effect.**

SEC. 2. This act shall take effect from and after its passage and approval.

Approved, January 6, 1875.

## CHAPTER XV.

## TO INCORPORATE THE CITY OF YANKTON.

AN ACT to amend an act entitled "An act to incorporate the city of Yankton, Dakota Territory, approved January 8, A. D. 1873.

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

SECTION 1. That "an act to incorporate the city of Yankton, Dakota Territory," approved January 8, 1873, be amended in the following manner. What act amended.

SEC. 2. That section nine of said act be amended so as to read as follows: Time of election and officers to be elected.

"On the first Monday in April, after the taking effect of this act, and on the same day in each year thereafter, an election shall be held for mayor, eight aldermen, clerk, treasurer and marshal, each of whom shall be elected for the term of one year, commencing on the first Monday succeeding the day of their election and shall hold their respective offices until their successors are elected and qualified."

SEC. 3. That section ten of said act be amended so as to read as follows: Opening and closing of polls

"At all elections authorized by this act, the polls shall be kept open from nine o'clock A. M. until four o'clock P. M. and no longer."

SEC. 4. That section eleven of said act be amended so as to read as follows: Election districts defined.

"Each ward shall constitute an election district, and polls shall be opened at such place therein as may be designated by the mayor, or fixed by ordinance or resolution of the council: *Provided*, That when any ward shall contain over three hundred legal voters, the mayor and council may, by ordinance, re-district said city, and increase the number of wards to six; and when so re-districted, each of said wards shall be entitled to two aldermen: *And provided further*, That every legal voter of the territory, who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all elections. And no person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding

his election: *And provided further*, That every person shall vote in the ward where he resides, and not elsewhere."

Powers of  
the mayor and  
council.

SEC. 5. That section thirteen, subdivision first, be amended so as to read as follows:

"To levy and collect taxes for general purposes, not exceeding four mills on the dollar in any one year, on all the property within the limits of the city, taxable according to the laws of the territory, the valuation of such property to be taken from the assessment roll of Yankton county; and it shall be the duty of the county clerk of said Yankton county, to *prevent* [permit] the city clerk to make out, from the assessment rolls of the county, an assessment roll for the city, of all the property liable to taxation as above specified: *Provided*, That the authorities of the said city of Yankton, shall not, in any year, issue warrants or orders to an amount greater than ninety per cent. of the amount of taxes levied for such year, and the amount actually received from other sources; and said city authorities shall not contract or incur any indebtedness in addition to the amount for which they are authorized to issue warrants, orders, or bonds."

Powers of  
same.

SEC. 6. That subdivision fourteenth of article thirteen be amended so as to read as follows:

"To provide for removing officers of the city for misconduct; to appoint a city attorney, street commissioner and city engineer and prescribe the duties and compensation of such officers, and to create any office, or employ any agent they may deem necessary for the good government and interests of the city: *Provided*, That the present street commissioner and city engineer shall hold their respective offices for the time for which they were elected to the same unless removed upon charges preferred in accordance with the charter and ordinances of the city."

Same.

SEC. 7. That subdivision twenty-third of section thirteen be amended so as to read as follows:

When streets  
and alleys may  
be changed or  
vacated.

"To name and re-name streets, avenues, parks and squares within the city; to vacate streets and alleys, and authorize the laying of railroad switches through the same when in their judgment the interests of the city will be promoted thereby: *Provided*, That three-fourths of the real estate owners adjacent to such streets and alleys shall petition to the city council that such streets and alleys should be vacated and the city council

if convinced that no injustice will be worked by any person or persons by such vacation shall order such vacation, and in all cases they shall cause all expenses arising from the application and the ensuing proceeding to be paid by the parties applying for such vacation. The streets, alleys or public grounds thus vacated shall become the property of owners of real estate thereto adjacent on each side, in proportion to the frontage of such real estate."

SEC. 9. [8.] That section eighteen be amended so as to read as follows:

Powers of  
the mayor and  
council.

"The mayor and council shall have power to extend, open, widen, grade, pave, macadamize or otherwise improve and keep in repair in any manner they may deem proper, any street, sidewalk, alley, avenue or lane within the limits of the city, to vacate any portion of any street or alley, and add the portion so vacated to adjoining lots; to re-survey and straighten any street or alley of said city; and to defray the cost and expense of such improvements, or any of them, out of the general funds of the city; or the mayor and council shall have power to levy and collect special taxes upon lots and pieces of ground adjacent to and abutting upon the streets, sidewalks, alleys, avenues or lanes thus opened, widened, extended or improved, or to be improved as aforesaid."

Sec. 10. [9.] That section twenty-one be amended so as to read as follows:

See nc.

"The mayor and council shall have power to require all lots or pieces of ground within the city to be *divided*, [drained] or filled when necessary to prevent stagnant water, or any other nuisance accumulating therein; and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, to cause such lots or pieces of ground to be drained or filled; and the cost and expense thereof shall be levied upon the property so filled or drained and collected as other special taxes; or pay for the same out of the general funds of the city."

Sec 11. [10.] That section thirty-six be so amended as to read as follows:

When money  
may not be ex-  
pended.

"No money shall be expended or payment made by the city, except in pursuance of a specific appropriation made for that purpose by ordinance or resolution. And the residents of

said city shall be exempt from payment of a poll tax for the benefit of roads as required under the present laws relating to roads; but in lieu thereof the mayor and council of said city shall have power to require each able-bodied male person between the ages of 21 and 60 years, resident within the city, to perform by himself or substitute, in each and every year, one day's labor upon the streets and highways of said city: *Provided*, That acting volunteer firemen shall be exempt from performing said one day's labor: *And provided further*, That such labor, when so required may be commuted by the payment of the sum of two dollars in each year, to be expended upon the streets and highways where such labor would have *be* [been] applied."

Road poll tax.

Firemen exempt.

Payment of liabilities to be provided.

SEC. 12. [11.] That section thirty-seven be amended so as to read as follows:

"At the first meeting in each month the mayor and council shall provide by ordinance or resolution, for the payment of all liabilities of the city incurred during the preceding month, or at any time previous thereto, except the bonded indebtedness of said city which shall be paid at the maturity of such bonds."

Mayor to appoint officers.

SEC. 13. [12.] That section fifty-two be amended so as to read as follows:

"The mayor shall have power, by and with the consent of the council, to appoint all officers of the city other than those elected by the people, and all nominations made by him may be confirmed or rejected by a majority of the councilmen present and voting upon such confirmation."

City justice of the peace.

SEC. 14. [13.] That section fifty-three be amended so as to read as follows:

"A city justice of the peace shall be appointed by the mayor and council from the qualified voters of said city. The city justice of the peace shall have exclusive jurisdiction and it shall be his duty to hear and determine all offenses against the ordinances of the city, and concurrent jurisdiction with all other justices in all other cases civil and criminal."

Appeals from the city court.

SEC. 15. [14.] That section sixty be amended so as to read as follows:

"In all cases before the said justice, arising under the ordinances of the city an appeal may be taken by the defendant to the district court of Yankton county except in cases tried

by a jury; but no appeal shall be allowed unless such defendant shall, (in case of fine,) within ten days, (and in case of imprisonment,) within twenty-four hours, enter into recognizance, with sufficient securities, to be approved by said justice, conditioned in case of fine, for the payment of said fine and costs, and costs of appeal, and in case of judgment of imprisonment, that he will render himself in execution thereof, if it should be determined against the appellant."

SEC. 16. [15.] That section sixty-five be amended so as to read as follows:

Powers of  
city justice.

"The city justice of the peace shall have power to enforce due obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered him while holding his court, or to process issued *on* [or] orders made by him in the same manner and to the same extent as provided for justice court. On the trial of any case in said court, it shall be the duty of the city justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial: *Provided*, The truth of the matter be fairly stated, and thereupon said exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the district court on writ of error which may be allowed by said district court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall, in such proceedings take judicial notice of all the ordinances of said city. Cases before the city justice of the peace, arising under the city ordinances, shall be tried and determined by the justice without the intervention of a jury, except in cases where, under the provisions of the ordinances of the city, imprisonment for a longer time than ten days *in* [is] made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial; and when a demand shall be so made it shall be the duty of the city justice of the peace to write down the names of eighteen persons, residents of the city, and having the qualifications of jurors in the district court, and the defendant and the attorney for the city shall each strike off three names, or, in case the defendant shall neglect or refuse so to do, then the city justice of the peace,

Cases tried  
without jury.

with the attorney for the city, shall strike off such names; and the said justice shall at once issue his venire to the marshal *demadning* [commanding] him to summon the twelve persons whose names remain upon the list as jurymen. And in all trials by jury in said *county* [court] challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor, and in case the number shall be reduced below twelve by such challenges, or any portion of said number shall fail to attend, *them* [then] the marshal shall summon in a sufficient number of talesmen, having the qualifications of jurors, to complete the panel, which shall in all cases consist of twelve jurors. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the justice who may examine the juror or other witness under oath.

**Fees of jurors.** Each and every person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction, such fees shall be taxed against the defendant as a part of the costs of the case,"

**City warrants, how signed; how paid.** SEC. 17. [16.] That section sixty-eight be amended so as to read as follows:

"All warrants drawn upon the treasury must be signed by the mayor, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable, and the person to whom chargeable; and no money shall be otherwise paid than upon such warrant so drawn, except as hereinafter provided. All warrants shall be paid in the order in which they are presented, and the treasurer shall note upon the back of each warrant presented to him the date of such presentation, and when payment is made the date of such payment: *Provided*, That any warrant shall be paid by the treasurer in case a sufficient amount of money shall remain in the treasury to pay all warrants presented previous to such warrant. Any violation of the provisions of this section on the part of the treasurer of said city shall be sufficient ground for his removal from office by the mayor and city council."

**When treasurer may be removed.**

**Duties of the marshal.**

SEC. 18. [17.] That section seventy-five be amended so as to read as follows:

"The marshal shall serve all warrants issued by the city justice of the peace, and may arrest offenders within or without the city limits for offenses committed against the ordinan-

ces of said city; and serve subpoenas for witnesses, venires for juries, and all other process issued by the city justices of the peace in such cases; and shall at all times have power to make, or order an arrest upon view of an offense being committed against said ordinances, with or without process, and bring the offender to trial before the city justice of the peace; *Provided*, That any person arrested for an offense without process shall be entitled, on demand before trial, to have filed a complaint on oath, in writing: *And provided further*, That nothing in this act contained shall be so construed as to authorize the marshal to serve any process in a civil suit or any warrant of arrest for violation of the laws of the territory.

SEC. 19. [18.] All acts and parts of acts in conflict with this act are hereby repealed. Conflict'g acts repealed.

SEC. 20. [19.] This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 14, 1875.

## CHAPTER XVI.

TO LOCATE A TERRITORIAL ROAD FROM CANTON TO MAXWELL CITY.

AN ACT to amend chapter 41 of the laws of 1872-3, approved Jan. 6th, 1873, and for other purposes.

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

SECTION 1. Section one of chapter 41 of the laws of 1872-3, is hereby amended as follows: Strike out all of said section after the words "as follows," in the fifth line of said section, and insert the following: "Commencing at the northeast corner of section twenty-three, township 98 of range 49 in the town of Canton; running thence south to the northeast corner of section 35; thence west along the north line of sections 35, 34, 33, 32 and 31 to the west line of said range 49; thence south along said line to the southeast corner of section one, of township 97 of range 50; thence west along the section line by way of Turner's mill and bridge to the northeast corner of section 9, in township 97, range 53; thence south one mile to the southeast corner of section 9; thence west along the section

Locating a territorial road from Canton to Olivet.

line to the Dakota river; thence by the most direct and practicable route to Olivet.”

Time for making report extended.

SEC. 2. Section five of said act is hereby so amended that the time for making a report of the location and cost of said road, and the filing of copies of the law, as provided in said section 5 shall be and the same is hereby extended to the first day of July, 1875, and no further charges shall be made by said commissioners, than the expenses already incurred under the provisions of the act to which this is amendatory.

Acts legalized.

SEC. 3. All acts of said commissioners heretofore performed under and by authority of the provisions of the said chapter 41, so far as said acts are consistent with the provisions of this act, are hereby legalized.

Conflicting acts repealed.

SEC. 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

When to take effect.

SEC. 5. This act shall take effect and be in force from and after its passage and approval by the governor.

Approved, January 15, 1875.

## CHAPTER XVII.

### TO INCORPORATE THE CITY OF ELK POINT.

AN ACT to amend section 62 of chapter twelve of the session laws of the Territory of Dakota, entitled “An act to incorporate the city of Elk Point, Dakota Territory,” approved January 10th, 1873.

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

Elk Point charter amended.

SECTION 1. That section sixty-two of chapter twelve of the session laws of 1872 and 1873, entitled “an act to incorporate the city of Elk Point, Dakota Territory,” be amended by adding thereto the following: “In all cases where the defendant shall demand a trial by jury, it shall be the duty of the city justice of the peace to write down the names of eighteen persons, residents of the said city, and having the

qualifications of jurors in the district courts; and the defendant and the attorney for the city shall each strike off three names; or in case the defendant shall neglect or refuse so to do, then the city justice of the peace, with the attorney for the city, shall strike off such names, and the said justice shall at once issue his venire to the marshal, or to the sheriff, or to any constable of the county of Union demanding [commanding] them or either of them to summon the twelve persons whose names remain upon the list as jurymen. And in all trials by jury in said court, challenges shall be allowed in the same manner and for the same cause as in the district court in cases of misdemeanor, and in case the number shall be reduced below twelve by such challenges, or any portion of said number shall fail to attend, then the marshal or the sheriff or constable who shall be attending upon said court, shall summons in a sufficient number of talesmen having the qualifications of jurors, to complete the panel, which shall in all cases consist of twelve jurors.

SEC. 2. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

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## CHAPTER XVIII.

### IN RELATION TO MECHANICS LIENS.

AN ACT to amend chapter 21 of the laws of 1867-8.

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

SECTION 1. That section four of chapter twenty-one of the laws of 1867-8, be amended by striking out the words "sixty days," where they occur in said section, and insert in the place thereof the words "one hundred and twenty days." Section four amended.

SEC. 2. That at the end of section four shall be added the following words: "Whenever a lien is obtained upon any property, it shall take effect and date from the time of furnishing the materials or performing the labor." When lien to take effect.

SEC. 3. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

## CHAPTER XIX.

## RELATIVE TO THE BOND OF THE TERRITORIAL TREASURER.

AN ACT to amend section 2 of chapter 86 of the general laws of 1862.

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

Amount of  
treasurer's  
bond.

SECTION 1. That section 2 of chapter 86 of the general laws of 1862, be amended as follows: Strike out the words "two thousand" in 3d line of said section, and insert in lieu thereof the words "five thousand."

Conflicting  
acts repealed.

SEC. 2. All acts in conflict with the provisions of this act are hereby repealed.

When to take  
effect.

SEC. 3. This act shall take effect and be in force from and after the date of its passage and approval.

Approved, January 15, 1875.

## CHAPTER XX.

## CONCERNING REVENUE.

AN ACT amendatory of chapter 51 of the laws of 1872-3, approved January 10, 1873.

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

Section sev-  
enty-four chap-  
ter 51, laws of  
1872-3, amend-  
ed.

SECTION 1. That section 74 of chapter 51 of the laws of 1872-3, be amended by adding thereto the following words: "And it shall be the duty of the town clerk to make out the tax list of all taxes legally authorized by the township, and annex to such tax list a warrant under the hand of said clerk, directed to the said treasurer, to collect the sums therein named; said list and warrant to be made out and delivered to said treasurer by said clerk during the month of August of each year."

Section 75  
amended.

SEC. 2. That section 75 of said act be amended so as to read as follows: "The warrant annexed to any tax list shall command the treasurer of the township to collect from each of the persons and corporations named in such tax list, and of the owners of the real estate therein described, the several sums

set opposite the names of such persons and corporations, and to the description of 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 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 warrant and return the same to the clerk at the expiration of the time limited therein for the collection of such tax list. The warrant issued by the clerk of any township may be executed anywhere within the county; and such warrant shall have the like force and effect as a warrant issued for the collection of county taxes; and the treasurer of the county shall have the like powers in the execution thereof as are provided by law for the collection of county taxes. If any tax in any tax list delivered to any township treasurer, shall remain unpaid at the time he is required by law to return his warrant to the township clerk, such treasurer shall, within ten days, make out and deliver to the county treasurer, in writing, a statement containing the amount of personal property, and a description of the lots and pieces of land upon which such taxes remain unpaid, together with the amount of tax assessed on each; and he shall attach thereto an affidavit, that the taxes mentioned in such statement are unpaid; and after diligent effort he has been unable to collect the same. The county treasurer upon delivery to him of such statement, shall give a certificate to the treasurer of the township of the amount of taxes so remaining unpaid as the same shall appear from such statement, which certificate shall be deposited by the township treasurer with the township clerk, and shall be filed by such clerk, and the county treasurer shall immediately add such delinquent taxes to his delinquent tax list, and collect the same as other delinquent taxes are collected, and when so collected shall pay over the same, (less his fees for the collection thereof,) to the township in which said taxes were levied, upon the order of the township board: *Provided*, That this act, so far as the collection of taxes by town treasurers do not apply to the county of Union.”

Section 75  
amended.

Where war-  
rant may be ex-  
ecuted.

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

When to take  
effect.

Approved, January 15, 1875.

## CHAPTER XXI.

## INTOXICATING LIQUORS.

AN ACT amending an act entitled "An act to provide against the evils resulting from the sale of intoxicating liquors in the territory of Dakota," approved January 10, 1873.

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

Section one  
amended.

License pro-  
vided for.

Bond required.

Liab. for dam-  
ages.

SECTION 1. That section one of an act entitled "An act to provide against the evils resulting from the sale of intoxicating liquors in the territory of Dakota," approved January 10th, 1873, be amended so as to read as follows: "That it shall be unlawful for any person or persons, by agent or otherwise, without first having obtained a license and given a bond, to sell in any quantity, intoxicating liquors, to be drank in, upon, or about the premises where sold, or to sell such intoxicating liquors to be drank in any adjoining room, building, or premises, or other place of popular resort connected with said building: *Provided*, That no person shall be granted a license to sell or give away intoxicating liquors, without first giving a bond to the county commissioners of their respective counties; which bond shall run in the name of the people of the territory of Dakota, and be in the penal sum of three thousand dollars (3,000) with at least two good and sufficient sureties to be approved by the county commissioners which said sureties shall be freeholders of the county, conditioned that the person applying for the license shall keep a quiet and orderly house, and that they jointly and severally will pay all damages to any person or persons, which may be inflicted upon them, either in person or property, or means of support, by reason of the person so obtaining a license, selling or giving away intoxicating liquors; and such bond may be sued and recovered upon in a civil action for the use of any person or persons, or their legal representatives, who may be injured by reason of the selling intoxicating liquors by the person or his agent so obtaining the license; *And provided further*, That the person applying for the license shall, after having given the bond as aforesaid, and before the license shall be granted, pay into the treasury of the county or other municipality a sum of not less than thirty dollars nor more than three hundred dollars: *And provided further*, That it

shall be competent and lawful for both the county commissioners of any county and also the mayor and city council or other authorities of any town or city situated therein to require the payment of the license herein provided, and the granting of the power to license or tax in any city or town charter shall not be held as conflicting in any way with the provisions of this act, the intention being to allow both the county and town or city authorities to levy and collect a license for the sale of intoxicating liquors as herein provided, or as provided by the charter and ordinances of such town or city: *And provided further*, No license shall run for a longer time than one year without renewal."

SEC. 2. And be it further enacted that sections eight, (8) Certain act revived and re-enacted nine (9) and ten (10) of an act entitled "An act to regulate the sale of spirituous liquors, and for other purposes, approved January 8, 1868," be and the same is hereby revived and re-enacted, and that sections one, two, three, four, five, six and seven of said act shall be of no force and effect.

SEC. 3. This act shall take effect and be in force from and When to take effect. after its passage and approval.

Approved, January 15, 1875.

## APPORTIONMENT.

### CHAPTER XXII.

#### APPORTIONMENT.

AN ACT apportioning the representation in the Legislative Assembly.

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

SECTION 1. That the county of Union shall constitute the Apportionment of first district first council and representative district, and shall be entitled to two members of the council and four members of the house of representatives.

SEC. 2. That the county of Clay shall constitute the second Second district

council and representative district, and shall be entitled to two members of the council and four members of the house of representatives.

**Third district.** SEC. 3. That the county of Yankton shall constitute the third council and representative district, and shall be entitled to two members of the council and five members of the house of representatives.

**Fourth dist** SEC. 4. That the counties of Bon Homme, Hutchinson, Armstrong, Hanson and Davidson shall constitute the fourth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives.

**Fifth district.** SEC. 5. That the counties of Lincoln and Turner shall constitute the fifth council and representative district, and shall be entitled to two members of the council and three members of the house of representatives.

**Sixth district.** SEC. 6. That the counties of Minnehaha, Lake and Moody shall constitute the sixth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives.

**Seventh dist.** SEC. 7. That the counties of Cass, Richland, Ransom, Barnes (heretofore known as Burbank) and Stutsman shall constitute the seventh council and representative district, and shall be entitled to one member of the council and two members of the house of representatives.

**Eighth dist.** SEC. 8. That the counties of Traill, Grand Forks and Pembina shall constitute the eighth council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

**Ninth district.** SEC. 9. That the counties of Burleigh and Stevens shall constitute the ninth council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

**Tenth district.** SEC. 10. That the counties of Charles Mix, including the Yankton reservation, and Buffalo, Brule, Hyde, Hughes and Sully shall constitute the tenth representative district, and shall be entitled to one member of the house of representatives.

**Eleventh dist.** SEC. 11. That the counties of Brookings, Hamlin, Deuel and Grant shall constitute the eleventh representative district, and shall be entitled to one member of the house of representatives.

SEC. 12. In case a new territory shall be erected out of the northern portion of Dakota Territory prior to the next general election, or before a new apportionment of representation is made, the representation herein assigned to Northern Dakota shall be and the same is hereby assigned as follows, to-wit:

In case a new territory shall be formed, how apportioned.

To the first council and representative district one member of the council and one member of the house.

To the second council and representative district one member of the council and one member of the house.

SEC. 13. That the counties of Stanley, Cheyenne, Delano, Mandan, Lawrence, Custer, Forsyth, Shannon, Lugenbeel, White River and Pennington counties shall and are hereby attached to the tenth (10) representative district for election purposes.

Certain counties annexed to tenth district.

SEC. 14. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Conflicting acts repealed.

SEC. 15. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 15, 1875.

## APPROPRIATIONS.

### CHAPTER XXIII.

#### COMMISSIONERS COMPENSATION.

A JOINT RESOLUTION making an appropriation to Frank Bem for services as commissioner of immigration.

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

SECTION 1. That Frank Bem be allowed the sum of one hundred dollars as compensation for his services as commissioner of immigration, out of any money in the territorial treasury, not otherwise appropriated.

One hundred dollars allowed Frank Bem.

SEC 2. This resolution shall take effect from and after its passage and approval.

When to take effect.

Approved, January 15, 1875.

## BONDS.

### CHAPTER XXIV.

#### RELIEF BONDS.

AN ACT to provide assistance and seed grain to those settlers in the territory who are needing aid by reason of a failure of crops.

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

Appropriation  
for relief.

SECTION 1. That there be and there is hereby appropriated out of the funds provided in this act the sum of twenty-five thousand dollars, or such sum as the act shall provide by the issue and negotiation of the bonds hereinafter mentioned for the assistance and to provide seed grain for those settlers in this territory who are needy by reason of a failure of their crops in the last harvest, resulting from the grasshopper devastation or other calamity.

Relief fund,  
how provided.

SEC. 2. To provide such fund, there shall be immediately issued the bonds of this territory to the amount of twenty-five thousand dollars, in denominations of five hundred dollars, bearing date the first day of January, A. D. 1875, with interest payable semi-annually on the first days of January and July in each year, running for ten years, with interest at eight per cent. per annum, and principal and interest payable at the Fourth National Bank in the city of New York.

Bonds how  
executed and  
negotiated.

SEC. 3. Such bonds shall be executed for the territory, and under the seal thereof by the governor, and shall be attested by the secretary, and shall be negotiated by the commissioners hereinafter appointed, at not less than ninety cents on the dollar, and the proceeds thereof deposited with the said Fourth National Bank of New York city, to be drawn upon the order and under the direction of the said commissioners for the purpose herein provided.

Names of com-  
missioners.

SEC. 4. Governor John L. Pennington, Judge J. P. Kidder, M. D. Thompson, T. M. Sargent and J. A. Potter are hereby appointed commissioners for the purpose of distributing the funds herein provided; and they, or a majority of them, are

authorized to purchase with such funds, from time to time, seed grain and other articles of necessity to the destitute settlers herein mentioned, and to distribute the same where most needed, according to the best evidence which shall come to their possession.

SEC. 5. Before making any distribution of such seed grain or other necessary articles, in any case, they shall require a statement under oath or other satisfactory authentication from the applicant of the existence of such necessity, and shall have power to make any and all needful rules and regulations to carry out the provisions of this act, and for a faithful distribution of such necessary articles to the really destitute.

Commissioners to require statement before making any distribution.

SEC. 6. Such commissioners shall in making their distribution in any county call to their assistance the county commissioners of such county, and it shall be the duty of the county commissioners to render such assistance as they shall be thereunto required by such commissioners herein appointed, and such commissioners may employ and pay any necessary and proper assistance in and about the discharge of the duties herein imposed.

Duty of commissioners before making distribution.

SEC. 7. Such distribution shall be made in time for the seeding in the spring of 1875, and if there should be any surplus of the funds herein provided remaining after making such distribution, such surplus shall be paid into the treasury of the territory to be used as other funds of the territory are used.

Distribution to be made in time for seeding.

SEC. 8. For the purpose of the prompt payment of the principle and interest upon the bonds herein provided, there shall be levied by the territorial board at the time the other taxes are levied and collected in the same manner as other territorial taxes are collected, such sum as shall be sufficient to pay such interest and the exchange thereon, and after five years from the first day of January, 1875, in addition thereto, a sinking fund tax annually sufficient to retire and pay said bonds at their maturity, and as fast as such taxes are collected and promptly upon the first day of January and July of each year, it shall be the duty of the territorial treasurer to pay such interest as shall then fall due, and with the sinking fund tax, as fast as the same shall be received, the treasurer shall with the same buy up said bonds at their market value, and retire and cancel the same. And no tax and no funds

Territorial board to levy tax.

provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose whatsoever.

Territorial treasurer's duty when he has no relief funds on hand.

SEC. 9. If for any reason the territorial treasurer shall not have in his hands sufficient of the funds herein provided to pay either the principal or interest upon such bonds when due, he shall pay such interest or principal out of any other fund in hands belonging to the territory. And there is hereby appropriated and set apart out of the general funds belonging to the territory sufficient to pay the interest on such bonds that shall fall due before the funds and tax herein provided can be made available; and it shall be the duty of such treasurer to pay such interest promptly at the time it falls due out of such funds as shall come to his hands.

Commissioners to file a statement.

SEC. 10. After such distribution shall have been made, the said commissioners shall as soon thereafter as practicable file a statement with the treasurer of the territory, showing the receipt and disbursement of the funds therein provided. And such treasurer shall incorporate such statement into his next report to the legislative assembly, and transmit the same for the inspection of such assembly.

In what case new commissioners to be appointed.

SEC. 11. In case of a failure or refusal of either of the parties herein named to act as such commissioner, it shall be the duty of the governor to appoint others in their stead, and the person or persons so appointed shall have the like powers as are herein conferred upon those herein named.

When to take effect.

Proviso.

SEC. 12. This act shall take effect and be in force from and after its passage and approval: *Provided, however,* That the persons receiving aid under the provisions of this act, when they are of age, competent to contract, shall execute and deliver to the said commissioners their promissory note for the amount of the aid they may receive respectively, payable to the territory of Dakota, dated January 1st, 1875, and payable five years after date at the treasurer's office of said territory, which note shall be turned over to the said territorial treasurer with the report herein provided for, and shall be held and collected when due by such treasurer, and if not paid at maturity it shall be the duty of the district attorney's of the proper counties to collect the same and pay the money into the treasury, and whatever moneys shall be received upon said notes shall be used exclusively for the redemption of the

bonds herein provided: *And provided further*, That there shall be exempt from the process issued upon a judgment or in an action upon said notes no more than three hundred dollars in value of real property, and two hundred dollars in value of personal property: *And provided further*, That no more than fifty dollars in value of such necessaries and grain shall be distributed to any one family.

COUNCIL CHAMBER,  
Yankton, D. T., Jan. 15, 1875. }

Authentication  
of president of  
council.

I hereby certify that on this day, this act was returned to the council, the house in which it originated, without the approval of his excellency, Governor John L. Pennington, with his objections to this bill in writing. His objections were entered at large on the journal of the council, and the council proceeded to reconsider the bill, and after such reconsideration, two-thirds of the council voted to pass the bill, the objections of the governor to the contrary notwithstanding.

JOHN L. JOLLEY,

*President of the Council.*

Attest:

ARTHUR LINN,

*Chief Clerk of the Council.*

HALL OF HOUSE REPRESENTATIVES,  
Yankton, Dakota, Jan. 15, 1875. }

Authenticat  
on of speaker  
of the house.

I hereby certify that on this 15th day of January, 1875, the foregoing bill, together with the objections of the governor, was received from the council by the house, and the house of representatives thereupon proceeded to reconsider said bill, and the question being put, shall the bill pass, the objections of the governor to the contrary notwithstanding, it was decided in the affirmative, two-thirds of the house voting to pass the bill, and then it was approved by the house of representatives.

G. C. MOODY,

*Speaker House Representatives.*

Attest:

C. F. MALLAHAN,

*Chief Clerk House of Representatives.*

# COUNTY COMMISSIONERS.

## CHAPTER XXV.

### PUBLICATION OF PROCEEDINGS.

AN ACT requiring the publication of the proceedings of the boards of county commissioners of the several counties of Dakota Territory.

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

County com-  
missioners re-  
quired to pub-  
lish proceed-  
ings.

SECTION 1. That it shall be the duty of the board of county commissioners of the several counties in this territory, to cause to be published in some newspaper printed in their respective counties, or in case no newspaper be printed in any county, then in some newspaper published in this territory, having the largest circulation in such county, a full and complete report of all their official proceedings of each regular and special meeting held, such proceedings to be so published as soon after any meeting of the commissioners as practicable. And the board of county commissioners are hereby authorized to pay for such publication: *Provided*, That such payment shall not exceed the rate of one-half the amount now authorized by law for publications of a legal character.

Duty of clerk  
of Board.

SEC. 2. That it is hereby made the duty of the clerk of the board of county commissioners in the several counties to make out a full and complete report of the proceedings of each regular and special meeting of the board, and to transmit the same to the publisher of the newspaper selected by such board to publish such proceedings, said report to be made out and transmitted by such clerk within one week from the time such proceedings are had. Such clerk shall be allowed by the board a reasonable compensation for such service.

Duty of pub-  
lisher of pro-  
ceedings.

SEC. 3. It shall be the duty of the publisher of any newspaper selected to publish any proceedings of the board of commissioners of the several counties, to cause any pro-

ceedings as aforesaid, received by him from any county clerk to be published in the issue of his paper next succeeding the time of their reception.

SEC. 4. That all acts or parts of acts inconsistent or conflicting herewith are hereby repealed. Conflicting acts repealed.

SEC. 5. That this act shall take effect and be in force from and after its passage. When to take effect.

Approved, January 6, 1875.

## CHAPTER XXVI.

### DUTIES OF COUNTY COMMISSIONERS.

AN ACT in regard to certain duties of the County Commissioners.

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

SECTION 1. That in any county where there is no court house erected by the county, it shall be the duty of the county commissioners of such county to provide for offices, court rooms, &c., for the several officers by law required to be furnished by such county, to secure offices for all county officers and court room for the lowest rent to be obtained, at the county seat; or to secure and occupy suitable rooms at a free rent within the limits of the county seat, or any of the additions thereto, until such county builds a court house. Commissioners to rent court house.

SEC. 2. All acts or parts of acts conflicting herewith are hereby repealed. Conflicting acts repealed.

SEC. 3. This act shall be in force and take effect from and after its passage and approval. When lien to take effect.

Approved, January 15, 1875.

# COUNTY OFFICERS.

## CHAPTER XXVII.

### COUNTY OFFICERS.

AN ACT to provide for county officers and defining their duties.

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

Officers of or  
ganized coun-  
ties.

SECTION 1. That all organized counties shall have the following described officers, to-wit: Three county commissioners, one register of deeds, who shall be *ex-officio* county clerk, one sheriff, one assessor, one judge of probate, one county treasurer, one county surveyor, one coroner, one district attorney, one superintendent of public schools, four justices of the peace, and four constables, who shall be elected at the general election in the year 1876 and every two years thereafter, except county commissioners, one of whom shall be elected annually.

Qualifications  
and number of  
county com-  
missioners.

SEC. 2. The county commissioners shall have the qualifications of electors and shall be elected by the qualified voters of the several counties respectively at the annual election. That there shall be a board of county commissioners consisting of three persons, in each organized [county in this territory, one of whom shall retire annually.]

Counties to  
be divided into  
commissioner  
districts.

SEC 3. That each county shall be divided into three districts by the board of county commissioners, which districts may be numbered from one to three, and said districts shall not be changed oftener than once in three years by said board. In each newly organized county the board of commissioners, at their regular sessions in January, April or July as provided in section six, shall proceed to divide their respective counties into districts, as provided for by this act, and one commissioner shall be elected from one of said districts at each general election thereafter by the qualified voters of the whole

county: *Provided, however,* That it shall not be lawful to change said district lines without a full board of commissioners existing at the time said lines are changed.

SEC 4. That where counties now are divided into three districts, it will not be necessary to make a new division of districts under this act. \* New division not necessary, when.

SEC. 5. That each person elected county commissioner, shall, before entering upon the duties of his office, take an oath before some officer qualified by law to administer oaths, that he will support the constitution of the United States, and the organic act of this territory, and that he will faithfully perform all the duties enjoined on him by law, which oath shall be certified to by the officer administering the same, under seal, and filed in the office of the register of deeds for said county for record, in a book to be kept for that purpose, and when so recorded shall be sufficient authority for such commissioner to act. Oath of county commissioner.

SEC. 6. That the county commissioners shall meet and hold sessions for the transaction of county business at the court houses in their respective counties, or at the usual place of holding court, on the first Monday in January, April, July and October, of each year, and may adjourn from time to time, and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notice in three public places in the county, or by publication in one newspaper in the county. Time of regular meetings.

SEC. 7. That when the county commissioners of the board are equally divided on any question, they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board. When county board equally divided.

SEC. 8. That copies of the proceedings of the board of county commissioners, duly certified and attested by the county clerk, under seal, shall be received as evidence in all courts of this territory. Copies of proceedings to be received as evidence.

SEC. 9. That any of said commissioners or the county clerk, shall have power and authority to administer oaths or affirmations in all cases, and said commissioners shall have the power to preserve order when sitting as a board, and may punish contempts by fine, not exceeding five dollars, or by im- Powers of commissioners and clerks.

prisonment in the county jail not exceeding twenty-four hours; they may enforce obedience to all orders made by them, by attachment or other compulsory process, and when fines are assessed by them, the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines, within ten days after they are collected.

Commissioners to keep distinct account with treasurer.

SEC. 10. That the said commissioners shall keep a distinct account with the treasurer of the county for each several terms for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him, and for all sums for which the said treasurer is accountable to the county, and they shall credit him with all orders returned and canceled, with all moneys paid, and with all vouchers presented by him, and with all matters with which the treasurer is to be credited on account; and the said commissioners shall, in their settlement with the treasurer, keep the general, special and road tax separate, that any citizen of the county may see how the same is expended.

Commissioners to keep a book.

SEC. 11. That they shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges, and all orders for the allowance of money from the county treasury, shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively, as allowed, from the first day of January to the thirty-first day of December in each year.

Shall keep a road book.

SEC. 12. That they shall keep a book for the entry of all proceedings and adjudications relating to bridges and the establishment, change or discontinuance of roads.

Shall keep warrant book.

SEC. 13. That they shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount and name of the drawee of each warrant drawn on the treasury, which may be known as the warrant book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn.

Power to prosecute civil actions.

SEC. 14. That they shall have power to institute and prosecute civil actions in the name of the county, for and on behalf of the county.

SEC. 15. That said county commissioners shall have power to make all orders respecting property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section, it shall be sufficient to convey all the interest of the county in such grounds, when an order is made for the sale and a deed is executed in the name of the county by the chairman of board of commissioners, reciting the order, and signed and acknowledged by him for, and on behalf of the county, before some officer authorized to take acknowledgment of deeds: *Provided, however,* That the question of the sale of such public grounds or lands shall be first submitted to a vote of the people of the county, as herein-after provided, and sanctioned by a majority vote thereof.

Power in relation to county property.

*Second*—That they shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness.

Other powers

*Third*—To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated for its benefit.

*Fourth*—They shall have power to open, lay out, vacate and change highways in the manner now provided, or as may hereafter be provided by law; to establish election precincts in their county and appoint the judges of election in the manner now provided, or as may hereafter be provided by law, and to equalize the assessment roll of their county in the manner now provided, or as may hereafter be provided by law.

*Fifth*—To fill all vacancies until the next succeeding general election, in all county and precinct officers, except the office of county commissioner.

*Sixth*—To furnish the necessary blank books, blanks and stationery for clerks of the district court, county clerk, register of deeds, county treasurer, and probate judge of their respective counties, to be paid out of the county treasury.

*Seventh*—To do and perform such other duties and acts that county commissioners are now or may hereafter be required by law for them to do and perform.

SEC. 16. That said commissioners shall superintend the fiscal concerns of the county, and secure their management in the best manner; they shall keep an account of the receipts

Duty of commissioners in relation to finances.

and expenditures of the county and on the first Monday of July annually, they shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year, to be made out in detail under separate heads, with an account of all debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county, the same shall be posted up at the usual place of holding their sessions, and at one public place in each precinct of the county.

Shall procure  
map of county.

SEC. 17. That the said commissioners are authorized to procure for their county a copy of the field notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be construed therewith, on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, to be kept open in the office of the county clerk, and the field notes to be deposited in the same office.

Special elec-  
tions to be held

SEC. 18. That the said commissioners shall have power to submit to the people of the county, at any regular or special election whether the county will aid or construct any road or bridge, or to submit to the people of the county any question involving an extraordinary outlay of money by the county, and said commissioners may aid any enterprise designed for the benefit of the county as aforesaid, whenever a majority of the people thereof shall be in favor of the proposition, as provided in this section.

When county  
warrants are  
depreciated.

SEC. 19. That when county warrants are at a depreciated value, the said commissioners may, in a like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied; and in all cases when an additional tax is laid, in pursuance of a vote of the people of the county, or of constructing or ordaining to construct any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

Mode of sub-  
mitting ques-  
tions to vote of  
people.

SEC. 20. That the mode of submitting questions to the people contemplated by the last two sections, shall be the following: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum and the whole regulation, including the time

of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

SEC. 21. That when the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes under section fifteen of this chapter; and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

Same.

SEC. 22. That the rate of tax levied in pursuance of the last four sections of this chapter shall in no case exceed three mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rate shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge, the annual rate shall not exceed one mill on a dollar of the valuation; and any special tax or taxes levied in pursuance of this chapter becoming delinquent shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue laws of this territory.

Rate of tax for special purposes.

SEC. 23. That the said commissioners being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax, in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

Duty of commissioners when proposition is carried by vote.

SEC 24. That money raised by the county commissioners, in pursuance of the last six sections, is specially appropriated and constituted a fund, distinct from all others, in the

How funds applied.

hands of the county treasurer, until the obligations assumed are discharged.

Sessions of  
board to be  
public.

SEC 25. That the said commissioners shall hold their sessions with open doors, and transact all business in the most public manner, and where the county has no court house, or the court house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to the interest of the county shall be heard by the board of commissioners in session only, but they may continue any business from any regular session to an intermediate day.

What books  
shall consti-  
tute record.

SEC. 26. That the books required to be kept by this chapter shall constitute the record of the board of county commissioners.

Power of com-  
missioners.

SEC. 27. That said commissioners shall have authority and power to provide for the erection and repairing of court houses, jails, and other necessary buildings within and for the county, and to carry out the provisions of this section, they shall have power to make contracts on behalf of the county for the building or repairing of the same. They shall determine the amount of taxes to be levied for county purposes, according to the provisions of this chapter, and the revenue law of this territory.

Counties may  
sue, etc.

SEC. 28. That the counties in this territory may sue and be sued, plead and be impleaded, in any court in this territory: and in all cases where lands have been granted to any county for public purposes, and any part thereof has been sold and the purchase money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of such lands, or to enforce the payment of the purchase money, shall be instituted in the name of the proper county.

Proceedings  
in case of judg-  
ment against  
county.

SEC. 29. That when any judgment is obtained against the county, it shall be a lien upon the property of the county, and the public property shall be liable therefor; but no execution shall issue therein until the board of county commissioners shall have had six months time to assess and collect a sufficient amount of revenue, under the provisions of this chapter, to pay off and discharge said judgments, in addition to the ordinary expenses of the county.

SEC. 30. That from all decisions of the board of commissioners, upon matters properly before them, there shall be allowed an appeal to the district court by any person aggrieved, upon filing a bond with sufficient penalty, and one or more sureties to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in the said district court; said bonds shall be executed to the county, and may be sued in the name of the county, upon breach of any condition therein.

Appeals from the decisions of commissioners.

SEC. 31. That said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on one of the board of county commissioners, and the county clerk shall upon the filing of the bond, and the payment of his fees, allowed by this chapter, as hereinafter provided, make out a complete transcript of the proceedings of said board, relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court.

Appeal, when and how taken.

SEC. 32. That said appeal shall be filed by the first day of the district court next after such appeal, and said cause shall stand for trial at such term.

Appeal, when filed.

SEC. 33. That all appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo*.

Appeals to be docketed.

SEC. 34. That the district court may make a final judgment and cause the same to be executed, or may send the same back to the board, with an order how to proceed, and require said board of county commissioners to comply therewith by mandamus or attachment, as for contempt.

Power of district court.

SEC. 35. That all treasurers, sheriffs, clerks, constables and other officers, chargeable with money belonging to any county, shall render their accounts to, and settle with the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

All officers to settle with commissioner

SEC. 36. That if any person thus chargeable, shall neglect or refuse to render true accounts, or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain,

When suit may be brought

and ascertain the balance due the county, and order suit to be brought in the name of the county therefor.

When the board refuses commissions.

SEC. 37. That in case the board of commissioners shall refuse such delinquent any commission, and such delinquent shall forfeit and pay to the county a penalty of twenty per cent. on the amount of funds due the county.

Commissioners to keep seal

SEC. 38. That the board of county commissioners hereby established, shall procure and keep a seal with such emblems and devices as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk.

What shall be sufficient sealing.

SEC. 39. That the impression of the seal hereby required to be kept, by the stamp, shall be sufficient sealing in all cases where sealing is required.

When county orders shall draw interest.

SEC. 40. That all county orders heretofore drawn or that may hereafter be drawn by the proper authorities of any county, shall, after having been presented to the county treasurer of the respective counties, and by him endorsed "not paid for want of funds in the treasury" from said date shall draw interest at the rate of ten per cent. per annum.

Location of county seat in new counties.

SEC. 41. That whenever any county shall organize in this territory, the qualified voters thereof are hereby empowered to select the place of the county seat by a vote at the first election held in the county for the choice of county officers, for this purpose each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed the place having the majority of all votes polled shall be the county seat, and public notice of said location shall be given within thirty days by the tribunal transacting county business, by posting up notices in three several places in each precinct in the county.

Changing county seat after location.

SEC. 42. That whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the tribunal transacting county business, signed by two-thirds of the qualified voters of the county, it shall be the duty of said tribunal, in the notices for the next general election, to notify said voters to designate upon their ballots at said election the place of their choice, and if upon canvassing the votes so given it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be

given as hereinbefore provided in the case of the location of county seats of new counties.

SEC. 43. That if no one place has a majority of all the votes polled, as provided for in sections 41 and 42, it shall be the duty of the tribunal transacting county business, within one month after said election, to order a special election and give ten days notice thereof, by posting up three notices in each precinct in the county, at which election, votes shall be taken by the ballot between the three highest places voted for at the first election, and if no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two highest places voted for at the last election, and the place having the highest number of votes shall be the county seat.

Proceedings where no place has a majority of votes.

SEC. 44. That whenever any county seat shall be located upon the public lands, it shall be the duty of the tribunal transacting county business to enter or purchase a quarter section of land at the place so designated, at the expense of, and for the use of the county, within three months thereafter, if said land be subject to private entry; if not, such tribunal shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

When county seats are located on public lands.

SEC. 45. That the aforesaid tribunal shall, within three months after the selection, cause the same to be surveyed in town lots, squares, streets and alleys, and platted and recorded in pursuance of law; and shall select the place for the county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

Surveying and platting county town.

SEC. 46. That the remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder, at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one-third cash, and the balance on time, as the county tribunals may deem best; and may dispose of lots at private sale upon terms as above provided for.

How the lots shall be disposed of

SEC. 47. That purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warranty deed from the county tribunal when payment in full shall be made for the same; any lots sold as above

Purchasers of lots to receive certificate

that shall not be paid for as provided in this chapter, or within one year thereafter, shall be forfeited to the county, and shall be again sold as hereinafter provided.

Proceeds of sales of lots, —how disposed of.

SEC. 48. That the proceeds of the sales of the aforesaid lots after deducting the expenses of the surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county seat, at the county seat, and shall be used for no other purpose whatever.

County buildings.

SEC. 49. That in any county which may collect a building fund by the provisions of this chapter, it shall be the duty of the tribunal transacting county business, within one year from the time such fund becomes available, to advertise, by publishing in a newspaper at least three months, for bids for building a court house, jail, and offices for register of deeds and county clerk, if the above specified fund, in their judgment, may be sufficient for that purpose, said advertisements for bids to contain plans and specifications for such buildings, and also the time allowed to complete the same. The lowest responsible bid shall in all cases be accepted, and the contracts] for such buildings shall be so conditioned that not more than one-half the payment for the same shall be made until the contract shall be completed to the satisfaction of the said tribunal.

Commissioners to elect chairman.

SEC. 50. That at the first meeting of the county commissioners in each and every year, they shall elect one of their number chairman, who shall act as chairman of the board of said commissioners during the year in which he is elected, or until his successor is elected; and in case of a vacancy, from any cause whatever, the board of county commissioners shall elect another chairman.

Duty of chairman.

SEC. 51. That it shall be the duty of the chairman of the board of county commissioners to preside at the meetings of said board, and all orders made by the board of county commissioners, and all warrants drawn on the county treasurer, shall be signed by the chairman and attested by the county clerk.

Compensation of commissioners.

SEC. 52. That the county commissioners shall receive as a compensation for their services, three dollars per day, and five cents a mile for traveling to and from the place of meeting.

SEC. 53. That when a vacancy occurs in the board of county

commissioners of any county in this territory, it shall be the duty of the chairman of said board of county commissioners, with the judge of probate and register of deeds, at their next regular or special meeting to appoint some suitable person to fill the vacancy in said board from the district where the vacancy occurs, and when such person so appointed shall qualify as provided by law, such vacancy shall be considered filled until the next regular election.

Proceedings  
where vacancy  
occurs.

SEC. 54. That the register of deeds shall keep a true record, (in proper books kept for that purpose) of all deeds, mortgages, bills of sale and chattel mortgages handed him for record, provided the person or persons handing him the same for record shall first pay him the fees provided by law for recording the same. He shall record at large and in full, word for word. Every register of deeds, before he enters upon the duties of his office, shall take and subscribe an oath before the clerk of the court of his county, or some other person duly empowered to administer oaths, to support the constitution of the United States and the organic act organizing the territory of Dakota, and faithfully and impartially to perform his duties as prescribed by law to the best of his ability, which said oath shall be indorsed on the back of his election certificate or appointment, recorded in a book kept in his office for that purpose, and filed in the office of the clerk of the court of the county, or if there is no such officer with clerk of the court of the county to which his county is attached for judicial purposes. He shall also give bonds with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the board of county commissioners of his proper county, conditioned that he will faithfully and impartially discharge the duties of his office.

Duty of regis-  
ter of deeds—  
shall take oath  
and give bonds

SEC. 55. The register of deeds in the several counties of this territory, are hereby authorized to appoint deputy registers, who shall be appointed in writing; and shall, before entering upon the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be indorsed on the appointment, and recorded in the office of the register of deeds. The register of deeds shall be responsible for the acts of their deputies, and make their appointment at pleasure.

Deputy regis-  
ters of deeds.

SEC. 56. That the register of deeds of each county shall per-

Duties of regis-  
ters of deeds.

form all the duties required of him by law relative to the making out and delivering notice of general and special elections, making abstract and canvassing the votes cast at any general and special election, issuing certificates of election to members of the legislative assembly, county and precinct officers, and forwarding the abstract of votes cast at any general or special election to the secretary of the territory; and shall perform any other act or acts which now are or hereafter may be prescribed by law for register of deeds to do and perform.

When office  
of register be-  
comes vacant.

SEC. 57. That in case of the office of register of deeds becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, can not or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be register of deeds of the county until the next general election.

County clerk.

SEC. 58. That the register of deeds shall be *ex-officio* county clerk.

Duty of coun-  
ty clerk.

SEC. 59. That the county clerk shall attend the session of the board of county commissioners, and keep a true and full record of all their proceedings in a book to be provided for that purpose.

Same.

SEC. 60. That it shall be the duty of the county clerk to do, perform and transact all county business without any extra or greater compensation than is allowed by law; said clerk shall keep all the books required to be kept by the county commissioners, shall file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted as evidence in all courts in this territory.

Power of  
county clerk.

SEC. 61. That the county clerk shall have power and authority to take the acknowledgment of deeds and other instruments in writing.

County clerks  
to keep records  
in safe.

SEC. 62. That it shall be the duty of said county clerks to keep the records of their office in a fire proof safe, to be kept for the purpose, and which shall be purchased by the county commissioners, when in their judgment the same shall be advisable.

County clerk  
liable for mis-  
conduct.

SEC. 63. That the county clerk shall be liable on his official bond as register of deeds for any misconduct in his office.

SEC. 64. That all deputy register of deeds in each county shall be *ex-officio* deputy county clerks, and shall have the same power and authority as county clerks.

Deputy registers to be *ex-officio* county clerks.

SEC. 65. That county clerks shall do and perform any and all acts which now are, or may hereafter be prescribed by law for county clerks to do and perform.

Duty of county clerks.

SEC. 66. That it shall be the duty of the sheriff, before he enters upon the duties of his office, to take and subscribe an oath to support the constitution of the United States and the organic act organizing the territory of Dakota, and to faithfully and impartially discharge the duties of his office, which oath may be taken before any person authorized by law to administer oaths in his county, which oath shall be recorded in the office of register of deeds. He shall, also, give bond, previous to entering upon the duties of his office, to the board of county commissioners of his county, in the penal sum of four thousand dollars, with two or more securities, to be approved by the board of county commissioners, and the approval indorsed thereon, conditioned that the said sheriff shall well and faithfully, in all things perform and execute the duties of sheriff, according to law, during his continuance in office, without fraud, deceit, or oppression, which bond shall be filed in the office of register of deeds of his proper county.

Duty of sheriff—shall take oath and give bonds.

SEC. 67. That the sheriff may appoint deputies, who shall be empowered to perform all the duties devolving on the sheriff, the sheriff being responsible for the acts of his deputies, but no deputy shall be authorized to perform the duties of sheriff until he shall have taken an oath to support the constitution of the United States and the provisions of the act organizing the territory of Dakota, and to perform the duties of his office faithfully and impartially, to the best of his ability, which oath shall be subscribed on the back of his appointment, and filed and recorded in the office of register of deeds of the county for which he is appointed deputy sheriff.

Sheriff may appoint deputies.

SEC. 68. That it shall be the duty of the sheriff to keep and preserve peace in their respective counties, for which purpose they are empowered to call to their aid such persons or power of their respective counties as they may deem necessary. They shall also pursue and apprehend all felons; they shall execute all writs, warrants, and other process from the district court, or from a justice of the peace, which shall be directed

Duty of sheriff.

to them by legal authority. The sheriff shall attend at the district court, and the session of the board of county commissioners, when required by the latter to attend.

Duties of sheriff.

SEC. 69. That the sheriff shall serve or post up all notices he may receive from the register of deeds or the board of county commissioners; he shall give notice of special and general elections when notified by the register of deeds, and notify the board of county commissioners when any vacancy happens in the office of register of deeds and shall keep his office at the county seat, and shall generally do and perform all and singular the duties which are now or may be hereafter authorized by law to be performed by sheriff.

When office of sheriff becomes vacant.

SEC. 70. That in case of the office of sheriff becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be sheriff until the next general election.

Duty of assessor.

SEC. 71. That the assessor of each and every county in this territory shall perform all and singular the acts and duties which now are or which may be hereafter prescribed by law, for assessors to perform.

Shall take oath and give bonds.

SEC. 72. That before entering upon the duties of his office the assessor shall take and subscribe an oath, to be certified by the officer administering it, to support the constitution of the United States, and the organic act organizing the territory of Dakota, which oath shall be recorded in the office of register of deeds, and shall give bond in a penal sum to be fixed by the board of county commissioners of each county, which bond shall be approved by board of county commissioners, conditioned that he will faithfully and impartially discharge the duties of his office according to law, and filed and recorded in the office of the register of deeds.

Assessor may appoint deputy.

SEC. 73. That the assessor may appoint a deputy in each government township, or any number of deputies, who shall be empowered to perform all the duties devolving on the assessor, the assessor being responsible for the acts of each deputy, but no deputy shall be authorized to perform the duties of assessor, until he shall have taken an oath to support the constitution of the United States and the provisions of the act organizing the territory of Dakota, and to perform the duties of his office faithfully and impartially, to the best

of his ability, which oath shall be subscribed on the back of his appointment, and filed and recorded in the office of register of deeds of the proper county; the assessor may revoke the appointment of any of his deputies at pleasure.

SEC. 74. That in case of the office of assessor becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be *sheriff* [assessor] until the next general election.

When assessor's office become vacant.

SEC. 75. That the judge of probate shall, before he enters upon the duties of his office, execute a bond in such sum as the board of county commissioners or a majority of them may direct, with sufficient security, to be approved by the county commissioners of his county, and shall take an oath to support the constitution of the United States, and the act organizing the territory of Dakota, which oath shall be recorded in the office of register of deeds of the proper county.

Judge of probate shall take oath and give bonds.

SEC. 76. That the judge of probate of each and every county in this territory shall perform all and singular the acts and duties which now are or which may be hereafter prescribed by law for judges of probate to perform.

Duty of probate judges.

SEC. 77. That each judge of probate in this territory shall have full power and authority to administer oaths in all cases where oaths are required to be made and to take the acknowledgments of deeds and other instruments in writing and he shall be *ex-officio* a justice of the peace.

Powers of probate judges.

SEC. 78. That the county treasurer shall, before he enters upon the duties of his office, take and subscribe an oath to support the constitution of the United States and the organic act organizing the territory of Dakota, which oath shall be taken before any officer authorized by law to administer oaths in his county, which oath shall be recorded in the office of register of deeds. He shall, also, give bond, previous to entering upon the duties of his office, to the board of county commissioners of his county in such penal sum as said county commissioners or a majority may direct.

County treasurer shall take oath and give bonds.

SEC. 79. That the county commissioners of any one of the counties of this territory may require the county treasurer to give additional freehold sureties, whenever in the opinion of a majority of said commissioners, the existing security shall

When treasurer shall give additional security.

have become insufficient, and said commissioners are hereby authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners or a majority of them may direct, whenever, in their opinion, more money shall have passed, or is about to pass, into the hands of said treasurer than is or would be recovered by the penalty in the previous bond.

When treasurer shall fail to give bond.

SEC. 80. That if any county treasurer shall fail or refuse to give such additional security or bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed, agreeably to the provisions of law.

When county commissioners may appoint treasurer or judge of probate.

SEC. 81. That in case of the office of judge of probate or county treasurer becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be judge of probate or county treasurer until the next general election.

Duty of county treasurer.

SEC. 82. That the county treasurer of each county in this territory shall perform all and singular, the acts and duties which now are or which may be hereafter prescribed by law, for county treasurers to perform.

County surveyor shall take oath and give bonds.

SEC. 83. That the county surveyor, previous to entering upon the duties of his office, shall take and subscribe an oath or affirmation, faithfully to discharge the duties of his office, and shall give bond to the county commissioners of the proper county, in the sum of five hundred dollars, conditioned for the faithful discharge of the duties of his office.

Duty of surveyor.

SEC. 84. That it shall be the duty of said surveyor, by himself or deputy, to execute any survey which may be required by any court, or upon application of any person or corporation.

Surveyor shall keep a record, etc.

SEC. 85. That the said surveyor shall keep a fair and correct record of all surveys made by him or his deputy, in a book to be kept by him for that purpose, which he shall transmit to his successor in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, indorsing thereon its proper number, a copy of which, and also a fair and accurate plat, to-

gether with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

SEC. 86. That in case of the office of county surveyor becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be county surveyor until the next general election.

When surveyor's office becomes vacant.

SEC. 87. That the coroner shall, before he enters upon the duties of his office, take and subscribe an oath to support the constitution of the United States, and the act organizing the territory of Dakota, and to faithfully discharge the duties of his office to the best of his ability; and he shall be required to give bond to the county commissioners in the penal sum of two thousand dollars, with good and sufficient sureties, to be approved by the county commissioners, conditioned for the faithful performance of his duty, which bond shall be filed with the register of deeds, and recorded in his office.

Coroner shall take oath and give bonds.

SEC. 88. That when there shall be no sheriff or deputy sheriff in any organized county, it shall be the duty of the coroner in each county to exercise all the powers and duties of sheriff of his county until a sheriff shall be elected and qualified; and when the sheriff, for any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof during the time the sheriff shall remain a prisoner therein. The coroner shall receive the same fees as a sheriff, for like business. When the sheriff is sued, the coroner shall serve the papers on him, and his return on all papers served by him shall be entitled to the same credit as the sheriff's return.

When coroner may act as sheriff.

SEC. 89. That the coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to the sheriff or any constable of his county, requiring him to summon forthwith three electors, having the qualifications of jurors, of the county to appear before the coroner at a time and place named in the warrant.

When coroner shall hold inquest.

SEC. 90. That warrant may be in substance as follows:

Form of warrant.

TERRITORY OF DAKOTA, }  
 \_\_\_\_\_ County. } ss

To the sheriff or any constable of said county:—In the name

of the territory of Dakota you are hereby required to summon forthwith three electors, having the qualifications of jurors, of your county, to appear before me at (name the place,) at (name the day an hour or say forthwith,) then and there to hold an inquest on the dead body of ————, there lying, and find by what means he died.

Witness my hand this ——— day of ———, 18—.

A. B.,

Coroner of ——— county.

**Warrant, by whom executed.** SEC. 91. The sheriff or constable shall execute the warrant and make return thereof at the time and place named.

**Duty of coroner when juror fails to appear.** SEC. 92. That if any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to empanel them and administer the following oath in substance:

**Form of oath to jury.** “You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you.”

**Coroner may issue subpoenas.** SEC. 93. The coroner may issue subpoenas within his county for witnesses, returnable forthwith, or at such time and place as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner has the same authority to enforce attendance of witnesses, and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the territory.

**Form of oath to witnesses.** SEC. 94. An oath shall be administered to the witnesses in substance as follows:

“You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God.”

**Testimony to be written.** SEC. 95. The testimony shall be reduced to writing under the coroner's order, and be subscribed by the witnesses.

**Form of verdict.** SEC. 96. The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matters in the following form suggested, as far as found:

TERRITORY OF DAKOTA, }  
County. } ss

An inquisition holden at -----, in ----- county, territory aforesaid, on the ----- day of -----, A. D. 18-- before coroner ----- coroner of the said county, upon the body of ----- (or a person unknown) there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously.)

In testimony whereof the said jurors have hereunto set their hands, the day and year aforesaid,  
(which shall be attested by the coroner.)

SEC. 97. If the inquisition find that a crime has been committed on the deceased, and name the person whom the jury believe has committed it, the inquest shall not be made public until after the arrest directed in the next section. When inquest not to be made public.

SEC. 98. If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. when coroner may order arrest.

SEC. 99. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace. When coroner may issue warrants.

SEC. 100. The warrant of a coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, such justice shall cause a complaint to be filed against him, and the same proceedings shall be had as in other cases under complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases. Authority of coroner's warrant.

SEC. 101. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be sufficient foundation for the proceedings of the justice instead of a complaint. What warrant shall contain, etc.

SEC. 102. The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testified material matter. Return to district court.

SEC. 103. The coroner shall cause the body of a deceased person which he is called to view, to be delivered to his friends Deceased body to be disposed of—how.

if any there be, but if not, he shall cause him to be decently buried and the expense to be paid from any property found with his body, or, if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of county commissioners, shall be allowed by them if deemed reasonable, and paid as other claims on the county.

When justice to act as coroner.

SEC. 104. When there is no coroner, and in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before himself by his warrant, and may proceed with him as a justice of the peace.

When physician to be summoned.

SEC. 105. In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow in such case a reasonable compensation instead of witness fees.

When office of coroner becomes vacant.

SEC. 106. That in case of the office of coroner becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be coroner until the next general election.

District attorney to take oath and give bonds.

SEC. 107. The district attorney shall, before he enters upon the duties of his office, take and subscribe an oath to support the constitution of the United States and the organic act organizing the territory of Dakota, and faithfully and impartially discharge his duty to the best of his ability. He shall also execute a bond with one or more sufficient sureties, to the board of county commissioners, to be approved by the chairman of said board in the sum of one thousand dollars, the condition of which bond shall be, that he will faithfully discharge the duties of the office of district attorney, and that he will pay over to the treasurer of his county all money which shall come into his hands by virtue of his office, which bond, together with the oath of office, shall be deposited in the office of the register of deeds of such county.

Duty of district attorneys.

SEC. 108. That it shall be the duty of the district attorneys of the several counties, to appear in the district courts of their respective counties, and prosecute or defend on behalf of the county or territory, all suits, indictments, applications or mo-

tions, civil or criminal, in which the territory or county is interested as a party.

SEC. 109. That no district attorney shall receive a fee or reward from or on behalf of any prosecution or other individual, for services in any prosecution or business to which it shall be his duty to attend.

District attorney to receive no fee or reward, when.

SEC. 110. That the district attorney shall receive for his services such compensation as the board of county commissioners of his county shall agree to pay him.

Compensation of district attorney.

SEC. 111. That in case of the office of district attorney becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be district attorney until the next general election.

When office of district attorney is vacant.

SEC. 112. That the county superintendent of public schools 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 the territory, and faithfully to discharge the duties of his office, which oath or affirmation shall be filed in the office of the county clerk. 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 the penal sum of five hundred dollars. Said bond must be approved by the county commissioners and filed in the office of the county clerk.

County superintendent of schools to take oath and give bond.

SEC. 113. That the county superintendent of public schools of each and every county in this territory shall perform all and singular the acts and duties which now are, or which may be hereafter prescribed by law, for county superintendents of public schools to perform.

Duty of such superintendent

SEC. 114. That in case of the office of county superintendent of public schools becoming vacant by death, resignation, or otherwise, or in case the person elected to the office cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be county superintendent of public schools until the next general election.

When vacancy occurs in such office.

SEC. 115. That each justice of the peace shall, before he enters on the duties of his office, take and subscribe an oath to

Justice of the peace to take oath and give bonds.

support the constitution of the United States and the organic act organizing the territory of Dakota, and faithfully and impartially discharge the duties of his office to the best of his ability. He shall also execute a bond with two freehold sureties, to the board of county commissioners, to be approved by the register of deeds, in the sum of five hundred dollars, the conditions of which bond shall be, that he will faithfully discharge the duties of the office of justice of the peace, and that he will pay over to the treasurer of his county, all moneys which shall come into his hands by virtue of his office, and that he will upon the expiration of his term of office, deposit with his successor his official docket, as well as those of his predecessor; that he will also turn over [to] his successor all official books and papers belonging to his office, which bond, together with the oath of office, shall be deposited in the office of the register of deeds of such county.

Duty of justice of the peace.

SEC. 116. That each justice of the peace of each county in this territory, shall perform all and singular the acts and duties, which now are or which may be hereafter prescribed by law, for justices of the peace to perform.

When vacancy occurs.

SEC. 117. That in case of the office of justice of the peace becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be justice of the peace until the next general election.

Constable to take oath and give bonds.

SEC. 118. That each constable shall, before he enters on the duties of his office, take and subscribe an oath to support the constitution of the United States and the organic act organizing the territory of Dakota, and faithfully and impartially discharge the duties of his office to the best of his ability. He shall also execute a bond with two freehold sureties, to the board of county commissioners, to be approved by the register of deeds, in the sum of five hundred dollars, the conditions of which bond shall be, that he will faithfully discharge the duties of the office of constable, in all things, according to law, during his continuance in said office, which bond, together with the oath of office, shall be deposited in the office of register of deeds of such county.

Duty of constable.

SEC. 119. That each constable of each county in this territory shall perform all and singular the acts and duties, which

now are or which may be hereafter prescribed by law, for constables to perform.

SEC. 120. That in case the office of constable becoming vacant by death, resignation, or otherwise, or in case the person elected to the office refuses, cannot or will not qualify, the board of county commissioners shall forthwith appoint some suitable person to be constable until the next general election.

When vacancy occurs in office of constable.

This act not to apply to Union county.

SEC. 121. That the provisions of this act shall not apply to Union county, in this territory, so far as the same relates to the office of county commissioner, assessor, justice of the peace and constables: *Provided, however,* That this section only relates to the time when such officers are elected and the number of officers as are mentioned in this section.

SEC. 122. That all the officers provided for in this chapter shall be elected at the general election in each even numbered year, except county commissioner; and when any officer provided for in this chapter is elected in an odd numbered year, except county commissioner, it shall only be to fill a vacancy until the person elected to fill the office at the election in an even numbered year, is by law entitled to perform the duties of such office.

When these officers shall be elected.

SEC. 123. That this act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 15, 1875.

## CHAPTER XXVIII.

WHEN COUNTY OR PRECINCT OFFICERS SHALL ENTER UPON THEIR DUTIES.

AN ACT to prescribe the time of county officers to enter upon their duties.

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

SECTION 1. The regular term of office for all county or precinct officers, when elected for a full term, shall commence on the first Monday of January next succeeding their election. But if the office to which he was elected be vacant at the time

When term of certain officers commences.

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.

Certain act  
repealed.

SEC. 2. Section 43, of chapter 17 of the general laws of 1870-1, be and are hereby repealed.

When to take  
effect.

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

Approved, January 12, 1875.

## COUNTY BOUNDARIES.

### CHAPTER XXIX.

#### COUNTIES IN WESTERN DAKOTA.

AN ACT to define the boundaries and name certain counties in the Territory of Dakota.

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

Defining bound-  
aries of Lu-  
genbeel county

SECTION 1. That the county of Lugenbeel shall be bounded and described as follows: Commencing at the point where the one hundred and first meridian of west longitude intersects the boundary line dividing the territory of Dakota and state of Nebraska, and running thence north along said one hundred and first meridian to its intersection with the channel of White river; thence westerly along the channel of White river to the mouth of Corn creek, a tributary thereof; thence southeasterly along the channel of Corn creek to its intersection with the one hundred and second meridian of west longitude; thence south along said one hundred and second meridian to its intersection with the boundary line dividing the territory of Dakota and state of Nebraska; thence east along said boundary line to the place of beginning.

Defining bound-  
aries of Shan-  
non county.

SEC. 2. That the county of Shannon shall be bounded and described as follows: Commencing at the southwest corner of Lugenbeel county on the dividing line between the territory of Dakota and state of Nebraska; thence north along the

western boundary of said Lugenbeel county to a point where the one hundred and second meridian of west longitude intersects the channel of Corn creek; thence northwesterly along the channel of said Corn creek to its mouth and confluence with the channel of White river, and crossing said White river to the north bank thereof; thence in a westerly course across the Mauvaise Terres or Bad Lands to a point in the channel of the south fork of the Big Cheyenne river opposite to the mouth and confluence of Spring creek, a tributary of said south fork; thence southwesterly following the channel of said south fork to its intersection with the one hundred and third meridian of west longitude; thence south along said one hundred and third meridian to its intersection with the boundary line dividing the territory of Dakota from the state of Nebraska; thence east along said boundary line to the place of beginning.

SEC. 3. That the county of Forsythe shall be bounded and described as follows: Commencing at the southwest corner of the county of Shannon, at the point of intersection of the one hundred and third meridian of west longitude with the boundaryline dividing the territory of Dakota and the state of Nebraska; thence north along said one hundred and third meridian to its intersection with the channel of the south fork of the Big Cheyenne river; thence southwesterly, following the channel of said south fork to its intersection with the boundary line dividing the territory of Dakota and the territory of Wyoming; thence south along said boundary line to the southwestern corner of the territory of Dakota; thence east along the boundary line dividing the territory of Dakota and the state of Nebraska, to the place of beginning.

Defining boundaries of Forsythe county.

SEC. 4. That the county of Custer shall be bounded and described as follows: Commencing at the northwest corner of Forsythe county where the south fork of the Big Cheyenne river intersects the boundary line dividing the territory of Dakota and the territory of Wyoming; and running thence north along said boundary line to its intersection with the forty-fourth parallel of north latitude, near the source of the east fork of the Cheyenne river; thence east along said forty-fourth parallel of north latitude to its intersection with the one hundred and third meridian of west longitude; thence south along said one hundred and third meridian to its inter-

Defining boundaries of Custer county.

section with the channel of the south fork of the Big Cheyenne river; thence following the channel of said south fork along the northern boundary of the county of Forsythe, to the place of beginning.

Defining boundaries of Lawrence county.

SEC. 5. That the county of Lawrence shall be bounded and described as follows: Commencing at the northwest corner of Custer county where the boundary line between the territory of Dakota and territory of Wyoming intersects the forty-fourth parallel of north latitude; and running thence north along said boundary line to its point of intersection with the channel of the Belle Fourche or north fork of the Big Cheyenne river; thence easterly along the channel of said Belle Fourche or north fork of the Big Cheyenne to its point of intersection with the one hundred and third meridian of longitude; thence south along said one hundred and third meridian to its intersection with the forty-fourth parallel of north latitude; thence west along said forty-fourth parallel to the place of beginning.

Defining boundaries of Pennington county.

SEC. 6. That the county of Pennington shall be bounded and described as follows: Commencing at a point in the channel of the south fork of the Big Cheyenne river where the one hundred and third meridian of west longitude intersects said channel, and where the counties of Shannon, Forsythe and Custer unite; thence north along said one hundred and third meridian to its point of intersection with the channel of the Belle Fourche or north fork of the Big Cheyenne river; thence easterly along the channel of said Belle Fourche or north fork to its confluence with the south fork of the Big Cheyenne river; thence continuing easterly along the channel of the Big Cheyenne river to its point of intersection with the one hundred and second meridian of west longitude; thence south along said one hundred and second meridian to its point of intersection with the channel of White river; thence westerly along the channel of said White river and the northern boundary of the county of Shannon to its intersection with the channel of the south fork of the Big Cheyenne river; and thence southeasterly along the channel of said south fork to the place of beginning.

Defining boundaries of Cheyenne county.

SEC. 7. The county of Cheyenne shall be bounded and described as follows: Commencing at a point on the Big Cheyenne river where the one hundred and second meridian of west

longitude intersects the channel thereof; thence south along said meridian to its intersection with the channel of the Wakpa Shicha or Bad river to its intersection with the one hundred and first meridian of west longitude; thence north along said one hundred and first meridian to its point of intersection with the forty-fifth parallel of north latitude; thence westerly along said forty-fifth parallel of north latitude to its intersection with the one hundred and second meridian of west longitude; thence south along said one hundred and second meridian to the place of beginning.

SEC. 8. The county of Delano shall be bounded and described as follows: Commencing at the northwest corner of Cheyenne county where the forty-fifth parallel of north latitude intersects the one hundred and second meridian of west longitude; thence west along said forty-fifth parallel to its point of intersection with the one hundred and third meridian of west longitude; thence south on said one hundred and third meridian to its point of intersection with the channel of the Belle Fourche or north fork of the Big Cheyenne river; thence easterly along the channel of said Belle Fourche or north fork to its confluence with the south fork of the Big Cheyenne river; thence continuing easterly along the channel of the Big Cheyenne river and the northern boundary of the county of Pennington, to its point of intersection with the one hundred and second meridian of west longitude; thence north along said one hundred and second meridian to the place of beginning.

Defining boundaries of Delano county.

SEC. 9. The county of Mandan shall be bounded and described as follows: Commencing at the northwest corner of Delano county where the one hundred and third meridian of west longitude intersects the forty-fifth parallel of north latitude; thence west along said forty-fifth parallel to its point of intersection with the boundary line dividing the territory of Dakota and the territory of Wyoming; thence south along said boundary line to its point of intersection with the channel of the Belle Fourche or north fork of the Big Cheyenne river, thence in an easterly course along the channel of said Belle Fourche or north fork and along the northern boundary of the county of Lawrence, to its point of intersection with the one hundred and third meridian of west

Defining boundaries of Mandan county.

longitude; thence north along said one hundred and third meridian to the place of beginning.

**Defining boundaries of White River county.**

SEC. 10. That the county of White River shall be bounded and described as follows: Commencing at the southeast corner of Cheyenne county where the one hundred and first meridian of west longitude intersects the channel of the Wakpa Shicha or Bad river; thence in a westerly direction following the channel of said Wakpa Shicha or Bad river and the southern boundary line of Cheyenne county to its point of intersection with the one hundred and second meridian of west longitude; thence south along said one hundred and second meridian and the eastern boundary of Pennington county to its point of intersection with the channel of White river; thence in an easterly direction along the channel of said White river and the northern boundary of Lugenbeel county to its intersection with the one hundred and first meridian of west longitude; thence north along said one hundred and first meridian to the place of beginning.

**Defining boundaries of Stanley county.**

SEC. 11. That section 6 of chapter 19 of the laws of 1872-3, of an act entitled "an act defining the boundaries and naming the counties west of the Missouri river," approved January 8th, A. D. 1873, be amended so as to read as follows: "That the county of Stanley shall be bounded as follows: Beginning on the Missouri river where the same is intersected by the fourth standard parallel; thence west on said parallel to its intersection with the one hundred and first meridian of west longitude; thence south along said one hundred and first meridian to its intersection with the channel of the Wakpa Shicha or Bad river; thence easterly along the channel of said Wakpa Shicha or Bad river to its mouth and confluence with the Missouri river; and thence northwesterly along the channel of said Missouri river, to the place of beginning."

**Change of boundary lines dividing certain counties.**

SEC. 12. That the boundary line dividing Lugenbeel county from Meyer county and Pratt county, shall be the one hundred and first meridian of west longitude; and the boundary line between the county of White River and the county of Pratt shall be the one hundred and first meridian of west longitude.

**How counties may be organized.**

SEC. 13. That the foregoing counties may be organized in the manner now provided by law for the organization of new

counties, and the first boards of commissioners of the several counties shall have the power to locate the county seats of the several counties temporarily and until the county seat shall be located by a vote of the qualified electors of the several counties.

SEC. 14. That all acts or parts of acts inconsistent with or conflicting with the provisions of this act are hereby repealed. Conflicting acts repealed.

SEC. 15. That this act shall take effect and be in force from and after its passage. When to take effect.

Approved, January 11, 1875.

## CHAPTER XXX.

### COUNTIES IN NORTHERN DAKOTA.

AN ACT to define the boundaries of certain counties therein named.

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

SECTION 1. That the county of Mercer shall be bounded and described as follows: Beginning at a point on the channel of the Missouri river where the forty-seventh parallel of north latitude intersects said Missouri river, and running thence west along said forty-seventh parallel to the southeast corner of Williams county; thence north along the eastern boundary of said Williams county to its point of intersection with the Missouri river; thence following the channel of said Missouri river easterly and southeasterly to the place of beginning. Defining boundaries Mercer county.

SEC. 2. That section 12 of chapter 19 of an act entitled "an act defining the boundaries and naming counties west of the Missouri river," approved January 8th, 1873, be and the same is hereby repealed. Certain section repealed.

SEC. 3. That the county of De Smet shall be bounded and described as follows: Beginning at the intersection of the ninth guide meridian with the fourteenth standard parallel; Defining boundaries of De Smet county.

thence running west on said fourteenth standard parallel to its intersection with the tenth guide meridian; thence south on said last mentioned guide meridian to its intersection with the township line between townships one hundred and fifty and one hundred and fifty-one; thence east on said township line to its intersection with the ninth guide meridian; thence north on said last named guide meridian to the place of beginning.

Defining boundaries of Barnes county.

SEC. 4. That the county of Barnes shall be bounded and described as follows: Beginning at a point on the western boundary line of Cass county where the line dividing townships one hundred and forty-three and one hundred and forty-four intersects said boundary line; thence west on said township line to its intersection with the range line between ranges fifty-nine and sixty; thence north on said range line to its intersection with the eleventh standard parallel; thence west on said parallel to its intersection with the range line between ranges sixty-one and sixty-two; thence south on said range line to its intersection with the ninth standard parallel; thence east along said parallel to the southwest corner of Cass county; thence north along the western boundary of said Cass county to the place of beginning.

Defining boundaries of Potter county.

SEC. 5. That the county of Potter shall be bounded and described as follows: Beginning at the northeast corner of the county of Sully; thence north on the tenth guide meridian to the fifth standard parallel; thence west to the center of the main channel of the Missouri river; thence down the center of the main channel of said river to the fourth standard parallel; thence east along said parallel to the place of beginning.

How organized

SEC. 6. That the several counties above named and defined may be organized in the manner now provided by law.

Conflicting acts repealed.

SEC. 7. That all acts or parts of acts conflicting or inconsistent with this act are hereby repealed.

When to take effect.

SEC. 8. That this act shall take effect and be in force from and after its passage.

Approved, January 14, 1875.

## CHAPTER XXXI.

## THE COUNTY OF BRULE.

AN ACT to organize the county of Brule and define its boundaries.

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

SECTION 1. That all of that district of country included within the following boundary lines, to-wit: Commencing at the southwest corner of Cragin county; thence running north along the west line of said county to the first standard parallel; thence west along said standard parallel to the Missouri river; thence down the center of the main channel of said Missouri river to the north line of township number one hundred; thence east along said township line to the place of beginning, shall be known as Brule county: *Provided*, That these boundaries shall in no wise be construed to interfere with the established limits of what is known as the Crow Creek Indian Reserve: *Provided further*, That nothing in this act shall be so construed as to release said Brule county or Charles Mix county from the payment to Bon Homme county of all court expenses, costs and disbursements for cases originating in said Charles Mix county prior to the passage of this act, and have been disposed of or are now pending in the district court within and for said Bon Homme county.

Defining boundaries of Brule county.

Proviso relating to costs.

SEC. 2. And be it further enacted, that H. M. Leedy, George Trimmer and James Blacketer shall be county commissioners, and M. H. Day, register of deeds, of said Brule county; and the commissioners aforesaid shall qualify as such on or before the first day of April, 1875; and when so qualified shall have the authority to appoint all other necessary and proper officers for the county, and the said county commissioners and other officers appointed by them shall hold their respective offices until the next general election, or until their successors shall be duly elected and qualified, and shall possess all the rights and powers and perform all the duties appertaining to their offices, and in case of the failure of any of the persons herein named as commissioners to qualify as such as above provided and within the time aforesaid, then, and in that case, it shall be the duty of the governor, and he is here-

County officers

by authorized to appoint in stead of such as shall fail to qualify, suitable and proper persons, and the persons so appointed shall qualify according to law, and shall possess all the powers and perform the duties incumbent by law on them as such officers.

County seat. SEC. 3. The county seat of said Brule county shall be and the same is hereby located temporarily at a point on the Missouri river, known and designated as Brule City, until otherwise ordered by the votes of the people as provided by law.

Conflicting acts repealed. SEC. 4. All acts and parts of acts heretofore enacted which relate to the boundaries of counties in conflict with this act are hereby repealed.

When to take effect. SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

## CHAPTER XXXII.

### THE COUNTY OF TRAILL..

AN ACT to organize and define the boundaries of the county of Traill, and for other purposes.

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

Defining boundaries of Traill county

SECTION 1. That all that portion of the territory of Dakota described as follows, to-wit: Commencing at a point on the eastern boundary of the territory where the 12th standard parallel intersects the same; thence west along said 12th standard parallel to the 8th guide meridian; thence south along said 8th guide meridian to the southwest corner of township 144, range 59; thence east along the township lines between townships 143 and 144 to the eastern boundary of the territory; thence down the Red River of the North along the eastern boundary of the territory to the place of beginning, be and the same is hereby made and constituted the county of Traill.

County seat. SEC. 2. The county seat of said county of Traill is hereby located upon the southeast quarter of section 15, township 146, range 49.

SEC. 3. Asa H. Morgan, John Brown and James Ostland County officers. are hereby appointed county commissioners, George E. Weston, register of deeds, Asa Sargeant, judge of probate and *ex-officio* county treasurer, and C. M. Clarke, sheriff of said county of Traill, and said persons respectively shall hold their offices until the next general election in the fall of 1875, and until their successors are elected and qualified.

SEC. 4. At said general election in the fall of 1875, the Term of county commissioners elect. county commissioners then elected shall be elected for the term of one, two and three years respectively.

SEC. 5. The officers herein appointed shall qualify on or When officers to qualify. before the second Tuesday in March, 1875, or such office shall be vacant, and shall be filled by appointment of the governor of Dakota Territory.

SEC. 6. The county commissioners herein appointed, or that Commissioners to appoint certain officers. may be so appointed by the governor, after qualifying, shall appoint all the other officers of the same county not herein appointed, to hold until the next general election in the fall of 1875, and until their successors are elected and qualified.

SEC. 7. An election shall be held on the day of the general An election to be held. election in the fall of 1875, in said county of Traill, for all the elective officers of said county, and the terms of office of those persons shall be as regulated by law for such officers.

SEC. 8. For the purpose of completing the organization of Officers of Grand Forks county. the county of Grand Forks, from a part of which the said county of Traill is herein taken, D. P. Reeves, Alex. Griggs and George A. Wheeler are hereby appointed and continued county commissioners, James Elton, register of deeds, Thomas Walsh, judge of probate and *ex-officio* county treasurer, and Nicholas Hoffman, sheriff, of said county of Grand Forks, who shall hold their offices until the next general election in the fall of 1875, and until their successors are elected and qualified; and said officers shall qualify on or before the second Tuesday in March, 1875, or such office shall be vacant, and shall be filled by appointment of the governor of the territory.

SEC. 9. The county commissioners herein appointed or ap- County commissioners to appoint certain officers. pointed by the governor, shall, after qualifying, appoint all the other officers of said county not herein appointed, and the persons so appointed shall hold their offices until the said

general election in the fall of 1875, and until their successors are elected and qualified.

An election to be held.

SEC. 10. An election shall be held on the day of the general election in the fall of 1875, in said county of Grand Forks, for all the elective officers of said county, and the terms of office of those persons then elected shall be as regulated by law for such officers.

Conflicting acts repealed.

SEC. 11. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

When to take effect.

SEC. 12. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12, 1875.

## CODIFICATION OF LAWS.

### CHAPTER XXXIII.

#### TO REVISE AND CODIFY THE LAWS.

AN ACT to provide for revising and codifying the laws of Dakota Territory.

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

Governor to appoint commissioners

SECTION 1. That the governor of this territory is authorized and empowered and it is hereby made his duty to employ and commission three competent and worthy persons, learned in the law, to revise and codify the laws of this territory.

Power of commissioners

SEC. 2. Such persons so employed and commissioned shall have the power, and it shall be their duty, to prepare and present to the next legislative assembly, upon the first day of the meeting thereof, a revision of the laws, and for that purpose

shall have the authority to add to or take from the laws now in force whatever may be necessary to make a perfect and complete code of laws for this territory.

SEC. 3. The persons so employed shall have the power from time to time to employ a clerk to assist them in the clerical part of their labors, and it shall be their duty whenever they shall have agreed upon a division or chapter to have the same printed, and to submit the corrected proof sheets to the judges of the supreme court for such suggestions as they shall be pleased to make; and when finally perfected and agreed upon, to print from time to time in pamphlet form in divisions or chapters, the result of their labors, to the extent of two hundred copies of such revision for distribution among the members of this legislative assembly, the territorial and county officers, and the members of the next legislative assembly.

Duties of  
commission.

Clerk.

SEC. 4. The persons so employed shall each receive such compensation as the governor shall deem reasonable, not exceeding eight hundred dollars; and such clerk shall receive for his compensation not more than three dollars per day while actually engaged in the discharge of his duties, to be paid from time to time by the territorial treasurer, upon warrants drawn by the territorial auditor, upon the certificate of the governor.

Compensation

SEC. 5. The printing of such revision in pamphlet form, in divisions or chapters, shall be let by the persons so employed to the lowest responsible bidder, after four weeks' advertisement of notice thereof, and shall not cost more than such sum as shall make the whole cost of revision, including compensation to the commissioners and clerk, thirty-five hundred dollars, and shall be paid as above provided.

Printing of  
laws.

SEC. 6. This act shall take effect and be in force from and after its passage and approval.

When to take  
effect.

Approved, January 14, 1875.

# CORPORATIONS.

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## CHAPTER XXXIV.

### REQUIRING FOREIGN CORPORATIONS TO FILE COPIES OF THEIR CHARTERS.

AN ACT requiring corporations of other States to file with the Secretary of the Territory, copies of their charters or articles of incorporation before transacting business in Dakota Territory.

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

Foreign corpo-  
ration to file  
charter with  
secretary.

SECTION 1. That no corporation created or organized under the laws of any other state or territory shall be allowed to establish an office and transact business within this territory, or acquire, hold and dispose of property, real, personal or mixed within the territory of Dakota, until such corporation shall have filed in the office of the secretary of the territory of this territory, a duly authenticated copy of its charter or articles of incorporation: *Provided*, That the provisions of this act shall not apply to corporations or associations created for religious or charitable purposes solely.

Charter to be  
recorded—fee.

SEC. 2. That such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of this territory for that purpose. That said secretary shall be entitled to charge a fee of one dollar for filing, and fifteen cents per folio for recording such charter or articles of incorporation.

Corporation to  
appoint agent  
—his evidence.

SEC. 3. That such corporation shall appoint an agent, who shall reside at some accessible point in this territory, in the vicinity of where the principal business of said corporation in this territory shall be carried on, duly authorized to accept service of process, and upon whom service of process may be made in any action in which said corporation may be a party; and service upon such agent shall be taken and held as due service upon such corporation. A duly authenticated copy of the appointment or commission of such agent shall be filed in the office of the secretary of this territory.

Agents' ap-  
pointment to  
be filed.

SEC. 4. Corporations having complied with all the provisions of this act shall have the same rights and privileges and be subject to the same rules and regulations as corporations created under and by virtue of the laws of this territory: *Provided, however,* That no rights or franchises shall be acquired under this act except the right of ownership to real or personal property, which may not be affected by the amendment or repeal of this act.

Rights of foreign corporations, proviso.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 15, 1875.

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## CRIMINAL PROCEDURE.

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### CHAPTER XXXV.

#### A CODE OF CRIMINAL PROCEDURE.

AN ACT to establish a code of criminal procedure for Dakota Territory.

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

#### PRELIMINARY PROVISIONS.

SECTION 1. This act shall be known as the code of criminal procedure of the territory of Dakota.

Title of act.

SEC. 2. A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

Crime defined.

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office;
5. Disqualification to hold and enjoy any office, of honor, trust, or profit under this territory.

Punishments of crime.

SEC. 3. Crimes or public offenses are divided into:

1. Felonies;
2. Misdemeanors.

Division of crimes.

- Felony defined.** SEC. 4. A felony is a crime which is, or may be, punishable with death, or by imprisonment in the territorial prison.
- Misdemeanor defined.** SEC. 5. Every other crime is a misdemeanor.
- When person punishable.** SEC. 6. No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof.
- Indictment necessary except when.** SEC. 7. Every public offense must be prosecuted by indictment except:
1. Where proceedings are had for the removal of civil officers of the territory;
  2. Offenses arising in the militia, when in actual service: and in the land and naval forces in time of war, or which this territory may keep, with the consent of congress, in time of peace;
  3. Offenses tried in justice's and police courts in cases concerning which lawful jurisdiction, without the intervention of a grand jury is, or may be conferred upon said courts.
- Title of proceeding.** SEC. 8. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.
- Criminal action how prosecuted.** SEC. 9. A criminal action is prosecuted in the name of The People of the Territory of Dakota as a party, against the person charged with the offense.
- Which party, defendant.** SEC. 10. The party prosecuted in a criminal action is designated in this code as the defendant.
- Rights of defendant.** SEC. 11. In a criminal action the defendant is entitled:
1. To a speedy and public trial;
  2. To be allowed counsel, as in civil actions; or to appear and defend in person and with counsel; and
  3. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.
- When person can be prosecuted more than once.** SEC. 12. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted except as hereinafter provided for new trials.
- Defendant not compelled to be witness for prosecution.** SEC. 13. No person can be compelled, in a criminal action, to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

SEC. 14. No person can be convicted of a public offense, unless by the verdict of a jury accepted and recorded by the court; or upon a plea of guilty; or upon judgment against him upon a demurrer to the indictment; in the case mentioned in section 269, or upon a judgment of a police or justices' court in cases in which such judgment may be lawfully given without the intervention of a jury and grand jury.

How conviction can be had.

TITLE I.

OF THE COURTS HAVING JURISDICTION IN CRIMINAL ACTIONS.

SEC. 15. There is in each of the three districts of this territory a court denominated the district court, with jurisdiction conferred by the organic act of this territory and other laws of congress, and having, among other things, common-law jurisdiction, and authority for the redress of all wrongs committed against the laws of this territory, affecting persons or property.

Jurisdiction of district court.

SEC. 16. Each of the said district courts may be held, for the trial of criminal actions, in any county or subdivision in the same district, as is or may be provided by law.

District court, where held.

SEC. 17. The district court has jurisdiction:

Jurisdiction of district court.

1. To inquire by the intervention of a grand jury of all public offenses committed or triable in the county or subdivision for which the court may be held;

2. To inquire into the cause of the detention of all persons imprisoned in the jail of the county or subdivision, or otherwise detained, and to make an order for their recommitment or discharge, or otherwise according to law;

3. To hear, try and determine all criminal actions according to law, and to exercise all powers, whether original or appellate, conferred upon it by this code, or by the other laws of this territory.

SEC. 18. The final decisions of the district courts are reviewable and determinable by the supreme court, according to law, on writs of error allowable by the supreme court, and bringing up for review the record and bills of exceptions.

Final decisions, how reviewable.

SEC. 19. Justices of the peace shall have power and jurisdiction throughout their respective counties as follows:

Jurisdiction of justices of the peace.

1. As committing magistrates, or courts of inquiry as provided for in sections 314, 315, 316, 317, 318 and 319 of the justices' code, and any supplements thereto;

2. To exercise such lawful original jurisdiction under the organic act as is now or may hereafter be conferred upon them by virtue of said justices' code, or other laws of this territory.

## TITLE II.

### OF THE PREVENTION OF PUBLIC OFFENSES.

#### Chapter I. Of lawful resistance.

II. Of the intervention of officers of justice.

III. Security to keep the peace.

IV. Police in cities and villages, and their attendance at exposed places.

V. Suppression of riots.

#### CHAPTER I.

##### OF LAWFUL RESISTANCE.

Resistance to  
commission of  
offense, by  
whom made.

SEC. 20. Lawful resistance to the commission of a public offense may be made;

1. By the party about to be injured;
2. By other parties.

Resistance to  
prevent com-  
mission of of-  
fenses by whom  
made.

SEC. 21. Resistance sufficient to prevent the offense may be made by the party about to be injured;

1. To prevent an offense against his person or his family, or some member thereof;
2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

Same.

SEC. 22. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

#### CHAPTER II.

##### OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

How public  
offenses to be  
presented.

SEC. 23. Public offenses may be prevented by the intervention of the officers of justice;

1. By requiring security to keep the peace;

2. By forming a police in cities and villages, and by requiring their attendance in exposed places;

3. By suppressing riots.

SEC. 24. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command, act in their aid, are justified in so doing.

Persons assisting officers of justice, justified.

### CHAPTER III.

#### SECURITY TO KEEP THE PEACE.

SEC. 25. An information verified by the oath of the complainant, may be laid before any of the magistrates mentioned in section 94, that a person has threatened to commit an offense against the person or property of another.

Informations before whom laid.

SEC. 26. If it appear from the information that there is just reason to fear the commission of the offense threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, or marshal or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate of the county.

When magistrate must issue warrant.

SEC. 27. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must on demand of the defendant be reduced to writing, and subscribed by the witnesses.

Proceedings where charge is controverted

SEC. 28. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

When person complained of is to be discharged.

SEC. 29. If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this territory, and particularly towards the complainant.

When person complained of must give bond

SEC. 30. If the undertaking required by the last section be given, the party complained of must be discharged. If he do not give it, the magistrate must commit him to prison,

Proceedings where bond is or is not given.

specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

**When person committed may be discharged.** SEC. 31. If the person complained of be committed for not giving security, he may be discharged by any justice of the peace of the county, or police or special justice of the city, upon giving the same.

**Magistrate to transmit undertaking.** SEC. 32. The undertaking must be transmitted by the magistrate to the next district court of the county.

**Assault in presence of magistrate.** SEC. 33. A person who in the presence of a court or magistrate, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security as provided in section 29, or if he refuse to do so he may be committed as provided in section 30.

**When person under bond must appear.** SEC. 34. A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the district court of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted unless his default be excused.

**When person complained of may be discharged.** SEC. 35. If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

**Proceedings when both parties appear.** SEC. 36. If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for a time not exceeding one year.

**When undertaking to keep the peace is broken.** SEC. 37. An undertaking to keep the peace is broken on the failure of a person complained of to appear at the district court as provided in section 34, or upon his being convicted of a breach of the peace.

**When district court must order undertaking prosecuted.** SEC. 38. Upon the district attorney producing evidence of such conviction to the district court to which the undertaking is returned, that court must order the undertaking to be prosecuted; and the district attorney must thereupon commence an action upon it in the name of the people of this territory.

**What offense must be alleged in the action.** SEC. 39. In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

**Security to keep peace, how required.** SEC. 40. Security to keep the peace or to be of good behavior, cannot be required, except as prescribed in this chapter.

## CHAPTER IV.

## POLICE IN CITIES AND THEIR ATTENDANCE AT EXPOSED PLACES.

SEC. 41. The organization and regulation of the police in the cities and villages of this territory, are governed by special statutes.

How organization of police governed.

SEC. 42. The mayor, or other officer having the direction of the police in a city or village, must order a force sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

When officer may order force to attend public meeting.

## CHAPTER V.

## SUPPRESSION OF RIOTS.

SEC. 43. When a sheriff or other public officer, authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

When officer may demand assistance from the county.

SEC. 44. The officer must certify to the court from which the process is issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

What officer must certify.

SEC. 45. Every person commanded by a public officer to assist him in the execution of process, as provided in section 43, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

When persons are guilty of misdemeanor.

SEC. 46. If it appears to the governor that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, or to suppress riots and to preserve the peace, he must, on the application of the sheriff, or the judge, order such a force from any other county or counties, as is necessary, and all persons so ordered or summoned by the governor or acting-governor, are required to attend and act; and any such persons who without lawful cause refuse or neglect to obey the command are guilty of a misdemeanor.

When governor may order out additional force.

SEC. 47. Under the facts and circumstances mentioned in the last section, and when the civil power of the county is not

When governor may call on the military authorities.

deemed sufficient, it shall be the duty of the governor to apply to the military authorities of the United States for a force sufficient to execute the laws and to prevent resistance thereto, to suppress riots, execute process and preserve the peace.

Duty of sheriff in case of unlawful assemblage.

SEC. 48. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county or any sheriff of the subdivision, and his deputies, the officials governing the city or town, or the justices of the peace and marshals and constables and police thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the people of the territory, immediately to disperse.

Proceedings where persons unlawfully assembled do not disperse.

SEC. 49. If the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law; and for that purpose may command the aid of all persons present or within the county.

Who deemed rioters.

SEC. 50. If a person so commanded to aid the magistrates or officers, neglect to do so, he is deemed one of the rioters, and is punishable accordingly.

When officer guilty of misdemeanor.

SEC. 51. If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section 48, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

When officer may disperse unlawful assemblage.

SEC. 52. If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section 48, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

Precautions before endangering life.

SEC. 53. Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse before an attack is made upon them by which their lives may be endangered.

Penalty for resisting process.

SEC. 54. A person, who after the publication of a proclamation by the governor or acting-governor, or who after lawful notice as aforesaid to disperse and retire, resists or aids

in resisting the execution of process in a county declared to be in a state of riot or insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor or any civil officer as aforesaid, to quell or suppress an insurrection or riot, is guilty of a felony, and is punishable by imprisonment in the territorial prison for not less than two years.

TITLE III.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS.

CHAPTER I.

OF THE REMOVAL OF CIVIL OFFICERS.

SEC. 55. In addition to the proceedings mentioned in chapter II of title XIII of the code of civil procedure, and apart and distinct from any other criminal action or proceedings, the following provisions are adopted to obtain a judgment of removal from office.

Proceedings to obtain judgment of removal from office.

SEC. 56. An accusation in writing against any county, township, city or municipal officer, for willful or corrupt misconduct in office may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed.

Accusation of misconduct in office, how presented.

SEC. 57. The accusation must state the offense charged, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

What accusation must state.

SEC. 58. After receiving the accusation, the judge to whom it is delivered must forthwith cause it to be transmitted to the district attorney of the county or subdivision, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require by written notice, of not less than five days, that he appear before the district court of the county or subdivision, and answer the accusation at a specified time. The original accusation must then be filed with the clerk of the court.

Duty of judge and attorney on receiving accusation.

SEC. 59. The defendant must appear at the time appointed in the notice, and answer the accusation, unless, for sufficient

Defendant must appear and answer.

cause, the court assigns another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

How defend-  
ant may an-  
swer.

SEC. 60. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

How objection  
to be made.

SEC. 61. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form; it being sufficient if it present intelligibly the ground of the objection.

How denial to  
be made.

SEC. 62. If he deny the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

When defend-  
ant must an-  
swer.

SEC. 63. If an objection to the sufficiency of the accusation be not sustained, the defendant must answer the accusation forthwith.

When court  
to render judg-  
ment, or pro-  
ceed to trial.

SEC. 64. If the defendant plead guilty, or refuse to answer the accusation, the court must render judgment of conviction against him. If he deny the matters charged, the court must proceed to try the accusation.

How trial to  
be had.

SEC. 65. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

Duty of court  
if defend-  
ant convicted.

SEC. 66. Upon a conviction, the court must pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

Proceedings  
for removal of  
territorial offi-  
cers.

SEC. 67. The same proceedings may be had on like grounds for the removal of any territorial officer elected by the people of the territory, or appointed by the governor thereof, except delegate to congress and members of the legislative assembly.

Same.

SEC. 68. In such proceedings the accusation may be presented by the grand jury of the county or subdivision in which such territorial officer resides, or in which he has his place of office for the usual transaction of his official business.

Proceedings  
or removal of  
district attor-  
ney.

SEC. 69. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must be delivered by the judge to the clerk, and by him to such person as may be appointed by the judge to act as prosecuting officer in the matter, who is authorized and required to conduct the proceedings.

SEC. 70. The same proceedings may be had against any officer within the jurisdiction of the court who is accused of charging and collecting illegal fees for services rendered or to be rendered in his office, or who has refused or neglected to perform the official duties pertaining to his office, or who has rendered himself incompetent to perform his said duties by reason of habitual drunkenness, and upon a conviction thereof the court may pronounce judgment that the defendant be removed from office, or that he pay a fine not exceeding five hundred dollars in favor of the informer, with costs of suit; or the court may in its discretion pronounce judgment, both for his removal from office and for the payment of the fine and costs.

Proceedings  
and penalty  
for certain of-  
fenses.

#### TITLE IV.

##### OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMITMENT INCLUSIVE.

Chapter I. Of the local jurisdiction of public offenses.

II. Of the time of commencing criminal actions.

III. Of the information.

IV. The warrant of arrest.

V. Arrest, by whom and how made.

VI. Retaking after an escape or rescue.

VII. Examination of the case and discharge of the defendant, or holding him to answer.

#### CHAPTER I.

##### OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

SEC. 71. Every person is liable to punishment for a public offense, as is prescribed by section 15 of the penal code, except it is by law cognizable exclusively in the courts of the United States.

Public offenses  
punishable,  
how.

SEC. 72. When the commission of a public offense commenced without this territory, is consummated within its boundaries, the defendant is liable to punishment thereof in this territory, though he were out of the territory at the time of the commission of the offense charged, if he consummated it in this territory through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the county in which the offense is consummated.

Offenses com-  
mitted without  
this territory.  
how punished.

Jurisdiction  
in case of duel

SEC. 73. When an inhabitant or resident of this territory, by previous appointment or engagement, fights a duel, or is concerned as second therein, out of the jurisdiction of this territory, and in the duel a wound is inflicted upon a person, whereof he dies in this territory, the jurisdiction of the offense is in the county where the death happened.

Jurisdiction  
when person  
leaves territory  
to evade law.

SEC. 74. When an inhabitant of this territory shall have left the same for the purpose of evading the operation of the provisions of the statutes relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed, or in any county in which in the opinion of the governor the evidence can be most conveniently obtained and produced, to be designated by him by a written appointment, filed in the office of the clerk of the court of that county.

Jurisdiction  
when offense is  
committed in  
two counties.

SEC. 75. When a public offense is committed, partly in one county and partly in another county, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

Where offense  
is committed  
near boundary.

SEC. 76. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Where offense  
is committed  
on board ves-  
sels.

SEC. 77. When an offense is committed in this territory, on board a vessel navigating a river, lake or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates.

Where in-  
dictment has  
jurisdiction in  
certain cases.

SEC. 78. The jurisdiction of an indictment:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent against his will, to cause him to be secretly confined or imprisoned in this territory, or to be sent out of the territory, or from one county to another, or

2. For decoying, or taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having lawful charge of the child; or

3. For inveigling, enticing or taking away an unmarried

female of previous chaste character, under the age of twenty-one years, for the purpose of prostitution; or

4. For taking away any female under the age of sixteen years, from her father, mother, guardian or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

Is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed, may in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, aiding, or in being an accessory to the commission of the offense, or in abetting the parties concerned therein.

SEC. 79. When the offense either of bigamy or of incest is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county. Where offense is bigamy or incest.

SEC. 80. When property taken in one county, by burglary, robbery, larceny or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter must upon demand deliver him to the sheriff of the former county, upon being served with a certified copy of the indictment, and upon a receipt indorsed thereon by the sheriff of the former county, of the delivery of the body of the defendant; and is, on filing the copy of the indictment and the receipt, exonerated from all liability in respect to the custody of the defendant. Jurisdiction and proceedings in certain cases.

SEC. 81. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county. Jurisdiction in case of accessory.

SEC. 82. When an act charged as a public offense is within the jurisdiction of another territory, county or state, as well as this territory, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this territory. When prior conviction or acquittal is a bar.

SEC. 83. When an offense is in the jurisdiction of two or more counties, a conviction or acquittal thereof in one county, is a bar to a prosecution or indictment thereof in another. Same.

**Jurisdiction of indictment for escape.** SEC. 84. The jurisdiction of an indictment for escaping from prison is in any county of the territory.

**For stealing.** SEC. 85. The jurisdiction of an indictment for stealing in any state or country, or other territory, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this territory, is in any county into or through which such stolen property has been brought.

**For murder or manslaughter.** SEC. 86. The jurisdiction of an indictment for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county, or out of the territory, is in the county where the injury was inflicted.

**Against a principal.** SEC. 87. The jurisdiction of an indictment against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this code if he were so present and aiding and abetting therein.

## CHAPTER II.

### OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

**Fine for prosecution for murder unlimited.** SEC. 88. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

**Limit in other cases.** SEC. 89. In all other cases, an indictment for a public offense must be found within three years after its commission.

**Cases where defendant is out of the territory.** SEC. 90. If when the offense is committed, the defendant be out of the territory, the indictment may be found within the term herein limited after his coming within the territory; and no time during which the defendant is not an inhabitant of or usually resident within the territory, is part of the limitation.

**Where an indictment is found.** SEC. 91. An indictment is found within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed.

## CHAPTER III.

### OF THE INFORMATION.

**Information defined.** SEC. 92. The information is the allegation in writing made

to a magistrate that a person has been guilty of some designated public offense.

SEC. 93. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Magistrate defined.

SEC. 94. The following persons are magistrates:

1. The judges of the supreme court;
2. The district judges;
3. Justices of the peace;
4. Police and other special justices, appointed or elected in a city, village or town.

Who are magistrates.

CHAPTER IV.

THE WARRANT OF ARREST.

SEC. 95. When an information verified by oath or affirmation is laid before a magistrate of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest. When magistrate must issue warrants.

SEC. 96. A warrant of arrest is an order in writing in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form: Warrant of arrest defined-form of

“County of \_\_\_\_\_,

“The people of the territory of Dakota. To any sheriff, constable, marshal or policeman in this territory [or in the county of \_\_\_\_\_, or as the case may be.]

“Information upon oath having been this day laid before me, that the crime of [designating it] has been committed, and accusing C. D. thereof,

“You are therefore commanded forthwith to arrest the above named C. D., and bring him before me, at [naming the place,] or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

“Dated at \_\_\_\_\_, this — day of \_\_\_\_\_, 18—.”

E. F., Justice of the peace [or as the case may be.]

SEC. 97. The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an What warrant to specify.

offense in respect to which the magistrate has authority to issue the warrant and the time of issuing it, and the county, city, town or village where it is issued, and be signed by the magistrate with his name of office.

To whom directed.

SEC. 98. The warrant must be directed to and executed by a peace officer.

Peace officer defined.

SEC. 99. A peace officer is a sheriff of a county or subdivision, or a constable, marshal, or policeman of a city, town or village, or township.

Warrant issued by certain judges, to whom directed.

SEC. 100. If the warrant be issued by a judge of the supreme court, or a district judge, it may be directed generally to any sheriff, constable, marshal or policeman in the territory, and may be executed by any of those officers to whom it may be delivered.

Warrant to whom directed, and how endorsed when issued by other magistrates.

SEC. 101. If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the county in which it is issued, and may be executed in that county, or if the defendant be in another county it may be executed therein, upon the written direction of a magistrate of that county, endorsed upon the warrant, signed by him with his name of office, and dated at the county, city, town or village where it is made, to the following effect:

“This warrant may be executed in the county of ———,”  
[as the case may be.]

Endorsement, when not to be made.

SEC. 102. The endorsement mentioned in the last section cannot, however, be made unless upon the oath of a credible witness, in writing, endorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon this proof the magistrate endorsing the warrant is exempted from liability to a civil or criminal action though it afterwards appear that the warrant was illegally or improperly issued.

Duty of arresting officer if offense be felony

SEC. 103. If the offense charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county as provided in section 107.

If a misdemeanor.

SEC. 104. If the offense charged in the warrant be a misdemeanor and the defendant be arrested in another county, the officer must upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

SEC. 105. On taking bail the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

Proceedings where bail is taken.

SEC. 106. If on the admission of the defendant to bail as provided in section 104, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant or some other magistrate in the same county as provided in the next section.

Proceedings where bail is not given.

SEC. 107. When by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer must at the same time deliver to the magistrate, the warrant, with the return endorsed and subscribed by him.

Proceedings where magistrate who issued warrant be absent.

SEC. 108. The defendant must in all cases be taken before the magistrate without unnecessary delay.

Delay prohibited.

SEC. 109. If the defendant be taken before a magistrate other than the one who issued the warrant, the information on which the warrant was granted must be sent to that magistrate, or if it cannot be procured the prosecutor and his witness must be summoned to give their testimony anew.

Where defendant is taken before magistrate who did not issue warrant.

SEC. 110. When an information is laid before a magistrate of the commission of a public offense triable in another county of the territory, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the information of the informant with the depositions, if any, of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

Proceedings where offense is in one county and defendant in another.

SEC. 111. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, with his return

Duty of officers who execute warrant.

indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

If offense be  
a misdemeanor—  
or—duty of of-  
ficer.

SEC. 112. If the offense charged in the warrant issued pursuant to section 110, is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, information, depositions, if any, and undertaking, to the clerk of the court in which the defendant is required to appear.

## CHAPTER V.

### ARREST BY WHOM AND HOW MADE.

Arrest defined. SEC. 113. Arrest is the taking of a person into custody that he may be held to answer for a public offense.

Arrest—how  
made.

SEC. 114. An arrest may be either;

1. By a peace officer under a warrant;
2. By a peace officer without a warrant; or
3. By a private person.

Aid of officer.

SEC. 115. Every person must aid an officer in the execution of a warrant, if the officer require his aid.

If offense be  
felony, arrest  
when made—if  
misdemeanor.

SEC. 116. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate indorsed upon the warrant.

Arrest defined

SEC. 117. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Restraint.

SEC. 118. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

Officer must  
say he acts  
with warrant.

SEC. 119. The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if required.

Duty if de-  
fendant resist.

SEC. 120. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to affect the arrest.

When officer  
may break  
open door.

SEC. 121. The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if after notice of his authority and purpose, he be refused admittance.

SEC. 122. An officer may break open an outer or inner door or window of a dwelling house for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

When officer may break open door.

SEC. 123. A peace officer may, without a warrant, arrest a person:

When peace officer may arrest person.

1. For a public offense, committed or attempted in his presence;
2. When the person arrested has committed a felony, although not in his presence;
3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;
4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.

SEC. 124. To make an arrest as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

Officer may break open door.

SEC. 125. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest though it afterwards appear that the felony had not been committed.

When arrest may be made without warrant.

SEC. 126. When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

When officer must inform party arrested of his authority

SEC. 127. He may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Disposition of person arrested by bystander.

SEC. 128. When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Where offense committed in presence of magistrate.

SEC. 129. A private person may arrest another:

1. For a public offense committed or attempted in his presence;

When private person to make arrest.

2. When the person arrested has committed a felony, although not in his presence;

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Must inform person arrested of cause thereof.

SEC. 130. He must, before making the arrest, inform the person to be arrested of the cause thereof; and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

When private person may make arrest.

SEC. 131. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the arrest.

Duty of private person in such cases.

SEC. 132. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

Offensive weapons—how disposed of.

SEC. 133. Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person and must deliver them to the magistrate before whom he is taken.

## CHAPTER VI.

### RETAKING AFTER AN ESCAPE OR RESCUE.

Pursuing person escaping from arrest.

SEC. 134. If a person arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the territory.

Officer may break open door or window

SEC. 135. To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

## CHAPTER VII.

### EXAMINATION OF THE CASE AND DISCHARGE OF THE DEFENDANT, OR HOLDING HIM TO ANSWER.

Magistrate's duty when defendant bro't before him.

SEC. 136. When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a

charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings and also of his right to waive an examination before any further proceedings are had.

SEC. 137. He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the county or city as the defendant may name. The officer must without delay perform that duty, and shall receive fees therefor as upon service of a subpoena.

Magistrate must allow defendant counsel.

SEC. 138. The magistrate must, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

When magistrate must proceed.

SEC. 139. The examination must be completed at one session unless the magistrate for good cause adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Adjournment of examination

SEC. 140. If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody upon sufficient bail or upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is adjourned.

Disposition of defendant on adjournment.

SEC. 141. The commitment for examination is by an endorsement signed by the magistrate, on the warrant of arrest, to the following effect: "The within named A. B., having been brought before me under this warrant, and having failed to give bail for his appearance, is committed to the sheriff of the county of —— [or to the marshal of the city of —— or as the case may be,] to await examination on the —— day of —— 18——, at —— o'clock, at which time you will have his body before me at my office."

Form of commitment for examination.

SEC. 142. At the examination, the magistrate must, in the first place, read to the defendant the information on file before him. He must also after the commencement of the prosecution, issue subpoenas for any witnesses required by the prosecutor or the defendant.

Duty of magistrate on examination.

Rights of defendant.

SEC. 143. The witnesses must be examined in the presence of the defendant; and may be cross-examined in his behalf. And on demand of the defendant all the testimony in the case must be reduced to writing in the form of depositions.

Defendant may produce witnesses.

SEC. 144. When the examination of the witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

Magistrate to keep dispositions.

SEC. 145. The magistrate or his clerk must keep the depositions taken on the examination, if any have been taken, and the statement of the defendant, if any, until they are returned to the proper court, and must not permit them to be inspected by any person except a judge of a court having jurisdiction of the offense, the district attorney of the county, and the defendant and his counsel.

Certain violation a misdemeanor.

SEC. 146. A violation of the provisions of the last section is punishable as a misdemeanor.

When magistrate must discharge defendant.

SEC. 147. After hearing the proofs and the statement of the defendant, if he have made one, if it appear, either that a public offense has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an endorsement on the information over his signature, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When he must hold him to answer.

SEC. 148. If, however, it appear from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner endorse on the information an order signed by him, to the following effect "It appearing to me that the offense in the within information mentioned, [or any other offense, according to the fact, stating generally the nature thereof,] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Proceedings if offense be not bailable.

SEC. 149. If the offense be not bailable, the following words or words to the same effect, must be added to the endorsement: "And that he is hereby committed to [the sheriff of \_\_\_\_\_, or to the marshal of the city of \_\_\_\_\_, or as the case may be.]"

SEC. 150. If the offense is bailable, and bail is taken by the magistrate, the following words or words to the same effect must be added to the endorsement mentioned in section 148: "And I have admitted him to bail, to answer, by the undertaking hereto annexed."

SEC. 151. If the offense is bailable and the defendant is admitted to bail, but bail have not been taken, the following words or words to the same effect must be added to the endorsement mentioned in section 148: "And that he is admitted to bail in the sum of \_\_\_\_\_ dollars, and be committed to the sheriff of the county of \_\_\_\_\_, [or the marshal of the city of \_\_\_\_\_, or as the case may be.] until said bail be given."

SEC. 152. If the magistrate order the defendant to be committed as provided in sections 149 and 151, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

SEC. 153. The commitment must be to the following effect: "County of \_\_\_\_\_: The people of the Territory of Dakota. To the sheriff of the county of \_\_\_\_\_, or marshal of the city of \_\_\_\_\_, or as the case may be:

"An order having been this day made by me, that A. B. be held to answer upon a charge of [stating briefly the nature of the offense, with time and place as near as may be,] you are commanded to receive him into your custody and detain him until he is legally discharged."

"Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 18—."  
 C. D., Justice of the Peace."  
 [or as the case may be.]

SEC. 154. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people, a written undertaking, without surety, to the effect that he will appear and testify at the court to which the information and depositions if any, are to be sent, or that he will forfeit such sum as the magistrate may fix and determine.

SEC. 155. When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will

If it be bailable

If bailable and bail has not been taken.

Where magistrate commits defendant.

Form of commitment.

Witness to give undertaking.

When witness shall give security for appearance.

not appear and testify, unless security be required, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

Infants and  
married women  
not excepted.

SEC. 156. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

When witness  
may be com-  
mitted.

SEC. 157. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply, or is legally discharged.

Proceedings  
where material  
witness has  
been discharg-  
ed.

SEC. 158. When, however, in pursuance of section 154, any material witness on the part of the people has been discharged on his undertaking, without surety, if afterwards on the sworn application of the district attorney or other person on behalf of the people, made to the magistrate or to any judge, it satisfactorily appears that the presence of such witness or any other person on the part of the people is material, or necessary on the trial in court, such magistrate, or judge, may compel such witness, or any other material witness on the part of the people, to give an undertaking, with sureties, to appear on the said trial and give his testimony therein; and, for that purpose, the said magistrate, or judge, may issue a warrant against any such person, under his hand, with or without seal, directed to a sheriff, marshal, or other officer, to arrest such person and bring him before such magistrate or judge.

When witness  
may be confin-  
ed in jail.

SEC. 159. And in case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said magistrate or judge, he may issue a warrant of commitment against such person, which shall be delivered to said sheriff, or other officer, whose duty it shall be to convey such person to the jail mentioned in said warrant, and the said person shall remain in confinement until he shall be removed to the grand jury and to the court for the purpose of giving his testimony, or until he shall have given the undertaking required by said magistrate or judge.

What magis-  
trate must re-  
turn to district  
court.

SEC. 160. When a magistrate has discharged a defendant, or has held him to answer as provided in sections 147 and 148,

he must return immediately to the next district court of the county or sub-division, the warrant, if any, the information, the depositions, if any have been taken, of all the witnesses examined before him, the statement of the defendant if he have made one, and all undertakings of bail or for the appearance of witnesses taken by him, together with a certified record of the proceedings as they appear on his docket.

## TITLE V.

### OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

- Chapter I. Preliminary provisions.  
 II. Formation of the grand jury.  
 III. Powers and duties of the grand jury.  
 IV. Presentment and proceedings thereon.

#### CHAPTER I.

##### PRELIMINARY PROVISIONS.

SEC. 161. All public offenses triable in the district courts must be prosecuted by indictment, except as provided in the next section. All public offenses — how prosecuted.

SEC. 162. When the proceedings are had for the removal of county, township, city, municipal, or territorial officers, they may be commenced by an accusation in writing as provided in chapter I of title III, of this code. Proceedings for removal from office — how prosecuted.

#### CHAPTER II.

##### FORMATION OF THE GRAND JURY.

SEC. 163. A grand jury is a body of men consisting of sixteen jurors, impanelled and sworn to inquire into, and true presentment make of all public offenses against the people of the territory, committed or triable within the county or subdivision for which the court is holden. Grand jury defined.

Duty of court where challenges are allowed.

SEC. 164. Whenever challenges to individual grand jurors are allowed, the court shall make an order to the sheriff, deputy sheriff, or coroner, to summon without delay, from the body of the county or subdivision, a sufficient number of persons to complete or to form a grand jury.

Twelve grand jurors to find indictment.

SEC. 165. No indictment shall be found, nor shall any presentment or accusation be made without the concurrence of at least twelve grand jurors.

Who may challenge panel.

SEC. 166. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual grand juror.

Causes of challenge to panel.

SEC. 167. A challenge to the panel may be interposed by either party for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury box of the county or subdivision;
2. That notice of the drawing of the grand jury was not given;
3. That the drawing was not had in the presence of the officers designated by law, or in the manner prescribed by law.

When grand jury may be discharged.

SEC. 168. If a challenge to the panel be allowed, the grand jury must be discharged.

Causes of challenge to grand juror.

SEC. 169. A challenge to an individual grand juror may be interposed by either party, for one or more of the following causes only:

1. That he is a minor;
2. That he is not a qualified elector;
3. That he is otherwise disqualified under any of the provisions of section 1, chapter XIX of the act approved December 24, 1867;
4. That he is insane;
5. That he is a prosecutor upon a charge against the defendant;
6. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such;
7. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opin-

ion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court upon his declaration under oath, or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him.

SEC. 170. Challenges may be oral or in writing, and must be tried by the court. Challenges may be oral or written.

SEC. 171. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes. Duty of court and clerk.

SEC. 172. If a challenge to an individual grand juror is allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. Where challenge is allowed, grand juror cannot act.

SEC. 173. The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt. Violation of last section.

SEC. 174. Neither the people, nor a person held to answer a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror unless it be by challenge, and before the grand jury is sworn; except that, after the grand jury is sworn, and before the indictment is found, the court may in its discretion, upon good cause shown, receive and allow a challenge. Parties prohibited from taking certain advantage.

SEC. 175. If the grand jury is discharged by an allowance of a challenge to the whole panel, or if an offense is committed during the sitting of the court, after the regular discharge of the grand jury; or if after such discharge a new indictment becomes requisite by reason of an arrest of judgment or by the quashing of an indictment; or if from any other good and sufficient cause another grand jury may become necessary, the court may, in its discretion, order that another grand jury be summoned; and the court may to that end forthwith make an order to the county commissioners for the immediate selection and furnishing to the clerk of a list of jurors, and may make such further orders to the clerk, sheriff and other officers for an immediate compliance with their duties as may be proper to obtain another grand jury at and during the same term of the court. When court may order another grand jury.

SEC. 176. A grand jury formed and impanelled as to and in a particular case, after a challenge or challenges to individual Concerning special grand jury.

grand jurors have been allowed, shall only be sworn to act in such particular case, and as to all other cases at the same term of the court the grand jury shall be formed in the usual manner provided by law.

**Court to appoint foreman.** SEC. 177. From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman when a person already appointed is discharged or excused, before the grand jury are dismissed.

**Oath of foreman.** SEC. 178. The following oath must be administered to the foreman of the grand jury:

“ You, as foreman of this grand jury, shall diligently inquire into, and true presentment make, of all public offenses against the people of this territory, committed or triable within this county, [or subdivision] of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the people, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you, or any other grand juror may have voted on any matter before you. You shall present no person, through malice, hatred, or ill will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God.”

**Oath to other grand jurors.** SEC. 179. The following oath must be immediately thereupon administered to the other grand jurors present:

“ The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God.”

**Grand jury must be charged.** SEC. 180. The grand jury being impanelled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper as to the nature of their duties, and as to any charges for public offenses returned to the court, or likely to come before the grand jury.

**Grand jury must retire.** SEC. 181. The grand jury must then retire to a private room, and inquire into the offenses cognizable by them.

SEC. 182. The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings (except of the votes of the individual members,) and of the evidence given before them. Grand jury must appoint clerk—his duty

SEC. 183. On the completion of the business before them, or whenever the court shall be of opinion that the public interests will not be subserved by a further continuance of the session, the grand jury must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court. When grand jury discharged.

### CHAPTER III.

#### POWERS AND DUTIES OF A GRAND JURY.

SEC. 184. The grand jury has power, and it is their duty to inquire into all public offenses committed or triable in the county or subdivision, and to present them to the court, either by presentment or indictment, or accusation in writing. Powers and duties of grand jury.

SEC. 185. A presentment is an informal statement in writing by the grand jury, representing to the court that a public offense has been committed, which is triable in the county or subdivision, and that there is reasonable ground for believing that a particular individual, named or described, has committed it. Presentment defined.

SEC. 186. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense. Indictment defined.

SEC. 187. The foreman may administer an oath to any witness appearing before the grand jury. Foreman may administer oath.

SEC. 188. In the investigation of a charge for the purpose of either presentment or indictment, or accusation, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence. What evidence grand jury receive.

SEC. 189. The grand jury can receive none but legal evidence, and the best evidence in degree to the exclusion of hearsay or secondary evidence. Same.

SEC. 190. The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that Evidence for defendant.

there is other evidence, they may by and with the consent of the district attorney order such evidence to be produced, and for that purpose the district attorney may issue process for the witnesses.

When indictment ought to be found.

SEC. 191. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

When member of grand jury must give evidence.

SEC. 192. If a member of the grand jury knows, or has reason to believe, that a public offense has been committed, which is triable in the county or subdivision, he must declare the same to his fellow jurors, who must thereupon investigate the same.

What the grand jury must inquire into.

SEC. 193. The grand jury must inquire:

1. Into the case of every person imprisoned in the jail of the county or subdivision, on a criminal charge, and not indicted;
2. Into the condition and management of the public prisons in the county or subdivision; and
3. Into the willful and corrupt misconduct in office of public officers of every description in the county or subdivision.

Shall have access to prisons.

SEC. 194. They are also entitled to free access at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

District attorney privileged.

SEC. 195. The grand jury may at all reasonable times, ask the advice of the court, or of the district attorney. The district attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable before them, and may interrogate witnesses before them whenever he thinks it necessary; but no other person is permitted to be present during their sessions except the members and a witness actually under examination, and no person whomsoever must be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

Grand jury to keep secret.

SEC. 196. Every member of the grand jury must keep secret, whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them.

When grand juror may disclose testimony.

SEC. 197. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness ex-

amined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

SEC. 198. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.

Grand juror cannot be questioned, except.

CHAPTER IV.

PRESENTMENT AND PROCEEDINGS THEREON.

SEC. 199. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be signed by the foreman.

Presentment —how found.

SEC. 200. The presentment when found, must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

Presentment —how disposed of.

SEC. 201. If the facts stated in the presentment constitute a public offense, triable in the county or subdivision, the court must direct the clerk to issue a bench warrant for the arrest of the defendant.

When bench warrant may be issued.

SEC. 202. The clerk, on the application of the judge or district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties, or into any part of the territory.

When clerk may issue bench warrant.

SEC. 203. The bench warrant, upon presentment, must be substantially in the following form:

Form of bench waraant.

“ County of \_\_\_\_\_,

“ The people of the territory of Dakota. To any sheriff, constable, marshal or policeman in this territory.

“ A presentment having been made on the — day of —, eighteen —, to the district court of the county of —, [or subdivision —], charging C. D. with the crime of — [designating it generally,] you are therefore commanded forthwith to arrest the above named C. D., and take

him before E. F., a magistrate of the county of —————; or in case of his absence or inability to act, before the nearest and most accessible magistrate in ————— county.

“ Given under my hand, with the seal of said court affixed, this — day of —————, A. D. 18—.”

By order of the court.

[SEAL.]

A. F., Clerk.

Where bench  
warrant may  
be served.

SEC. 204. The bench warrant may be served in any county or part of the territory, and the officer serving it must proceed thereon as upon a warrant of arrest on an information, except that when served in another county or part of the territory it need not be indorsed by a magistrate of that county or part of the territory.

How magis-  
trate must pro-  
ceed.

SEC. 205. The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

## TITLE VI.

### OF THE INDICTMENT.

Chapter I. Finding and presentation of the indictment.

II. Rules of pleading and form of the indictment.

### CHAPTER I.

#### FINDING AND PRESENTATION OF THE INDICTMENT.

What is nec-  
essary to find  
an indictment.

SEC. 206. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed, “ A true bill,” and the indorsement must be signed by the foreman of the grand jury.

How original  
information  
disposed where  
indictment not  
found.

SEC. 207. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the original information or the certified record of the proceedings before the magistrate transmitted to them, must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

SEC. 208. The dismissal of the charge does not, however, <sup>Re-submission of charge.</sup> prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction, it cannot be again submitted.

SEC. 209. When an indictment is found, the names of the <sup>Names of witnesses.</sup> witnesses examined before the grand jury, must, in all cases, be inserted at the foot of the indictment or indorsed thereon before it is presented to the court.

SEC. 210. An indictment when found by the grand jury, <sup>Indictment—how presented.</sup> must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record.

SEC. 211. When an indictment is found against a defendant <sup>Proceedings when indictment is found before defendant is arrested.</sup> who has not been previously arrested, and is not under bail, the same proceedings must be had as are prescribed in sections 239 to 246 inclusive, against a defendant who fails to appear for arraignment.

## CHAPTER II.

### RULES OF PLEADING AND FORM OF THE INDICTMENT.

SEC. 212. All the forms of pleading in criminal actions and <sup>Forms of pleadings.</sup> rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

SEC. 213. The first pleading on the part of the people is the <sup>First pleading.</sup> indictment.

SEC. 214. The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 215. The indictment must be direct and certain, as it <sup>Indictment to be direct certain.</sup> regards:

1. The party charged;
2. The offense charged;
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

**Where indictment is prosecuted by fictitious name.** SEC. 216. When a defendant is indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

**Indictment to charge but one offense.** SEC. 217. The indictment must charge but one offense, but the same offense may be set forth in different forms or degrees under different counts; and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

**Time when offense was committed.** SEC. 218. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

**Where certain errors not material.** SEC. 219. When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

**Words of indictment—how construed.** SEC. 220. The words used in an indictment must be construed in their usual acceptance, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

**Statute terms not strictly personal.** SEC. 221. Words used in a statute to define a public offense need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

**What is sufficient in an indictment.** SEC. 222. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated;
2. That it was found by a grand jury of the county or subdivision in which the court was held;
3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his true name is to the jury unknown;
4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county or subdivision, is triable therein;

5. That the offense was committed at some time prior to the time of finding the indictment;

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

7. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

SEC. 223. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits. Certain inform-  
malities to be  
disregarded.

SEC. 224. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment. What need  
not be stated in  
indictment.

SEC. 225. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial. What need  
not be stated in  
pleading.

SEC. 226. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. What is suffi-  
cient in plead-  
ing private  
statute.

SEC. 227. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on trial. What is suffi-  
cient in an in-  
dictment for  
libel.

SEC. 228. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial. In case of in-  
dictment for  
forgery.

In an indictment for perjury.

SEC. 229. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom, the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

In an indictment for larceny or embezzlement.

SEC. 230. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

In an indictment for selling obscene books.

SEC. 231. An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Where several defendants are indicted.

SEC. 232. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Distinctions between accessories and principals, etc.

SEC. 233. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, and no additional facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

Accessory may be indicted

SEC. 234. An accessory to the commission of a felony, may be indicted, tried and punished, though the principal felon be

neither indicted nor tried, and though the principal may have been acquitted.

SEC. 235. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

Person can be indicted for compounding a felony.

## TITLE VII.

### OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

#### Chapter I. Of the arraignment of the defendant.

- II. Setting aside the indictment.
- III. Demurrer.
- IV. Plea.
- V. Removal of the action before trial.
- VI. The mode of trial.
- VII. Formation of the trial jury.
- VIII. Postponement of the trial.

## CHAPTER I.

### OF THE ARRAIGNMENT OF THE DEFENDANT.

SEC. 236. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found, if triable therein; if not, before the court to which it is removed or transmitted.

Defendant to be arraigned.

SEC. 237. If the indictment is for a felony the defendant must be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

When defendant must be present.

Same—duty  
of court.

SEC. 238. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned; and the officer must do so accordingly.

When bench  
warrant to be  
issued.

SEC. 239. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, when his personal attendance is necessary, the court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Same.

SEC. 240. The clerk, on the application of the district attorney may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Form of bench  
warrant.

SEC. 241. The bench warrant, upon the indictment must, if the offense is a felony, be substantially in the following form:

“ County of \_\_\_\_\_,

“ The people of the territory of Dakota. To any sheriff, constable, policeman or marshal in this territory.

“ An indictment having been found on the — day of —, A. D., 18—, in the district court in and for the county [or subdivision] of \_\_\_\_\_, charging C. D. with the crime of \_\_\_\_\_ [designating it generally,] you are therefore commanded forthwith to arrest the above named C. D., and bring him before that court [or before the court to which the indictment may have been removed, naming it,] to answer said indictment; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of \_\_\_\_\_.

“ Given under my hand, with the seal of said court affixed, this — day of \_\_\_\_\_, A. D. 18—.”

By order of the court.

[SEAL.]

E. F., Clerk.

Same, where  
offense is a mis-  
demeanor.

SEC. 242. If the offense is a misdemeanor or a bailable felony, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect: “ or if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment.”

Court must  
fix amount of  
bail.

SEC. 243. If the offense charged is bailable, the court, upon directing the bench warrant to issue, must fix the amount of

bail; and an endorsement must be made on the bench warrant and signed by the clerk, to the following effect:

“The defendant is to be admitted to bail in the sum of ——— dollars.”

SEC. 244. The defendant when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county or subdivision in which the indictment is found.

Where offense is not bailable, duty of sheriff.

SEC. 245. The bench warrant may be served in any county in the same manner as a warrant of arrest, except, that when served in another county it need not be endorsed by a magistrate of that county.

Bench warrant may be served in any county.

SEC. 246. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon.

How magistrate to proceed in taking bail.

SEC. 247. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court, to which the indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

Duty of court on indictment for felony.

SEC. 248. If the defendant is present when the order is made, he must be forthwith committed accordingly. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Where defendant is present how disposed of.

SEC. 249. If the defendant appear for arraignment, without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel. If he desires, and is unable to employ counsel, the court must assign counsel to defend him.

Court must inform defendant of his right to counsel.

SEC. 250. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant, and asking him whether he pleads guilty or not guilty to the indictment.

How arraignment must be made.

SEC. 251. When the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment.

Defendant must declare his true name.

When court  
to proceed.

SEC. 252. If he gives no other name, the court may proceed accordingly.

If defendant  
allege another  
name.

SEC. 253. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Defendant to  
be allowed time  
to answer.

SEC. 254. If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment.

What motion  
defendant may  
make.

SEC. 255. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

## CHAPTER II.

### SETTING ASIDE THE INDICTMENT.

When indict-  
ment must be  
set aside.

SEC. 256. The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not found, indorsed and presented or filed, as prescribed in this act;

2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or indorsed thereon;

3. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section 195.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

When defen-  
dant precluded  
from taking ob-  
jections.

SEC. 257. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

SEC. 258. The motion must be heard at the time it is made, unless for good cause the court postpone the hearing to another time. When motion to be heard.

SEC. 259. If the motion be denied, the defendant must immediately answer to the indictment either by demurring or pleading thereto. When defendant must answer.

SEC. 260. If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless it direct that the case be re-submitted to the same, or another grand jury. When defendant to be discharged.

SEC. 261. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, and unless a new indictment is found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section. Proceedings if court direct a re-submission of case.

SEC. 262. An order to set aside an indictment, as provided in this chapter, is no bar to a further prosecution for the same offense. What is not a bar.

### CHAPTER III.

#### DEMURRER.

SEC. 263. The only pleading on the part of the defendant is either a demurrer or a plea. Defendant's only pleading.

SEC. 264. Both the demurrer and the plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose. Pleadings to be made in open court.

SEC. 265. The defendant may demur to the indictment when it appears upon the face thereof, either: When defendant may demur.

1. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county or subdivision;

2. That it does not substantially conform to the requirements of this act;

3. That more than one offense is charged in the indictment;

4. That the facts stated do not constitute a public offense;

5. That the indictment contains any matter, which if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

Demurrer.

SEC. 266. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the indictment, or it must be disregarded.

Objections in demurrer to be heard.

SEC. 267. Upon the demurrer being filed, the objections presented thereby, must be heard, either immediately or at such time as the court may appoint.

Duty of court respecting demurrer.

SEC. 268. Upon considering the demurrer, the court must give judgment, either sustaining or overruling it; and an order to that effect must be entered upon the minutes.

Where demurrer is sustained.

SEC. 269. If the demurrer is sustained, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court being of opinion that the objection on which the demurrer is sustained may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

When defendant must be discharged.

SEC. 270. If the court do not direct the case to be re-submitted, the defendant, if in custody, must be discharged; or if admitted to bail, his bail is exonerated; or if he have deposited money instead of bail, the money must be refunded to him.

Proceedings where case is re-submitted.

SEC. 271. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in this act, or in sections 259 and 260.

Plea where demurrer is overruled.

SEC. 272. If the demurrer be overruled, the court must permit the defendant, at his election, to plead; which he must do forthwith, or at such a time as the court may allow. If he does not plead, judgment may be pronounced against him.

Concerning certain objections--how taken.

SEC. 273. When the objections mentioned in section 265 appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

## CHAPTER IV.

## PLEA.

SEC. 274. There are three kinds of pleas to an indictment. Kinds of pleas.  
A plea of :

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

SEC. 275. Every plea must be oral, and must be entered upon the minutes of the court. Plea to be oral.

SEC. 276. The plea must be entered in substantially the following form: Form of plea when entered.

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offense charged in this indictment;"

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged in this indictment;"

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted, [or acquitted, as the case may be,] of the offense charged in this indictment, by the judgment of the court of \_\_\_\_\_, [naming it,] rendered at \_\_\_\_\_, [naming the place,] on the \_\_\_\_\_ day of \_\_\_\_\_."

SEC. 277. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it can be put in by counsel. How plea of guilty to be put in.

SEC. 278. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted. Plea may be withdrawn.

SEC. 279. The plea of not guilty puts in issue every material allegation in the indictment. Issues on plea of not guilty.

SEC. 280. All matters of fact tending to establish a defense other than that specified in the third subdivision of section 274, may be given in evidence under the plea of not guilty. Evidence under plea of not guilty.

SEC. 281. If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or When a former acquittal is not an acquittal of same offense.

substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

Former acquittal.

SEC. 282. When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the indictment on which he was acquitted.

When former acquittal or conviction is a bar.

SEC. 283. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

When plea of not guilty to entered.

SEC. 284. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

## CHAPTER V.

### THE REMOVAL OF THE ACTION BEFORE TRIAL.

Action may be removed—when—how.

SEC. 285. A criminal action, prosecuted by indictment, may at any time before trial is begun, on the application of the defendant, be removed from the court in which it is pending, if the offense charged in the indictment be punishable with death, or imprisonment in the territorial prison, whenever it shall appear to the satisfaction of the court by affidavits, (or if the court should so order by other testimony) that a fair and impartial trial cannot be had in such county or subdivision, in which case the court may order the person accused to be tried in some near or adjoining county, in any district where a fair and impartial trial can be had; but the party accused shall be entitled to a removal of the action but once, and no more; and if the accused shall make affidavit that he cannot have an impartial trial by reason of the bias or prejudice of the presiding judge of the district court where the indictment is pending, the judge of such court may call any other judge of a district court to preside at such trial; and it shall be the duty of such other judge to so preside at said trial, and do any other act with reference thereto, as though he was presiding judge of said district court.

SEC. 286. The order of removal must be entered upon the minutes, and the clerk must thereupon make out and transmit to the court to which the action is removed, a certified copy of the order of removal and of the records, pleadings and proceedings in the action including the undertakings for the appearance of the defendant and of the witnesses.

Duty of clerk  
when action  
is removed

SEC. 287. If the defendant is in custody, the order must provide for the removal of the defendant, by the sheriff of the county or subdivision where he is imprisoned, to the custody of the proper officer of the county or subdivision to which the action is removed; and he must be removed according to the terms of such order.

Disposition of  
defendant if in  
custody.

SEC. 288. When the court has ordered a removal of the action, it may require the accused, if the offense be then bailable, to enter into an undertaking with good and sufficient sureties to be approved by the court, in such sum as the court may direct, conditioned for his appearance in the court to which the action has been removed, on the first day of the next term thereof, and to abide the order of such court; and in default of such undertaking, a warrant shall be issued to the sheriff or other proper officer, commanding him safely to keep, and at the proper time to convey the prisoner to the jail of the county or subdivision where he is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

Court may re-  
quire bail.

SEC. 289. When a removal of the action is allowed, the court may recognize the witnesses on the part of the people, to appear before the court in which the defendant is to be tried.

Witness may  
be recognized.

SEC. 290. The court to which the action is removed must proceed to trial and judgment therein the same in all respects as if the action had been commenced in such court. If it is necessary to have any of the original pleadings, or other papers, before such court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

Duty of court  
to which action  
is removed.

SEC. 291. The district attorney on behalf of the people may also apply in a similar manner for a removal of the action; and the court being satisfied that it will promote the ends of

District at-  
torney may ap-  
ply for removal  
of action.

justice, may order such removal upon the same terms and to the same extent as are provided in this chapter, and the proceedings on such removal shall be in all respects as above provided.

## CHAPTER VI.

### THE MODE OF TRIAL.

When an issue of fact arises.

SEC. 292. An issue of fact arises:

1. Upon a plea of not guilty, or
2. Upon a plea of a former conviction or acquittal of the same offense.

How tried.

SEC. 293. Issues of fact must be tried by a jury.

Defendant to be present—when.

SEC. 294. If the indictment is for a felony, the defendant must be personally present at the trial; but if for a misdemeanor not punishable by imprisonment, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial.

## CHAPTER VII.

### FORMATION OF THE TRIAL JURY.

Who are jurors

SEC. 295. The jurors duly drawn and summoned for the trial of civil actions, are also the jurors for the trial of criminal actions.

Trial jurors—how formed.

SEC. 296. Trial juries for criminal actions may also be formed in the same manner as trial juries in civil actions.

Clerk to prepare ballots.

SEC. 297. At the opening of the court the clerk must prepare separate ballots containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same can not be seen, and must deposit them in a sufficient box.

When names of all jurors may be called.

SEC. 298. When the cause is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court in its discretion may order that an attachment issue against those who are absent; but the court may, in its discretion, wait or not, for the return of the attachment.

SEC. 299. Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box.

Manner of drawing jury.

SEC. 300. When the jury is completed, the ballots containing the names of the jurors sworn, must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

Disposition of ballots.

SEC. 301. After the jury are so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

Same.

SEC. 302. If a juror be absent when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

Where juror is absent.

SEC. 303. When a jury has been duly summoned, if, upon calling the cause for trial, twenty-four of the jurors summoned do not appear, the court may, in its discretion, order the sheriff to summon from the body of the county or subdivision, as many persons as it may think proper, at least sufficient to make twenty-four jurors, from whom a jury for the trial of the cause may be selected.

Where all the jurors do not appear — duty of court.

SEC. 304. The names of the persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box mentioned in section 297.

Names of jurors—how written.

SEC. 305. The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

Drawing the jury.

SEC. 306. The jury consists of twelve men, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between the people of the territory of Dakota and the defendant whom they shall have in charge, and a true verdict to give according to the evidence, which verdict must be unanimous.

Number of jury -- how sworn.

SEC. 307. If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon from the body of the county or subdivision so many persons qualified to serve as jurors as it deems sufficient to form a jury. The jurors so summoned may

Proceedings where sufficient number are not drawn.

be called from the list returned by the sheriff, and so many of them not excused or discharged, as may be necessary to complete the jury, must be impanelled and sworn.

**Affirmation.** SEC. 308. Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "So help you God," at the end of the oath, the following; "This you do affirm under the pains and penalties of perjury."

## CHAPTER VIII.

### POSTPONEMENT OF THE TRIAL.

**Postponement of trial.** SEC. 309. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same or next term.

## TITLE VIII.

### OF PROCEEDING AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

#### Chapter I. Challenging the jury.

##### II. The trial.

##### III. Conduct of the jury after the cause is submitted to them.

##### IV. The verdict.

##### V. Bill of exception.

##### VI. New trials.

##### VII. Arrest of judgment.

## CHAPTER I.

### CHALLENGING THE JURY.

**Challenging jurors.** SEC. 310. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

SEC. 311. When several defendants are tried together they cannot sever their challenges, but must join therein.

Challenges of several defendants.

SEC. 312. The panel is a list of jurors returned by a sheriff, to serve at a particular court, or for the trial of a particular action.

Panel defined.

SEC. 313. A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.

Challenge to panel defined.

SEC. 314. A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

Challenge to panel -- how formed.

SEC. 315. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

When challenge to be taken.

SEC. 316. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Exceptions to the challenge.

SEC. 317. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

Proceedings on exception.

SEC. 318. If the challenge is denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court; and the court must proceed to try the question of fact.

Proceedings where challenge is denied.

SEC. 319. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Proceedings upon trial of challenge.

SEC. 320. When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

Challenge on account of bias of officer, when allowed.

SEC. 321. If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must

Court must discharge jury, when.

discharge the jury, and another jury can be summoned for the same term forthwith, from the body of the county or subdivision; or the judge may order a jury to be drawn and summoned in the regular manner. If it be disallowed, the court must direct the jury to be impanelled.

Challenging individual jurors.

SEC. 322. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

Nature of challenge.

SEC. 323. A challenge to an individual juror is either:

1. Peremptory, or
2. For cause.

When challenges are to be taken.

SEC. 324. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge.

SEC. 325. A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Challenge to jurors in criminal cases.

SEC. 326. In all criminal cases the defendant is entitled to the following challenges:

1. For capital offenses, the defendant may challenge peremptorily twenty jurors;
2. In prosecutions for offenses punishable by imprisonment in the territorial prison, ten jurors;
3. In other prosecutions, three jurors.

Prosecuting attorney may challenge.

SEC. 327. The prosecuting attorney in capital cases may challenge peremptorily six jurors; in other cases, three jurors.

Challenge for cause.

SEC. 328. A challenge for cause may be taken either by the people or the defendant.

General and particular objections to jurors.

SEC. 329. It is an objection to a particular juror, and is either:

1. General, that the juror is disqualified from serving in any case on trial; or
2. Particular, that he is disqualified from serving in the case on trial.

General and particular cause of challenges.

SEC. 330. General causes of challenges are:

1. A conviction for felony;

2. A want of any of the qualifications prescribed by law to render a person a competent juror, including a want of knowledge of the English language as used in the courts;

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

SEC. 331. Particular cause of challenge are of two kinds:

1. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias;

Particular  
cause of chal-  
lenge.

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot try the issue impartially without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

SEC. 332. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

When chal-  
lenge for im-  
plied bias may  
be taken.

1. Consanguinity or affinity within the sixth degree, inclusive, to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury which has tried another person for the offense charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Exemption  
from jury ser-  
vice.

SEC. 333. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

What causes  
to be stated on  
challenge.

SEC. 334. In a challenge for implied bias, one or more of the causes stated in section 332 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 331 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon rumor, statements in public journals, or common notoriety, provided it appears to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered upon the minutes of the court.

Exception to  
challenges.

SEC. 335. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon, as prescribed in section 316, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenges,  
how tried.

SEC. 336. All challenges, whether to the panel or to individual jurors, shall be tried by the court, without the aid of triers.

When juror  
challenged to  
be a witness.

SEC. 337. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

Other wit-  
nesses.

SEC. 338. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

Duty of court.

SEC. 339. On the trial of a challenge, the court must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

SEC. 340. All challenges to an individual juror, except pe-  
 remptory, must be taken, first by the defendant, and then by  
 the people; and each party must exhaust all his challenges  
 before the other begins.

Manner of  
taken chal-  
leges.

SEC. 341. The challenges of either party for cause need not  
 all be taken at once; but they must be taken separately, in  
 the following order, including in each challenge all the causes  
 of challenge belonging to the same class:

Order of chal-  
leges for  
cause.

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror for actual bias.

SEC. 342. If all challenges on both sides are disallowed,  
 either party, first the people and then the defendant, may  
 take a peremptory challenge, unless the party's peremptory  
 challenges are exhausted.

Peremptory  
challenges.

## CHAPTER II.

### THE TRIAL.

SEC. 343. The jury having been impanelled and sworn, the  
 trial must proceed in the following order:

Order in which  
trial shall pro-  
ceed.

1. If the indictment is for felony, the clerk or district attorney must read it, and state the plea of the defendant to the jury. In all other cases, this formality may be dispensed with;

2. The district attorney, or other counsel for the people, must open the case and offer the evidence in support of the indictment;

3. The defendant or his counsel may then open his defense, and offer his evidence in support thereof;

4. The parties may then, respectively, offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case;

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people shall commence, and the defendant or his counsel shall follow; then the counsel for the people shall conclude the argument to the jury;

6. The judge must then charge the jury; he may state the testimony, and must declare the law, but must not charge the jury in respect to matters of fact; such charge must, if so requested, be reduced to writing before it is given, unless by tacit or mutual consent it is given orally, or unless it is fully taken down at the time it is given by a stenographer reporter, appointed by the court.

When the order may be changed.

SEC. 344. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order of trial and argument prescribed in the last section may be departed from.

Court to decide questions of law.

SEC. 345. The court must decide all questions of law which arise in the course of the trial.

When jury to determine law and fact.

SEC. 346. On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

When jury to determine only fact.

SEC. 347. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court. Questions of fact are to be decided by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

When three counsel may argue cause.

SEC. 348. If the indictment is for an offense punishable with death, three counsel on each side may argue the case to the jury. If it is for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

Defendant presumed innocent.

SEC. 349. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

Verdict where there is doubt.

SEC. 350. When it appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

When defendants to be tried separately.

SEC. 351. When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases defendants jointly prosecuted may be tried separately or jointly in the discretion of the court.

Discharge of one defendant that he may be witness.

SEC. 352. When two or more persons are included in the same indictment, the court may, at any time before the de-

defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

SEC. 353. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must, before the evidence is closed in order that he may be a witness for his co-defendant, submit its said opinion to the jury, who, if they so find, may acquit the particular defendant for the purpose aforesaid.

Same. Duty of court.

SEC. 354. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this code.

What rules of evidence applicable.

SEC. 355. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted, unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved, but any other overt act, not alleged in the indictment, may be given in evidence.

Evidence necessary to convict of conspiracy.

SEC. 356. A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense, or the circumstances thereof.

Same.

SEC. 357. Upon a trial for having, with an intent to cheat or defraud another designedly by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing unless the pretense or some note or memorandum thereof, be in writing, either subscribed by, or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to a prosecution for falsely representing or personating another, and in such assumed character, marrying or receiving money or property.

Evidence in cases of false pretense.

SEC. 358. Upon a trial for inveigling, enticing or taking away an unmarried female of previous chaste character,

Evidence in case of seduction.

under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, or for having under promise of marriage, seduced and had illicit connection with an unmarried female of previous chaste character, the defendant cannot be convicted upon the testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

When court may suspend proceedings.

SEC. 359. If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail to answer any new indictment which may be found against him for the higher offense.

When plea of former acquittal not sustained.

SEC. 360. If an indictment for the higher offense is found by a grand jury impanelled within a year next thereafter, he must be tried thereon, and a plea of former acquittal to such last found indictment is not sustained by the fact of the discharge of the jury on the first indictment.

In case certain indictment not found.

SEC. 361. If a new indictment is not found for the higher offense within a year as aforesaid, the court must again proceed to try the defendant on the original indictment.

When jury may be discharged.

SEC. 362. The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

Duty of court respecting prisoner, in case it has not jurisdiction.

SEC. 363. If the jury is discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this territory, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the state, territory, or district where the offense was committed.

Same. Bail and disposition of records.

SEC. 364. If the offense was committed within the exclusive jurisdiction of another county of this territory, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest, or if the offense be a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, ren-

der himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking, and the clerk must forthwith transmit a certified copy of the indictment, and all the papers in the action, filed with him, to the district attorney of the proper county, the expense of which transmission is chargeable to that county.

SEC. 365. If the defendant is not arrested, on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be; and the sureties in the undertaking as mentioned in the last section must be discharged.

When prisoner must be discharged.

SEC. 366. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

Proceedings, where defendant is arrested.

SEC. 367. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be re-submitted to the same or another grand jury.

When court must discharge prisoner.

SEC. 368. If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice; nor can the court, for any cause, prevent the jury from giving a verdict.

Court may advise jury to acquit the defendant.

SEC. 369. When, in the opinion of the court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the court

When jury may view place where offense was committed.

for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

Where juror has knowledge of facts in controversy.

SEC. 370. If a juror have any personal knowledge respecting a fact in controversy in a cause, he must declare it in open court during the trial. If, during the retirement of a jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

Custody and conduct of jury

SEC. 371. The jurors sworn to try an indictment may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or to be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

Jury to be admonished by the court.

SEC. 372. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

When juror becomes sick.

SEC. 373. If, before the conclusion of a trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impanelled.

Proof on trial for murder.

SEC. 374. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Proof on trial for bigamy.

SEC. 375. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or

other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this territory, proof of that fact, accompanied with proof of cohabitation thereafter in this territory, is sufficient to sustain the charge.

SEC. 376. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited. Proof on trial for forgery.

SEC. 377. In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it state the testimony of the case, it must in addition inform the jury that they are the exclusive judges of all questions of fact. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse or sign its decision. If part of any written charge be given and part refused, the court must distinguish, showing by the indorsement or answer what part of each charge was given and what part refused. The courts charge to the jury.

SEC. 378. After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court. Disposition of jury after being charged.

SEC. 379. When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody; Defendant, who gives bail and appears.

of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

When court  
to appoint sub-  
stitute for dis-  
trict attorney.

SEC. 380. If the district attorney fails, or is unable to attend at the trial, the court must appoint some attorney at law to perform the duties of the district attorney on such trial.

### CHAPTER III.

#### CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

Who to pro-  
vide jury room.

SEC. 381. A room must be provided by the board of commissioners of the county, for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Jury to have  
comfortable ac-  
commodations.

SEC. 382. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county, with suitable and sufficient food and lodging.

What papers  
jury may take.

SEC. 383. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

When jury  
may be brought  
into court.

SEC. 384. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the district attorney and the defendant or his counsel, or after they have been called.

Where juror  
becomes sick.

SEC. 385. If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

SEC. 386. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

Jury cannot be discharged until, when.

SEC. 387. In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term as the court may direct.

When cause may be re-tried

SEC. 388. While the jury are absent the court may adjourn from time to time as to other business; but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the jury discharged.

Court may adjourn while jury are absent.

SEC. 389. A final adjournment of the court discharges the jury.

Discharge of jury.

## CHAPTER IV.

### THE VERDICT.

SEC. 390. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

Proceedings when jury have agreed.

SEC. 391. If the indictment is for a felony, the defendant must, before the verdict is received, appear in person. If it is for a misdemeanor, the verdict may, in the discretion of the court, be rendered in his absence.

In case of felony verdict to be given in presence of defendant.

SEC. 392. When the jury appear, they must be asked, by the court or the clerk, whether they have agreed upon their verdict; and if the foreman answers in the affirmative, they must, on being required, declare the same.

Proceedings when jury appear.

SEC. 393. The jury may either render a general verdict, or where they are in doubt as to the legal effect of the facts

Character of verdict.

proved, they may, except upon an indictment for libel, find a special verdict.

Form of general verdict.

SEC. 394. A general verdict upon a plea of not guilty, is either "guilty," or "not guilty;" which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof."

Special verdict defined.

SEC. 395. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence and not the evidence to prove them; and the conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict to be written.

SEC. 396. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

Form of special verdict.

SEC. 397. The special verdict need not be in any particular form, but is sufficient if it presents intelligibly the facts found by the jury.

Argument in case of special verdict.

SEC. 398. The special verdict may be brought to argument by either party, upon two days notice to the other, at the same or another term of the court.

Court to give judgment upon special verdict.

SEC. 399. The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment or of any other offense of which he could be convicted under the indictment, judgment must be given accordingly; but if otherwise, judgment of acquittal must be given;

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

SEC. 400. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

When court must order a new trial.

SEC. 401. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant must find the degree of the crime of which he is guilty.

Duty of jury in giving verdict.

SEC. 402. In all other cases, the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment, or an attempt to commit the offense.

Same.

SEC. 403. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Same, on an indictment against several defendants.

SEC. 404. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Where court may direct jury to reconsider verdict.

SEC. 405. If the jury render a verdict which is neither a general nor a special verdict the court may, with proper instructions as to the law, direct them to re-consider it; and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

Same.

SEC. 406. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant, upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

Duty of court where jury persist.

When jury  
may be polled.

SEC. 407. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case, they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Clerk to re-  
cord verdict.

SEC. 408. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

When defend-  
ant to be dis-  
charged.

SEC. 409. If the judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given: except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention to the end that a new indictment may be preferred, in the same manner and with like effect, as provided in section 367.

Disposition  
of defendant  
where verdict  
is against him.

SEC. 410. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

Proceedings  
where defense  
is insanity and  
jury acquits.

SEC. 411. If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.

## CHAPTER V.

### BILLS OF EXCEPTION.

Exceptions to  
decision of  
court on trial.

SEC. 412. On the trial of an indictment, exceptions may be taken by the defendant to the decision of the court upon a matter of law by which his substantial rights are prejudiced, and not otherwise, in any of the following cases:

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias;

2. In admitting or rejecting witnesses or testimony, on the trial of a challenge to a juror for actual bias;

3. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

SEC. 413. A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk. Bill of exceptions to be signed and filed

SEC. 414. The bill of exceptions must be settled at the trial, unless the court otherwise direct. If no such direction be given, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added, until it is made conformable to the truth. Character of bill of exceptions.

SEC. 415. If the bill of exceptions be not settled at the trial, it must be prepared and served within three days thereafter, on the district attorney, who may, within three days thereafter serve on the defendant or his counsel, amendments thereto. The defendant may then, within three days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, not less than five, nor more than ten days thereafter, to have the bill of exceptions settled. When bill to be prepared if not settled at the trial.

SEC. 416. At the time appointed the judge must settle and sign the bill of exceptions. Judge to settle and sign exceptions.

SEC. 417. The time for preparing the bill of exceptions or the amendments thereto, or for settling the same, may be enlarged by the consent of the parties, or by the presiding judge. Concerning time for preparing bills of exception.

SEC. 418. If the bill of exceptions be not served within the time prescribed in section 415, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served and the parties omit, within the time limited by section 415, the one to prepare amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, the other to the amendments. When exceptions are deemed abandoned.

What exceptions to contain.

SEC. 419. The bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

To be filed.

SEC. 420. The bill of exceptions must be filed with the clerk of the court at the time of, or before, taking the writ of error.

Exceptions may be taken, when.

SEC. 421. Exceptions may be taken by either party to a decision of the court or judge upon a matter of law:

1. In granting or refusing a motion in arrest of judgment.
2. In granting or refusing a motion for a new trial.

## CHAPTER VI.

### NEW TRIALS.

New trial defined.

SEC. 422. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

Court has power to grant a new trial.

SEC. 423. The court in which a trial has been had upon an issue of fact, has power to grant a new trial, when a verdict has been rendered against the defendant by which his substantial rights have been prejudiced, upon his application in the following cases only:

1. When the trial has been had in his absence, if the indictment is for felony.
2. When the jury has received any evidence out of court other than that resulting from a view of the premises;
3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;
4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;
5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;
6. When the verdict is contrary to law or evidence.

SEC. 424. The application for a new trial must be made before judgment.

Application for new trial, when to be made.

## CHAPTER VII.

### ARREST OF JUDGMENT.

SEC. 425. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section 265, unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

Motion in arrest of judgment.

SEC. 426. The court may also, on its own view of any of these defects, arrest the judgment without motion.

When court may arrest judgment.

SEC. 427. If, from the evidence on the trial there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be re-committed to the officer of the proper county or subdivision or admitted to bail anew to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or if admitted to bail, his bail is exonerated, or if money has been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the indictment was founded.

When evidence shows defendant guilty but indictment insufficient.

Discharge of defendant.

## TITLE IX.

### OF JUDGMENT AND EXECUTION.

Chapter I. The judgment.

II. The execution.

## CHAPTER I.

### THE JUDGMENT.

SEC. 428. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or ac-

When court must appoint time for pronouncing judgment.

quittal, if the judgment is not arrested, or a new trial granted, the court must appoint a time for pronouncing judgment.

Time specified.

SEC. 429. The time appointed must be at least two days after the verdict if the court intend to remain in session so long, or if not at as remote a time as can reasonably be allowed.

When judgment may be pronounced in defendant's absence.

SEC. 430. For the purpose of judgment, if the conviction is for a misdemeanor, judgment may be pronounced in his absence.

When officer to produce prisoner.

SEC. 431. When the defendant is in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer must do so accordingly.

When bench warrant may issue for defendant's arrest.

SEC. 432. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for his arrest.

Same. Duty of clerk.

SEC. 433. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Form of bench warrant.

SEC. 434. The bench warrant must be substantially in the following form:

“County of \_\_\_\_\_,

“The people of the territory of Dakota. To any sheriff, constable, marshal or, policeman in this territory.”

A. B. having been on the \_\_\_\_\_ day of \_\_\_\_\_ A. D., 18—, duly convicted in the district court, of the county of \_\_\_\_\_ of the crime of, [designating it generally,] you are therefore commanded forthwith to arrest the above named A. B., and bring him before that court for judgment, or if the court has adjourned for the term, you are to deliver him into the custody of the sheriff of the county of \_\_\_\_\_, [as the case may be.]”

“Given under my hand, with the seal of said court affixed, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., eighteen hundred and —.”

By order of the court.

[SEAL.]

E. F., Clerk.

SEC. 435. The bench warrant may be served in any county, in the same manner as a warrant of arrest; except that when served in another county, it need not be endorsed by a magistrate of that county. How bench warrant may be served.

SEC. 436. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof. Disposition of defendant when arrested.

SEC. 437. When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the indictment, and of his plea and the verdict, if any thereon; and must be asked whether he has any legal cause to show why judgment should not be pronounced against him. What defendant must be informed by court.

SEC. 438. He may show for cause against the judgment:

1. That he is insane; and if in the opinion of the court there is reasonable ground for believing him to be insane, the question of his insanity must be tried as hereinafter, in this code, provided for. If upon the trial of that question, the jury find that he is sane judgment must be pronounced; but if they find him insane, he may be committed to the territorial lunatic asylum, if there be one, until he becomes sane or be otherwise committed according to law, and when notice is given of that fact as hereinafter provided for, he must be brought before the court for judgment. Defendant may show cause against judgment. What.

2. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

SEC. 439. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it must thereupon be rendered. When judgment must be rendered.

SEC. 440. After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court upon the suggestion of either party, that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion, hear the same summarily at a When court may hear further evidence.

specified time, and upon such notice to the adverse party as it may direct.

How such evidence to be presented.

SEC. 441. The circumstances must be presented, by the testimony of witnesses examined in open court; except, that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

Evidence prohibited except as specified.

SEC. 442. No affidavit, or testimony, or representation of any kind, verbal or written, can be offered to, or received by, the court, or member thereof, in aggravation or mitigation of the punishment, except as provided in the last two sections.

Judgment in case of conviction of two offenses.

SEC. 443. If the defendant have been convicted of two or more offenses, before judgment on either, the judgment may be, that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Judgment of fine and imprisonment.

SEC. 444. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment; which cannot exceed one day for every two dollars of the fine.

Judgment of fine constitutes a lien.

SEC. 445. A judgment that the defendant pay a fine constitutes a lien, also, in like manner as a judgment for money rendered in a civil action.

Papers to be filed by clerk.

SEC. 446. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had; and must immediately annex together and file the following papers, which constitute a record of the action:

1. The indictment and a copy of the minutes of the plea or demurrer.
2. A copy of the minutes of the trial.
3. The charges given or refused, and the indorsements, if any, thereon; and
4. A copy of the judgment.

## CHAPTER II.

### THE EXECUTION.

Papers furnished to officer to justify execution.

SEC. 447. When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the min-

utes, must be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

SEC. 448. If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil action. Execution where judgment is for fine.

SEC. 449. If the judgment be imprisonment, or a fine and imprisonment, until such fine be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with. Execution where judgment is for imprisonment.

SEC. 450. When the judgment is imprisonment in a county jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county or subdivision. In all other cases when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment. Who to execute judgment in certain cases

SEC. 451. If the judgment is for imprisonment in the territorial prison the sheriff of the county or subdivision must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden, superintendent or keeper of the territorial prison. He must also deliver to the warden or other proper officer a certified copy of the judgment, and take from the warden or other proper officer a receipt for the defendant; and make return thereof to the court. Where judgment is imprisonment in territorial prison.

SEC. 452. The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this territory, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county; and every person who refuses, or neglects to assist the sheriff, when so required, is punishable as if the sheriff were in his own county. Authority of officer while conveying prisoner.

SEC. 453. When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county, a warrant duly attested by the clerk under the seal of the court stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than thirty, nor more than sixty days from the time of the judgment. Proceedings on judgment of death.

SEC. 454. The judge of a court at which a conviction requiring judgment of death is had, must, immediately after Duty of judge in case of judgment of death.

the conviction transmit to the governor, by mail, or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Governor to require opinion of judges.

SEC. 455. The governor may thereupon require the opinion of the judges of the supreme court or any of them, upon the statement so furnished.

Governor only can relieve.

SEC. 456. No judge, court or officer, other than the governor, can relieve or suspend the execution of a judgment of death, except the sheriff in the cases provided in the next seven sections, unless a writ of error is allowed and taken.

After judgment of death, if defendant become insane.

SEC. 457. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected or to be selected forthwith by the county commissioners a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney.

Inquisition to try insanity of defendant.

SEC. 458. The district attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

Certificate of inquisition to be signed.

SEC. 459. A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerks of the court in which the conviction was had.

Duty of sheriff on the finding of the inquisition.

SEC. 460. If it is found by the inquisition, that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor, or from a majority of the judges of the supreme court, directing the execution of the judgment.

Same.

SEC. 461. If the inquisition find that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

When female is pregnant. Inquisition.

SEC. 462. When there is good reason to suppose that a female, against whom judgment of death is rendered, is pregnant, the sheriff of the county or subdivision, with the con-

currence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians of the territory to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney. The provisions of sections 460 and 461 apply to the proceedings upon the inquisition.

SEC. 463. If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment. If, however, it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor.

Duty of sheriff on finding of inquisition.

SEC. 464. When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

When governor to order execution.

SEC. 465. If, for any reason, a judgment of death has not been executed, and it remains in force, the court, in which the conviction was had, on the application of the district attorney, must order the defendant to be brought before it; or, if he is at large, a warrant for his apprehension may be issued.

Duty of court where judgment has not been executed.

SEC. 466. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the sheriff of the proper county execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Same.

SEC. 467. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

How death to be produced.

SEC. 468. A judgment of death must be executed within the walls or yard of a jail of the county in which the conviction was had, or some convenient private place in the county. If there is no such jail or prison in the county in which the conviction was had, or if it becomes unfit or unsafe for the confinement of prisoners, or is destroyed by fire or otherwise, and the jail of another county has been legally designated for the confinement of the prisoners of the county in which the conviction was had, the judgment must be executed in manner as above.

Judgment of death, where executed.

SEC. 469. The sheriff or deputy-sheriff of the county must be present at the execution, and must invite the presence (by at least three days notice) of the district attorney, together

Who to be present at execution.

with one physician and twelve reputable citizens, to be selected by him. He must also, at the request of the defendant, permit any minister or ministers of the gospel whom the defendant may name, and any of his relatives, or friends, not to exceed five, to attend the execution; and also such peace officers as the sheriff or under-sheriff may deem proper. But no persons other than those mentioned in this section can be present at the execution; nor can any person under age be allowed to witness the same.

Duty of sheriff  
on executing  
judgment of  
death.

SEC. 470. The sheriff or deputy-sheriff must prepare and sign, with their names of office, a certificate attached to the death warrant, setting forth the time, manner and place of the execution, and that the judgment was executed upon the defendant, according to the provisions of the last three sections, and attested by at least twelve persons, not relatives of the defendant, who witnessed the execution.

Sheriff to file  
certificate.

SEC. 471. The sheriff or deputy-sheriff must cause the certificate to be filed in the office of the clerk of the court.

## TITLE X.

### WRIT OF ERROR.

Chapter I. Writs of error, when allowed and how taken, and the effect thereof.

II. Dismissing the writ for irregularity.

III. Argument of the writ.

IV. Judgment in supreme court.

### CHAPTER I.

#### WRITS OF ERROR, WHEN ALLOWED AND HOW TAKEN, AND THE EFFECT THEREOF.

Writ of error. SEC. 472. Either party may sue out a writ of error to remove to the supreme court, and therein to re-examine and review the record and bills of exception in a criminal action, upon matters of law, decided in the district courts in manner as prescribed in this chapter.

SEC. 473. Writs of error shall be allowed in all cases from the final decisions of said district courts, to the supreme court, under such regulations as are herein or may be prescribed by law. The party seeking the writ must apply to the judge, or to a justice of the supreme court, by petition, verified by affidavit, setting forth clearly and succinctly the chief matters of error complained of.

Proceedings to obtain writ of error.

SEC. 474. The party suing out the writ is known as the plaintiff in error, and the adverse party as the defendant in error; but the title of the action is not changed in consequence of the writ.

Title of parties to writ of error.

SEC. 475. The writ may be sued out by the defendant:

When writ may be sued out by defendant.

1. From a final judgment of conviction;
2. From an order refusing a motion in arrest of judgment;
3. From an order refusing a motion for a new trial;
4. Upon bills of exception for any of the causes mentioned in section 412, of this code.

SEC. 476. The writ may be sued out by the people:

When by the people.

1. From a judgment for the defendant on a demurrer to the indictment;
2. From an order arresting the judgment;
3. From an order granting a new trial.

SEC. 477. The writ must be sued out within one year after the rendition of the judgment, and within sixty days after an order is made.

Limit of time in which writ may be taken.

SEC. 478. A writ sued out by the people, in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

Writ sued out by people not to affect defendant.

SEC. 479. A writ of error from the supreme court to remove and re-examine or review a judgment of conviction, stays the execution of the judgment in all capital cases, and in all other cases, upon filing with the clerk of the court in which the conviction was had, a certificate of the judges of such court, or of a justice of the supreme court, that in his opinion there is probable cause for the writ, but not otherwise.

Effect of writ of error on judgment.

SEC. 480. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment of the supreme court.

Duty of sheriff in certain cases

When execution of judgment is suspended.

SEC. 481. If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

Duty of clerk where writ is sued out.

SEC. 482. Upon the writ of error being sued out, the clerk of the court upon whom it is served, must, within ten days thereafter or within such reasonable time as may be allowed to him, transmit to the clerk of the supreme court the writ with his return thereon, to which shall be annexed and returned an authenticated copy of the record of this action as mentioned in section 448, and of all bills of exception, together with an assignment of errors and prayer for reversal.

The return to contain certificate of judge.

SEC. 483. The return must also embrace a certificate of the judge or of a justice of the supreme court that the record contains in itself all the bills of exception and a true copy of all the evidence bearing upon or necessarily relating to any bill of exception.

Party excepting to specify matters to which he excepts.

SEC. 484. The judges of the district courts shall not allow any bills of exception which shall contain the charge of the court at large to the jury, upon any general exception to the whole of such charge, but the party excepting, shall be required to state distinctly the several and particular matters of law in such charge to which he excepts; and such matters of law, and those only, shall be inserted in the bills of exception, and allowed by the court.

Adverse party to be notified.

SEC. 485. Immediately after the issuing of the writ, a citation to the adverse party to be and appear at the supreme court, to be issued by the clerk thereof, shall be served on him or his attorney, giving at least ten days notice thereof.

Concerning certiorari.

SEC. 486. No *certiorari* for diminution of the record shall be hereafter awarded in any action, unless a motion therefor shall be made in writing, and the facts on which the same is founded, shall, if not admitted by the other party, be verified by affidavit, and all motions for such *certiorari* shall be made at the first term of the entry of the action; otherwise, the same shall not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay.

## CHAPTER II.

## DISMISSING THE WRIT FOR IRREGULARITY.

SEC. 487. If the writ is irregular in any substantial particular, but not otherwise, the court may, on any day in term on motion of the defendant in error upon two days notice, with copies of the papers on which the motion was founded, order it to be dismissed. When court may dismiss.

SEC. 488. The court may also upon like motion dismiss the writ, if the return is not made as provided in sections 484 and 485, unless for good cause they enlarge the time for that purpose. Same.

## CHAPTER III.

## ARGUMENT OF THE WRIT.

SEC. 489. The writ of error may be brought to argument by either party on ten days notice, on any day, at a general or adjourned term of the supreme court; but it must be heard and determined at the first term after the record is filed, unless for good cause shown. How writ may be brought to argument.

SEC. 490. When the writ is called for argument, the plaintiff in error must furnish each member of the court with a copy of the record of the action, bills of exception, and of the assignment of errors. If he fails to do so, the writ must be dismissed unless for cause shown the court otherwise direct. What plaintiff in error to furnish.

SEC. 491. The judgment may be affirmed if the plaintiff in error fails to appear; but can be reversed only after argument, though the defendant in error fails to appear. Affirmation or reversion of judgment.

SEC. 492. Upon the argument of the writ, if the offense is punishable with death, three counsel on each side must be heard, if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side. Number of counsel that may argue case.

## CHAPTER IV.

## JUDGMENT IN SUPREME COURT.

SEC. 493. After hearing the writ, the court must give judgment without regard to technical errors or defects, or to ex- When court must give judgment.

ceptions which do not affect the substantial rights of the parties.

Power of  
supreme court.

SEC. 494. The supreme court may reverse, affirm, or modify the judgment or order of the district court, and may, if proper, order a new trial.

Duty of court  
if judgment is  
reversed.

SEC. 495. If a judgment against the defendant is reversed, without ordering a new trial, the supreme court must direct, if he is in custody, that he be discharged therefrom, or if on bail, that his bail be exonerated, or if money was deposited instead of bail, that it be refunded to the defendant.

When original  
judgment must  
be enforced.

SEC. 496. On a judgment of affirmance against the defendant, the original judgment must be enforced.

Disposition of  
judgment from  
supreme court.

SEC. 497. When the judgment of the supreme court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the district court.

When supreme  
court has no  
further juris-  
diction.

SEC. 498. After the certificate of the judgment has been remitted to the court below, the supreme court has no further jurisdiction of the writ, or of the proceedings thereon; and all orders which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted.

## TITLE XI.

### MISCELLANEOUS PROCEEDINGS.

#### Chapter I. Compelling the attendance of witnesses.

II. Inquiring into the insanity of the defendant before trial or after conviction.

III. Compromising misdemeanors by leave of the court.

IV. Proceedings against corporations.

V. Entitling affidavits.

VI. Errors and mistakes in pleadings or other proceedings.

VII. Disposal of property stolen or embezzled.

VIII. Reprieves, commutations and pardons.

IX. Coroners' inquests and duties of coroners.

X. Of search warrants.

- XI. Proceedings against fugitives from justice.
- XII. Dismissal of the action before or after indictment, for want of prosecution or otherwise.
- XIII. General provisions and definitions applicable to this case.

## CHAPTER I.

## COMPELLING THE ATTENDANCE OF WITNESSES.

*And be it further enacted by the Legislative Assembly of the Territory of Dakota :*

SEC. 499. That chapter II of article VIII of title XI, of "an act to establish a code of criminal procedure for Dakota Territory," approved January 12, 1869, said chapter being headed "Compelling the Attendance of Witnesses," is hereby revived and re-enacted.

## CHAPTER II.

## INQUIRING INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

SEC. 500. That chapter V of article VIII of title XI, of the aforesaid act, approved January 12, 1869, said chapter being headed "Inquiry into the Insanity of the Defendant before Trial or after Conviction," so far as the same is not in conflict with the provisions of this present act, is hereby revived and re-enacted.

## CHAPTER III.

## COMPROMISING MISDEMEANORS BY LEAVE OF THE COURT.

SEC. 501. That chapter VI of the aforesaid article, and title XI of said act of January 12, 1869, said chapter being headed "Compromising Certain Public Offenses by leave of the Court," so far as the same is not inconsistent with the provisions of this code, is hereby revived and re-enacted.

## CHAPTER IV.

## PROCEEDINGS AGAINST CORPORATIONS.

Proceedings  
against corpor-  
ations.

SEC. 502. That chapter VIII of article VIII of title XI, of the aforesaid act of January 12, 1869, said chapter being entitled "Proceedings Against Corporations," is hereby revived and re-enacted.

## CHAPTER V.

## ENTITLING AFFIDAVITS.

Entitling aff-  
davits unneces-  
sary.

SEC. 503. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon a writ of error; but if made without a title or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or writ of error, in which it is made.

## CHAPTER VI.

## ERRORS AND MISTAKES IN PLEADINGS OR OTHER PROCEEDINGS.

Informalities  
not fatal.

SEC. 504. Neither a departure from the form or mode prescribed in this code in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

## CHAPTER VII.

## DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

Disposal of  
stolen property

SEC. 505. That chapter XI of article VIII of title XI, of the aforesaid act of January 12, 1869, said chapter being entitled "Disposals of Property Stolen or Embezzled," is hereby revived and re-enacted.

## CHAPTER VIII.

## REPRIEVES, COMMUTATIONS AND PARDONS.

SEC. 506. That chapter XII, of the same, as aforesaid, article and title of the act of January 12, 1869, said chapter being entitled "Reprieves, commutations and pardons," so far as the said chapter is in accordance with the organic act, and consistent with the provisions of this code, is hereby revived and re-enacted.

Reprieves,  
commutations  
and pardons.

## CHAPTER IX.

## CORONERS' INQUESTS AND DUTIES OF CORONERS.

SEC. 507. That title I of part VI of the aforesaid act of January 12, 1869, entitled "Of coroners' inquests and the duties of coroners," with the exception of the last section thereof, to-wit: section 756, is hereby revived and re-enacted.

Coroner's in-  
quests.

## CHAPTER X.

## OF SEARCH WARRANTS.

SEC. 508. That title II of part VI of the aforesaid act of January 12, 1869, entitled "Of search warrants," is hereby revived and re-enacted.

Search war-  
rants.

## CHAPTER XI.

## PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

SEC. 509. The governor may offer a reward, not exceeding one thousand dollars, payable out of the territorial treasury, for the apprehension,

Governor may  
offer reward.

1. Of any convict who has escaped from the territorial prison; or,
2. Of any person who has committed, or is charged with the commission of, an offense punishable with death.

SEC. 510. That chapters I and II of title III of part VI of the aforesaid act of January 12, 1869, entitled "Of proceedings against fugitives from justice," are hereby revived and re-enacted.

Proceedings  
against fugi-  
tives from jus-  
tice.

## CHAPTER XLII

## DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

When prisoner to be discharged.

SEC. 511. When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Same.

SEC. 512. If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, is not brought to trial at the next term of court in which the indictment is triable after it is found, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

When court may order action continued.

SEC. 513. If the defendant is not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor is shown, the court may order the action to be continued from term to term, and in the mean time may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

When action is dismissed defendant discharged.

SEC. 514. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

When reasons for dismissal must be set forth in order.

SEC. 515. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action or indictment to be dismissed; but in that case the reasons of the dismissal must be set forth in the order which must be entered upon the minutes.

Nolle prosequi abolished.

SEC. 516. The entry of a *nolle prosequi* is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Order of dismissal not a bar.

SEC. 517. An order for the dismissal of the action, as provided in this chapter is not a bar to any other prosecution for the same offense.

CHAPTER XIII.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

SEC. 518. The rule of common law that penal statutes are to be strictly construed, has no application to this code. This code establishes the law of this territory respecting the subjects to which it relates; and its provisions, and all proceedings under it are to be liberally construed, with a view to promote its objects, and in furtherance of justice.

Certain common law rule does not apply to this code.

SEC. 519. No part of this code is retroactive unless expressly so declared.

This code not retroactive.

SEC. 520. Unless when otherwise provided, words used in this code in the present tense includes the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural and the plural the singular. And the word person includes a corporation, as well as a natural person.

Construction of words.

SEC. 521. The term writing includes printing.

Same.

SEC. 522. The term oath includes an affirmation.

Same.

SEC. 523. The term signature includes a mark when the person cannot write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient.

What the term signature includes.

SEC. 524. This code applies to criminal actions and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect.

To what this code applies.

SEC. 525. All modes of procedure in criminal actions heretofore enacted in this territory having relation to any matters herein provided for shall, upon the taking effect of this code, be entirely abrogated, and from thence abolished: *Provided, however,* That all proceedings of every kind or character whatsoever, commenced before the taking effect of this code, shall not by reason of anything in this code contained, be deemed to have abated: *Provided,* That this code shall not be construed as repealing the procedure in justices' courts in cases in which they have lawful original jurisdiction: *And*

Certain modes of procedure abolished.

Certain proceedings not abated.

Concerning justices courts

Concerning  
jurors.

*provided further*, That this code shall not be construed as repealing an act entitled "An act respecting grand and petit jurors of the district courts," approved December 24, 1867.

Procedure not  
provided for by  
this code to be  
according to  
common law.

SEC. 526. That from and after the taking effect of this act, the procedure, practice and pleadings in the district courts of this territory, in criminal actions or in matters of a criminal nature, not specifically provided for in this code, shall be in accordance with the procedure, practice and pleadings of the common law, and assimilated as near as may be with the procedure, practice and pleadings of the United States or federal side of said courts.

When to take  
effect.

SEC. 527. This act shall take effect at noon on the tenth day of March, A. D., one thousand eight hundred and seventy-five.

Approved, January 15, 1875.

## CHANGE OF NAMES.

### CHAPTER XXXVI.

#### DISTRICT COURTS AUTHORIZED TO CHANGE NAMES.

AN ACT to authorize district courts to change the names of persons, towns, villages and cities within this territory.

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

District courts  
may change  
names.

SECTION 1. That the district courts shall have authority to change the names of persons, towns, villages and cities within this territory.

Proceedings  
necessary to  
change the  
name of per-  
sons.

SEC. 2. That any person desiring to change his or her name may file a petition in the district court of the district in which such person may be a resident, setting forth:

1st. That the petitioner has been a *bona fide* citizen of such district for at least six months prior to the filing of the petition;

2d. The cause for which the change of petitioner's name is sought;

3d. The name asked for, and it shall be the duty of the judge of the district court at any term thereof after the filing of such petition, upon being duly satisfied by proof in open court, of the truth of the allegations set forth in the petition, and that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days previous notice of the intended application had been duly given in some newspaper printed in such district therein, to order and direct a change of name of such petitioner, and that an order for the purpose be made in the journals of such court.

SEC. 3. That whenever it may be desirable to change the name of any town, village or city in any county of the territory, a petition for that purpose may in like manner be filed in the district court of such district, signed by a majority of the legal voters of such town, village or city, setting forth the cause why such change is desirable, and the name prayed for to be substituted, and the court upon being satisfied by proof that the prayer of the petitioners is reasonable and just, and that notices as required in the foregoing section had been given, and that two-thirds of the legal voters of such town, village or city desire the said change, and that there is no other town, village or city in the territory of the name prayed for, may order the change as required in such section.

Changing names of towns villages, etc.

SEC. 4. All proceedings under this act shall be at the cost of the petitioner or petitioners for which fee, bill or execution may issue as in 'civil cases: *Provided, always,* That any change of names under the provisions of this act shall not in any manner affect or alter any right of action, legal process or property.

Petitioner to pay costs.

Right of action not affected.

SEC. 5. This act shall take effect from and after its passage.  
Approved, January 14, 1875.

When to take effect.

## CONVEYANCE OF HOMESTEADS.

### CHAPTER XXXVII.

#### CONVEYANCE OF HOMESTEADS NOT VALID UNLESS WIFE JOINS.

AN ACT making the conveyance of homesteads not valid unless the wife joins in said conveyance.

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

Exemption of homestead.

SECTION 1. The homestead of every family resident in this territory as hereinafter defined whether such homestead be owned by the husband or wife so long as it continues to possess the character of a homestead shall be exempt from judicial sale, from judgment lien and from all mesne or final process issued from any court.

What shall be deemed a family.

SEC. 2. A widow or widower though without children shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

Husband and wife must sign conveyance.

SEC. 3. A conveyance or incumbrance by the owner of such homestead shall be of no validity unless the husband and wife, if the owner is married and both husband and wife are residents of the territory, concur in and sign the same joint instrument.

For what the homestead shall be liable.

SEC. 4. The homestead shall be liable for taxes accruing thereon, and if certified and recorded as hereinafter directed shall be liable only for such taxes and shall be subject to mechanics' lien for work, labor or material done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same.

When it may be sold.

SEC. 5. The homestead may be sold for any debt created for the purchase thereof.

What homestead to embrace.

SEC. 6. The homestead must embrace the house used as a home by the owner thereof, and if he or she has two or more

houses thus used at different times and places, such owner may select which he or she will retain as a homestead.

SEC. 7. It may contain one or more lots or tracts of land with the buildings thereon and other appurtenances subject to the limitations contained in the next section, but must in no case embrace different lots and tracts unless they are contiguous or unless they are habitually and in good faith used as part of the same homestead. Same.

SEC. 8. If within a town plat it must not exceed one acre in extent, and if not within a town plat it must not embrace in the aggregate more than eighty acres. In town and out of town.

SEC. 9. It must not embrace more than one dwelling house or any other buildings except such as are properly appurtenant to the homestead as such, but a shop, store or other building situated thereon and really used or occupied by the owner in the prosecution of his own ordinary business may be deemed appurtenant to such homestead. What it may embrace.

SEC. 10. The owner, or the husband or wife may select the homestead, and cause it to be marked out, and platted and recorded as provided in the next section. A failure in this respect shall not leave the homestead liable, but the officer having the execution against the property of such a defendant may cause the homestead to be marked off, platted and recorded, and may add the expense thence arising to the amount embraced in his execution. Homestead to be platted.

SEC. 11. The homestead shall be marked off by fixed and visible monuments unless the same shall embrace the whole of a subdivision or lot, and in giving the description thereof when marked off as aforesaid the direction and distance of the starting point from some corner of the dwelling house shall be stated. The description of the homestead, certified and acknowledged by the owner, shall be recorded by the register of deeds of the proper county in a book to be called the "Homestead Book," which shall be provided with a proper index. Manner of marking off and describing homestead.

SEC. 12. The owner may from time to time change the limits of the homestead by changing the metes and bounds as well as the record of the description or may change it entirely; but such changes shall not prejudice conveyances or liens made or created previously thereto; and no such change of the entire homestead made without the concurrence of the Changing limits of homestead.

husband or wife, shall affect his or her right or those of the children.

Exemption of  
new home-  
stead.

SEC. 13. The new homestead, shall in all cases be exempt to the same extent and in the same manner as the old or former homestead was exempt.

When dis-  
trict court to  
determine  
question.

SEC. 14. When a disagreement takes place between the owner or any person adversely interested as to whether any land or buildings are properly a part of the homestead it shall be competent for the district court in any proper case to determine such question and all questions relating thereto.

In case of  
death of either  
husband or  
wife.

SEC. 15. Upon the death of either husband or wife the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law; and upon the death of both husband and wife, the children may continue to possess and occupy the whole homestead until the youngest child becomes of age.

Descent of  
homestead.

SEC. 16. Such homestead shall descend according to the rules of descent, unless otherwise directed by will, and shall be held exempt from any antecedent debt of the parent, and if it descends to the issue of either husband or wife it shall be held by such issue exempt from debts of their own, except as in the next section provided.

When home-  
stead liable for  
any debts.

SEC. 17. And if there be no husband or wife surviving, and no issue, the homestead shall be liable to be sold for the payment of any debts to which it might at that time be subjected, as if it had never been held as a homestead.

Homestead  
may be devised

SEC. 18. Subject to the rights of the surviving husband or wife as declared by law, the homestead may be devised like other real estate of the testator.

Family de-  
fined.

SEC. 19. Every family, whether consisting of one or more persons, in actual occupancy of a homestead as defined in this act, shall be deemed and held to be a family within the meaning of this act.

Conflicting  
acts repealed.

SEC. 20. Chapter thirty-seven of the laws of 1862, approved May 12, 1862, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

When to take  
effect.

SEC. 21. This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

## DITCHES AND DRAINS.

### CHAPTER XXXVIII.

#### FOR LOCATING AND CONSTRUCTING DITCHES, DRAINS AND WATER COURSES.

AN ACT to provide for locating and constructing ditches, drains and water courses in Union and Clay counties, Dakota Territory.

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

SECTION 1. That the county commissioners of Union and Clay counties, shall have power, at any regular session, whenever in their opinion the same is demanded by, or will be conducive to the public health, convenience or welfare, to cause to be established, located and constructed, as hereinafter provided, any ditch, drain or water course within such county. Commissioners have power to cause ditches to be constructed.

SEC. 2. That before the county commissioners of any county shall take any steps towards locating or establishing any ditch, drain or water course, there shall be filed with the county commissioners of such county, a petition from one or more persons owning lands adjacent to the line of the proposed ditch, drain or water course, setting forth the necessity of the same, with a description of its proposed starting point, route and terminus, together with the names of the owners and occupants or agents of the lands through which the same may pass. Certain petition to be filed with commissioners.

SEC. 3. That if they shall be satisfied that notice of such application has been given, by publication three weeks successively in a newspaper published in the county, or by post- When commissioners may locate and establish the ditch.

ing up notices in three of the most public places in the neighborhood of such proposed ditch, drain or water course, at least twenty days before the meeting of the board, at which such petition is presented, shall, at their next regular meeting, if no remonstrance has been presented to the location of said proposed ditch, drain or water course, locate and establish the same.

Persons damaged to make application.

SEC. 4. That if any person or persons claiming compensation for lands appropriated for the purpose of constructing any ditch, drain or water course, under the provisions of this act, shall make his, her or their application in writing therefor to the county commissioners, on or before the third day of the session at which the petition has been set for hearing, and on failure to make such application, shall be deemed and held to have waived his, her or their right to such compensation.

When viewers must be appointed.

SEC. 5. That if any person or persons may at any time previous to the third day of the session at which the petition has been set for hearing, set forth such grievance by way of remonstrance, the said board shall thereupon appoint three discreet and disinterested freeholders, as viewers, and appoint a day and place for them to meet.

Duties of viewers.

SEC. 6. That such viewers, having five days notice, to be given by the person or persons remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and proceed to view the proposed ditch, drain or water course, assess the damages, if any, which such objector or objectors may sustain from such ditch, drain or water course being opened, and shall report the same at the ensuing session of such board.

When damages to be paid by the county.

SEC. 7. That if a majority of the viewers assess and report compensation in favor of the objector or objectors, and the board shall consider the proposed ditch, drain or water course, to be conducive to the public health, convenience or welfare, they shall order the costs and compensation to be paid out of the county treasury: *Provided*, That in arriving at such determination and award, the benefits to accrue to such owner or occupant by reason of such ditch, drain or water course, are to be considered in making such award; but if a majority report against a claim for compensation, the objector or objectors shall pay the costs; and when payment of compensa-

tion is made as herein provided, such ditch, drain or water course shall be established and recorded.

SEC. 8. That said county commissioners, whenever they shall have established any such ditch, drain or water course, shall divide the same into suitable sections, not less in number than the number of owners of land through which the same may be located, and shall also prescribe the time within which the work on such sections shall be completed.

Duty of commissioners in locating ditch.

SEC. 9. That the county commissioners shall cause notice to be given of the time and place of letting, and of the kind and amount of work to be done on said sections, and the time fixed by them for its completion, by publishing for thirty days in some newspaper printed, or of general circulation in said county, and shall let the work upon said sections respectively, to the lowest bidder therefor; and the person or persons taking such work at such letting, shall, on the completion thereof, to the satisfaction of the county commissioners, be paid for such work out of the county treasury, upon the order of the county commissioners: *Provided*, That if any person or persons to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be re-let by the county commissioners, in the manner hereinbefore provided.

Commissioners to give notice of letting of contracts.

SEC. 10. That the viewers shall be allowed such fees for services under this act, as the county commissioners shall in each case deem reasonable and allow; and all other fees and costs accruing under this act shall be the same as provided by law for like services in other cases, and all costs, expenses, cost of construction, fees and compensation for property, determined under this act, shall be paid out of the county treasury, out of the general fund, on the order of the county commissioners: *Provided*, That no part of the same except the compensation for property appropriated, shall be paid out of the county treasury, till the sum shall have been levied and collected as provided in the next section of this act.

Certain costs and fees how paid.

SEC. 11. That the county commissioners shall make an equitable apportionment of the costs, expenses, costs of construction, fees and compensation for property appropriated which shall accrue and be assessed, and determined under this act, among the owners of the land benefited by the location

Costs to be assessed on property benefited.

and construction of such ditch, drain or water course, in proportion to the benefit to each of them through along the line, or in the vicinity of whose lands the same may be located and constructed respectively; and the same may be levied upon the lands of the owners to be benefited in said proportions, and collected in the same manner that other taxes are levied and collected for county purposes.

When to take effect.

SEC. 12. This act shall take effect and be in force from and after its passage and approval.

Approved, January 15, 1875.

## DIVISION OF COUNTIES.

### CHAPTER XXXIX.

#### TO PREVENT THE DIVISION OF ORGANIZED COUNTIES.

AN ACT preventing the division of organized counties in certain cases.

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

Counties how they may be divided.

SECTION 1. No organized county in the territory, with an area of eight hundred and fifty square miles or less, shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county shall vote for the same.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

# EDUCATION.

## CHAPTER XL.

### TO ESTABLISH A PUBLIC SCHOOL LAW.

AN ACT to establish a public school law for the Territory of Dakota.

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

SECTION 1. That there shall be elected at each regular delegate election in this territory a superintendent of public instruction who shall hold his office for two years and until his successor is elected and qualified. And if a vacancy shall occur in said office of superintendent by death, resignation or otherwise, it shall be the duty of the governor to appoint some suitable person to fill such vacancy.

Election of superintendent of public instruction.

SEC. 2. The superintendent of public instruction shall, before entering upon the discharge of the duties of his office, take and subscribe to an oath to support the constitution of the United States and the organic act of this Territory, and to faithfully discharge the duties of his office, which oath shall be filed with the clerk of the supreme court of the territory of Dakota.

Superintendent to take oath

SEC. 3. It shall be the duty of the superintendent of public instruction to keep a record of his official acts, and to exert himself constantly and faithfully to promote the interests of education in the territory. And to this end he shall visit schools, confer with county superintendents, and hold institutes in company with them, and furnish them blank forms for collecting statistics of the various schools in the territory. He shall prepare and present to the governor before the fifteenth day of December in each year, a report of his official acts for the preceding year with a full statement of the condition of the common schools in the territory, and the expendi-

Various duties of superintendent.

ture of the public school money, and shall make such suggestions for the improvement and support of common schools as he shall deem proper.

Powers of superintendent

SEC. 4. The superintendent of public instruction shall also have power to grant certificates of qualification to teachers of proper learning and ability to teach in any public school in the territory, and to regulate the grade of county certificates. The superintendent shall appoint a deputy whose term of office shall continue during the pleasure of the superintendent, and who shall be a resident of that portion of Dakota territory north of the 46th parallel of latitude, whose duties shall be the same as those prescribed for the superintendent, and shall be confined to the above described territory. The deputy superintendent shall confer with the superintendent from time to time and make a complete report of his official acts to the superintendent at such times as the superintendent may require.

Shall appoint a deputy.

Compensation of superintendent.

SEC. 5. The compensation of the superintendent of public instruction for his services shall be the sum of five dollars per day for each and every day employed by him in the performance of the duties of his office and the expense of procuring blanks, forms, postage, stationery, and such books as are necessary for the use of his office, and publication of his annual report. That the deputy superintendent of public instruction shall receive the same pay for such service as the superintendent is by law entitled to receive: *Provided, however.* That the superintendent of public instruction shall not be paid for more than one hundred and twenty days in any one year: *And provided further,* That the deputy superintendent of public instruction provided for in this act shall not be paid for more than forty days in any one year: *And provided further,* That all of which allowance shall be paid by the territorial treasurer on the certificate of the territorial auditor, and said auditor shall grant such certificate on the accounts of said officers sworn to by said officers.

Compensation of deputy superintendent.

Duties of superintendent with reference to school books

SEC. 6. The superintendent of public instruction shall discourage the use of sectarian books and sectarian instruction in the schools; to advise in the selection of books for the school district libraries and to open such correspondence abroad as may enable him to obtain, so far as practicable,

information relative to the system of common schools and their improvements in other states and countries. He shall examine and determine all appeals duly made to him from the decision of any county superintendent in forming or altering any school district or concerning any other matter under the common school law of this territory, and his decision shall be final. He shall prepare for the use of common school officers suitable forms for making reports and conducting all necessary proceedings, and he shall cause the laws relating to common schools with the rules, regulations and forms aforesaid, and such instructions as he shall deem necessary to be printed, together with a suitable index in pamphlet form at the expense of the territory. He shall prepare a sufficient number of his annual report to be distributed as follows: One copy to each member of the legislature; one copy to each county superintendent of schools; one copy to each district officer and to such other of the county and territorial officers as may be by him deemed proper, not to exceed fifteen hundred copies in one year. The text books to be used in the public schools shall be as follows: McGuffey's Readers and Spellers, Quackenbos' Arithmetics, Cornell's Geographies, Harvey's Grammar, Quackenbos' United States History; and it shall not be lawful to use other text books in these studies except by permission of the territorial superintendent upon request of the county superintendent, showing sufficient reasons therefor.

SEC. 7. The territorial superintendent of public instruction with the several county superintendents shall hold annually, at some convenient place, a territorial teachers institute for the instruction and advancement of teachers; said institute not to continue less than four days and not to exceed ten days; which institute shall be free to all teachers and those preparing to teach in this territory.

Superintendent shall hold territorial institute.

SEC. 8. The several counties of this territory shall at the same time and in the same manner as other county officers are elected, elect a suitable person to be superintendent of public schools within such county, who shall hold his office for two years from the first of January next succeeding his election, unless he shall be elected to fill a vacancy, in which case he may immediately qualify into office and shall hold his office until his successor is elected and qualified, and who

County superintendent to be elected.

shall receive three dollars for each day spent in the discharge of his official duties and a reasonable compensation for his annual report to the superintendent of public instruction, and every superintendent of schools shall make out in detail his account for official service, 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 a justice of the peace in the county in which he resides; woich oath or affirmation shall be certified by said justice before such superintendent's account shall be presented to the county commissioners 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 county fund the same as other county officers, upon the order of the county commissioners, who may allow reasonable expenses of the superintendent: *Provided, however,* That no order shall be drawn to any superintendent until he shall have filed with the county clerk, the receipt of the superintendent of public instruction for the statistical returns of the preceding school year, in pursuance of the requirements of section twenty of this act.

**SEC. 9.** The county superintendent of public schools 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 county clerk's office. 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 the penal sum of five hundred dollars; said bond must be approved by the county commissioners, and filed in the register of deeds office.

**SEC. 10.** That it shall be the duty of the county superintendent of schools in addition to other duties required of him, to divide his county into school districts, and subdivide the same when petitioned by a majority of the citizens thereof wishing to be set off in a new district, and to furnish the county commissioners of such county with a written description of the boundaries of each district, which description must be filed in the register of deeds office before such district shall be entitled to proceed with its organization by the election of

school district officers, and it shall be his duty to keep on file in his office all petitions and remonstrances, which shall show the date of reception and the action had thereon; and it shall be his further duty on the division of, or change of district boundaries, to notify the clerk of the districts interested of the change made. Whenever it shall be deemed necessary to form a district from parts of two more counties, it shall be the duty of the county superintendent of each county in which any part of the proposed joint district shall be situated to unite in laying out such joint district; and each county superintendent assisting, shall file a description of said joint district in the register of deeds office in his county.

When district is to be formed from parts of two districts.

SEC. 11. It shall be the duty of the county treasurer, on the first Monday in March and October in each year, to furnish the county superintendent of public schools with a statement of the amount of money in the county treasury, belonging to the school fund, and he shall pay the same upon the order of said superintendent, to the district treasurers.

County treasurer to furnish statement of school moneys.

SEC. 12. It shall be the duty of the county superintendent of public schools on the second Monday of March and October in each year, or as soon thereafter as he shall receive the statement of the county treasurer provided for in section 11, to apportion such amount to the several districts or parts of districts within the county, in proportion to the number of children residing in each, over the age of five and under twenty-one years of age, as the same shall appear from the last annual reports of the clerks of the respective districts, and shall immediately notify, by mail or otherwise, the district treasurer of each district, the amount of money due to his district, and he shall draw his order on the county treasurer in favor of the several district treasurers for the amount apportioned for each district: *Provided*, No district shall be entitled to receive any portion of the common school fund which shall not have held a school meeting at the time appointed by law for holding annual school meetings in this territory or within thirty days thereafter, and made out and forwarded to the county superintendent of public instruction, their annual report within (40) forty days of the time fixed by law for holding annual school meetings in this territory, and which shall not have had three months school during the previous year, (except new districts which shall receive one years' apportionment with-

County superintendent to apportion school moneys.

Certain districts not entitled to school moneys.

out complying with this provision) and complied with the requirements of the law relating to text books.

Superintendent to visit schools.

SEC. 13. It shall be the duty of the superintendent to visit such common schools within their respective counties as shall be organized, according to law, at least once in each year, or oftener if they shall deem it necessary. At such visitation, the superintendent shall examine into the state and condition of such schools as respects the progress in learning and the order and government of schools; and they may give advice to the teacher of such schools as to the government thereof, and the 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 schools in learning. Every superintendent of public schools shall also make out his account for official services in the manner hereinbefore required, and deliver a copy of the same to the county commissioners of the county in which such superintendent was elected or appointed on or before the first day of the annual session in January in each year, and the same shall be filed in the office of the register of deeds.

May give advice to teacher.

Account for official services

Respecting reports of district clerks. Appeals.

SEC. 14. He shall see that the several reports of the clerks of the several school districts are made correctly and in due time, and shall hear and determine all appeals from the decision of district boards.

County superintendent to hold public examination of teachers.

SEC. 15. He shall hold public examination of all persons offering themselves as teachers of common schools at the county seat of his county, on the last Saturdays of April and October of each year, notice of which shall be given publicly as possible, at which time he shall grant certificates for not less than three months, or more than one year to such persons as he shall find qualified as to moral character, learning and ability, and any person receiving such certificate shall be deemed a qualified teacher within the meaning of this act. Persons applying to the county superintendent for a certificate at any other time than at the public examination, shall pay to the said superintendent the sum of one dollar for his services.

Shall issue certificates.

Fee for granting certificates

County superintendent to prepare notice of district meeting when new district is formed.

SEC. 16. Whenever a school district shall be formed in any county, the county superintendent of schools 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; and when a joint district is formed from portions of two or more counties, the county superintendents of each county from which any portion of the new district is taken, shall unite in giving the customary notices, and the new district shall be numbered by the superintendent of the county having the highest number of districts. A majority of the voters in any school district being dissatisfied with the formation of their district or the action of the county superintendent, shall have the right of appeal from his decision to the territorial superintendent, if an appeal be taken within sixty days.

When joint district is formed.

Right of majority to appeal.

SEC. 17. The county superintendent of public schools shall perform all other duties of said office that now are or may hereafter 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 appertaining to his office.

County superintendent's duties.

Shall deliver records to his successor.

SEC. 18. If a vacancy occur in the office of county superintendent of public schools by death, resignation or otherwise, notice thereof shall be given by the register of deeds to the 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 county clerks' office, as hereinbefore provided, and shall discharge all the duties of the office of county superintendent of public schools until a successor is elected and qualified. He shall give a like bond to that required by this act to be given by the county superintendent of schools.

When county commissioners to appoint superintendent.

Oath and bond.

SEC. 19. The county superintendent shall make full and complete annual returns to the superintendent of public instruction, between the first and tenth days of November of each year, of the number of children between the ages of five and twenty-one in the school district 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 kind of text books used, and the amounts expended; the amounts raised in each county and district by taxation or otherwise for educational interests, and any other

Character of report of superintendent of county to territorial superintendent.

items that may be of service to the superintendent of public instruction in preparing his annual report. The district clerk shall report to the county superintendent the names of the school district officers, with their post office address.

District clerk  
to make report

#### SCHOOL DISTRICT MEETINGS.

Power of  
qualified vot-  
ers at district  
meetings.

SEC. 20. The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

Appoint a  
chairman.

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

To adjourn.

2d. To adjourn from time to time;

To choose of-  
ficers---powers  
thereof.

3d. 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;

School house  
site.

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

To vote taxes

5th. To vote a tax annually not exceeding one per cent. on the taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site, and to build, hire or purchase a school house, and to keep the same in repair;

Same.

6th. To vote a district tax annually, not exceeding one per cent. on the taxable property of the district for pay of teachers' wages in the district, and necessary fuel and other school expenses;

To sell school  
property.

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

To vote tax---  
proviso.

8th. To vote such a tax as may be necessary to furnish the school house with blackboards, outline maps, stoves, furniture and apparatus necessary for illustrating the principles of science, or to discharge any debts or liabilities of the district, lawfully incurred: *Provided*, That said tax shall not exceed one per cent. in any year, and may be applied to any other purpose by a vote of the district at any regularly called meeting.

Concerning  
suits.

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

To repeal  
proceedings.

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

11th. To vote a tax not exceeding twenty-five dollars (25.00) in any one year, to procure a district library, consisting of such books as they may direct any person to procure.

District library tax.

SEC. 21. The following persons shall be entitled to vote at any district meeting: All persons possessing the qualifications of electors as defined by the laws of the territory, and who shall be actual residents of the district at the time of offering to vote at such election.

What persons may vote.

SEC. 22. If any person offering to vote at a school district meeting 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:

Proceedings and oath where person offering vote is challenged.

“ 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.

ORGANIZATION OF DISTRICTS.

SEC. 23. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected and qualified. 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 to the school district fund.

When district deemed organized.

Penalty for refusing to serve as school officer.

SEC. 24. The officers of each school district shall be director, clerk and treasurer, one of whom shall be elected at each annual school meeting, to serve for three years, and until his successor is elected and qualified: *Provided*, That at the next annual school meeting after the passage of this act, and at meetings called, to organize new districts, the director shall be elected to serve for one year, the clerk for two years, and the treasurer for three years.

What officers to be elected, and terms of office. *Proviso*

SEC. 25. Every school district organized in pursuance of this act shall be a body corporate, and shall possess the usual powers of corporation for public purposes, by the name

School district to be body corporate

and style of school district No. . . . ., [such number as may be designated by the county superintendent] . . . . . 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 capable of contracting and being contracted with, and hold such real and personal estate as it may come in possession of by will or otherwise, or is authorized to be purchased by the provisions of this act.

Time for annual school meeting.

SEC. 26. An annual school meeting for each district shall be held at the school house or at the place usually occupied for school purposes, or at some central place in the district, on the first Saturday in September, at such hour as the district board may direct. Annual school meetings shall be called by the district clerk ten days previous to the time of such meeting, who shall post three notices of the time and place of holding such meeting. But if the district clerk shall neglect or refuse to notify the annual school meeting, a special meeting may be called as provided in section 27, at which time it shall be lawful to elect school district officers and transact any other business usually done at the annual school meetings. Special school meetings may be held at any time by giving notice for ten days of the time and place of said meeting, and the business to be acted upon at said meeting. No school district meeting shall be legal unless written or printed notice of said meeting shall be posted for ten days previous to said meeting.

Notices to be posted.

When special meeting called.

When not legal.

Proceedings when no annual meeting is held as provided.

SEC. 27. Whenever the time for holding the annual meeting in any district shall pass without such meeting being held, the clerk, or in his absence, any 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 ten days previous to the time of meeting. But if said meeting shall not be notified within thirty days 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 respective offices until the next annual meeting, and until their successors are elected and qualified.

Powers of qualified voters at district meeting.

SEC. 28. 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 ensuing year, 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 school, or a certain portion to each; but if such matters shall not be determined at the annual or special meeting, it shall be the duty of the district board to determine the same.

SEC. 29. The director of each district shall preside at the district meetings, and shall sign orders drawn by the clerk, authorized by the 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 the director.

DISTRICT CLERK.

SEC. 30. 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.

Duties of the clerk.

SEC. 31. The said clerk shall be clerk of all district meetings; but if such clerk shall not be present at such district meeting, the voters present may appoint a clerk for such meeting, who shall certify the proceedings thereof and the same shall be recorded by the clerk of the district.

When clerk may be appointed pro-tem.

SEC. 32. 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 adjourned for a longer period than one month. Every notice for a special district meeting shall specify the object for which such meeting is called.

Clerk to post notices calling meetings.

SEC. 33. The clerk of the district shall draw orders on the treasurer of the district for monies in the hands of such treasurer which have been appropriated to, or raised by the district to be applied to the payment of teacher's wages and ap-

Clerk to draw orders for money on county treasurer.

ply such money to the payment of teacher's wages, as shall have been employed by the board, and the 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 a district board agreeable to the provisions of this act.

District clerk to notify county clerk of amount of tax voted.

SEC. 34. It shall be the duty of the district clerk on or before the first day of November in each year to notify the county clerk of the amount of tax, if any, voted at the last annual meeting, which notice shall be substantially in the following form:

Form of notice.

District clerk's office, school district No. \_\_\_\_\_ of \_\_\_\_\_ county, Dakota Territory.

(date) \_\_\_\_\_ 187—

To the county clerk of \_\_\_\_\_ county, Dakota Territory:

I hereby notify you that at a district meeting of district No. \_\_\_\_\_, held on the \_\_\_\_\_ day of \_\_\_\_\_ 187—, at \_\_\_\_\_ the district voted the following tax:

For school-house fund, .....	_____	mills.
“ teachers “ .....	_____	“
“ contingent “ .....	_____	“
	_____	
Total, .....	_____	“

on the dollar of valuation of real and personal property for school purposes for the coming year, and you are hereby ordered to enter such tax on the county tax list for collection on the property in this district.

Report of district clerk to county superintendent.

SEC. 35. 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 schools for each county in which part of his district may lie; showing,

Number and age of school children.

1st. The number of children, male and female, designating each 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 twenty-one years.

Number and sex attending school.

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

Time school has been taught.

3rd. 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, and the wages paid.

4th. The amount of money raised by the district, and the purpose for which it was levied, also the amount received from the apportionment of county fund, and the manner in which the same has been applied. Money raised and how applied.

5th. The amount of taxes levied, and now in the hands of the county treasurer for collection; also the amount of outstanding or unpaid orders on each fund, if any. Amount tax levied, collected, etc.

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

7th. The names of school district officers and the time their term of office expires. Names of officers.

SEC. 36. It shall be his duty to keep a correct copy of all reports made, and turn them over to his successor; also of all orders drawn on the treasurer, and record the treasurer's reports in his records of proceedings. Clerk to keep copy of reports and record them.

DISTRICT TREASURER.

SEC. 37. 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, in any one year, with sufficient securities, to be approved by the director and clerk, (who may at any time require new or additional bond, and shall require new bonds whenever the amount of money to come into his hands shall be equal to the amount of bond, or upon the failure, death, or removal from the county of any bondsman, or other sufficient reason) conditioned upon 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 and the necessary expenses thereof in any case arising under this section, unless otherwise ordered by the court, shall be paid out of the contingent fund. Bond of treasurer. With whom filed. Proceedings where treasurer fails to give bond.

SEC. 38. If the treasurer shall fail to give bonds as required in this act, or from sickness or from any other cause shall be unable to attend to the duties of said office, the clerk shall Proceedings in case of breach of bond.

call a special district meeting for the purpose of electing a new treasurer for the unexpired term of the treasurer's office. And if the clerk fails to call a district meeting within thirty days after the office is vacant any legal voter of the district may call a meeting.

County treasurer to pay over school fund—when.

SEC. 39. The treasurer of each district shall apply for, and the county treasurer shall pay over to the district treasurers all of the school monies collected for his district upon the order of the director and clerk of the district, on hand the first Monday in October, January, April and July of each year; and of the county school fund upon the order of the county superintendent; and the district treasurer shall pay over, on the order of the clerk, signed by the director of such district, out of the moneys in his hands belonging to the funds drawn upon.

When district treasurer refuses to pay over moneys.

SEC. 40. 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.

In case of loss of school money.

SEC. 41. If by neglect of any treasurer, any school money shall be lost to any school district which has been received from the county treasurer, said treasurer shall forfeit to such district the full amount of money so lost.

Statement of district treasurer, what to contain.

SEC. 42. The treasurer shall present to the district at each annual meeting, a report in writing containing a statement of all moneys received by him from the county treasurer during the year, from assessments in the district and apportionment, and the disbursements made, and exhibit the vouchers therefor, which report shall be recorded by the clerk; and if it shall appear at the expiration of his term of office that any balance of money is in his hands at the time of making such report he shall immediately pay such balance to his successor.

#### DISTRICT BOARD.

District board to buy or sell school house, and perform other duties.

SEC. 43. The district board shall purchase or lease such 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.

SEC. 44. 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 regulations relating to the district library as they may deem proper and to appoint some suitable person as librarian and to take charge of the school apparatus belonging to the district.

District board to have care of school property and appoint a librarian.

SEC. 45. The district board shall have power to admit scholars from adjoining districts and remove scholars for disorderly conduct, and when scholars are admitted from other districts, the district board may, in their discretion, require a tuition fee from such scholars; or they shall have power to send scholars from their district to any other school within a reasonable distance, and pay a tuition fee therefor, or they may send only advanced scholars to a graded or high school outside of the district, paying tuition fee therefor; and in the collection of taxes and distribution of school money, have the same effect and be the same as though there was a school and teacher kept in the district for as many months as scholars attend other schools, and the tuition shall be paid out of the teachers fund.

Admittance of scholars from other districts; fees, how paid.

SEC. 46. The district board 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.

District board shall hire teachers.

SEC. 47. The district board shall provide the necessary appendages for the school house during the time school is taught therein; and the bills for the same shall be presented and allowed (if reasonable,) at any regular district meeting.

Shall provide all necessary appendages of school house.

SEC. 48. The district schools established under the provisions of this act shall be at all times equally free and accessible to all children under the age of twenty-one years and over five years of age, residents of the district, subject to such regulations as the district board in each may prescribe.

Schools to be equally free to all children.

SEC. 49. In every school district there shall be taught orthography, reading, writing, English grammar, geography

Branches to be taught.

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.

Special school meeting to elect in case of vacancy.

SEC. 50. If a vacancy should occur in the district board in any district, the remaining member or members of the board shall call a special district meeting to elect a new member of the board for the unexpired term to fill vacancy.

#### REVENUE.

Duty of county clerk to levy poll and other tax.

SEC. 51. It shall be the duty of the county clerk 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, and a further tax of two mills on the dollar upon the taxable property of the county, to be applied to the same purpose, to be collected at the same time and in the same manner as prescribed by law for the collection of taxes, which taxes, when collected, shall be distributed to the several school districts in proportion to the number of children over five and under twenty-one years of age therein, and shall be drawn from the county treasury upon the order of the superintendent of schools of the county.

How collected.

How distributed.

Certain duties of county clerk in relation to taxes for district schools.

SEC. 52. It shall be the duty of the county clerk, and it is hereby made his duty to make out and charge up to each description of real estate and on all personal property in his county the district school taxes as he is notified has been voted by the district in which it is situated, in the same manner as the county and territorial tax list is prepared, and deliver it to the county treasurer at the same time.

County treasurer to collect school taxes.

SEC. 53. And it shall be the duty of the county treasurer, and it is hereby made his duty to collect the taxes for school purposes at the same time and in the same manner as the county and territorial tax is collected, and full power is hereby given him to sell the property, or any property for school taxes, the same as is now by law provided for other taxes; and he shall execute a tax deed on tax sales made for school district taxes, the same as is provided in the case of other taxes, and receive the same fees as is provided in the case of other taxes.

May distrain and sell.

Certain moneys to be collected by county treasurer.

SEC. 54. 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 treasurers as prescribed by this act. He shall collect all delinquent school taxes, as by law provided for other taxes, and he shall pay the same over to the treasurer of the district entitled thereto, less his fees and cost of collecting; and if any county treasurer shall refuse to deliver over to the order of the superintendent any money in his possession, or shall use, or permit to be used, for any other purposes than are specified in this act, any school money in his possession, he shall, on conviction thereof be adjudged guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

Penalty for using school moneys unlawfully.

SEC. 55. Whenever an 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.

Money improperly collected to be refunded.

SEC. 56. 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*, That the clerk of the board of education in such city or village shall make due report within the time and manner prescribed in this act to the superintendent of schools.

School of cities etc., regulated by special law.

MISCELLANEOUS.

SEC. 57. 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 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 said branches. And teachers 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.

Teachers to make report at end of term.

What report to contain.

SEC. 58. Every clerk of a district board 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.

Penalty where clerk signs false report.

SEC. 59. Every school district clerk or treasurer who shall neglect or refuse to deliver to their successors in office all rec-

Penalty where officers refuse to deliver books etc. to successor.

ords and books belonging severally to their offices shall be subject to a fine not exceeding five dollars.

Taxes to be levied to pay judgment.

SEC. 60. Whenever 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 against any school district.

Jurisdiction of justices of the peace in school matters.

SEC. 61. 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 two hundred dollars, and the parties shall have the right to appeals as in other cases.

Concerning compensation of school district officers.

SEC. 62. No school district officer mentioned in this act shall receive any compensation for his services out of the territorial or county school fund, but a regularly convened district meeting may by vote allow the district board such compensation as they shall deem proper.

Penalty for refusing to serve as school officer.

SEC. 63. 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 without substantial cause 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 his district by whom such action was prosecuted.

Courts to collect certain fines.

SEC. 64. All fines and penalties not otherwise provided for in this act shall be collected by action in any court of competent jurisdiction.

Disposition of money donated to schools.

SEC. 65. Whenever any sum of money shall be paid into the county *treasurer* [treasury] by any educational aid society or benevolent person or persons for the cause of education, the county treasurer shall issue to such society or person a certificate of deposit stating the amount of money received, from what source and for what source, and for what purpose the same is applied, whether to the payment of teachers wages, the building or leasing of school houses, or the purchase of a site of land, and the particular school district or districts to which the said money is donated; and the said educational fund may thereafter be drawn from the county treasurer by order of the county superintendent of schools

and applied by the district board of the proper district to the object specified in the certificate of donation. And the county superintendent of public schools shall make a statement of the expenditure of said fund in his annual report.

County superintendent to make statement.

SEC. 66. The territorial superintendent of public instruction in connection with the county superintendent of each county shall annually hold a session of the teachers institute, of not more than ten days in length, and the sum of one hundred dollars is hereby appropriated from any funds in the territorial treasury for the purpose of employing experienced teachers to assist in conducting the same and defraying other expenses; the several county superintendents are hereby required to aid in conducting the said institute, and it may be required by county superintendents, of teachers applying for certificates to teach, that they shall if consistent with their other duties attend the sessions of the teachers institutes.

Teachers' institutes.

Appropriation.

Certain parties required to attend institute.

FORMS.

SEC. 67. The form of notice of the first district school meeting may be substantially as follows:

Form of notice of first district meeting.

.....  
To ..... a house holder in school district number .....

The county superintendent has 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 said district, notifying the voters of said district to attend the first meeting thereof which is appointed to be held at the house of ..... in said district on the ..... day of ..... 18.. at ..... o'clock....

.....  
County Superintendent of Public Instruction.

This ..... day of ..... 18..

SEC. 68. The form of notice for annual district meeting may be as follows:

Form of notice of 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 ..... day of ..... 18.. at ..... o'clock .... this ..... day of ..... 18..

.....  
District Clerk.

Form of order on the district treasurer.

SEC. 69. The form of order on the district treasurer may be as follows:

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

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

..... District Clerk.

..... Director.

Dated at ..... D. T., this ..... day of ..... 18..

Form of bond of district treasurer.

SEC. 70. The form of bond of district treasurer may read as follows:

Know all men by these presents, that we, ..... treasurer of school district number ..... county ..... and ..... his surety, are held and firmly bound unto school district No. .... in the sum of ..... dollars, for the payment of which we bind ourselves severally and jointly, our heirs, executors and administrators, firmly by these presents, sealed with our seals, dated this ..... day of ..... 18..

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

Signed, sealed and delivered, in presence of

.....  
.....

..... [SEAL.]  
..... [SEAL.]  
..... [SEAL.]

Form of vouchers.

SEC. 71. Vouchers may be in the following form:

Received ..... 18... of ..... treasurer of school district number ....., county of ....., ..... dollars, for services rendered as teacher in the said district, for the term of ..... months.

....., Teacher.

Form of teachers' contract.

SEC. 72. The form of contracts between district and teacher may read as follows:

It is hereby agreed between school district number . . . . ., county of . . . . ., and . . . . . teacher. That the said . . . . . 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 . . . . ., 18. . . . ., and for such services properly rendered, the said school district is to pay . . . . . the amount that may be due according to this contract on or before the . . . . . day of . . . . ., 18. . . . .

. . . . ., District Clerk.  
This . . . . . day of . . . . ., 18. . . . .  
. . . . ., Teacher.

SEC. 73. The form of annual report of district treasurer may be substantially as follows:

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 on hand last report. . . . . \$——  
Amount received from county treasurer. . . . . ——  
Total amount received. . . . . \$——

Which has been placed to the credit of the following funds:

School house. . . . . \$——  
Teachers . . . . . ——  
Contingent. . . . . ——

Paid out on orders of the district clerk and director on the following funds:

School house. . . . . \$——  
Teachers . . . . . ——  
Contingent. . . . . ——  
Total paid out. . . . . ——  
Balance on hand. . . . . ——

Divided among the funds as follows:

School house. . . . . \$——  
Teachers . . . . . ——  
Contingent. . . . . ——

This . . . . . day of . . . . ., A. D. 18. . . . .  
. . . . ., Treasurer.

SEC. 74. The form of report of district clerk to the county superintendent of public instruction may read as follows:

Form of report of district clerk to county superintendent

Form of report  
of district  
clerk to county  
superintendent

To ....., Dakota, ....., 18....  
....., county superintendent of  
schools for ..... county, Dakota:

SIR:—The following is a correct report of the condition and  
statistics of school district number ....., of .....  
county, for the year ending August 31st, 187..:

Number of children residing in district ....., } Males,.. —  
between the ages of 5 and 21..... } Females —  
Total..... —

Number of pupils attending school during } Males.... —  
the year .... (of these .... resided in other } Females.. —  
districts)..... }  
Total..... —

Number of months school has been taught during the year —  
Teacher's Names.            Wages.            No. of Months Taught.  
.....            \$.....            .....  
.....            \$.....            .....  
.....            \$.....            .....

Amount of money received from county fund during  
year..... \$——

Amount of money raised on district tax..... —  
“ “ “ on hand from last year..... —

Total..... \$——

Amount paid for buildings and repairs..... \$——

“ “ “ furniture, library and apparatus... —

“ “ “ fuel and other expenses..... —

“ “ “ teachers' wages..... —

Total..... \$——

Balance in hand of treasurer..... \$——

Value of all school district property..... —

TEXT BOOKS USED IN SCHOOL:

..... Readers.            ..... Spellors.  
..... Arithmetics.            ..... Geographies.  
..... Grammars.            ..... Histories.  
.....  
.....

The last school meeting was held . . . . . 18...  
at .....

Names of School Board.	Address.	Terms Expire.
....., Director.	.....	..... 18..
....., Clerk.	.....	..... 18..
....., Treasurer.	.....	..... 18..

Remarks, .....  
.....  
.....  
.....  
.....

Form of report  
of district  
clerk to county  
superintendent

District Clerk, School District No. ..., }  
of ..... County. }

To which should be added a copy of teachers' reports, giving the names, ages and total number of male and female pupils, number of days taught, the kind of text books used, the number of scholars in each branch of study, and the greatest number of miles to be traveled by scholars living on the border of the district.

The form of the clerks' notice to the county clerk may read as follows:

....., Dakota, ....., 18..

To .....county clerk of .....county, Dakota:

SIR—At the last meeting of school dist. No .., in the county of ...held at ....on the ...day of ....., 18.., it was voted to collect the following rate of taxes, for the use of the district:

- For the school house funds, .... mills on the dollar;
- “ “ teachers’ “ “ “ “ “
- “ “ contingent “ “ “ “ “

Which you will carry out on the tax list for this district.

....., District Clerk,  
....., Director.

SEC. 75. A school teacher's certificate may be in the following form:

Form of  
school teachers  
certificate.

Dakota Territory, }  
..... County. }

..... A. D. 18..

This is to certify that ..... has been examined by me and found competent to give instruction in reading, 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.

.....,  
Superintendent of Public Instruction, ..... County.

SEC. 76. Form of deed of school property may be as follows:

Form of deed  
of school prop-  
erty.

This indenture made the ..... day of ....., one thousand eight hundred and ....., between .....

and ....., his wife, of the county of ....., Dakota Territory, parties of the first part, and ....., of district board of district number ....., county and territory aforesaid, parties of the second part, witnesseth that the said parties of the first part, in consideration of ..... dollars to them in hand paid before the delivery thereof, 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 property) with the appurtenances and all the estate, title and interest of 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, their successors and assigns forever.

....., [SEAL.]  
 ....., [SEAL.]

Sealed and delivered in presence of

.....  
 .....

Territory of Dakota, }  
 ..... County. }

Personally appeared before me, a ....., within and for the county above named ..... and ....., his wife, to be [me] known to be the persons 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. 18..

Certain act repealed.

SEC. 77. Chapter 35 of the session laws of 1870-1 and all acts and parts of acts heretofore passed in relation to common schools are hereby repealed: *Provided*, That such repeal shall not affect any rights or liabilities that have [accrued] *occurred* under, and by virtue of said act or acts; *And*

*provided further*, That all officers that have been duly elected and qualified in accordance with the provisions of said act shall continue to hold and discharge the duties of their respective offices, until their successors are duly elected and qualified.

Proviso.

SEC. 78. This act shall take effect from and after its passage and approval: *Provided, however*, That nothing herein contained shall be construed so as to interfere in any manner with the provisions of an act passed at the present session of the legislative assembly establishing a board of education for the city of Yankton, regulating the management of the public schools therein.

When to take effect.

Proviso.

Approved, January 15, 1875.

## CHAPTER XLI.

### EDUCATION OF THE BLIND.

AN ACT to provide for the instruction and education of blind persons.

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

SECTION 1. That the governor of this territory is authorized and it is hereby made his duty to enter into a contract, for not more than five years at one time, with the proper authorities of the state of Iowa, Minnesota or Nebraska, to keep, maintain, instruct and educate any blind person, who now is, or may hereafter become, a resident of the territory of Dakota.

Governor to make contract for educating blind persons.

SEC. 2. That after such contract is made, the institution of the state with which such contract is made, shall be the institution for the blind of this territory, the same as though such institution was located within this territory.

Defining the institution for the blind of Dakota.

SEC. 3. That each county superintendent of public schools shall report to the county commissioners of his county, at any regular meeting of said commissioners, the name, age, name of parents or guardian, and post office address of every blind person, and all such persons as may be too blind to acquire an education in the common schools, between the age of five and twenty-five years, residing in his county.

County superintendent to report all blind persons.

SEC. 4. That it shall be the duty of the county commissioners, when they have been notified that there are any blind per-

County commissioners to report blind persons to governor.

sons in their county, who are entitled to the benefits of an institution for the support and education of the blind, to at once report the name, age and residence of such persons in their county to the governor of this territory.

Who entitled to receive education at public expense.

SEC. 5. That every blind person of this territory, and all such as may be too blind to acquire an education in the common schools, of suitable capacity, between the age of five and twenty-five years, shall be entitled to receive an education for three years, at the expense of the territory of Dakota, at the said institution for the support and education of blind persons.

Blind person to obtain certain certificate to be entitled benefits of this act.

SEC. 6. That in order to entitle any blind person to the benefits of this act, it shall be necessary for such persons to obtain a certificate of the superintendent of public schools of the county in which such person resides, that such person, giving name, age and residence, is blind, or too blind to acquire an education in the common schools, and is entitled to the benefits of such an institution, which certificate shall be approved by the governor, and upon presentation of such certificate and an order from the governor of the territory to the authorities of the institution, to admit such person, specifying the time for which he shall be admitted under the existing contract, such person shall be admitted into such institution and receive all the benefits of the same.

Authorities of blind asylum to give certain notice to governor.

SEC. 7. That the authorities of such institution when they receive any such person from this territory under the contract, shall at once notify the governor of this territory, giving name of the person so admitted, the date when admitted, and the time for which such persons are admitted.

Auditor to audit all acc'ts for instruction of blind.

SEC. 8. That it shall be the duty of the auditor of this territory, to audit all accounts presented by the authorities of the institution for the support and education of the blind persons of the state with which the governor has made a contract, as provided in section one of this act, under such regulations as such auditor may prescribe, and to draw his warrant or warrants on the territorial treasurer for the amount due such institution.

When to take effect.

SEC. 9. This act shall take effect and be in force from and after its passage and approval.

Approved, January 15, 1875.

## CHAPTER XLII.

## EDUCATION OF THE DEAF AND DUMB.

AN ACT to provide for the instruction and education of deaf and dumb persons.

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

SECTION 1. That the governor of this territory is authorized, and it is hereby made his duty to enter into a contract, for not more than five years at one time, with the proper authorities of the state of Iowa, Minnesota or Nebraska, to keep, maintain, instruct and educate any deaf and dumb persons who now is or may hereafter become a resident of the territory of Dakota.

Governor to make contract for educating deaf and dumb

SEC. 2. That after such contract is made, the institution of the state with which such contract is made shall be the institution for the deaf and dumb of this territory, the same as though such institution was located within this territory.

Defining the deaf and dumb institute for Dakota.

SEC. 3. That each county superintendent of public schools shall report to the county commissioners of his county, at any regular meeting of said commissioners, the name, age, name of parent or guardian, and post office address, of every deaf and dumb person, and all such persons as may be too deaf to acquire an education in the common schools, between the age of five and twenty-one years, residing in his county.

County superintendent to report all deaf and dumb persons to commissioners.

SEC. 4. That it shall be the duty of the county commissioners, when they have been notified that there are any deaf and dumb persons in their county, who are entitled to the benefits of an institution for the support and education of the deaf and dumb, to at once report the name, age and residence of such persons in their county to the governor of this territory

Commissioners to report to governor.

SEC. 5. That every deaf and dumb person of this territory, and all such as may be too deaf to acquire an education in the common schools of suitable capacity, between the age of five and twenty-one years, shall be entitled to receive an education for three years, at the expense of the territory of Dakota, at the said institution for the support and education of the deaf and dumb.

Who entitled to receive education at public expense.

SEC. 6. That in order to entitle any deaf and dumb person to the benefits of this act, it shall be necessary for such per-

Deaf and dumb person to obtain certificate.

son to obtain a certificate of the superintendent of public schools of the county in which such person resides, that such person, giving name, age and residence, is deaf and dumb, or too deaf to acquire an education in the common schools, and is entitled to the benefits of such an institution, which certificate shall be approved by the governor, and upon presentation of such certificate and an order from the governor of this territory to the authorities of the institution, to admit such person, specifying the time for which he shall be admitted under the existing contract, such person shall be admitted into such institution and receive all the benefits of the same.

Authorities of deaf and dumb school to give certain notice to governor.

SEC. 7. That the authorities of such institution, when they receive any such person from this territory under the contract, shall at once notify the governor of this territory, giving name of the person so admitted, the date when admitted, and the time for which such persons are admitted.

Auditor required to audit accounts for instruction of deaf and dumb

SEC. 8. That it shall be the duty of the auditor of this territory to audit all accounts presented by the authorities of the institution for the support of the deaf and dumb persons of the state with which the governor has made a contract, as provided in section one of this act, under such regulations as such auditor may prescribe, and to draw his warrant or warrants on the territorial treasurer for the amount due such institution.

When to take effect.

SEC. 9. This act shall take effect and be in force from and after its passage and approval.

Approved, January 12, 1875.

## ELECTIONS.

### CHAPTER XLIII.

PROVIDING FOR THE TIME OF HOLDING GENERAL ELECTIONS.

AN ACT providing for the time of holding general elections in the Territory of Dakota, and for other purposes.

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

Time when general elections to be held.

SECTION 1. That all general elections in the Territory of Dakota shall be held in the several election precincts in the

territory on the Tuesday next after the first Monday in November in each year, at which election shall be chosen as many officers as are by law to be elected.

SEC. 2. That section 34 of chapter 17 of the laws of 1870-1, Amendment of certain act. entitled "an act providing for elections and to prescribe the canvass and return of the same," approved January 13, 1871, be and the same is hereby amended so as to read as follows:

Section 34. That if the returns of election of any organized Duty of secretary when returns not received. county in this territory, shall not be received at the office of the secretary of the territory withing 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 Messenger, how paid. 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 of deeds; and the territorial treasurer shall present a bill against the county not sending the County to pay expense. election returns within time, to the office of the secretary of the territory, and such bill shall be presented to the county commissioners of such county for the whole amount paid to such messenger, and the county commissioners, when such bill is presented, shall allow the same in full, and shall issue a warrant for the amount of the bill so presented, and such warrant shall be paid in cash by the county treasurer of such county whenever the same is presented, or as soon thereafter as any money is received in such county treasurer's office.

SEC. 3. That so much of section two (2) of chapter seventeen Certain act repealed. (17) of the laws of 1870-1, entitled "an act providing for elections and to prescribe the canvass and return of the same," as conflicts with section one (1) of this act, and all other acts and parts of acts in conflict with the provisions of this act, is hereby repealed.

SEC. 4. That this act shall be in force and effect from and When to take effect. after its passage and approval.

Approved, January 9, 1875.

## FEES.

### CHAPTER XLIV.

#### FEES OF CHAPLAINS.

AN ACT to establish the fees of Chaplains.

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

Chaplains to  
receive \$2 per  
diem.

SECTION 1. That the fees for chaplains elected by the council and house of representatives, shall be (\$2.00) two dollars per day for services rendered during the session of the legislative assembly. Said fees shall be paid out of any moneys in the territorial treasury not otherwise appropriated.

When to take  
effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, December 30, 1874.

### CHAPTER XLV.

#### FEES OF COUNTY TREASURERS.

AN ACT relating to fees of County Treasurer.

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

Treasurer's fee  
for levying on  
personal prop-  
erty.

SECTION 1. That every county treasurer of each county in this territory, for each and every levy he shall make on personal property for the satisfaction of a tax or taxes, shall receive a fee of fifty cents to be collected out of the property levied on by him, and for the sale of personal property so levied on by him, he shall receive a fee of fifty cents, to be collected out of the property so levied on by him.

Conflicting  
act repealed.

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

When to take  
effect.

SEC. 3. That this act shall take effect and be in force from and after its passage and approval.

Approved, December 30, 1874.

## CHAPTER XLVI.

## FEES OF PRINTERS.

## AN ACT to regulate the rates of Printer's Fees.

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

SECTION 1. That for publishing any notice of sheriff's or constable's sale, mortgage sale, or any order, citation or summons or any proceedings or advertisement, by law required to be published in any newspaper, the proprietor or publisher thereof shall be entitled to receive the sum of one dollar and fifty cents for each square or one hundred words for the first insertion, and seventy-five cents per square for each subsequent insertion, from one to three squares; from three to six squares, one dollar per square for the first insertion, and fifty cents per square for each subsequent insertion; and over six squares, fifty cents for each insertion.

SEC. 2. That in computing the number of words in a legal advertisement, where figures are used to denote the day of the month, said date shall be counted as one word, each initial letter shall count as one word, and numbers expressed in fractions shall count as one word.

SEC. 3. That all notices of sale under chattel mortgages and sheriff's sales shall be published in a newspaper: *Provided*, There be a newspaper printed or published in the county in which such notice shall have effect; and in case there be no newspaper printed or published in such county, said notices shall be posted as now required by law.

SEC. 4. That nothing in this act shall be construed to repeal or conflict with the laws now in force relative to the payment of printer's fees for advertising the list of delinquent taxes, and proceedings of the board of county commissioners as required by law; but the fees therefor shall remain as heretofore prescribed by law: *Provided, however*, That the counties of Burleigh and Bon Homme shall be exempted from the provisions of this act.

SEC. 5. That all acts or parts of acts conflicting with this act and section "one of chapter twenty-three of the laws of 1865-6, approved January 12th, 1866," are hereby repealed.

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

Approved, January 15, 1875.

## CHAPTER XLVII.

## FEES OF WITNESSES AND JURORS.

AN ACT to regulate the fees of witnesses and jurors in Justice Court.

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

Fees of witnesses in justices' courts.

SECTION 1. In all cases, civil and criminal, before a justice of the peace, the fees of witnesses shall be as follows:

For each day's attendance, one dollar;

For each half day's attendance, fifty cents;

For each mile actually traveled to attend at the place of trial one way, ten cents.

Fees to be paid in advance.

SEC. 2. No witness shall be compelled by attachment or other process, to go to or attend any place of trial until his mileage and attendance for half a day, as specified in the preceding section shall have been paid, or tendered to him.

Fees.

SEC. 3. The fees of jurors in justice court shall be as follows:

For each case, attendance, fifty cents.

When to take effect.

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

Approved, January 14, 1875.

## FUNDING COUNTY INDEBTEDNESS.

## CHAPTER XLVIII.

## AUTHORIZING THE FUNDING OF COUNTY INDEBTEDNESS.

AN ACT authorizing the county commissioners of the several counties of this territory to fund the outstanding indebtedness of their respective counties.

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

Outstanding indebtedness of counties to be funded.

SECTION 1. That the outstanding indebtedness of the several organized counties of this territory, payable out of the taxes for ordinary county revenue and the sinking fund tax shall be funded as hereinafter provided.

SEC. 2. That the county commissioners of the several counties of this territory, on and after the first day of January, 1875, shall have the authority, and it is hereby made their duty, to provide that whenever warrants drawn upon the funds hereinbefore mentioned, shall be presented to the county treasurer of the county, in sums of fifty dollars, for the purpose of being funded, that such warrants shall be taken up, the interest thereon calculated to the said first day of January, 1875, and in lieu thereof, and in payment of said warrants, that the bonds of said county, in denominations of not less than fifty dollars, bearing date and with interest, and payable as hereinafter mentioned, be issued to the holders of such warrants.

Commissioners shall have authority to issue county bonds for warrants.

SEC. 3. Such bonds shall be dated the first day of January, 1875; shall be payable ten years after date, and shall bear interest at the rate of ten per cent. per annum, payable semi-annually on the first day of July and January of each year, at the county treasurer's office in said county, and the principal thereof shall be there payable.

Bonds, when dated and when payable.

SEC. 4. It shall be the duty of the county commissioners of such counties as shall fund their outstanding indebtedness, as herein provided, to levy and collect annually a tax in cash sufficient to pay the interest on said bonds, and after five years they shall levy and collect in addition thereto an annually sinking fund bond tax, sufficient to pay the principal of such bonds by the time the same shall become due and payable; and with such sinking fund bond tax, as fast as the same is collected, they shall go into the market and buy up such bonds, and retire the same, and such interest tax and sinking fund bond tax shall not be used for any other purpose whatsoever.

Commissioners shall levy tax to pay interest on bonds

May purchase bonds.

SEC. 5. The said outstanding indebtedness which shall exist on the said first day of January, 1875, only, shall be funded as herein provided, and any and all persons shall have until the first day of July, 1875, to bring in warrants in their possession, drawn on such funds, and receive the bonds as before provided, and no longer.

Certain outstanding in indebtedness only to be funded

SEC. 6. The county commissioners of any county, the indebtedness of which shall be funded as herein provided, shall at their first session of the board after the passage of this

Duty of commissioners in reference to this act.

act make such provisions as shall be necessary and proper for carrying out the provision of this act, or as soon thereafter as it can reasonably be done, and such bonds shall be either printed or lithographed, and shall be executed by the chairman of the board of commissioners for the county, shall be under the seal of the county, and attested by the clerk thereof, and shall be payable to the order of the person respectively presenting such warrants.

Disposition  
of county war-  
rants redeem-  
ed by bonds.

SEC. 7. When such warrants are so taken up and paid by the issue of bonds as herein provided, such warrants shall be marked "Paid by Bond No. —," (giving number of bond) and shall be retained by the county treasurer until his settlement with the county commissioners, shall then be carefully compared with the bond register, and if found to correspond therewith shall be then destroyed, and to facilitate settlement with such board the county treasurer shall indorse upon each warrant so taken up and paid the amount of interest allowed thereon.

County treas-  
urer to have  
bond register.

What to be  
cited therein.

Proviso.

SEC. 8. The county treasurers of the several counties funding their indebtedness under the provisions of this act shall provide themselves with a book to be called the bond register, wherein they shall note the number of all bonds issued, the date when issued, the party to whom issued, and the amount of the warrant, and the amount of the interest thereon for which such bond was exchanged, and such other facts as he shall be required thereunto by the county commissioners, and such register shall immediately after the first day of July, 1875, be deposited with the county clerk, and shall remain in his office as a public record: *Provided, however,* That in the counties of Union, Minnehaha, Brookings, Clay, Bon Homme and Burleigh, it shall be optional with the board of county commissioners to fund said outstanding indebtedness as herein provided, or to pay the same in the manner now provided by law.

When to take  
effect.

SEC. 9. This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

# GAME.

## CHAPTER XLIX.

### PROHIBITING THE KILLING OF QUAILS AND PRAIRIE CHICKENS AT CERTAIN TIMES.

AN ACT making it unlawful to kill quail during certain months.

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

SECTION 1. That it shall be unlawful for any person except on his own premises, and for his own use, and not for sale, trade, or traffic, to kill, ensnare, or trap, or in any way or manner destroy, or pursue with such intent, any quail, prairie chicken, or grouse, between the first day of March and the first day of August in each and every year. Killing game unlawful, when

SEC. 2. Any person violating any of the provisions of section one of this act or who shall destroy or disturb the nest or eggs, or have in his possession, or expose to sale any of the birds intended to be protected by section one of this bill, shall upon conviction, be fined not less than two or more than fifteen dollars. Penalty for violation of this law.

SEC. 3. The penalties denounced in this act shall be recoverable upon proper proceeding before a justice of the peace. Penalties—how recoverable.

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

Approved, January 15, 1875.

# IMMIGRATION.

## CHAPTER L.

### PROVIDING FOR AN IMMIGRANT HOUSE AT YANKTON.

AN ACT to provide for an Immigrant House at Yankton, Dakota Territory.

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

Appropriation for immigrant house.

SECTION 1. That there be, and is hereby appropriated out of any money in the territorial treasury not otherwise appropriated, the sum of one thousand dollars for the construction of an immigrant house in the city of Yankton, or within half a mile of the said city: *Provided*, The said city of Yankton shall appropriate a like sum of money for the construction of aforesaid immigrant house, but not otherwise.

Authorities of Yankton may levy tax.

SEC. 2 *And be it further enacted*; That the mayor and council of the city of Yankton be, and are hereby authorized to appropriate the sum of one thousand dollars towards the construction of an immigrant house as provided in section one of this act, and said mayor and council are further authorized to levy and collect a tax not exceeding one thousand dollars on the property of said city of Yankton for the purpose of carrying this act into immediate effect.

Mayor of Yankton call meeting of council to levy tax.

SEC. 3. That for such purpose the mayor of the city shall immediately after the taking effect of this act call a meeting of the city council, and at such meeting if the said mayor and council shall deem it advisable to carry out the provisions of this act on the part of said city, they shall so resolve, and thereupon at such meeting the said mayor and city council shall by resolution levy a tax upon the property of said city as appears upon the last assessment roll thereof, sufficient to raise said one thousand dollars besides the expense of collecting the same, taking into consideration the taxes annually

uncollectable, which tax shall be collected as hereafter provided.

SEC. 4. As soon as said tax shall be levied the city treasurer, assisted by the city clerk, shall enter and extend the tax so levied upon the present tax bill now in the hands of said treasurer for the year 1874-5, and the warrant accompanying said list as provided by the ordinance of said city shall be a sufficient warrant and authority to said treasurer to collect said tax; upon the completion of said tax the said treasurer shall proceed at once to collect the same by distress and sale, and by the sale of real property as provided in the ordinance of said city for the collection of other city taxes; and for the purpose of facilitating the collection of such tax, the mayor and city council may provide by ordinance or resolution any time that may be necessary for that purpose, and such tax shall be paid in cash, and shall be kept by said treasurer as a separate and distinct fund, and shall be used exclusively for the purposes of this act.

Duty of city treasurer in reference to tax.

SEC. 5. As soon as the mayor and council of said city signify by resolution their intention to carry out the provisions of this act on behalf of said city and such tax shall be levied by said mayor and council, the parties hereinafter named shall proceed to carry out the object hereof by proposing plans, selecting site and contracting for the erection of such building; and the monies herein appropriated out of the territorial treasury shall be paid to the parties performing the work or furnishing material, upon the warrant of the territorial auditor as certified to such auditor by said hereafter named parties; and the moneys to be paid by the city shall be paid by the city treasurer upon the warrant of the mayor attested by the clerk, as provided by the ordinance of said city and drawn upon the fund for that purpose.

Certain parties to attend building immigrant house.

SEC. 6. The monies appropriated by sections one and two of this act shall be expended by Hon. Fred J. Cross, Commissioner of Immigration elect, and Hon. Joel A. Potter, mayor of the city of Yankton, and said Cross and Potter shall select the location for said immigrant house within the limits provided by this act: Said immigrant house shall be under the joint control and management of the commissioner of immigration of the territory of Dakota and of the mayor of the city of Yankton, and shall be the property of the ter-

Who to expend moneys.

ritory of Dakota and of the city of Yankton in equal proportions, each owning one undivided half thereof.

Duty of parties in reference to selecting site, &c.

SEC. 7. Said parties shall not make any debt or expend any greater sum than is hereby provided for, and shall erect such immigrant house on such lot or lots, or lands as shall be donated for that purpose—if any shall be so donated—and if none shall be so donated the said parties shall place the said building either upon the levee or shall lease for that purpose suitable grounds within the limits aforesaid, for the period of five years at a yearly rent not to exceed ten dollars a year.

When to take effect,

SEC. 8. This act shall take effect from and after its passage and approval.

Approved, December 26, 1874.

## CHAPTER LI.

### TO ESTABLISH A BUREAU OF IMMIGRATION.

AN ACT to establish a bureau of immigration for the Territory of Dakota.

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

Bureau of immigration established.

SECTION 1. There is hereby established within and for the territory of Dakota, a bureau of immigration.

Election of commissioners of immigration.

SEC. 2. For this purpose there shall be elected biennially by the qualified voters of the territory, at the time of the delegate election, two commissioners of immigration, one of whom shall be known and designated as territorial superintendent; and there shall be elected by the legislative assembly in joint convention of the council and house of representatives at the present session, and biennially thereafter; three other commissioners of immigration, one from each judicial district of the territory, who, together, shall constitute a body politic, under the same and style of the territorial board of immigration.

SEC. 3. The persons so elected shall possess the requisite qualifications required by the laws of the territory for holding office, and the three elected by the legislative assembly shall be residents of the judicial district from whence they are elected, and each of them shall hold office for the term of two years, and until their successors shall be elected and qualified.

Qualifications of commissioners of immigration.

SEC. 4. The superintendent of immigration shall be president of the board and *ex-officio* the general manager of the bureau, and shall have an annual salary of eight hundred dollars, and the other commissioners shall each have one vote in the management of the business, and shall only draw pay for actual traveling expenses.

Superintendent to be present and have salary.

SEC. 5. The commissioners shall meet at the capital of the territory on the first Monday of February next after their election, and shall qualify by subscribing the proper oath of office, and depositing with the secretary of the territory their official bonds, each in the sum of two thousand dollars, with such surety as the secretary shall approve, conditioned for a faithful discharge of the duties of their respective offices, and they shall complete their organization by electing one of their number secretary, and another auditor of the board.

When board shall organize.

SEC. 6. The board shall meet regularly once in six months, viz: On the first Monday of February and August of each year, for the transaction of business, at such places as they may from time to time designate, and a majority of the board shall constitute a quorum for the transaction of any business, and for the purpose of economy, and to constitute such quorum, any commissioner except the superintendent may give to another commissioner his proxy to act and vote for him whenever he may deem it advisable.

When the board shall meet.

Quorums.

SEC. 7. The president of the board shall preside at all meetings of the board, and shall call special meetings where so requested in writing, by two of the members of the board, giving to each at least five days notice; but no more than six meetings shall be held in any one year, and such board may adjourn from day to day to complete their business, not exceeding five days at any one time.

Who shall preside at and call meetings.

Number of meetings per annum.

SEC. 8. The territorial superintendent shall occupy by himself, deputy or clerk, an immigration office in such city or towns as the board shall designate, and which shall be furnished for this purpose by such city or town, free of rent; and

Office of Superintendent.

the said office shall be the depository of the publications of the board, and of such specimens of the agricultural products and manufactured articles of the several counties of the territory, and such maps and views as shall illustrate the territory, and such office shall be open during usual business hours to citizens and strangers.

Superintendent to prepare maps and pamphlets.

To correspond.

Agents.

Statements to be published.

County agents to be appointed.

SEC. 9. It shall be the duty of the superintendent to prepare in manuscript for publication such circulars, pamphlets, maps, papers, cards, etc., as shall give an impartial and just view of every part of the territory, and shall submit all matters so prepared to the board for approval and publication, and the board shall cause to be printed by such person or persons as they shall designate so much of such matter as they shall approve. The superintendent shall correspond with all agents of the board, and such other persons as may desire information; and shall in conjunction with the other members of the board facilitate the ingress of immigrants, by obtaining, as may be in their power, low rates of tariff in transportation of passengers and freight; and for that purpose the board shall have the power to employ one or more of their own number, or other person, as agent of the board, to proceed to the cities upon the Atlantic seaboard, or elsewhere, to assist and direct the immigration to this territory; and said board shall publish in such papers of the territory as will so publish gratuitously, a semi-annual statement, including the number, character and cost of all documents, if any published during the quarter, the number distributed, the number on hand, the number of letters received and answered, the reported labor of agents, the actual immigration as nearly as ascertained; and said board shall render to the legislature at each session thereof a general report of the affairs of the bureau.

SEC. 10. It shall be the duty of the board to appoint and commission one agent in each organized county in the territory, who shall be a resident of the county during his term of office. It shall be the duty of such agents to report to the superintendent on the third Monday of January, April, July and October, of each year, the number of letters received and answered, and such other information as the board may require. Each county agent shall be sufficiently supplied by the superintendent with documents of the board, with the

necessary stationery and postage stamps, not to exceed ten dollars per annum each.

SEC. 11. The agents employed by the board, including members of the board, when acting in that capacity, to facilitate immigration by proceeding to the Atlantic seaboard, or elsewhere, to assist and direct immigration to this territory, shall receive such expenses and compensation as shall be agreed upon with them by the board, not to exceed two dollars per diem over and above necessary expenses.

Compensation  
of agents.

SEC. 12. The superintendent shall receive the salary herein provided, in regular quarterly payments, and he may expend for all incidental expenses of his office, including fuel, stationery and postage, not more than two hundred dollars, which salary and incidental expenses shall be paid by the territorial treasurer, upon the certificate of the superintendent, out of the funds in his hands belonging to the territory.

Superintendent's  
salary  
and allowances

SEC. 13. All the expenses of the bureau shall be audited and allowed by the board at their regular semi-annual meetings. All bills shall be filed with the auditor, and all accounts allowed shall be recorded by the secretary of the board, and shall be certified to by the auditor of the territory, under seal of the board, signed by the auditor and countersigned by the secretary of the board, and shall be paid by warrant of the territorial auditor, drawn on the territorial treasurer, in favor of the parties to whom such account shall be certified as due, and after the appropriation herein given, as that may hereafter from time to time be made, is exhausted, there shall not be expended by the board any more money, nor shall any other debts or obligations be incurred by the board.

Expenses of  
bureau how  
audited and  
paid.

Limit of ex-  
penditure.

SEC. 14. In case of any vacancy in said board by reason of a failure to qualify at the time prescribed herein, or by death, resignation, removal from the territory, or otherwise, the remaining members of such board shall have the power to fill such vacancy.

Vacancies,  
how filled.

SEC. 15. Fred J. Cross is hereby appointed territorial superintendent of immigration, and Jacob Branch, commissioner of immigration, under the provisions of this act, who shall hold their offices respectively until the first Monday in February, 1877, and until their successors are elected and qualified.

Appointment  
of superintend-  
ent and com-  
missioner.

Present commissioner to turn over books.

SEC. 16. The members herein appointed, and to be by the legislative assembly elected, shall meet as herein provided on the first Monday of February, 1875, and organize such board, and procure a seal, the necessary books and other articles, and the present commissioner of immigration shall turn over to such board at that time all the books, papers and other property belonging to the territory pertaining to his office.

Appropriation for expenses of bureau.

SEC. 17. For the purpose of said bureau of immigration, exclusive of the salary of the superintendent and the incidental expenses of his office, there is hereby appropriated out of any funds belonging to the territory, not otherwise appropriated, the sum of three thousand dollars, for the year ending on the first Monday of February, 1876, and the further sum of three thousand dollars for the year ending on the first Monday of February, 1877.

Manner of election of commissioners by legislature. How commissioned.

SEC. 18. The members of said board elected by the legislative assembly in joint convention, shall be commissioned by the governor, and to that end the presiding officer and chief clerk of said joint convention shall certify in writing to the governor, the names of the persons receiving the highest number of votes, and such voting shall be by *viva voce*, each member having one vote, and the person from each judicial district receiving the highest number of votes cast shall be declared duly elected as such commissioner.

Conflicting acts repealed.

SEC. 19. All acts and parts of acts conflicting with the provision of this act, and all acts and parts of acts relating to the appointment or election of a commissioner of immigration, or the establishment of a bureau of immigration, are hereby repealed; but notwithstanding such repeal, the present commissioner, James S. Foster, may continue to act as such until the first day of January, 1875, and be entitled to his salary already accrued, and until that time, as now provided by law.

When to take effect.

SEC. 20. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

# INCORPORATIONS.

## CHAPTER LII.

PROVIDING FOR THE INCORPORATION OF VOLUNTARY ORDERS,  
ASSOCIATIONS AND SOCIETIES.

AN ACT to regulate the incorporation of voluntary orders,  
associations and societies.

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

SECTION 1. Any voluntary order, association, or society, Defining what bodies may become bodies corporate. having for its object the promotion of intelligence, temperance, benevolence, social improvement, mutual aid, general agriculture and related industries, the advance of domestic manufactures, co-operative sales, purchases and shipment of property, and facilitating the transaction of business, or any one or more of these objects; and the general organization and governing body of such order, association or society for the territory, or any district or county council, or association of the same, or any subordinate council, division, lodge or association of the same, each separately and for itself under its own proper name, number and designation, according to the constitution, by-laws, rules and usages of such order, association or society, Powers of such bodies. may become a body corporate and politic with perpetual succession, and may assume a corporate name as aforesaid, by which they may sue or be sued, plead and be impleaded, in all courts of law and equity; and may have a corporate seal and the same alter and renew at pleasure; and for and in aid of the purposes of their incorporation, may take and hold lands, tenements and hereditaments, goods, chattels and money, by purchase, gift, grant, devise or bequest, and may sell, alien, devise, convey, or dispose of the same at the pleasure and as the interests of said organization may require.

Manner in which certain bodies shall proceed to become incorporated.

SEC. 2. Whenever any such council, division, lodge or body of such voluntary order, association or society shall desire to become incorporated as provided in section 1 of this act, they shall do so in the following manner, to-wit:

At any regular meeting of such council, division, lodge or body, when notice shall have been given of such purpose at the last preceding regular meeting; or at a special meeting called for that purpose, whereof notice shall have been given to at least three-quarters of the members in good and regular standing under the laws of the order, association or society, they shall declare and set forth the name or number, or both, by which they shall be known, called and incorporated; the objects of the incorporation; the place of meeting, reserving to themselves the right to change the same according to the constitution, by-laws, rules and usages of such order, association or society, and shall further set forth the place or places of business, giving the territorial jurisdiction of the corporation; the number and names of its executive committee, directors, trustees, or board of agents or business committee, under whatever name chosen, who shall not be less than three nor more than nine in number and shall be members of the body; the names and official designation of the presiding officer and the secretary, or clerk; and shall further set forth what officers or committee is authorized to carry out the purposes, represent and transact the business of the corporation.

Duty of secretary of meeting to make record and file it with county clerk.

SEC. 3. The secretary or clerk of such meeting shall make a true record of the proceedings of the meeting, setting forth all the requirements provided for in section two of this act, which shall be attested by the signature of the presiding officer, and by the secretary or clerk, as a true record, and the secretary or clerk shall deliver the same to the register of deeds of the county where such meeting shall be held, and it shall be the duty of each register of deeds in this territory immediately upon the receipt of such certified statement to record the same in a book of record to be kept by him, provided for such purposes at the expense of the county, for which services he may demand the sum of ten cents per hundred words, and from and after making such record by the register of deeds, the said executive committee, directors, trustees, or board of agents or business committee, as the case may be, and their associated members and their successors shall be

invested with all the powers and immunities incident to aggregate corporations, and a certified transcript of the record herein authorized to be made by the register of deeds, shall be deemed and taken in all courts and places whatever in this territory as *prima facie* evidence of the existence of such corporation.

SEC. 4. Whenever the general organization and governing body of such order, association or society for this territory, if there shall be such, shall desire to become incorporated as provided in section one of this act, they shall do so in the manner provided in section two, and the secretary or clerk of such meeting as in said section two provided, shall make a true record of the proceedings of the meeting, setting forth all the requirements of section two which shall be attested by the signature of the presiding officer and by the secretary or clerk, as a true record, and the secretary or clerk shall deliver the same to the secretary of the territory, who shall record and carefully preserve the same in his office, and a copy thereof duly certified by said secretary under the seal of the territory, shall be *prima facie* evidence of the existence of such corporation.

Duty of register of deeds where papers are filed.

SEC. 5. This act shall not be construed as repealing any of the provisions of an act entitled "an act to regulate incorporations," approved January 6, 1868: *Provided*, That none of the provisions of said act shall apply to or regulate any order, association or society as aforesaid, which shall become incorporated under and by virtue of the provisions of this act.

Concerning the repeal of other acts.

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

When to take effect.

Approved, January 12, 1875.

## INTEREST.

### CHAPTER LIII.

#### FIXING THE RATE OF INTEREST ON MONEY.

AN ACT reducing the rate of interest in Dakota Territory,  
and for other purposes.

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

Prescribing  
the highest  
rate of interest.

SECTION 1. That the highest rate of interest which shall be lawful for any person to take, receive, retain, or contract for in this territory, shall be twelve per centum per annum, and at the same rate for a shorter time, and the civil code of 1865-6, is hereby amended in conformity hereto.

Forfeiture  
for charging  
usury.

SEC. 2. That a person taking, receiving, retaining, or contracting for any higher rate of interest than at the rate of twelve per centum per annum, shall forfeit all the interest so taken, received, retained, or contracted for; and the said civil code of 1865-6 is modified and amended to the extent provided in this section, and no further upon this subject, it being the intent and meaning of this act not to provide a forfeiture of any portion of the principal.

When to take  
effect.

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

Approved, January 15, 1875.

# INJURIES.

## CHAPTER LIV.

### PENALTIES FOR INJURING PERSON OR PROPERTY.

AN ACT relating to injuries to person or property.

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

SECTION 1. That if the life of any person not in the employment of a railroad company shall be lost in this territory by the reason of the negligence or carelessness of the proprietor or proprietors of any railroad, or by the unfitness or negligence or carelessness of their employees or agents, the personal representatives of the person whose life is so lost may institute suit and recover damages in the same manner that the person might have done for any injury where death did not ensue.

Railroads liable for damages in cases of fatal accidents.

SEC. 2. That if the life of any person or persons is lost or destroyed by the neglect, carelessness or unskillfulness of another person or persons, company or companies, corporation or corporations, their or his agent, servants or employees, then the widow, heir, or personal representatives of the deceased, shall have the right to sue such person or persons, company or companies, corporation or corporations, and recover punitive damages for the loss or destruction of the life aforesaid.

Who shall have the right to recover damages.

SEC. 3. That all railroad companies in this territory shall pay full damages to the owner or owners of horses and other stock and cattle that they may negligently or carelessly kill or damage, by their cars, locomotive, agents or employes, along said railroads or its branches, within the territory of Dakota.

Railroads liable for damages in case of injuring stock.

SEC. 4. That the killing or damaging of any horses, cattle, or other stock, by the cars or locomotive along said railroad or branches, shall be *prima facie* evidence of carelessness and negligence of said company.

What shall be evidence.

SEC. 5. That whenever any horses, cattle or stock may be killed or crippled by any train of cars or locomotive, upon

Procedure to recover damages.

any railway within this territory, it shall be lawful for the owner of the horses, stock or cattle so killed or crippled, after first giving a station agent of the company to which said railway shall belong, written notice of his intention, to apply to a justice of the peace within the county in which said stock may have been killed or crippled, to appoint appraisers to affix a value upon the horse or horses, cattle or stock so killed or crippled, and said justice of the peace shall appoint three discreet and disinterested citizens of the county a board of appraisers, who, after having been duly sworn, shall examine the horses, cattle or stock so killed or crippled, and affix a value upon the same if killed, or assess the damages to the same if crippled, and return to said justice of the peace a written report, describing the horses, cattle or stock, stating whether they were killed or crippled, and also setting out the valuation or assessment of damage made by them; which report said justice shall preserve as a part of the records of his office.

Same, where  
company fails  
to pay damages

SEC. 6. That in case the company shall fail, for the space of sixty days, to pay to the owner of the horses, cattle or stock so killed or crippled, the full amount assessed by said board of appraisers, and one-half the costs attending the assessment, the owner shall have the right to institute an action, in any court in the county of competent jurisdiction, on the original cause of action; and if upon the trial of this action the owner recovers a verdict, it shall be the duty of the court to render judgment in the owner's favor for the amount of said verdict, and all costs incurred subsequent to the killing or crippling; but if the owner fails to recover a verdict, the costs of the action shall be taxed against him.

When costs  
to be taxed to  
plaintiff.

Compensation  
of justice and  
appraisers.

SEC. 7. That the justice of the peace and the three appraisers shall receive for their services under this act, each, the sum of one dollar, to be paid equally by the railroad company, owner or owners of the horses, cattle or stock killed or crippled.

Conflicting  
acts repealed.

SEC. 8. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

When to take  
effect.

SEC. 9. That this act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

# JUDICIAL DISTRICTS.

## CHAPTER LV.

### DEFINING THE JUDICIAL DISTRICTS OF DAKOTA TERRITORY.

AN ACT to define the Judicial Districts of Dakota Territory and to provide for holding courts therein.

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

SECTION 1. That the counties of Clay, Union, Lincoln, Minnehaha, McCook, Moody, Lake, Brookings, Wood, Deuel, Hamlin, Clark, Grant, Greeley and Stone, and the Sisseton and Wahpeton Indian Reservation, shall constitute the first judicial district.

Defining the first judicial district.

SEC. 2. All that portion of the Territory bounded and described as follows, viz: Commencing at the northeast corner of the Sisseton and Wahpeton Indian Reservation, thence along the north line of said reservation to the northwest corner thereof; thence southerly along the western boundary of said reservation to the intersection with the forty-sixth parallel of latitude; thence west along said parallel to the west or right bank of the Missouri river at low water mark; thence down along the said west or right bank at low water mark to the mouth of Grand river; thence up the center of the main channel of Grand river to the mouth of Ree river; thence up the main channel of the Ree river to the point of intersection with the one hundred and third meridian of west longitude; thence due west to the Little Missouri river; thence up the main channel of the Little Missouri river to its intersection with the western boundary of the Territory; thence north along the west boundary of said Territory to the northern boundary thereof; thence east along the northern boundary of said Territory to the northeast corner of said Territory; thence southerly along the eastern boundary of said Territory to the place of beginning, shall constitute the third judicial district.

Defining the third judicial district.

What to constitute the second district.

SEC. 3. All that portion of the Territory not embraced within the bounds of the first and third districts as herein defined, shall constitute the second judicial district.

United States criminal causes pending, how disposed of.

SEC. 4. All criminal cases in which the United States is a party, shall be tried and disposed of in the court for the district in which they are now pending unless the place of trial shall be changed as provided by law.

Place of holding court in Burleigh county.

SEC. 5. The district court in and for the county of Burleigh shall be held at Bismarck on the second Tuesday of May and the third Tuesday of September in each year.

In Cass county.

SEC. 6. The district court in and for the county of Cass shall be held at Fargo on the fourth Tuesday of May and the first Tuesday of September in each year.

Certain district courts to exercise powers of U. S. courts.

SEC. 7. The district courts in and for the counties of Clay, Yankton and Cass shall exercise the powers appertaining to district and circuit courts of the United States for the several districts in which they are located.

When to take effect.

SEC. 8. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage and approval.

Approved, December 22, 1874.

## CHAPTER LVI.

### DIVIDING THE JUDICIAL DISTRICTS INTO SUBDIVISIONS.

AN ACT dividing the judicial districts of this territory into subdivisions, and providing for the holding of the district courts in the different counties and subdivisions thereof.

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

How first district to be subdivided.

SECTION 1. That the first judicial district shall be subdivided as follows:

Clay county.

The county of Clay shall constitute one subdivision and the district court shall be therein held on the second Tuesday of February and November in each year.

Union county.

The county of Union shall constitute one subdivision, and the district court shall be therein held on the second Tuesday of June and first Tuesday of December in each year.

The county of Lincoln shall constitute one subdivision, and the district court shall be therein held on the first Tuesday of April and October in each year: *Provided however*, That only one term of court shall be held in each year, which shall be on the first Tuesday of October, except at the request of the county commissioners, in which case there shall be held the April terms.

Lincoln county

Proviso.

The county of Minnehaha shall constitute one subdivision, and the district court shall be therein held on the third Tuesday of May in each year

Minnehaha county.

The counties of Lake, Moody, Brookings, and all other portions of the first judicial district not included in any other subdivision shall constitute one subdivision, and the judge of the district court after receiving notice from the county commissioners of Moody county that a term of court is required to be held in this subdivision, shall appoint and hold terms of court at Flandreau, the county seat of Moody county, and in such case if there shall be at any term any business from either of the other counties of this subdivision in such court, such county shall pay its proportionate share of the expenses of such court under the provisions of this act, but not otherwise.

Other counties and sections.

SEC. 2. The second judicial district shall be subdivided as follows:

How second district shall be subdivided.

The county of Bon Homme shall constitute one subdivision, and the district court shall be therein held at the town of Bon Homme on the third Tuesday of March and September of each year.

Bon Homme county.

The counties of Charles Mix, Brule, Buffalo, Hyde, Hughes, Douglass and Sully shall constitute one subdivision, and the district court shall be therein held at Brule City, in Brule county, on the second Tuesday of August in each year, subject however to the provisions of section four of this act relating to the appointment of terms by the district judge.

Charles Mix, Brule and other counties.

The county of Turner shall constitute one subdivision, and the district court shall be therein held whenever required as now provided by law.

Turner county.

The county of Yankton, and all other portions of the said judicial district not included in any other subdivision shall constitute one subdivision, and the general term of the dis-

Yankton county.

district court shall be therein held at the city of Yankton on the second Tuesday of April and October in each year, and in addition thereto special terms shall be held at said city of Yankton as now provided by law for Yankton county.

Hutchinson and other counties.

Hutchinson, Armstrong, Hanson and Davidson counties shall constitute one subdivision, and one term in each year of the district court shall be held therein at such time and place as the judge shall appoint.

How third district to be subdivided.

SEC. 3. The third judicial district shall be divided as follows:

Cass, Stutsman and other counties.

The counties of Cass, Stutsman, Richland, Ransom, La Moure, Traill, Grand Forks, Pembina, Barnes (heretofore known as Burbank) Foster, Ramsey, Cavalier, Gingras, French and Rollette as heretofore known and named shall constitute one subdivision, and the district court shall be therein held at the county seat of Cass county on the fourth Tuesday of May and first Tuesday of September in each year.

The other portions.

All the remaining portion of the said third judicial district shall constitute another subdivision thereof, and the district court shall be therein held at the county seat of Burleigh county on the second Tuesday of May and third Tuesday of September in each year.

Power of judge to appoint where courts to be held.

SEC. 4. The judges of the district courts respectively shall have the authority at any time to appoint by an order to that effect courts to be holden in any county of a subdivision composed of two or more counties, and from the time of the making of such order such county wherein courts are so appointed shall cease to be a part of the subdivision herein provided, and shall constitute a subdivision of itself and the district courts shall be therein held at the county seat of such county at the times provided in such order.

Number of names to be selected for jurors.

SEC. 5. Two hundred instead of sixty names shall be selected and furnished to the clerks of the district courts by the county commissioners and register of deeds from which to draw the grand and petit jurors, and such number shall at all times be kept full by completing the number after each term of the court when a jury or juries have been drawn and summoned; and to carry out the provisions of this act the county commissioners of the several counties composing each

a subdivision shall as soon after the passage of this act as practicable furnish to the clerk of the district court of their respective counties the names of two hundred persons selected from the tax list as now provided by law, which names shall be put into a box and drawn from as now provided by law for drawing from sixty names, and at the end of each term of the district court the clerk thereof shall make requisition upon the county commissioners for the furnishing of so many names as have been drawn, so as to keep the said number full as before provided, and such county commissioners shall at their first meeting after receiving such requisition furnish such number of names so selected from the tax list to complete and keep full such number of two hundred.

Duty of commissioners to furnish names to clerk of court.

SEC. 6. To enable juries to be drawn and summoned in those subdivisions composed of two or more counties, the registers of deeds of all the organized counties therein shall as soon as practicable after the passage of this act, and yearly thereafter, as soon as the assessment roll is returned, furnish to the clerk of the district court of that subdivision the aggregate number of names appearing upon the assessment roll of their counties respectively if such county shall have such assessment roll, and the clerk of such district court shall thereupon and yearly thereafter make requisition upon the county commissioners for the proportionate number of names to be furnished by each county of the subdivision respectively to make up the number of two hundred, each county to furnish such proportion as the number of names upon their assessment roll bears to the aggregate of all the assessment rolls of the counties of such subdivision, and thereupon from time to time as such requisition shall be made the county commissioners shall furnish the required number of names, and from the two hundred names so furnished the grand and petit juries shall be drawn by such district court clerk and sheriff of the county where the court is held by lot as now provided by law.

Duty of register of deeds in certain cases

Clerk of court to make requisition.

SEC. 7. If one or more counties shall fail to furnish their proportionate, or any number of names, such juries shall be drawn from those names that shall be furnished, and the judges of the district courts respectively are authorized and empowered to make any rule or order that shall be by them deemed necessary, or to cause any act or thing to be done to effect the drawing or summoning of either a grand or petit

Where subdivision fails to furnish its proportion of jurors.

jury from such subdivision, and shall at any time have the power to cause a jury, either grand or petit, to be summoned for such district court from the body of such subdivision, and no omission of any act altogether, or the failure to perform it within the time herein prescribed shall be cause of challenge of any individual juror or to the panel.

Clerk of court to furnish venire to sheriff.

SEC. 8. When a jury is drawn from the names so furnished the clerk of the court shall issue his venire to the sheriff of the counties respectively from whence the jurors are drawn, which shall be by such sheriff served and returned to such clerk as in other cases; and any officer or person failing to perform his duty as required in this act, shall be liable to attachment for contempt of court and subject to such fine and imprisonment, or either, as the court shall impose, not exceeding one hundred dollars' fine and thirty days' imprisonment.

Authority of sheriff in certain cases.

SEC. 9. To carry out the provisions of this act the sheriff of the county where the court is held shall have the authority to execute all proper process in any county or other place composing such subdivision the same as though such subdivision was composed of one county only.

Registers to transmit statement of assessment to clerk of court.

SEC. 10. For the purpose of paying the expenses of holding courts in those subdivisions composed of two or more counties, the different registers of deeds of the organized counties therein shall as soon after the passage of this act as practicable, and annually thereafter as soon as the assessment roll is received, transmit to the clerk of the court of that county where the court is held, a statement of the aggregate amount of the assessment roll of their counties respectively, and at the close of each term of the district court such clerk shall, under the supervision of the judge, calculate the expenses of such term and the proportionate amount to be paid by each organized county, according to the proportion which the amount of the assessment roll bears to the aggregate amount of all the assessment rolls in such subdivision, and shall draw orders in favor of the persons to whom such expenses shall be due upon the treasurers of such counties for such proportionate amounts, which orders shall be registered and paid as other county orders or warrants are paid, and such clerk shall thereupon as soon as such proportionate amount is as-

Duty of judge and clerk respecting payment of expenses.

certained by him, furnish to the registers of deeds respectively, for the use of the county commissioners, the amount thereof.

SEC. 11. If any county shall fail to so furnish a statement of the amount of its assessment roll, or if no assessment shall be made therein, the judge shall have the power by an order to fix the proportionate amount of the expenses of the court which such county shall pay, and the clerk shall then draw the orders upon the treasurer of such county accordingly, which shall be registered and paid as before provided, and the judge of such district court may at any time by a mandamus compel the assessment and levy of a tax or the doing of any other act or thing to carry out the provisions of this act.

Power of judge where county fails to furnish assessment.

SEC. 12. The judges of the district courts respectively shall have the power to appoint a clerk of the district court in each of the counties of his district, who shall have the right to administer oaths, take acknowledgments of deeds and other instruments, and who shall procure and keep a seal of the court for that county, and when courts are appointed therein shall perform all other duties pertaining to that office.

Judge to appoint clerks.

SEC. 13. All pleadings, process and proceedings shall be entitled, and the venue shall be laid in that county where the court is held, the same as though such subdivision was composed only of that county.

Venue, where laid.

SEC. 14. In all the laws of this territory regulating or affecting the practice in the courts, wherever the term county is used it shall be deemed and held to include and mean subdivision as well.

County to include subdivision.

SEC. 15. All civil process issuing from any of the courts of this territory or by virtue of any of the practice acts shall run in the name of "The Territory of Dakota."

Name in which process shall run.

SEC. 16. The judges of the district courts respectively shall have the power whenever thereunto requested by the county commissioners, by an order to that effect to appoint and hold additional terms of the district court in any county or subdivision, and such judges shall have the power to adjourn the courts from time to time as they shall deem expedient for the due administration of justice; and the courts herein appointed shall continue so long as the business therein shall require.

When judges may hold additional terms of court.

When to take  
effect.

SEC. 17. This act shall take effect and be in force from and after its passage and approval: *Provided, however,* That this act shall in no case apply to unorganized counties until they shall have been organized as provided by law.

Approved, January 15, 1875.

## JURORS IN CIVIL CASES.

### CHAPTER LVII.

#### RELATING TO CHALLENGING JURORS IN CIVIL CASES.

AN ACT relating to the challenging of jurors in civil cases.

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

Relating to  
the challenging  
of jurors.

SECTION 1. That to chapter III of title VIII of the code of civil procedure be added as section 218, the following:

Number of  
challenges.

Either party to a civil action, when the trial is by jury, may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to three peremptory challenges. If no peremptory challenges are taken until the twelve jurors are in the box, these must be taken by the parties alternately, commencing with the plaintiff.

On what  
grounds chal-  
lenges for cause  
may be taken.

SEC. 2. Challenges for cause may be taken on one or more of the following grounds:

1st. A want of any of the qualifications prescribed by law, to render a person competent as a juror;

2d. Consanguinity or affinity within the fourth degree, to any party;

3d. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party or a partner in business with either party, or surety on any bond or obligation for either party;

4th. Having served as a juror or been a witness on a previous trial between the same parties, for the same cause of action;

5th. Interest on the part of the juror in the event of the action, or in another action begun or contemplated, involving the same or similar matter, or the main question, except his interest as a member or citizen of a municipal corporation;

6th. Having an opinion or belief as to the merits of the action founded upon knowledge of its material facts, or some of them;

7th. The existence of a state of mind in the juror evincing enmity against or bias to or against either party;

8th. Not understanding the English language as used in the courts.

SEC. 3. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed. Conflicting acts repealed.

SEC. 4. That this act shall take effect and be in force from and after the date of its passage and approval. When to take effect.

Approved, January 11, 1875.

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## JURY TRIAL.

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### CHAPTER LVIII.

TO REGULATE TRIAL BY JURY IN JUSTICES' COURTS.

AN ACT to regulate trials by jury in justices' courts, and for other purposes.

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

SECTION 1. In every civil action brought before a justice of the peace, where the value in controversy or sum demanded exceeds twenty dollars, it shall be lawful for either of the parties of the suit, after issue joined, and before the justice shall proceed to inquire into the merits of the cause, to demand of said justice that such action be tried by a jury; and upon Either party in a civil action may demand trial by jury.

Proceeding of  
justice to se-  
cure jury.

said demand it shall be the duty of the said justice of the peace to write down the names of eighteen persons, residents of the county, and having the qualifications of jurors in the district court, from which list of names each party may strike out three names alternately; and in case of the absence of either party, or of his refusal to strike out, the justice shall strike out of said list such names; and the justice shall at once issue his venire directed to the sheriff or any constable of the county, commanding him to summon the twelve persons whose names remain upon the list as jurymen; and in all such trials by jury in the justices' courts, challenges shall be allowed in the same manner and for the same causes as in the district courts in civil actions; and in case the number shall be reduced below twelve by such challenges, or any portion of said number shall fail to attend, the justice before whom the cause is to be tried shall direct the sheriff or any constable to summon and return forthwith a sufficient number of talesmen, having the qualifications of jurors, to complete the panel. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the justice who may examine the juror or other witness under oath.

Defendant  
in criminal ac-  
tion may de-  
mand jury.

SEC. 2. In all criminal actions brought before justices of the peace, in which actions said justices have lawful original jurisdiction to hear, try and determine, without the intervention of a grand jury, it shall be lawful for the defendant, except where the maximum fine imposed by law does not exceed twenty dollars or imprisonment therein ten days, to demand a trial by jury before the commencement of such trial; and when such demand is made, the same proceedings shall be had to form the jury, as is prescribed in section one of this act: *Provided*, That in all trials by jury in criminal actions in justices' courts, challenges shall be allowed in the same manner and for the same causes as in the district courts in cases of misdemeanor.

Provided.

When parties  
may agree to  
less than  
twelve jurors.

SEC. 3. In all actions, civil and criminal, tried in justices' courts, the parties thereto may agree that the jury in such action shall consist of a less number than twelve jurors: *Provided*, That such agreement be in writing and filed with the papers in the cause and made a part of the record thereof.

SEC. 4. The provisions of any act in conflict with this act Conflicting acts repealed. are hereby repealed.

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

Approved, January 15, 1875.

## JUSTICES OF THE PEACE.

### CHAPTER LIX.

#### JURISDICTION CONFERRED UPON JUSTICES OF THE PEACE IN CERTAIN CASES.

AN ACT to confer jurisdiction upon justices of the peace in certain cases.

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

SECTION 1. Any person convicted of petit larceny, as defined by law, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment: Penalty for petit larceny. *Provided*, That this act shall not affect any case in which the accused is held to answer under existing law, at the time of the passage of this act: *Provided further*, That nothing in this act shall apply to cases where the property taken amounts to more than fifteen dollars. Proviso.

SEC. 2. This act shall take effect and be in force from and When to take effect. after its passage and approval.

Approved, January 15, 1875.

## CHAPTER LX.

## REQUIRING QUARTERLY REPORT TO BE MADE TO COUNTY BOARD.

AN ACT requiring justices of the peace to make a quarterly report to the county commissioners of their respective counties.

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

Justices re-  
quired to make  
reports to coun-  
ty commission-  
ers—when.

SECTION 1. It shall be the duty of all justices of the peace to make a full report, under oath, of all their proceedings in actions or matters in which the county or territory is a party, or interested therein, to the county commissioners of each of their respective counties, on the first Monday of January, April, July and October of each year.

What report  
to contain.

SEC. 2. Such report shall contain the names of the parties to the action on proceeding, a statement of all orders made by said justice, whether the defendant be bound over or otherwise, the judgment whether of dismissal or imprisonment, or for a fine and costs, or either; if for imprisonment, the extent thereof and costs; if for a fine, the amount thereof and costs; the amount of fine and costs paid, if any, and the disposition thereof; an itemized account of the fees of said justices, and of all officers and witnesses, and the names of each.

Justices re-  
quired to pay  
over moneys.

SEC. 3. Said justices shall pay into the treasury of their respective counties, all fines and moneys collected by them in behalf of the county or territory at the time of making their reports, as provided in this act; but if at any time such moneys in their hands amount to two hundred dollars, they shall pay the same into the treasury forthwith.

Penalty for  
violating this  
act.

SEC. 4. Any justice of the peace violating any of the provisions of this act shall be liable to a fine of not less than ten, nor more than one hundred dollars, to be recovered in a civil action by the county, which action may be brought originally in a justices' court or the district court.

When justice  
commits mis-  
demeanor.

SEC. 5. And if any justice of the peace shall neglect or refuse to make such report, or neglect or refuse to pay over the aforesaid moneys collected by them, or shall refuse to allow the county commissioners, or any of them, to examine their

records in regard to such matters, they shall be deemed guilty of willful and corrupt misconduct in office.

SEC. 6. This act shall take effect from and after its passage <sup>When to take effect.</sup> and approval.

Approved, January 15, 1875.

## CHAPTER LXI.

### PROVIDING FOR THE SERVICE AND EXECUTION OF WRITS AND PROCESS.

AN ACT providing for the service and execution of all writs and process issued by a justice of the peace.

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

SECTION 1. That all writs and process issued by any justice <sup>Writs--how directed.</sup> of the peace in the several counties of this territory, shall be directed to the sheriff or any constable of the county: *Provided*, That nothing in this act shall be so construed as to <sup>Provide.</sup> prevent any justice appointing a special constable, as provided for in section sixteen of the justices' code.

SEC. 2. All acts and parts of acts conflicting with the pro- <sup>Conflicting acts repealed.</sup> visions of this act are hereby repealed.

SEC. 3. This act shall take effect from and after its passage <sup>When to take effect.</sup> and approval.

Approved, January 11, 1875.

# L A W S.

## CHAPTER LXII.

PROVIDING FOR THE DISTRIBUTION OF THE VOLUMES OF LAWS.  
 AN ACT relating to the distribution and preservation of the  
 volumes of laws of Dakota Territory.

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

Names of  
 officers entitled  
 to laws.

SECTION 1. That hereafter and until otherwise provided by law, the following named officers of this territory and of the counties therein, and none others, shall be entitled to receive, without cost to the person holding such office, one copy of the bound volumes of laws enacted by the legislative assembly of this territory, to-wit:

The chief justice of the supreme court of the district of Dakota; each associate justice of said supreme court; each clerk of court; the United States attorney for the district of Dakota; the United States marshal for the district of Dakota; each United States commissioner appointed by any judge of this territory; the governor of the territory; the secretary of the territory; the auditor; the treasurer; the superintendent of public instruction; the commissioner of immigration; the librarian of the historical society of Dakota Territory; each judge of probate; each sheriff; each register of deeds; each justice of the peace; each coroner; each county superintendent of public instruction; each assessor of any county or township; each chairman of the board of county commissioners; and one copy to each library association organized for the benefit of the public in any county or town in this territory; and one to each member of the legislative assembly of the session of which he was a member.

Secretary of  
 territory  
 to  
 distribute  
 to  
 certain persons

SEC. 2. That it is hereby made the duty of the secretary of this territory, whenever any volumes of the laws of this territory shall come into his hands, to transmit to each federal and territorial officer and United States commissioner and clerks

of the United States district and supreme court, one volume of such laws, pre-paying the postage thereon if sent by mail, and the said secretary shall state an account of his disbursements for postage or carriage of such volumes so sent by him, to the auditor of the territory, who is hereby authorized to audit the same if in his judgment it be just and correct, and when so audited, the treasurer of the territory is authorized to pay the same out of any money in his hands not otherwise appropriated.

Payment of postage or carriage.

SEC. 3. That the register of deeds of the several counties of this territory, shall, on the first Monday of February next succeeding the time when any session of the legislative assembly of this territory shall be held, make a requisition upon the secretary of the territory for as many copies of the laws of said session, as may be required to supply one copy to each county, district or township office entitled to the same, as provided in this act, and shall forward said requisition to said secretary, who shall thereupon, or as soon thereafter as he shall receive the said volumes of laws, forward the number of copies called for by said requisition of the register, to said register, either by express, or in any other secure manner, the charges of said carriage to be borne by the county receiving such laws. The register of deeds upon receiving the laws, shall distribute them to the several officers entitled by law to the same, taking, in every instance, the official receipt of the officer to whom they are delivered, said receipt to describe the date of the volume so delivered, and to be thereafter filed in the office of said register of deeds.

Register of deeds to make requisition for laws.

Register to distribute laws and take receipt.

SEC. 4. That whenever any person shall be elected to fill any of the county, town or district offices mentioned in section one of this act, it shall be such persons duty, before taking possession of the said office, to procure from the register of deeds of their county a copy of the receipt filed with said register by the out-going officer, for any volumes of the laws of this territory, which copy of said receipt the person so elected shall exhibit to his predecessor in office at the time when he shall assume the duties of his office, and shall require from his said predecessor all the volumes of laws which his said predecessor may have received, as shown by the receipt on file with the register of deeds; and it shall be the duty of the said officer after having received from his predecessor

Duty of newly elected officials with reference to volumes of laws.

the volumes of laws as heretofore specified, to make out duplicate receipts of the same, one of said receipts to be given to his predecessor in office, and the other to be forthwith transmitted to the register of deeds of the county who is hereby required to file the same in his office.

Penalty where  
out-going offi-  
cer refuses to  
turn over laws.

Proviso.

SEC. 5. That in case any person holding an office in this territory, or in any county, town or district thereof, shall, upon relinquishing said office to his successor, fail or refuse to deliver over to his successor in office all the volumes of laws that have come into his possession by virtue of holding such office, such person so failing or refusing shall be liable, upon conviction, to a fine of fifty dollars, or to imprisonment in the county jail not exceeding twenty days, and it is hereby made the duty of the person succeeding to the office of such delinquent to file complaint against him before a justice of the peace; *Provided*, That in case the person so failing or refusing to deliver said volumes of laws can show to the satisfaction of the justice that the said laws have been destroyed or stolen in a manner for which the said delinquent person should not be held responsible, then and in that case no penalty shall be imposed.

How to procure  
copies of  
laws in certain  
cases.

Payment  
therefor to be  
made by coun-  
ty.

SEC. 6. That whenever any county, town or district officer, entitled to a copy of the laws of this territory, shall, through the neglect or refusal of his predecessor in office to turn such laws over to him, or through loss occasioned by fire, theft, or other cause for which said person cannot be held responsible, be without such laws, such person is hereby authorized to make a written requisition upon the register of deeds of his county, for such volumes of laws as may be required, and the said register is authorized to proceed according to section three of this act, to supply the said requisition: *Provided*, That the secretary of the territory shall be authorized to charge the county from which said requisition is made, the cost, with ten per cent. added, for each and every additional volume so furnished, which said amount shall be allowed by the board of commissioners of said county, and paid over to the secretary of the territory, in cash, who shall in turn pay the same to the territorial treasurer, taking his official receipt therefor, and that officer shall place all such amounts so received to the credit of the territorial fund for the purposes of immigration.

SEC. 7. That the secretary of the territory is hereby authorized and empowered to sell, to any party applying therefor, the volumes of laws of this territory for the cost and ten per cent. added per volume, and to pay over to the territorial treasurer all sums so received, taking the official receipt of said treasurer therefor, and the said treasurer is instructed to place all sums so received to the credit of the immigration fund of the territory.

Secretary authorized to sell the volumes of laws.

SEC. 8. That ten volumes of the laws of Dakota, passed by the legislative assembly, at this and at all subsequent sessions, shall be placed in the territorial library by the secretary of the territory, and shall be kept therein for the use of any persons visiting said library, but shall not be loaned or otherwise disposed of.

Secretary to retain ten volumes.

SEC. 9. All acts or parts of acts inconsistent or conflicting with this act are hereby repealed.

Conflicting acts repealed.

SEC. 10. This act shall take effect and be in force from and after its passage.

When to take effect.

Approved, January 15, 1875.

## LIBRARY.

### CHAPTER LXIII.

PROVIDING FOR THE CARE AND CUSTODY OF THE TERRITORIAL LIBRARY.

AN ACT to provide for the care and custody of the Territorial Library.

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

SECTION 1. That the territorial library, including statutes, reports, documents and miscellaneous books of every nature and description, belonging to said library, is hereby placed in the care and custody of the secretary of the territory,

Secretary of territory to have care of library—his duty.

whose duty it shall be to provide a room for said library and keep the same open at all reasonable hours for the benefit of the public; to label and arrange the books in a convenient manner; to collect in all books now out, and to let no book go out without first taking the receipt of the person to whom such book is delivered.

Compensation  
and rent.

SEC. 2. There is hereby appropriated the sum of two hundred and fifty dollars annually out of the territorial treasury to be paid out of any money not otherwise appropriated to the secretary of the territory as compensation to him for the care and custody of said library and for rent of room.

Territorial  
auditor to au-  
dit certain ac-  
counts.

SEC. 3. It shall be the duty of the territorial auditor to audit all accounts presented to him by the secretary of the territory when properly verified, and draw his warrants on the territorial treasurer for the same, for all money paid out by the secretary as express charges or freight on books donated and sent to the territorial library from abroad.

Acts repealed.

SEC. 4. Chapter twenty-eight (28) of the laws of 1872-3, approved December 28th, 1872, and all other acts and parts of acts in conflict with this act are hereby repealed.

When to take  
effect.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

## LOGS AND LUMBER.

### CHAPTER LXIV.

TO PROVIDE FOR FLOATING LOGS AND LUMBER, AND FOR OTHER PURPOSES.

AN ACT entitled an act to provide for the floating of logs and lumber in the streams of this territory and constructing booms for securing the same.

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

Lawful to  
boom logs in  
navigable riv-  
ers.

SECTION 1. It shall be lawful for any person having logs or lumber in any stream navigable for water crafts, in this terri-

tory, to boom such logs or lumber along the shore and to secure the boom by means of piles driven in the stream or by chains, ropes, timber or traverse poles, made fast at points along the shore: *Provided*, That there shall be at all times sufficient channel left clear for the free passage of any crafts or rafts usually navigating such streams. Proviso.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed. Acts repealed.

SEC. 3. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

## LUNATICS.

### CHAPTER LXV.

#### PROVIDING FOR THE KEEPING OF LUNATICS.

AN ACT to provide for the safe keeping of Lunatics of this Territory.

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

SECTION 1. That the governor of this territory is authorized, and it is hereby made his duty, from time to time, to enter into a contract, or contracts, with the states of Minnesota, Iowa or Nebraska, as in his judgment will be most economical and advisable, for the keeping, maintaining, treating and care in the state asylum of declared lunatics from this territory. Governor authorized to contract for keeping of lunatics.

SEC. 2. After such contract is made, the asylum of the state with which such contract is made shall be the insane asylum for the territory, and any person who, under the provisions of any law now in force, or that may be hereafter enacted, shall be declared or adjudged a lunatic, or insane, and a proper subject for confinement in a lunatic asylum, may be by the proper officer or person taken to, and confined in, such asylum, the same as though such asylum was located within this territory. Asylum for this territory defined.

Expenses—  
how paid.

SEC. 3. The expense attending in taking such person to such asylum and confinement therein according to such contract shall be paid by the guardian out of the estate of such person, or by the persons bound to provide for and support such insane person, if such estate is sufficient therefor, or such person is able thereto; but if such insane person has no estate, and no one who has the ability is bound to support him or her, then the same shall be paid out of the county treasury of the county where such insane person is a resident, and the county commissioners of any county shall have the power, and it shall be their duty to provide the means of, and do whatever shall be necessary in carrying out the provisions of this act in the cost arising thereunder, when the expense as before provided is to be paid out of the county treasury.

Power of  
probate court.

SEC. 4. The probate court shall have the power to make an order in any proper case for the taking to and confinement in said asylum of any insane person.

When to take  
effect.

SEC. 5. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

## LEGISLATIVE ASSEMBLY.

### CHAPTER LXVI.

DESIGNATING THE TIME FOR THE LEGISLATURE TO CONVENE.

AN ACT to designate the time of the meeting of the Legislative assembly of the Territory of Dakota.

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

Certain sec-  
tion amended.

SECTION 1. That section one (1) of chapter fifty six (56) of the laws of 1862, entitled "An act to designate the time of the meeting of the legislature, and defining the duties of the same," approved May 7th, 1862, be and the same is hereby amended so as to read as follows:

Section 1. That the regular biennial session of the legislative assembly of the territory of Dakota shall commence on the second Tuesday in January, in the year one thousand eight hundred and seventy-seven, and biennially thereafter on the second Tuesday of January. When session to commence.

SEC. 2. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed. Conflicting acts repealed.

SEC. 3. That this act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 9, 1875.

## MECHANICS LIEN.

### CHAPTER LXVII.

#### JURISDICTION OF PROBATE COURTS TO ENFORCE MECHANICS LIEN.

AN ACT to provide for the jurisdiction of the probate courts to enforce mechanics liens, and the proceedings and practice therein.

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

SECTION 1. That the probate courts of this territory shall have concurrent jurisdiction with the district courts of this territory, to enforce mechanics liens where the amount of the lien claimed is one hundred dollars or less. Probate courts jurisdiction to enforce mechanic's liens.

SEC. 2. That the issue, trial, practice and proceedings, to enforce mechanics liens in the probate courts, shall be the same as in civil actions in the justices' courts in this territory, except as hereinafter provided for. Manner of trial.

SEC. 3. The summons shall be the same as is now required in justices' court, with the words added thereto, "this action is to enforce a mechanics' lien." Form of summons.

SEC. 4. When the defendant cannot be summoned, as provided in the justices' code, in actions on contract, notice shall be given to the defendant, and the notice put up or published in the same form and manner as is required in attachment cases, when the defendant cannot be summoned, and the notice shall state that a summons has been issued against him, How defendant to be summoned.

to enforce a mechanics' lien; and that unless he appear before the probate court, at some time and place to be mentioned in said notice, not less than twenty, nor more than ninety days from the date thereof, judgment will be rendered against him, and the property sold upon which the lien was obtained. The proof of setting up the notices may be made in same manner as in attachment cases.

Proceedings  
after notifica-  
tion of failure  
of defendant to  
appear.

SEC. 5. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered, and the same proceedings be had till judgment is rendered as in attachment cases; and the plaintiff, or some person in his behalf, shall execute a bond before execution is issued, as is required in attachment cases.

Judgments,  
how entered.

SEC. 6. Judgments shall be entered establishing the amount of the lien, interest and costs, and specify upon what property it is made a lien.

Form of exe-  
cution.

SEC. 7. The executions issued upon such judgments shall be the same as is required in the district court, except the execution shall direct the officer to sell all the right, title and interest that the owner or judgment debtor had in the premises or property mentioned in the judgment, at the time the materials are furnished, labor performed, or the time the lien attached, or at any time thereafter.

Appeals.

SEC. 8. Either party may appeal from the judgment rendered by the probate court, in these cases, the same in all respects, as from a judgment rendered by a justice of the peace, upon performing the same conditions and requirements as is required in appealing from judgments rendered by justices of the peace.

Transcript of  
judgment filed  
in dist. court  
constitutes a  
lien.

SEC. 9. A certified transcript of such judgments may be filed and docketed in the office of the clerk of the district court in the county where the judgment was obtained, or any other county in this territory, and they shall be judgments of the district court, and shall be a lien on real property the same as judgments obtained in the district court from the time of filing and docketing said transcript.

Conflicting  
acts repealed.

SEC. 10. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

When to take  
effect.

SEC. 11. This act shall take effect and be in force from and after the date of its passage and approval.

Approved, January 15, 1875.

# MINES.

## CHAPTER LXVIII.

### DEFINING THE MANNER OF LOCATING MINERAL LODES.

#### AN ACT Concerning Mines.

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

SECTION 1. That the length of any lode claim hereafter located within this territory, may equal, but shall not exceed, fifteen hundred (1500) feet along the vein or lode. Length of lode defined.

SEC. 2. The width of lode claims shall be one hundred and fifty (150) feet on each side of the center of the vein or crevice: Width of lode defined. *Provided*, That any county may, at any general election, determine upon a greater width not exceeding three hundred (300) feet on each side of the center of the vein or lode, by a majority of the legal votes cast at said election; and any county, by such vote at such election, may determine upon a less width than above specified: Majority of votes authorized to change width. *Provided*, That not less than twenty-five (25) feet on each side of the vein or lode shall be prohibited.

SEC. 3. That the discoverer of a lode shall, within three (3) months from the date of discovery, record his claim in the office of the recorder or register of deeds of the county in which such lode is situated, by a location certificate, which shall contain Discoverer to record his claim.

- 1st. The name of the lode;
- 2d. The name of the locator;
- 3d. The date of location;
- 4th. The number of feet in length claimed on each side of the discovery shaft;
- 5th. The number of feet in width claimed on each side of the vein or lode;
- 6th. The general course of the lode as near as may be.

What certificate to contain.

When location certificate to be void.

SEC. 4. Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general course of the lode, and such description as shall identify the claim with reasonable certainty, shall be void.

Manner of locating claim.

SEC. 5. Before filing such location certificate, the discoverer shall locate his claim by first sinking a discovery shaft thereon sufficient to show a well defined mineral vein or lode; second, by posting at the point of discovery, on the surface, a plain sign or notice containing the name of the lode, the name of the locator and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side the lode; third, by marking the surface boundaries of the claim.

Manner of marking surface boundaries.

SEC. 6. Such surface boundaries shall be marked by eight (8) substantial posts, hewed or blazed on the side or sides, facing the claim, and sunk in the ground, to-wit: One at each corner, and one at the center of each side line, and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

What shall be sufficient for location.

SEC. 7. Any open cut, cross cut or tunnel, at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten (10) feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

Length of time discoverer may have to perform labor.

SEC. 8. The discoverer shall have sixty (60) days from the time of uncovering or disclosing a lode, to sink a discovery shaft thereon.

What location certificate construed to contain.

SEC. 9. The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically, with such parts of all lodes or ledges as continue, by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines *contained*, [continued] whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

SEC. 10. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

Discoverer cannot claim beyond exterior lines of claim.

SEC. 11. All mining claims now located, or which may be hereafter located, shall be subject to the right of way of any ditch or flume for mining purposes, or of any tramway or pack-trail which is now in use, or which may be hereafter laid out across any such location: *Provided always*, That such right of way shall not be exercised against any location duly made and recorded, and not abandoned prior to the establishment of the ditch, flume, tramway or pack-trail without consent of the owners except by condemnation, as in case of land taken for public highways; parol consent to the location of any such easement, accompanied by the completion of the same over the claim, shall be sufficient without writing: *And provided further*, That such ditch or flume shall be so constructed that the water from such ditch or flume shall not injure vested rights by flooding or otherwise.

Mining claims subject to right-of way.

Proviso.

SEC. 12. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused, may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

When owner of mine may demand security from miner.

SEC. 13. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this act, such locator or his assigns may file an additional certificate subject to the provisions of this act: *Provided*, That such relocation does not interfere with the existing rights of others at the time of such relocation, and no such relocation or the record thereof shall preclude the claimant or claimants from proving any such title or titles as he or they may have held under previous locations.

Concerning the filing of an additional or amended certificate.

Amount of work to be performed annually.

SEC. 14. The amount of work to be done or improvements made during each year to hold possession of a mining claim, shall be that prescribed by the laws of the United States, to-wit: One hundred dollars annually.

Affidavit of labor to be made.

SEC. 15. Within six (6) months after any set time or annual period herein allowed for the performance of labor or making improvements upon any lode claim, the person on whose behalf such outlay was made, or some person for him, shall make and record an affidavit in substance as follows:

Form of affidavit.

TERRITORY OF DAKOTA, }  
County of ..... }

Before me the subscriber personally appeared, .....  
....., who being duly sworn, says that at least .....  
..... dollars worth of work or improvements were performed or made upon (here describe claim or claims, or part thereof,) prior to the ..... day of ....., A. D. 18...  
situate in ..... mining district, county of .....  
Territory of Dakota. Such expenditure was made by or at the expense of ....., owners of said claim, for the purpose of holding said claim.

[Jurat.]

[Signature.]

And such certificate when recorded in the office of the register of deeds of the county wherein such claim is located, shall be *prima facie* evidence of the performance of such labor.

Manner of re-locating abandoned claims.

SEC. 16. The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim, or the relocater may sink the original shaft, cut or adit to a sufficient depth to comply with sections five (5) and (7) of this act, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case, a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificates may state that the whole or any part of the new location is located as abandoned property.

No certificate can claim more than one location.

SEC. 17. No location certificate shall claim more than one location, whether the location be made by one or several locators; and if it purport to claim more than one location, it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it

cannot be told which location is first described, the certificate shall be void as to all.

SEC. 18. The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him, and shall furnish the locator or locators with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents.

Fee of register of deeds for recording.

SEC. 19. All acts or parts of acts conflicting with this act are hereby repealed.

Conflicting acts repealed.

SEC. 20. This act shall take effect and be in force on and after its passage.

When to take effect.

Approved, January 6, 1875.

## CHAPTER LXIX.

### RELATING TO DISPUTED MINING PROPERTY.

AN ACT relating to mining property in dispute, and for the protection of miners.

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

SECTION 1. That in all actions in any district court of this territory wherein the title or right of possession to any mining claim shall be in dispute, the said court or the judge thereof may, upon application of any of the parties to such suit, enter an order for the under-ground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties in such suit, or in anywise interested in the result of the same; and upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey, and observe the method of making the same; said second survey to be at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall be allowed to enter into such prop-

Judge may order surface or subterranean survey of mine.

Witnesses to attend survey.

Order can only be made in open court.

erty and examine the same; such court or the judge thereof may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of said property when such removal is shown to be necessary to a just determination of the question involved: *Provided, however,* That no such order shall be made for survey and inspection except in open court or in chambers, upon notice of application of such order of at least six days, and not then except by agreement of parties or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case, and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

Judge to have power to issue writs of injunction.

SEC. 2. The said district courts of this territory or any judge thereof, sitting in chancery, shall have, in addition to the power already possessed, power to [issue] writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person or persons to the possession of any mining property from which he or they may have been ousted, by force and violence, or by fraud, or from which they are kept out of possession by threats, or whenever such possession was taken from him or them by entry of the adverse party on Sunday, or a legal holiday, or while the party in possession was temporarily absent therefrom. The granting of such writ to extend only to the right of possession under the facts of the case, in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued.

Penalty where through force or threats obtain possession of mine.

SEC. 3. In all cases where two or more persons shall associate themselves together for the purpose of obtaining the possession of any lode, gulch, or placer claim, then in the actual possession of another, by force and violence, or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim or quartz mill, or other mining property, or not being upon such property, but within hearing

of the same shall make any threats, or make use of any language, sign or gestures, calculated to intimidate any person or persons at work on said property, from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending shall, on conviction thereof, be fined in a sum not exceeding two hundred and fifty dollars, and be imprisoned in the county jail not less than thirty days nor more than six months; such fine to be discharged either by payment or by confinement in such jail until such fine is discharged at the rate of two dollars and fifty cents (\$2.50) per day. On trials under this section proof of a common purpose of two or more persons to obtain possession of property as aforesaid, or to intimidate laborers as above set forth, accompanied or followed by any of the acts above specified by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same.

SEC. 4. If any person or persons shall associate and agree to enter or attempt to enter by force of numbers and the terror such numbers is calculated to inspire; or by force and violence, or by threats of violence against any person or persons in the actual possession of any lode, gulch or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons and all and each of them so entering or attempting to enter, shall be deemed guilty of murder in the first degree, and punished accordingly. Upon the trials of such cases any person or parties cognizant of such entry, or attempted entry, who shall be present and aiding, assisting or in any wise encouraging such entry, or attempted entry, shall be deemed a principal in the commission of said offense.

When party seize possession of mineral property, and killing ensues, deemed murder.

Who deemed principals.

SEC. 5. All acts and parts of acts inconsistent herewith are hereby repealed so far as they shall affect the enforcement of this act.

Conflicting acts repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

When to take effect.

Approved, January 6, 1875.

# NUMERICAL INDEX.

## CHAPTER LXX.

### TO PROVIDE FOR KEEPING A NUMERICAL INDEX.

AN ACT providing for the keeping of a numerical index by the different registers of deeds of this territory.

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

Register of  
deeds to keep  
numerical in-  
dex.

SECTION 1. That the registers of deeds of the counties of the territory shall prepare from the records of their offices respectively, and shall hereafter keep a numerical index of the deeds, mortgages, and other instruments of record in their respective offices affecting or relating to the title to real property in lieu of the indexes by names of grantors and grantees, as now kept.

Two different  
indexes to be  
kept.

SEC. 2. There shall be prepared and kept one index of the deeds, and contracts, and other instruments, not liens merely, and another index of the mortgages and other liens, which indexes shall be substantially or as near as may be in the following forms:





SEC. 3. For the making and preparing of the index to the instruments now of record, the register of deeds shall be allowed by the county commissioners, and paid out of the county treasury of their respective counties such just sum as shall be reasonable and proper, and for keeping such indexes hereafter they shall receive no compensation beyond their fees now allowed or that may hereafter be allowed for the recording of instruments, the indexing being a part of their duties in recording the instrument. Compensation of registers.

SEC. 4. The county commissioners shall cause to be procured the necessary books to carry the provisions of this act into effect: *Provided however*, That it shall be discretionary with the county commissioners of the counties of Union and Bon Homme as to whether they adopt the provisions of this act or not. County commissioners to procure books. Certain counties exempt.

SEC. 5. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 12, 1875.

CHAPTER LXXI.

CERTAIN COUNTIES TO HAVE DISCRETIONARY AUTHORITY IN KEEPING NUMERICAL INDEX.

AN ACT supplementary to an act entitled "an act providing for the keeping of a numerical index by the different registers of deeds of this Territory."

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

SECTION 1. It shall be discretionary with the county commissioners of the counties of Minnehaha, Brookings, Burleigh and Clay to adopt the provisions of an act entitled "an act providing for the keeping of a numerical index by the different registers of deeds of this territory." Certain counties to have discretionary authority.

SEC. 2. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 14, 1875

## OFFICERS.

### CHAPTER LXXII.

#### ANNUAL REPORTS OF TERRITORIAL OFFICERS.

AN ACT fixing the time for the territorial officers to make their annual reports.

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

When territorial officers to qualify.

SECTION 1. That hereafter it shall be the duty of the territorial auditor, the territorial treasurer, the commissioner of immigration, and the superintendent of public instruction, to submit their annual reports to the governor, and through him to the legislative assembly, on or before the fifteenth day of December in each year.

Conflicting acts repealed.

SEC. 2. That all acts or parts of acts in conflict with the provisions of this act are hereby repealed.

When to take effect.

SEC. 3. That this act shall take effect and be in force from and after the date of its passage and approval.

Approved, January 15, 1875.

### CHAPTER LXXIII

#### WHEN OFFICERS SHALL QUALIFY.

AN ACT providing for the time when all territorial, county, precinct and district officers must qualify and enter upon the duties of their office.

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

Time for certain officers to qualify.

SECTION 1. That all territorial, county, precinct and district officers shall qualify and enter upon the duties of their office within ten days from the time provided by law for such officers to qualify and enter upon the duties of such office.

SEC. 2. That if any person elected to any territorial, county, precinct or district office shall fail to qualify and enter upon the duties of such office, for a longer time than ten days after the time provided by law for the person elected to qualify and enter upon the duties of such office, such office shall be declared vacant, and shall be filled by appointment by the authority provided for by law to fill such vacancy: *Provided, however,* That if there is a contest for such office, or if the person elected to such office, is prevented or obstructed in any manner from entering upon the duties of such office, the time provided for by this act for him to qualify and enter upon the duties of such office shall not govern.

When office may be declared vacant.

Proviso.

SEC. 4. That this act shall take effect and be in force from and after the date of its passage and approval.

When to take effect.

Approved, January 15, 1875.

## REGISTRATION OF WARRANTS.

### CHAPTER LXXIV.

TO PROVIDE FOR REGISTERING AND PAYING WARRANTS.

AN ACT to provide for the registration of warrants and regulating the order of paying the same.

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

SECTION 1. That all warrants upon the territorial treasurer, the treasurer of any county or any municipal corporation therein issued after January first, 1875, shall be paid in the order of their presentation therefor.

Warrants to be paid in the order of their presentation.

SEC. 2. The territorial treasurer, and the treasurer of every organized county and every incorporated city or town therein, shall provide himself with, and keep a warrant register, which register shall show in a column arranged for that pur-

Territorial and county treasurers to keep warrant register.

pose, the number, date and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person, to whose name the same is registered, the date of payment when made, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed as hereinafter provided.

Duty of treasurer to register warrants.

Fee therefor.

Proviso.

SEC. 3. It shall be the duty of every such treasurer, upon the payment of a fee of ten cents, when the amount is less than twenty-five dollars, and twenty-five cents if over that amount, by the holder of any warrant, or by any person presenting the same for registration, in the presence of such person, to enter such warrant in his warrant register for payment in the order of presentation for registration, and upon every warrant so registered he shall endorse "registered for payment" with the date of such registration, and shall sign such endorsement: *Provided*, That nothing in this act shall be construed to require the holder of any warrant to register the same, or to modify or repeal the law as it now is relating to presentation and endorsement if "not paid for want of funds" and interest thereafter.

Treasurer to set aside certain moneys for payment of registered warrants.

SEC. 4. It shall be the duty of every such treasurer to set aside in a special and sealed package the money for the payment of each registered warrant in the order of its registration as soon as money sufficient for the payment of such warrant is received to the credit of the particular fund upon which such warrant is drawn, such package shall be endorsed with the number and description of such warrant, and the name and address of the person to whose name the same is registered, and interest upon such warrant shall thereupon cease, and such treasurer shall by mail immediately notify the person in whose name the same is registered, and shall endorse the date of the mailing of such notice upon such sealed package, and shall pay over to the party holding such warrant such sum when called for.

Duty of treasurer in keeping cash book.

SEC. 5. Every such treasurer shall daily, as moneys are received, foot the several columns of his cash book, and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants so registered, he

shall close the account for that year in such register, and shall carry forward the excess.

SEC. 6. Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received, or who shall fail to keep his cash book footed from day to day, as required by this act, for the space of three days, shall forfeit for each offense the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer.

When treasurer liable to forfeit.

SEC. 7. The cash book and register of every such treasurer shall at all times be open to the inspection of any person in whose name any warrant is registered and unpaid.

Cash book and register open to inspection.

SEC. 8. Any treasurer who shall for the period of five days after moneys in amount sufficient to pay any registered warrant in its order have been received, fail to mail notice thereof to the person registering such warrant, shall forfeit to such person ten per cent. on the amount of such warrant, and ten per cent. additional for every thirty days thereafter during which such failure shall continue.

When treasurer liable to forfeit.

SEC. 9. Any such treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be liable on his official bond to each and every person, the payment of whose warrant is thereby postponed in the sum of three hundred dollars, to be recovered in a civil action.

When treasurer liable on his bond.

SEC. 10. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Conflicting acts repealed.

SEC. 11. Nothing in this act shall be so construed as to prevent payment of taxes in warrants as now provided by law: *Provided further*, That this act shall not apply to the counties of Minnehaha and Union.

Act, how construed.

Counties exempt.

SEC. 12. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 14, 1875.

## REPEALS.

### CHAPTER LXXV.

#### RELATIVE TO CONTESTING COUNTY OFFICERS.

AN ACT repealing chapter six of the laws of 1864-5.

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

Certain chap-  
ter repealed.

SECTION 1. That chapter six of the laws of 1864-5, entitled "an act prescribing the manner of contesting the election of county officers," approved January 3d, 1865, be and the same is hereby repealed.

When to take  
effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

### CHAPTER LXXVI.

#### RELATING TO FEES OF CLERKS.

AN ACT to repeal section five of chapter two of the session laws of 1872-3.

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

Certain sec-  
tion repealed.

SECTION 1. That section five, chapter two of the session laws of 1872-3, be and the same is hereby repealed.

When to take  
effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval: *Provided, however,* That this act shall apply to the third judicial district of this territory only, and as to the first and second districts thereof it shall be inoperative.

Proviso.

Approved, January 15, 1875.

CHAPTER LXXVII.

REPEALING AND AMENDING THE CIVIL CODE WITH REFERENCE  
TO INCORPORATIONS.

AN ACT to repeal section 2 of chapter 2 of the laws of 1872-3,  
and for other purposes.

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

SECTION 1. That section 2 of chapter 2 of the laws of 1872-<sup>Certain section repeated.</sup>  
3, approved July 10th, 1873, be and the same is hereby re-  
pealed.

SEC. 2. That section 188 of an act entitled "an act to sim-<sup>How execution of attachment in certain cases to be made.</sup>  
plify and abridge the practice, pleadings and proceedings of  
the courts of the territory," passed at the seventh session of  
the legislative assembly of the territory be amended so as to  
read as follows: The execution of the attachment upon any  
debts, or other property incapable of manual delivery to the  
sheriff, shall be made by leaving a certified copy of the war-  
rant of attachment with the president or other head of the as-  
sociation or corporation, or the secretary, cashier or manag-  
ing agent thereof, or with the debtor or individual holding or  
occupying such property, with a notice showing the property  
levied on, or if the property attached be unoccupied real  
property, by putting a certified copy of such warrant upon  
the outer door of the court house, or other building in which  
the district court shall be held within the county or district in  
which such unoccupied real property shall be situated.

SEC. 3. This act shall take effect and be in force from and <sup>When to take effect.</sup>  
after its passage and approval.

Approved, January 6, 1875.

CHAPTER LXXVIII.

RELATIVE TO FEES AND COSTS IN CIVIL ACTIONS.

AN ACT repealing section 10, chapter 2, of the laws of 1872-3,  
approved January 10th, 1873, and for other purposes.

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

SECTION 1. That section 10 of chapter 2 of the laws of <sup>Certain section repeated.</sup>  
1872-3, approved January 10th, 1873, be and the same is

hereby repealed: *Provided, however,* That such repeal shall in no way affect actions heretofore commenced.

Section substituted.

SEC. 2. That in lieu of said section 10 there be substituted the following:

Fees and costs not allowed, When.

No fees or costs shall be allowed to any party in a civil action, except witness fees, jury fees, clerk's fees, sheriff's fees, and costs of court. No civil action which is in the jurisdiction of the courts of the justices of the peace, shall be commenced originally in the district courts of this territory, except when the defendant is a non-resident of the territory, and has real property within the territory liable to attachment: *Provided, however,* That no judgment shall be rendered in any action commenced in the district court, except in term time.

When to take effect.

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

Approved, January 1, 1875.

## CHAPTER LXXIX.

### RELATIVE TO DOCKETING EXECUTIONS.

AN ACT repealing the amendment to the code of civil procedure, requiring the docketing of executions.

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

Repeal of section requiring the docketing of executions.

SECTION 1. That the act entitled "an act supplemental to an act to simplify and abridge the practice, pleadings and proceedings of the courts of this territory," approved January 8th, 1868, the first section of which reads as follows: "That when an execution shall be issued under, and by virtue of the provisions of an act entitled 'an act to simplify and abridge the practice, pleadings, and proceedings of the courts of this territory,' included in chapter I, title IX of said act, before the same shall be delivered to the sheriff, or coroner as therein provided, the party or his attorney issuing the execution shall cause the same to be docketed, in the execution docket, by the clerk of the court in which the judgment is rendered," be and the same is hereby repealed.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 1, 1875.

CHAPTER LXXX.

REPEALING AND RE-ENACTING PORTIONS OF JUSTICES' CODE.

AN ACT repealing chapter 34 of the laws of 1862, also sections two hundred and seven to two hundred and twenty inclusive of the justice code of 1865-6, as published in the laws of 1870-71, and to re-enact chapter 10 of the laws of 1868-9.

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

SECTION 1. That chapter 34 of the laws of 1862 and sections 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, of the justice code of 1865-6, as published in the laws of 1870-71, and re-enacted by section 2 of chapter 6 of laws of 1872-3, be and the same is hereby repealed.

Sections of justices' code repealed.

SEC. 2. That chapter 10 of the laws of 1868-9, entitled an act to amend an act entitled "an act to establish the courts and define the jurisdiction of the justices of the peace," be and the same is hereby re-enacted and made of full force and effect.

Chapter re-enacted.

SEC. 3. All acts and parts of acts in conflict with this act are hereby repealed.

Conflicting acts repealed.

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

When to take effect.

Approved, January 9, 1875.

CHAPTER LXXXI.

REPEALING THE PROHIBITION AGAINST MASKED BALLS.

AN ACT repealing sections 478 and 480 of the penal code of the laws of 1864-5, approved January 11th, 1865.

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

SECTION 1. That sections 478 and 480 of the penal code of the laws of 1864-5, approved January 11th, 1865, which read as follows:

Repeal of sections of penal code relating to unlawful assembly.

"Sec. 478. Every assembly of three or more persons having their faces painted, discolored, or concealed, or being otherwise disguised in a manner adapted to prevent them from being identified, is an unlawful assembly."

“Sec. 480. Every person being a proprietor, manager, or keeper of any theatre, circus or public garden, public hall or premises, or other place of public meeting, resort or amusement whatever, for admission to which any price or payment is demanded, who permits therein any masquerade or masked ball, or any assemblage of persons masked, is guilty of a misdemeanor, punishable by imprisonment in the territorial prison not exceeding two years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars and not less than five hundred dollars, or by both such fine and imprisonment;”

Be and the same is hereby repealed.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, December 19, 1874.

## CHAPTER LXXXII.

### RELATIVE TO BOATS AND VESSELS.

AN ACT repealing chapter seven of the laws of 1862, approved May 2d, 1862.

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

Certain section repealed.

SECTION 1. That chapter seven of the laws of 1862, entitled “an act to provide for proceedings for the collection of demands against boats and vessels,” be and the same is hereby repealed.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, December 30, 1874.

## CHAPTER LXXXIII.

## REPEALING AND AMENDING PORTIONS OF THE REVENUE LAW.

AN ACT repealing chapter eight of the session laws of 1872-3,  
and for other purposes.

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

SECTION 1. That chapter eight of the session laws of 1872-3, Chapter eight repealed.  
be and the same is hereby repealed.

SEC. 2. That all property in this territory, whether real or Time at which property shall be listed.  
personal, subject to taxation under existing laws, including  
real estate, becoming taxable for the first time, shall be listed  
to the owner thereof for the year one thousand eight hundred  
and seventy-five, and yearly thereafter, with reference to the  
amount owned on the first day of April, including all prop-  
erty purchased on that day.

SEC. 3. The board of county commissioners of each county Commissioners to equalize and list from April 1st.  
in this territory, in equalizing the value of real and personal  
property therein, shall estimate such property at its value on  
the first day of April of the year for which such equalization  
is made.

SEC. 4. The lien for all taxes for territorial, county, school, When lien for taxes to attach.  
road, township or other purposes, shall attach on all real es-  
tate on the first day of April annually for the ensuing year.

SEC. 5. This act shall take effect and be in force from When to take effect.  
and after its passage and approval.

Approved, January 12, 1875.

## ROADS.

## CHAPTER LXXXIV.

LOCATING A TERRITORIAL ROAD FROM YANKTON TO CHOTEAU  
CREEK.

AN ACT to establish and locate a territorial road from Yank-  
ton to Choteau Creek.

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

SECTION 1. That D. T. Bradford, Eugene Alexander and Names of commissioners to locate road.  
George W. Snow be, and they are hereby, appointed commis-

cioners to locate and establish a territorial road from Yankton, by way of Smutty Bear bottom, Bon Homme and Springfield, to George Trumbo's ranche, on Choteau Creek.

**When to meet.** SEC. 2. That the said commissioners shall meet at Bon Homme, on or before the first day of July, A. D. 1875, and proceed to locate said road.

**Expenses, by whom paid.** SEC. 3. The expenses of locating the same road shall be paid by the counties through which said road shall pass.

**When to take effect.** SEC. 4. This act shall take effect and be in force from and after its passage and approval.

Approved, January 1, 1875.

## CHAPTER LXXXV.

### RELOCATING A ROAD IN CLAY COUNTY.

#### AN ACT to relocate a territorial road in Clay County.

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

**Defining the route of road.** SECTION 1. That that portion of the road surveyed, laid out and established, under the provisions of chapter 44 of the laws of 1870-71, which is hereafter described, is hereby relocated as follows, to-wit: Commencing at a point in said road at or near the northeast corner of section thirty-six, township ninety-four, range fifty-three; thence west on the north lines of said section thirty-six, and sections thirty-five, thirty-four and thirty-three, to the road known as the bluff road, a few rods west of the corner of section 33.

**Portion of road vacated.** SEC. 2. All that portion of said road leading across said section thirty-six, and from thence to said bluff road is hereby vacated.

**Damages, how to be paid.** SEC. 3. Any person damaged by the relocating of said highway shall have ninety days from the passage of this act in which to apply to the county commissioners for payment of such damage, under the provisions of the general statutes relating to highways, and if they fail for that length of time so to apply, they shall thereafter be forever barred and fore-

closed from recovering any damages therefor, and said road shall remain a public highway until changed or vacated according to law.

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

Approved, January 15, 1875.

## CHAPTER LXXXVI.

### LOCATING A ROAD IN TURNER COUNTY.

AN ACT to establish a territorial road in Turner county, D. T.

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

SECTION 1. That the following described quarter section line, to-wit: Commencing at the south-east corner of the south-west quarter of section number five in township number ninety-seven of range number fifty-two, in Turner county, D. T., and running south along said quarter line through the center of sections eight and seventeen to intersect the territorial road from Yankton to Sioux Falls, be, and the same is hereby established and made a territorial road. Defining route of the road.

SEC. 2. That any person deeming himself or herself damaged by the opening of the road hereby established, shall have sixty days in which to apply to the board of county commissioners for the viewing, appraisalment and fixing of said damages; and if, after such viewing, it shall appear that the party so applying has sustained any damage, the said board shall issue warrants on the county treasurer for the payment of the same. Damages, how to be paid.

SEC. 3. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

# STENOGRAPHERS.

## CHAPTER LXXXVII.

### AUTHORIZING A STENOGRAPHER TO BE APPOINTED FOR DISTRICT COURTS.

AN ACT authorizing the appointment of stenographers for the district courts of this territory.

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

Judges authorized to appoint stenographers.

SECTION 1. That the respective judges of the district court of the territory be and they are hereby authorized and empowered from time to time, as they shall deem advisable for the more economical administration of justice, to appoint a stenographer for each of their district courts respectively.

Duties and oath of stenographers.

SEC. 2. Such stenographers shall hold their offices at the pleasure of the judges of the district court for which they are appointed, shall perform such duties as such judge shall prescribe, and shall take and subscribe an oath to support the constitution of the United States and the organic act of the territory, and to honestly, faithfully and impartially perform the duties of their said office, which oath shall be filed with the clerk of the court in that county where the district court shall by law exercise the jurisdiction which pertains to district and circuit courts of the United States.

Duties and compensation of stenographers.

SEC. 3. Such stenographer shall proceed from county to county, or subdivision, where the district courts are held, when required thereunto by such district judge, and be in attendance upon such district court, to perform such duties as shall be required of him by such judge, and shall receive as compensation for the performance of his duties as such stenographer, such sum as the said judge shall prescribe, not exceeding the sum of ten dollars per day while actually engaged in the discharge of his duties, to be paid by the county or subdivision wherein such service shall be rendered, upon the order of the judge of the district court.

When to take effect.

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

Approved, January 12, 1875.

# SUPREME COURT

## CHAPTER LXXXVIII.

### TO ASSIGN THE JUDGES OF THE SUPREME COURT.

AN ACT assigning the judges of the supreme court of this territory to judicial districts, and for other purposes.

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

SECTION 1. That the Honorable J. P. Kidder, associate justice of the supreme court of this territory, and his successors in office, are hereby assigned to the first judicial district of this territory. First district.

SEC. 2. That the Honorable P. C. Shannon, chief justice of the supreme court of this territory, and his successors in office, are hereby assigned to the second judicial district of this territory. Second district.

SEC. 3. That the Honorable A. H. Barnes, associate justice of the supreme court of this territory, and his successors in office, are hereby assigned to the third judicial district of this territory. Third district.

SEC. 4. That the judges of the supreme court of this territory may, at their pleasure, hold terms of court in each judicial district, other than the one to which they are assigned by this act. Judges may hold court in each district.

SEC. 5. That in case of the absence from the territory, sickness or any other cause whatever, any judge is unable to hold court, or to hear and determine any motion, either in term time or vacation, it is hereby made the duty of any other judge of the supreme court, to hold court in such district, during the whole; or any part of such term of court, or to hear and determine any motion either in term time or vacation. When any judge shall be absent, duty of other judges.

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

Approved, January 9, 1875.

## CHAPTER LXXXIX.

## FIXING THE TIME FOR HOLDING THE SUPREME COURT.

AN ACT to fix the time of holding the supreme court for the Territory of Dakota.

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

Time of holding supreme court.

SECTION 1. That there shall be held at Yankton, two terms annually, of the supreme court, commencing the fourth Tuesday of June, and the second Tuesday of December.

Certain act repealed.

SEC. 2. That chapter 14 of the acts of 1870-1, is hereby repealed: *Provided however*, That the January term, 1875, of said court, shall be held as therein provided.

Proviso.

When to take effect.

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

Approved, January 15, 1875.

## TAXES.

## CHAPTER XC.

## EXTENDING TIME FOR PAYING SCHOOL TAXES.

AN ACT extending the time for the payment of school district taxes, and for other purposes.

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

Delinquent school taxes declared valid and time extended.

SECTION 1. That all delinquent school district taxes now in the hands of any officer of the school district board of any school district in this territory are hereby declared valid, and the time for the school district board to collect any and all such taxes is hereby extended until the first day of April, A. D. 1875.

District board to collect taxes

SEC. 2. That in all cases of any delinquent taxes now in the hands of any officer of any school district board, the said board shall proceed to the collection of such delinquent taxes in the same manner, and subject to the same rules, regulations, and with equal force and effect as such school district board now collects taxes as provided by law for the collection of taxes in any school district in this territory.

**SEC. 3.** That if on the first day of April, A. D. 1875, there is any delinquent taxes in the hands of any school district board officer, the school district board shall turn such delinquent taxes over to the county treasurer of the county in which such school district board is situated, and the county treasurer shall proceed to collect such delinquent taxes in the same manner that such taxes are now collected by law.

When district board shall turn taxes over to county treasurer.

**SEC. 4.** That all acts and parts of acts in conflict with the provisions of this act are hereby repealed so far as they apply to the cases herein provided for by this act.

Conflicting acts repealed.

**SEC. 5.** That this act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 15, 1875.

## CHAPTER XCI.

PROVIDING THAT DELINQUENT TAXES SHALL BE BROUGHT FORWARD.

AN ACT requiring the delinquent taxes to be brought forward upon the next tax list, and providing for the collection of the same, and for other purposes.

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

**SECTION 1.** That all delinquent county, school and territorial taxes which shall remain delinquent in this territory, on the first day of October, 1875, without regard to the year for which they were levied, shall be brought forward and entered upon and added to the tax list for the year 1875, in appropriate columns, and shall be collected together with the interest and penalty thereon, in the same manner and with like effect as though said tax had been levied and assessed in the year 1875.

When delinquent taxes shall be bro't forward.

**SEC. 2.** To facilitate the bringing forward of said delinquent taxes, the county clerk shall have access to and the custody of the tax books now in the hands of the county treasurer, at the time they are making up the said tax list for 1875, and it shall be the duty of said clerk to enter upon and add to such tax list for 1875, all such delinquent taxes as provided in section one of this act.

County clerk to assist in bringing forward delinquent taxes.

Certain acts  
declared legal.

**SEC. 3.** All acts and doings of all the county, township, precinct, school and other officers in and about the assessment, levying and collection of said taxes, so far as may be necessary to legalize and validate said delinquent taxes, are hereby legalized and validated, ratified and confirmed: *Provided however*, That nothing herein contained shall be construed as legalizing or validating any tax not authorized by law to be levied or raised.

Proviso.

Duty of county  
treasurer.

**SEC. 4.** It shall be the duty of the county treasurers of the several counties of this territory, to collect all such delinquent taxes, and all taxes which shall be levied and placed in their hands for collection, and assessed, in the manner and at the time provided by law, and if they fail so to do, and the county shall suffer any loss by reason of the neglect of any such treasurer so to perform his duty in that regard, the said treasurer shall be liable upon his official bond, together with his sureties, to the county for such loss.

Penalty for  
failing to do  
duty.

When to take  
effect.

**SEC. 5.** This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.

## CHAPTER XCII.

### PROVIDING FOR THE PAYMENT OF DELINQUENT TAXES.

AN ACT to provide for the payment of delinquent taxes.

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

What taxes  
may be paid  
with county  
warrants.

**Section 1.** That all taxes up to, and including the year 1873, now delinquent in the counties of Yankton and Bon Homme, with the exception of the territorial tax, may be paid with county warrants, and it shall be the duty of the county treasurers of said counties to receive such warrants in payment of any and all taxes up to and including the year 1873, with the exception above stated, and give receipts for such taxes: *Provided, however*, That as fast as any moneys shall be received into the treasury of the county from whatever source, except in payment of territorial taxes, such money shall be used to re-

Proviso.

imburse the special funds absorbed by the warrants received under the provisions of this act, care being taken by the board of county commissioners to keep and preserve the school funds to such condition that the schools can be maintained as provided by law.

SEC. 2. All acts or parts of acts conflicting with the provisions of this act are hereby repealed. Conflicting acts repealed.

SEC. 3. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

## WEIGHTS AND MEASURES.

### CHAPTER XCIII.

#### PRESCRIBING PENALTY FOR USING FALSE WEIGHTS AND MEASURES.

AN ACT defining the penalty for using false weights and measures.

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

SECTION 1. If any person with intent to defraud, use a false balance, weight, or measure, in the weighing or measuring of any thing whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged or given in payment, he shall be punished by fine, not exceeding one hundred dollars, nor less than twenty-five dollars, or by imprisonment in the county jail not more than thirty days, or by both fine and imprisonment, at the discretion of the court. The fine shall be appropriated to the use of common schools, in the same county. He shall also be liable to the injured party in double the amount of damages, with costs of suit. Penalty for using false weights and measures.

SEC. 3. This act shall be in force from and after its passage and approval. When to take effect.

Approved, January 12, 1875.

# **SPECIAL AND PRIVATE LAWS.**

# BRIDGING THE SIOUX RIVER.

## CHAPTER 1.

### BRIDGING THE SIOUX RIVER.

PREAMBLE to a bill for an act to enable Lincoln county to aid in bridging the Big Sioux river and to encourage internal improvements. Preamble.

WHEREAS, Lincoln county is a border county of this territory, the Big Sioux river separating it from the state of Iowa, and the emigration into the said Lincoln county mostly comes from the east, having to cross the said Sioux river, and

WHEREAS, The said Sioux river is at times for weeks at a time impassable except by ferry or bridge, which is a great detriment and loss to Lincoln county which is mostly settled by homesteads and is unable to bridge the Sioux river, and

WHEREAS, The counties adjoining in Iowa have a large amount of taxable land and income, and offer inducements, and do secure manufacturing works and improvements, property belonging to or for the business of Lincoln county, which adds to their wealth and prosperity, and desire to bridge the said Sioux river and are prohibited from building but across one-half of the main channel thereof by law; therefore

AN ACT to enable Lincoln county to aid in bridging the Sioux river and encourage internal improvements.

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

SECTION 1. That the board of commissioners of Lincoln county may, at the request of two hundred of the legal voters of said county, at the next election held therein, submit the question to the vote of the county whether they shall aid in building a bridge or bridges across the Sioux river, or other internal improvements in the county, stating the amount required, which may be paid in orders or bonds of the county in similar form to those authorized by the law in

When election  
may be order-  
ed to vote  
bridge bonds.

payment of the county indebtedness previous to January 1st, 1875, and similar provision shall be made for the payment thereof.

Authorizing county board to offer inducements for manufacturing.

SEC. 2. That the board of county commissioners may make such arrangements with manufacturing companies, corporations, or individuals, to secure the investing of capital in improvements and business in the county that will or does not conflict with the organic act of this territory.

When to take effect.

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

Approved, January 15, 1875.

## CANTON.

### CHAPTER 2.

#### PROVIDING FOR CORRECTING THE PLAT OF THE VILLAGE OF CANTON.

AN ACT to provide for correcting the plat of the village of Canton, patented as Lincoln, and the additions thereto.

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

What shall comprise village of Canton.

SECTION 1. That the townsite provided for in chapter IX laws of 1867-68, in the organization of the county of Lincoln, which was laid out and surveyed as the village of Canton, but patented under the townsite law as Lincoln, and being in said bill located as the county seat of said county, and the several additions thereto known as Hill's Addition, Carpenter's Addition, Pattee's Addition and Carpenter's Second Addition, to the village of Canton, patented as Lincoln, shall be known as the village of Canton, the blocks being numbered as they now are in said plats, from 1 to 56 inclusive; and in Carpenter's Second Addition from 1 to 5, as platted thereon.

Regarding conveyances.

SEC. 2. That in the future conveyance of lots therein, it shall be unnecessary to mention that it was patented as Lin-

coln, but describe the premises by lots and blocks only, and any conveyances heretofore made without mentioning the fact of its having been patented as Lincoln, shall not be construed to effect the title thereto, as between the parties, and all future additions shall join the said village of Canton, as provided herein, or Carpenter's Second Addition thereto, and shall be platted as ..... Addition to the village of Canton.

SEC. 3. Any informalities in the plats above mentioned in consequence of the error in the name, as patented or otherwise, shall not effect the boundaries of the village of Canton, as provided in section 1. Certain informalities immaterial.

SEC. 4 All acts or parts of acts conflicting herewith are hereby repealed. Conflicting acts repealed.

SEC. 5. This act shall be in force and take effect from and after its passage and approval. When to take effect.

Approved, January 15, 1875.

## CHANGE OF NAME.

### CHAPTER 3.

TO CHANGE THE NAME OF NILS PEDERSON.

AN ACT to change the name of Nils Pederson.

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

SECTION 1. That the name of Nils Pederson shall hereafter be Nils P. Leque, by which name he shall be known in all legal intents and purposes. Name changed

SEC. 2. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 13, 1875.

## COMMISSIONER DISTRICTS.

### CHAPTER 4.

#### BON HOMME COUNTY.

AN ACT to repeal an act of the special and private laws of 1872-3, creating three commissioner districts in Bon Homme County.

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

Certain act  
repealed.

SECTION 1. That chapter 8 of special and private laws of 1872-3, approved January 9th, 1873, creating three commissioner districts in Bon Homme county, be and the same is hereby repealed.

When to take  
effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

### CHAPTER 5.

#### LAKE COUNTY.

AN ACT to divide the county of Lake into three commissioner districts.

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

County divided  
into three  
commissioner  
districts.

SECTION 1. That the county of Lake be and the same is hereby divided into three commissioner districts, to be bounded as follows:

Boundaries of  
first district.

District No. 1 to commence at the northeast corner of the county; thence west to the northwest corner of the county; thence south to the southwest corner of section seven, (7) township 106, range 54; thence east to the northwest corner of section sixteen, (16) township 106, range 52; thence south one mile and a half; thence east to the east line of the county; thence north to the place of beginning.

District No. 2 to commence at the southeast corner of dis- Second district  
 trict number one; thence west to the line between sections  
 twenty-two and twenty-three, township 106, range 52; thence  
 south to the south line of the county; thence east to the east  
 line of the county; thence north to the place of beginning.

District No. 3 to commence at the southwest corner of dis- Third district.  
 trict number one; thence along the south boundary of district  
 number one to the northwest corner of district number three;  
 thence south to the south line of the county, thence west to  
 the west line of the county; thence north to the place of be-  
 ginning.

SEC. 2. That at the first general election held in said county When com-  
 missioners to  
 be elected.  
 and annually thereafter, there shall be elected one commis-  
 sioner for each of the districts named, each of whom shall be  
 a resident of the district which he is to represent, and to be  
 voted for only by the electors of said district, whose duties  
 and powers shall be the same as now prescribed by law.

SEC. 3. That at the first meeting of said commissioners and When com-  
 missioners to  
 provide for  
 terms of office.  
 immediately after qualifying, they shall provide for the expi-  
 ration of the term of service of one of their number at the  
 end of one, two and three years severally, the same to be de-  
 termined by lot; and at all subsequent elections the vacancies  
 thus provided for shall be filled by the election of one com-  
 missioner, who shall hold his office for three years: *Provided* Proviso.  
*however*, That vacancies which shall otherwise occur shall be  
 filled as now provided by law, the vacancy thus filled to be  
 for the unexpired term only.

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

Approved, January 12, 1875.

CHAPTER 6.

MOODY COUNTY.

AN ACT to create three commissioner districts in Moody  
 County.

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

SECTION 1. That the county of Moody be and the same is County divi-  
 ded into three  
 districts.  
 hereby divided into three districts to be known as commis-  
 sioner districts, and to be bounded as follows:

**Boundaries of first district.** District number one to commence at the northeast corner of the county; thence west to the northwest corner of the county; thence south to the southwest corner of section seven (7), township 107, range 50; thence east to the east line of the county; thence north to the place of beginning.

**Boundaries of second district.** District No. 2 to commence at the southeast corner of district number one; thence west to the west line of the county; thence south eight miles to the southwest corner of section 19, township 106, range 50; thence east to the east line of the county; thence north to the place of beginning.

**Boundaries of third district.** District No. 3 to commence at the southeast corner of district No. 2; thence west to the west line of the county; thence south to the south line of the county; thence east to the east line of the county; thence north to the place of beginning.

**When commissioners to be elected.** SEC. 2. That at the first general election, and annually thereafter, there shall be elected one commissioner for each of the districts named, each of whom shall be a resident of the district which he is to represent, and to be voted for only by the electors of said district, whose duty and power shall be the same as is now prescribed by law.

**Commissioners to decide term of office by lot.** SEC. 3. That at the first meeting of said commissioners, and immediately after qualifying, they shall provide for the expiration of the term of service of one of their number at the end of one, two and three years severally, the same to be determined by lot, and [at] all subsequent elections the vacancies thus provided for shall be filled by the election of one commissioner, who shall hold his office for three years: *Provided*, That vacancies which shall otherwise occur shall be filled as now provided by law, the vacancy thus filled to be for the unexpired term only.

**When to take effect.** SEC. 4. This act shall take effect and be in force from and after its passage and approval.

Approved, January 6, 1875.

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## CHAPTER 7.

### UNION COUNTY.

AN ACT to re-establish commissioner and assessor districts in Union county, Dakota Territory.

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

**First district defined.** SECTION 1. That the townships known as Big Sioux, Jefferson and Civil Bend shall, and the same are hereby made to, constitute the first commissioner district.

SEC. 2. That the townships known as Elk Point and Brule Creek shall, and the same are hereby made to, constitute the second commissioner district. Second district defined.

SEC. 3. That the townships known as Sioux Valley, Virginia, Spink and Prairie shall, and the same are hereby made to, constitute the third commissioner district. Third district defined.

SEC. 4. That the townships of Big Sioux, Jefferson, Civil Bend, Elk Point, Brule Creek, Sioux Valley, Virginia, Spink, and Prairie, shall each constitute one assessor district. Assessors districts defined.

SEC. 5. That the legal voters in each such commissioner and assessor district shall have power to elect at the next general election, and biennially thereafter, one commissioner for each such commissioner district so constituted, and one assessor for each assessor district so constituted, who shall hold their respective offices for the term of two years, and until their successors are elected and qualified; and the duties of said officers shall be the same as now or may be prescribed by law. Power of voters to elect officers.

SEC. 6. That all laws in conflict with the provisions of this act are hereby repealed, so far as it relates to Union county. Conflicting acts repealed.

SEC. 7. This act shall take effect and be in force from and after its passage and approval. When to take effect.

Approved, January 12, 1875.

## DISTRICT COURT.

### CHAPTER 8.

#### UNION COUNTY.

AN ACT to provide for the holding of special terms of the district court in and for the county of Union, in the Territory of Dakota.

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

SECTION 1. That there shall be held annually two special terms of the district courts in and for the county of Union, in Two special terms to be held annually in Union county.

the Territory of Dakota, on the second Tuesdays of August and March, at which all issues of law or of facts not requiring the intervention of a jury, and all motions, may be tried and heard.

When to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage and approval.

Approved, January 15, 1875.

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## EDUCATION.

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### CHAPTER 9.

#### THE CITY OF YANKTON.

AN ACT providing a board of education for the city of Yankton, Dakota Territory, and regulating the management of the public schools therein.

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

Establishment of board of education.

SECTION 1. That there be and there is hereby established a board of education for the city of Yankton, Dakota Territory.

Number of board.

SEC. 2. Said board shall consist of eight persons, two for each district of said city, as herein described. All that portion of said city east of Walnut street and south of Fourth street shall constitute the first district; all west of Walnut street and south of Fourth street shall constitute the second district; all north of Fourth street and west of Walnut street shall constitute the third district; all north of Fourth street and east of Walnut street shall constitute the fourth district:

Board to have power to alter districts.

*Provided however,* That said board shall have the power at any regular meeting held within two months immediately prior to any annual election, to change and alter such district, and to redistrict from time to time said city for such purposes.

SEC. 3. There shall be elected annually in said city, by the city council thereof, at a meeting of said council to be held for that purpose on the first Tuesday of May in each year, commencing on the first Tuesday of May, A. D. 1876, two members of said board, one for each alternate district, commencing with the first and third districts, then the next year from the second and fourth districts, and so alternating each year thereafter.

City council to elect members of board, when.

SEC. 4. For the purpose of determining the commencement and expiration of their term of office, and to enable the said city council to carry out the provisions of said section three, the persons hereinafter appointed members of said board shall, at the time of their organization, determine by lot who of them, respectively, shall hold for the long term, and who for the short term.

Duty of board to determine term of office.

SEC. 5. The persons hereinafter appointed shall hold their office according to such determination by lot and the provisions of section 3, for the terms of one, two, three and four years, respectively, from the first Tuesday of May, A. D. 1875, and until their successors are duly elected and qualified, and the persons hereafter elected shall hold their office for four years, and until their successors are elected and qualified. They shall each take and subscribe an oath to support the constitution of the United States and the organic act of this territory, and to honestly and faithfully discharge the duties of their office, and file the same with the city clerk.

Persons appointed to such board to hold office according to determination.

To take oath, form of.

SEC. 6. The city council of said city may at any time elect members of said board to fill the vacancies which may occur from any other cause than the expiration of the term of office of those elected, and the person thus elected shall serve out the unexpired term.

City council may fill vacancies.

SEC. 7. Any member of said board of education of said city may be removed from office for official misconduct by the city council of said city, by a vote of two-thirds of the members thereof, but a written copy of the charges preferred against said member shall be served upon him, and he shall be allowed an opportunity of refuting any such charges of misconduct, before removal.

Removal from office of member of board.

SEC. 8. The board of education shall be a corporate body in relation to all the powers and duties conferred upon them by this act, to be styled "The Board of Education of the

Board of education made a corporate body. Powers of.

City of Yankton," and as such shall have the power to sue and be sued, to contract and be contracted with, and shall possess all the powers usual and incident to bodies corporate, and as shall be herein given, and shall procure and keep a common seal. A majority of said board shall constitute a quorum. At each annual meeting of the board, on the third Tuesday of May, they shall elect one of their number president of the board, and whenever he shall be absent, a president *pro tempore* shall be appointed.

Quorum.

Shall elect president.

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Members to receive no pay nor be interested in contracts.

SEC. 9. The members of the board shall receive no compensation, nor shall be interested directly or indirectly, in any contract for building, or for making any improvement or repairs provided for by this act. They shall have the care and custody of all the public property in said city pertaining to school purposes, and the general management and control of all school matters.

Annual and special meetings.

Manner of calling special meetings.

SEC. 10. The annual meeting of said board shall be held on the third Tuesday of May in each year. The board shall also meet for the transaction of business as often as once in each month, and may adjourn for any shorter term. Special meetings may be called by the president, or in case of his absence or inability to act, by any member of the board, as often as necessary, by giving a personal notice to each member of the board, or by causing a written or printed notice to be left at his last place of residence at least forty-eight hours before the hour for such special meeting.

Secretary of board—his duties.

SEC. 11. The said board shall appoint a secretary who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the board. The said secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The said record, or a transcript thereof, certified by the secretary and attested by the seal of the board, shall be received in all courts as *prima facie* evidence of the facts therein set forth, and such records and all the books, accounts, vouchers and papers of said board shall at all times be subject to the inspection of the city council, or any committee thereof, or any tax payer of said city. For the purposes of economy, the said board, if they deem it advisable, may at any time until their annual meeting in 1878, appoint one of their own num-

ber secretary, in which event said secretary shall serve without compensation.

SEC. 12. The said board of education of said city shall have power, and it shall be their duty to levy and raise from time to time, by tax, such sums as may be determined by said board of education to be necessary and proper for any or all of the following purposes:

Board to levy and raise tax.

1. To purchase, exchange, lease or improve sites for school houses;

Purposes of tax.

2. To build, purchase, lease, enlarge, alter, improve and repair school houses and their outhouses and appurtenances;

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages, but the powers herein granted shall not be deemed to authorize the furnishing with class or text books any scholar whose parents or guardians shall be able to furnish the same;

4. To procure fuel and defray the contingent expenses of the board, including the compensation of the secretary;

5. To pay teachers wages, after the application of public moneys, which may by law be appropriated and provided for that purpose.

SEC. 13. The tax so to be levied as aforesaid, and collected by virtue of this act, shall be collected in the same manner as other city taxes, except the first tax to enable the said board to operate until the taxes of 1875-6 can be made available, which shall be levied and collected as hereinafter provided:

How taxes collected.

and for that purpose the said board of education shall have power to levy and cause to be collected, such taxes as are herein authorized, and shall cause the rate for each purpose to be certified by the secretary to the city clerk in time to be added to and put upon the annual tax list of the city; and it shall be the duty of the city clerk to calculate and extend upon the annual assessment roll and tax list such tax so levied by said board, and such tax shall be collected as other city taxes are collected. And in case the city council shall fail to levy any

Relative to first tax.

tax for city purposes, or shall fail to cause an assessment roll or tax list to be made, as now or that may hereafter be provided by ordinance, the said board may cause an assessment roll and tax list to be made out by its secretary, and put into the hands of the city treasurer with a warrant for the collection of the same, under the hand of the president and seal of

When city council shall fail to levy tax.

the board, and attested by the secretary, and may cause the same to be collected in the same manner as other city taxes are collected, or as may, by a resolution of such board, be provided.

Amount of tax limited.

SEC. 14. The amount raised for teacher's wages and contingent expenses shall be only such as together with the public money coming to said city from the territorial and county fund, and other sources, shall be sufficient to maintain efficient and proper schools for the children in said city, nor shall the tax for the purchasing, leasing or improving sites, and the building, purchasing, leasing, enlarging, altering or repairing of school houses, exceed in any one year two cents on the dollar of valuation of the taxable property of said city, and the said board of education are authorized and directed, when necessary, to borrow in anticipation the amount of the taxes so to be raised, levied and collected as aforesaid.

Board may issue school bonds.

SEC. 15. The board of education of said city are authorized and empowered, and it shall be their duty, whenever the said board shall deem it necessary, in order to an efficient organization and establishment of schools in said city, and when the taxes authorized by this act shall not be sufficient, or shall be deemed by said board burdensome upon the tax payers of said city, from time to time to issue the bonds of said city, in denominations of not less than one hundred dollars, payable ten years after date, and bearing interest at the rate of ten per centum per annum, payable semi-annually, on the first days of January and July, and upon their face to show they are issued for school purposes, and cause the same to be sold and negotiated at not less than ninety cents on the dollar, and the money realized therefrom deposited with the city treasurer to the credit of the said board of education. And when any bonds shall be so negotiated, it shall be the duty of the said board of education of said city, to provide by tax for the payment of the principal and interest of said bonds: *Provided however*, That at no time shall the aggregate amount of bonds issued under the provisions of this act, exceed twenty thousand dollars.

City treasurer to be custodian of school moneys.

SEC. 16. All moneys to be raised pursuant to the provisions of this act, and all school moneys which shall, by law, be appropriated to or provided for said city, shall be paid over to the city treasurer of said city, and the county treasur-

er of Yankton county shall, from time to time, as he shall receive the county school funds, and at least once in each month on the first Monday thereof, pay over to said city treasurer the proportion thereof belonging to the said city, the same as though said city constituted one school district, and for that purpose said board shall have power to cause all needful steps to be taken, including census, reports, or other acts or things, to enable said board to receive the school moneys belonging to said city, as fully and completely as though said city formed one of the school districts of said Yankton county.

SEC. 17. The treasurer of said city shall give such bonds to such board of education in such sums and with such conditions and sureties as they shall from time to time require, in order to insure the safe keeping of the school funds, which shall be in addition to his other bonds, and the said treasurer and his sureties upon such bond, shall be accountable to the board for the school moneys that come into his hands, and in case of a failure of such treasurer to give such bonds when required thereto by such board, within ten days thereafter, such treasurer's office shall become vacant and the mayor and council of said city shall appoint another person in his place.

Treasurer to give bond.

Penalty for refusing.

SEC. 18. All moneys required to be raised by virtue of this act shall be paid in cash, or in the warrants hereinafter provided, drawn on the school funds only, and such moneys and all moneys received by said city for the use of the common schools therein, shall be deposited for safe keeping thereof with the treasurer of said city to the credit of the board of education, and shall be by him safely kept separate and apart from any other funds of said city, until drawn from said treasury as herein provided. The treasurer shall pay out the moneys authorized by this act, to be received by him, upon warrants drawn by the president, countersigned by the secretary and attested by the seal of said board of education.

Taxes to be paid in cash or school warrants.

Moneys, how paid out.

SEC. 19. The said board shall have power to and it shall be their duty:

Powers and duties of board of education.

1. To organize and establish such and so many schools in said city, as they shall deem requisite and expedient, and to change and discontinue the same;

To organize schools.

2. To purchase, sell, exchange and hire school houses and

To purchase property.

rooms, lots or sites for school houses, and to fence and improve them as they may deem proper;

To build and enlarge school houses.

3. Upon such lots and upon such sites as now are owned by school district number one, to build, enlarge, alter, improve and repair school houses, outhouses and appurtenances, as they may deem advisable;

To purchase apparatus.

4. To purchase, sell, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages, and to provide fuel for the schools;

To have custody of school property.

5. To have the custody and safe keeping of the school houses, outhouses, books, furniture and appurtenances, and to see that the ordinances of the mayor and city council, in relation thereto, are observed;

To employ teachers.

6. To contract with, license and employ, all teachers in said schools, and at their pleasure to remove them;

To pay wages.

7. To pay the wages of such teachers out of the moneys appropriated and provided by law for the support of common schools in said city, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised by this act;

To defray contingent expenses.

8. To defray the necessary and contingent expenses of the board, including the compensation of the secretary;

To have management of schools.

9. To have in all respects the superintendence, supervision and management of the common schools of said city, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, grading, government and instruction, or the reception of pupils and their transfer from one school to another, and generally for their good order, prosperity and utility;

To make report to city council.

10. To prepare and report to the mayor and city council such ordinances and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of school houses, lots and sites and appurtenances, and all the property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations; and annually, on or before the first Monday in July of each year, to determine and certify to the city clerk of said city, the rate of taxation, in their opinion necessary and proper to be levied under the provisions of this act for the year commencing on

the first day of July thereafter, and also at any time to determine how many and what denomination of bonds shall issue and be sold to pay the extraordinary outlays required.

SEC. 20. Each member of said board shall visit all the public schools in said city at least twice in each year of his official term, and the said board shall provide that each of said schools shall be visited by a committee of three or more of their number at least once during each term.

Members of board to visit schools.

SEC. 21. The said board of education shall have power to allow the children of persons not resident in said city, to attend the schools of said city under the control and care of said board upon such terms as said board shall prescribe, fixing the tuition which shall be paid therefor.

Non-resident children to be admitted to schools of city.

SEC. 22. It shall be the duty of the board in all their expenditures and contracts, to have reference to the amount of moneys which shall be subject to their order during the current year, for the particular expenditures in question, and not to exceed that amount.

Board not to expend moneys in anticipation of succeeding year's taxes.

SEC. 23. The title of the school houses, sites, lots, furniture, books, apparatus and appurtenances, and all other property belonging to the school districts in said city of Yankton and all such property in this act mentioned shall be vested in the city of Yankton, for the use of schools, and the same while used or appropriated for school purposes, shall not be levied upon or sold by virtue of any warrant or execution or other process, nor be subject to any judgment lien, nor be subject to taxation for any purpose whatever, and the said city, in its corporate capacity, shall be able to take, hold and dispose of any real or personal estate, transferred to it by gift, grant, bequest or devise, for the use of the common schools of said city, whether the same be transferred in terms to said city by its proper style, or by designations, or to any person or persons or body, for the use of said schools.

Title to school property, how vested.

Exempt from taxation.

SEC. 24. Whenever any real property is purchased by said board, the transfer or grant and conveyance therefor shall be taken to the "city of Yankton for the use of schools," and whenever any sale is made by said board, it shall be so resolved, which resolution shall be spread upon the records of said board and the conveyance therefor shall be executed in the name of the city of Yankton, by the president of said

Grant to real property, how taken.

board, attested by the secretary of said board and under the seal thereof, and acknowledged by said president and secretary. And said president and secretary shall have full power and authority to execute conveyances upon such sale or exchange, with or without covenants of warranty on behalf of said city.

Officers of board may execute conveyance.

Time for annual report to city council.

SEC. 25. It shall be the duty of said board at least fifteen days before the annual election for members of said board in each year, to prepare and report to the mayor and city council, true and correct statements of the receipts and disbursements of moneys under and in pursuance of the provisions of this act, during the preceding year, which accounts shall be stated under appropriate heads:

What report to contain.

1. The moneys raised by the board under section 12 of this act.

2. The school moneys received by the treasurer of the city from the county treasurer.

3. The moneys received by the treasurer of the city under section 15 of this act.

4. All other moneys received by the city treasurer subject to the order of the board, specifying the sources from which they shall have been derived; and to these ends the city treasurer shall make report to said board when required and as required, of all school moneys received and disbursed by him.

5. The manner in which sums of money shall have been expended, specifying the amount under each head of expenditure, and the city council shall, at least one week before such election, cause the same to be published in all the newspapers of said city which will publish the same gratuitously.

Council shall pass certain ordinances required by said board.

SEC. 26. The mayor and city council of said city shall have the power and it shall be their duty to pass such ordinances and regulations as the said board of education may report as necessary for the protection, preservation, safe keeping, and care of the school houses, lots, sites, appurtenances and appendages, libraries, and all necessary property belonging to or connected with the schools of said city, and to impose proper penalties for the violation thereof, and all penalties shall be collected in the same manner that the penalties for the violation of the city ordinances are by law collected, and when collected shall be paid to the treasurer of the city, to

the credit of the said board of education, and shall be subject to their order as herein provided.

SEC. 27. All fines, penalties, and forfeitures, for the violation of any city ordinance of said city, and all fines, penalties and forfeitures for any criminal offense committed within said city, shall, when collected, be paid by the officers receiving the same, into the city treasury to the credit of said board of education, and subject to their order as other moneys raised pursuant to the provisions of this act.

Fines, etc., to be paid into school fund.

SEC. 28. It shall be the duty of the clerk of said city, immediately after the election of any person as a member of said board of education, personally or in writing to notify him of his election, and if any such person shall not within ten days after receiving such notice of his election, take and subscribe the oath as herein provided, and file the same with the said clerk, the city council may consider it as a refusal to serve, and proceed to fill the vacancy occasioned by such refusal. And the person so refusing shall forfeit and pay to the city treasurer, for the benefit of the schools of said city, a penalty of fifty dollars, which may be recovered in the name of said city in a civil action.

Clerk of city to notify person elected member of board.

Penalty for refusing to serve.

SEC. 29. That D. T. Bramble and F. M. Ziebach for the first district; F. J. Dewitt and J. R. Sanborn for the second district; Bartlett Tripp and Newton Edmunds for the third district, and Joseph Ward and E. P. Wilcox for the fourth district, of said city, are hereby appointed members of said board of education, and they shall, on or before the third Monday in January, A. D. 1875, qualify, by taking the oath herein prescribed, and if any shall neglect so to qualify by that time, the clerk shall notify the city council of such neglect, and a vacancy shall exist for each person so failing to qualify, and the mayor and council shall proceed to fill such vacancy or vacancies by the election of suitable and proper persons as provided herein, who shall hold their office as herein provided for such persons herein appointed, and the person or persons so failing to qualify shall forfeit and pay the penalty as prescribed in section 28, to be recovered in the manner therein prescribed.

Names of members of first board.

Duty of council in case of vacancy.

SEC. 30. The board so appointed or elected, shall meet on the first Tuesday of February, A. D. 1875, and shall organ-

When board to meet, organize and determine their terms of office.

ize and determine their length of term as provided in this act, and upon such organization shall at once assume the management and control of the public schools in said city, and the present school officers of the district or districts within said city shall turn over to them all moneys and other property belonging to such district; and from thence so much of such districts as are in the city of Yankton shall cease to exist, and all property belonging thereto shall vest in the city of Yankton for the use of schools, under the provisions of this act: *Provided however*, That the tax heretofore raised and voted therein, and not collected, so far as the same shall have been assessed upon the property of said city, shall be collected by the proper officers as though this act had not passed, and paid over to the city treasurer for the use of said board of education, and a proportionate amount of the debts and liabilities of said district shall be assumed and paid by said city through the said board of education, the same as though they had been incurred and contracted by said board, and to that end it shall be the duty of the officers of said school district to make full, true and accurate statements of the property, finances and condition of said district to said board immediately upon their organization, and the county superintendent of schools shall have the power to re-organize that part of the district outside of the city, and call a school meeting of the electors therein for that purpose.

Proviso.

Officers of old dist. to make statement.

Board to make estimate of expenses, and may levy tax.

Tax, how collected.

SEC. 31. As soon after their organization as practicable, the board herein appointed and provided for shall make a careful calculation and estimate of the amount of moneys necessary to be raised to place the schools, as soon as may be in an efficient condition, to be used until the taxes of 1875-76 can be made available, and it shall be their duty to levy and collect such amount upon the property in the city as appears upon the last assessment rolls of said city and such addition as they may cause to be made, to raise such amount, and to provide for the collection of the same before the first day of August, A. D. 1875, and for that the board shall cause a tax list to be made out by the secretary of the board, based upon the last assessment roll of said city, and adding thereto such other property in said city as is or may be liable to taxation, and shall place the same in the hands of the treasurer with a warrant for the collection of said tax, under

the hand of the president of the board and the seal thereof, and attested by the secretary, and thereupon the city treasurer shall proceed to levy and collect the said tax by distress and sale of personal property, and shall collect the same by the first day of June, A. D. 1875, and if any tax upon real property shall not be collected by the first day of June, A. D. 1875, he shall advertise the said real property, the tax upon which shall remain so delinquent, for sale, for the payment of said tax, for three successive weeks, in one of the newspapers published in said city, and shall proceed to sell the same on the second Monday of July, A. D. 1875, at the court room in said city, and shall adjourn the sale from day to day until all is sold, or until the first day of August, A. D. 1875, and if the same is not sold by that day, that part of the tax remaining uncollected shall be carried forward by him upon the next assessment roll and tax list and added to such taxes and collected as other taxes are collected; and the owner of such real property shall have the same length of time for the redemption of such real property, from such sale, as in case of other city taxes, and the title to the same shall be made in the same manner as in case of other city taxes, and for the collection of the taxes and the performance of any duty under the provisions of this act, the city treasurer and city clerk shall have and receive such compensation as the said board shall from time to time fix, to be paid out of the funds under the control of said board.

Duty of treasurer.

Compensation of clerk and treasurer.

SEC. 32. All acts and parts of acts inconsistent with this act are hereby repealed.

Conflicting acts repealed.

SEC. 33. This act shall take effect and be in force from and after its passage and approval: *Provided nevertheless*, That the school district officers of school district number one shall continue to act as such, and the said district shall continue its existence in law until the organization of said board of education as herein provided.

When to take effect.

Proviso.

Approved, January 6, 1875.

## INTOXICATING LIQUORS.

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### CHAPTER 10.

#### EXEMPTING BURLEIGH COUNTY FROM THE PROVISIONS OF THE LIQUOR LAW.

AN ACT exempting the county of Burleigh from the provisions of chapter 25 of the laws of 1872-3, entitled "An act to provide against the evils resulting from the sale of intoxicating liquors in the territory of Dakota.

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

Exempting  
Burleigh County  
from provisions  
of liquor  
law.

SECTION 1. That the county of Burleigh be, and is, hereby exempted from the provisions of chapter 25 of the laws of 1872-3, entitled "an act to provide against the evils resulting from the sale of intoxicating liquors in the territory of Dakota," approved, January 10th, 1873.

Conflicting  
acts repealed.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act be and the same is hereby repealed

When to take  
effect.

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

Approved, January 15, 1875.

# INCORPORATIONS.

## CHAPTER 11.

### BISMARCK.

AN ACT to incorporate the city of Bismarck.

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

### ARTICLE I.

#### GENERAL PROVISIONS.

SECTION 1. That all of the northwest quarter of section four (4), the west half of the northeast quarter of section four (4), the north half of section five (5), and of that portion of section six (6) which lies east of the Missouri river, in township one hundred and thirty-eight (138), north, of range eighty (80), west, and all of the north half of section thirty-one (31) lying east of the Missouri river, and all of the south half of sections thirty-two (32) and thirty-three (33), of township one hundred and thirty-nine (139), north, of range eighty (80), west, all interested in the county of Burleigh together with the inhabitants residing therein, be and the same is hereby declared to be a corporation, by the name of the city of Bismarck, and the west line of said city shall extend to the middle of the main channel of the Missouri river. Limits of Bismarck defined.

SEC 2. The proprietor or proprietors of any land within the corporate limits of the city of Bismarck, or adjoining and contiguous to the same, may lay out said land into lots, blocks, streets, avenues, alleys and other grounds, under the name of ..... addition to the city of Bismarck, and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out, and particularly describing the lots, blocks, streets, avenues, alleys and other grounds belonging to such addition. The Manner of laying out city property.

Duty of surveyor.

lots must be designated by numbers, and the streets, avenues and other grounds, by names or numbers; and such plat shall be acknowledged before some officer authorized to take the acknowledgment of deeds, and have appended a survey made by some competent surveyor; and said surveyor shall certify that he has accurately surveyed such addition, and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds, are well and accurately staked off and marked, and when such map or plat is so made out, acknowledged and certified, and after being approved by the mayor and council, the same shall be filed and recorded in the office of the register of deeds of Burleigh county, and thereupon such plat shall be equivalent to a deed in fee simple from the proprietor or proprietors, of all streets, avenues, alleys, public squares, parks and commons, and such portion of the land as is therein set apart for public and city use, or is dedicated to charitable, religious or educational purposes; and all additions thus laid out within the said corporate limits shall remain a part of such city; and all additions now and hereafter laid out and adjoining and contiguous to the said corporate limits, shall be included within the same, and be and become a part of such city for all purposes whatsoever; and the inhabitants of such addition shall be entitled to all the rights and privileges, and be subject to all the laws, ordinances, rules and regulations of the city to which said land is an addition: *Provided*, The mayor and council shall have control of all such additions, and shall have power, by ordinance, to compel the owners of any such additions to lay out streets, avenues and alleys so as to have the same correspond in width and direction, and be continuations of the streets, avenues and alleys in the city or additions belonging thereto; and no addition shall have any validity, rights or privileges as an addition, unless the terms and conditions of such ordinances are complied with, and the plat thereof shall have been submitted to, and approved by, the mayor and council, and such approval indorsed thereon.

Who to control additions.

What this act not to affect.

SEC. 3. No right or property accrued to said city of Bismarck, or any corporation, or person, under any law heretofore in force, shall be affected by this act.

Power of the city.

SEC. 4. The city of Bismarck, created and governed by the provisions of this act, shall be a body corporate and politic, and shall have power:

- 1st. To sue and be sued;
- 2d. To purchase and hold real and personal property for the use of the city, and real estate sold for taxes;
- 3d. To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interests of the city;
- 4th. To make all contracts, and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers, to have a common seal, and to change and alter the same at pleasure;
- 5th. To exercise such other and further powers as may be conferred by law.

SEC. 5. The powers hereby granted shall be exercised by the mayor and council of the city of Bismarck as hereinafter set forth. Who to exercise powers.

SEC. 6. The city of Bismarck shall be divided into three wards, named respectively, the first, second, and third. Wards, number of

SEC. 7. Each and every process whatever affecting the city of Bismarck shall be served upon the mayor, or in his absence, upon the city clerk, or in the absence of both from the city, then upon the city marshal. Process, upon whom served.

SEC. 8. The council of said city of Bismarck shall consist of six citizens of said city, being two from each ward, who shall be qualified electors of their respective wards, under the organic act and laws of this territory. Council, of whom to consist.

SEC. 9. On the first Monday in April, after the taking effect of this act, and on the same day in each year thereafter, an election shall be held for mayor, *eight* [six] aldermen, clerk, treasurer and marshal, each of whom shall be elected for the term of one year, commencing on the first Monday succeeding the day of their election and shall hold their respective offices until their successors are elected and qualified. Time of holding election.

SEC. 10. At all elections authorized by this act, the polls shall be kept open from nine o'clock A. M. until four o'clock P. M., and no longer. Opening and closing polls.

SEC. 11. Each ward shall constitute an election district, and polls shall be opened at such place therein as may be designated by the mayor, or fixed by ordinance or resolution of the council: *Provided*, That when any ward shall contain over three hundred legal voters, the mayor and council may, by Election districts. Power of council. Proviso.

ordinance, re-district said city, and increase the number of wards to six; and when so re-districted, each of said wards shall be entitled to two aldermen: *And provided further*, That every legal voter of the territory, who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all elections thereof: *Provided*, That such citizen has paid all poll tax that may be due from him to the city at the time of offering to vote, and in case any person so offering to vote shall be challenged at said polls, he shall, in addition to the oath now required by law, make oath that he has paid such tax, or, in case he refuses to make such oath, his vote shall be rejected. And no person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding his election: *And provided further*, That every person shall vote in the ward where he resides, and not elsewhere.

Who may  
vote.

## ARTICLE II.

### POWERS OF OFFICERS.

Power of  
Mayor and  
Council.

SEC. 12. The mayor and council of the city of Bismarck shall have the care, management and control of the city, and its property and finances, and shall have power to enact and ordain any and all ordinances not repugnant to the organic act, and the laws of this territory, and such ordinances to alter, modify or repeal; and shall have power:

To levy and  
collect taxes.

1st. To levy and collect taxes for general purposes, not exceeding four mills on the dollar in any one year, on all the property within the limits of the city, taxable according to the laws of the territory, the valuation of such property to be taken from the assessment roll of Burleigh county; and it shall be the duty of the county clerk of said Burleigh county, to permit the city clerk to make out, from the assessment rolls of the county, an assessment roll for the city, of all the property liable to taxation as above specified: *Provided*, That the authorities of the said city of Bismarck, shall not, in any year, issue warrants or orders to an amount greater than ninety per cent. of the amount of taxes levied for such year, and the amount actually received from other sources; and said city authorities shall not contract or incur any in-

debtedness in addition to the amount for which they are authorized to issue warrants, orders, or bonds;

2d. To provide for the sale of real estate for the non-payment of taxes due thereon, and for the time and manner of redemption of the same, and conveyance thereof: *Provided*, That the owner may redeem the same within two years after the day of sale, or at any time thereafter, until the tax deed is issued, by the payment of the full amount of tax, and all taxes subsequently paid thereon by the purchaser, and all costs, penalties and charges thereon, together with interest at the rate of forty per cent. per annum;

To sell real estate.

3d. To provide for the sale of personal property for any taxes due from the owner thereof, or assessed upon the property to be sold;

To sell personal estate.

4th. To levy and collect a license tax on runners, hawkers, peddlers, liquor sellers, pawn brokers, taverns, dram shops, saloon keepers of any kind, brokers, shows and exhibitions for pay, billiard tables, ball and ten pin alleys, without regard to the number of pins used; hacks, drays, wagons, or other vehicles used for pay, within the city; theater and theatrical exhibitions for pay, and to adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person or property;

To license liquor sellers, etc.

5th. To restrain, prohibit and suppress tippling shops, billiard tables, ten pin alleys, ball alleys, houses of prostitution and other disorderly houses and practices, games and gambling houses, desecrating the Sabbath (commonly called Sunday,) and all kinds of indecencies;

To suppress tippling shops, etc.

6th. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose, and to enforce the same within the limits of the city;

To prevent contagious diseases.

7th. To erect, establish and regulate hospitals, work houses, houses of correction and jails, and provide for the government and support of the same;

To erect hospitals.

8th. To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to make and prescribe regulations for the cleaning and keeping in order all slaughter houses, stock yards, warehouses, stables or

To remove nuisances.

other places where offensive matter is kept or liable to accumulate;

To regulate  
police.

9th. To establish, regulate and support night watch and police, and define the duties thereof;

To light  
streets.

10th. To provide for the lighting of streets, laying down of gas pipes, and erection of lamp posts, and to regulate the sale of gas and the rent of gas metres within the city;

To establish  
market houses.

11th. To erect and establish market houses and make market places, and to regulate and govern the same, and to provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city, and to provide for the safety and protection of private property when damages are likely to accrue by the action of the elements, or through the carelessness or negligence of any servant or officer of the city, and to establish, alter and change the channels of streams and water-courses, and bridge the same: *Provided*, That any such improvement mentioned in this subdivision, costing in the aggregate a sum greater than two thousand dollars, shall not be authorized until the ordinance providing therefor shall be first submitted to and ratified by a majority of the legal voters of said city, voting at said election;

To change  
channels of  
streams.

When to sub-  
mit question to  
vote.

To take cen-  
sus.

12th. To provide for and cause to be taken, an enumeration of the inhabitants of the city;

To provide  
for elections.

13th. To provide by ordinance for the election of city officers and prescribe the manner of conducting the same, and the return thereof, and for deciding contested elections;

To remove  
officers.

14th. To provide for removing officers of the city for misconduct; to appoint a city attorney, street commissioner and city engineer, and to prescribe the duties and compensation of such officers, and to create any office, or employ any agent they may deem necessary for the good government and interests of the city;

To impose  
penalties.

15th. To regulate the police of the city, and impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery and collection thereof, and in default of payment to provide for confinement in the city prison, or for hard labor in the city;

To fix com-  
pensation.

16th. To regulate and prescribe the duties and powers and compensation of all officers and servants of the city not herein provided for;

17th. To require of all officers and servants elected or appointed in pursuance of this act, bond and security for the faithful performance of their duties; and no officer shall become security upon the official bond of another;

To require bonds.

18th. To issue bonds of the city in such amounts and for such length of time, not to exceed twenty years, and at such rate of interest as they may deem proper, not to exceed ten per cent. per annum; said bonds to express upon their face the purpose for which they were issued, and under what ordinance, and may have interest coupons attached: *Provided*, No such bonds shall be issued for any purpose, unless at a regular or special election, after twenty days public notice, stating distinctly the purpose and object for which said bonds are to be issued, and the amount thereof, the electors of said city, by two-thirds of the legal votes at said election, shall determine in favor of issuing said bonds, which said bonds shall in no case be diverted from the object for which they are issued, and shall not be disposed of by the city at less than ninety per cent. of their face;

To issue bonds

Proviso.

19th. To provide for the prevention of cruelty to animals;

To prevent cruelty to animals.

20th. To appropriate money and provide for the payment of the debts and expenses of the city;

To appropriate money.

21st. To regulate, license or prohibit the sale of domestic animals, or goods, wares or merchandise at public auction on the streets, alleys, highways, or any public grounds within the city;

To regulate auctions.

22d. To regulate, license or prohibit the auctioneering of goods, wares and merchandise, brought into the city for the purpose of being sold at auction;

Same.

23d. To name and re-name streets, avenues, parks and squares within the city; to vacate streets and alleys, and authorize the laying of railroad switches through the same when in their judgment the interests of the city will be promoted thereby;

To name streets.

24th. To prohibit, on the petition therefor of the owners of not less than two-thirds of the ground included in any square or block, the erection of any building, or addition to any building more than ten feet high, unless the outer walls thereof be made of brick and mortar, or of iron, or stone and mortar; and to provide for the removal of any building or additions erected contrary to such prohibition.

To prevent erection of wooden buildings.

- To establish sewerage. 25th. To lay out the city into districts for the purpose of establishing a system of sewerage and drainage, and to levy and collect a special tax upon real estate in any such district for the purpose of constructing sewers and drains therein, or they may pay for such sewerage and drainage out of the general funds of the city.
- To construct water works. 26th. To erect and construct water works either within or without the corporate limits of the city, and to make all needful rules and regulations concerning the use of water supplied by such water works, and to do all acts necessary for the construction, completion, management and control of the same.
- To organize fire companies. 27th. To provide for the organization and support of fire companies, and to establish regulations for the prevention and extinguishment of fires.
- To equalize assessments. 28th. To act as a board of equalization for the city, to equalize assessments, and to correct any error in the listing or valuation of property, and to supply any omissions in the same; and to make a general increase in the valuation of real estate, as in their judgment they may deem proper; such increase not to exceed twenty per cent. of the valuation for county purposes.
- To require reports from city officers. 29th. To require from any city officer of the city at any time, a report in detail of the transactions of his office, or of any matter concerned therewith.
- To prevent horse racing. 30th. To prevent horse racing and immoderate riding or driving in the streets, and to compel persons to fasten their horses or other animals attached to vehicles, while standing in the streets.
- To regulate keeping gun-powder. 31st. To regulate the transportation and keeping of gun-powder and other combustibles and explosive articles.
- To improve parks. 32d. To purchase, hold and improve public grounds and parks, and to provide for the protection and preservation of the same.
- To appropriate private property. 33d. To appropriate private property for the use of the city.
- To provide punishment for disturbers of the peace. 34th. To provide for the punishment of persons disturbing the good order and quiet of the city by clamor and noise, by intoxication, drunkenness, fighting, using obscene or profane language in the streets or other public places, to the annoyance of citizens, or otherwise violating the public peace

by indecent and disorderly conduct, or by lewd and lascivious behavior; and to provide for the punishment of vagrants, common street beggars, common prostitutes, habitual disturbers of the peace, known and notorious pick-pockets, gamblers, burglars, thieves, watch-stuffers, ball game players, persons who practice any trick, game or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves, and such punishment may be either by imposing and collecting fines, or by imprisonment at hard labor, or both, at the discretion of the court: *Provided*, That no such person shall be fined for a single offense to exceed fifty dollars, and that such imprisonment at hard labor shall for the first offense not exceed thirty days; for the second offense sixty days; for the third offense ninety days; and they shall have power to provide that all persons who shall refuse or neglect to pay the fine imposed, on conviction of any offense, together with the costs of prosecution, shall be imprisoned and kept at hard labor until, at the rate of seventy-five cents per each day's labor, exclusive of Sundays, they shall have earned an amount equal to such fine and costs. They shall also have power to make suitable regulations to conduct such labor to the best advantage, and in a manner consistent with age, sex and health of the prisoners, and such labor may be done at the city prison, or elsewhere, under the charge of such officers or other persons, as the mayor and council may select: *Provided, however*, That no person shall for the first offense be sentenced to work outside an enclosure. And they shall have power also to provide suitable hospitals for the reception and care of such prisoners as may be diseased or disabled, the same to be under such regulations and under the charge of such persons as the mayor and council may by ordinance direct.

35th. To provide for filling such vacancies as may occur in the office of alderman, or other elective officer of the city, by calling special elections for that purpose. To provide for filling vacancies.

36th. To enter into arrangements with the county commissioners of Burleigh county for the safe keeping of city prisoners. To provide for keeping prisoners.

SEC. 13. All ordinances of the city shall be passed pursuant to such rules and regulations as the mayor and council may Manner of passing ordinances.

precise: *Provided*, That upon the passage of all ordinances the yeas and nays shall be entered upon the record of the city council, and a majority of the votes of all the members of said council present shall be necessary to their passage: *Provided*, A majority of all the members elected shall constitute a quorum.

How ordinances may be proven.

SEC. 14. All ordinances of the city may be proven by the ordinance book or certificate of the clerk under the seal of the city; and when printed or published in a book or pamphlet form, and purporting to be published or printed by the authority of the city, shall be read and received in all courts and places without further proof.

Statement to be published.

SEC. 15. The mayor and council shall cause to be published semi-annually, a statement of the receipts and expenditures, and the financial condition of the city.

Grade of streets, how established.

SEC. 16. The mayor and council shall have power to establish by ordinance the grade of any street, alley, avenue or lane within the city; and when the grade of such street, alley, avenue or lane shall have been established, such grade shall not be changed except by a vote of two-thirds of the council, and not then until the damages to property owners which may be caused by such change of grade, shall have been assessed and determined by three disinterested appraisers, who shall be appointed by the mayor, with the consent of the council, for that purpose, who shall make such appraisal, taking into consideration the benefits, if any, to such property, and file their report with the city clerk within ten days after receiving notice of their appointment; and the amount of damages so assessed shall be tendered to such property owners or their agents, before any such change of grade shall be made.

Opening and widening of streets.

SEC. 17. The mayor and council shall have power to extend, open, widen, grade, pave, macadamize or otherwise improve and keep in repair in any manner they may deem proper, any street, sidewalk, alley, avenue or lane within the limits of the city, to vacate any portion of any street or alley, and add the portion so vacated to adjoining lots; to re-survey and straighten any street or alley of said city; and to defray the cost and expense of such improvements, or any of them, out of the general funds of the city; or the mayor and council shall have power to levy and collect special taxes upon

lots and pieces of ground adjacent to and abutting upon the streets, sidewalks, alleys, avenues or lanes thus opened, widened, extended or improved, or to be improved as aforesaid.

SEC. 18. Such taxes shall be levied on all the lots and lands abounding or abutting on such improvement, said tax to be either in proportion to the feet front so abounding or abutting, or according to the value of such lots or lands (exclusive of improvements thereon) as shown by the last assessment for general city purposes, as the mayor and council may determine. And the mayor and council are hereby required to provide for ascertaining the value of the improvements, in order that the same may be deducted from the valuation of such real estate for general city purposes, in case special tax is to be levied upon the basis of valuation: *And provided*, That when such improvement shall extend into or through any unsubdivided tract or parcel of land, and taxes shall be so levied, if upon the basis of the valuation, as not to be charged upon the real estate adjoining such improvement, for a greater depth than the average distance through the subdivided real estate to be taxed for said purpose.

Concerning taxes for improvements.

SEC. 19. The mayor and council shall have the power to provide for keeping sidewalks clean and free from all obstructions and accumulations, and may provide for the assessment and collection of taxes on unoccupied real estate, and for the sale and conveyance thereof to pay the expenses of keeping the sidewalks adjacent to such real estate clean and free from obstructions and accumulations as herein provided.

Concerning cleaning of sidewalks, etc.

SEC. 20. The mayor and council shall have power to require all lots and pieces of ground within the city to be drained or filled when necessary to prevent stagnant water, or any other nuisance accumulating therein; and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, to cause such lots or pieces of ground to be drained or filled; and the cost and expense thereof shall be levied upon the property so filled or drained and collected as other special taxes; or pay for the same out of the general funds of the city.

Concerning draining and filling.

SEC. 21. When the mayor and council shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain, or otherwise improve any street, sidewalk,

Proceedings to open or widen streets.

alley, avenue or lane within the limits of the city, for which a special tax is to be levied as herein provided, the mayor and council shall by resolution declare such work or improvement necessary to be done, and such resolution shall be published for four consecutive weeks in the official newspaper of the city; and if a majority of the resident owners of the property liable to taxation therefor, shall not within twenty days thereafter file with the city clerk of said city, their protest against such improvement, then the mayor and council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect the taxes as herein provided.

Concerning special taxes.

SEC. 22. Such special taxes shall be due and may be collected as the improvements are completed in front of, or along or upon any block or piece of ground, or at the time the improvement is completed according as shall be provided in the ordinance levying the tax. Such tax, if not paid within thirty days after becoming due, shall have added thereto a penalty of ten per cent., and shall bear interest from the day of sale at the rate of twenty-five per cent. per annum, to be computed on the tax, penalty and cost of sale.

Certain costs may be included in special tax.

SEC. 23. The cost and expense of grading, filling, paving, macadamizing, culverting, curbing and guttering, or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane, as may be deemed best by the mayor and council.

Duty of engineer when special tax is levied.

SEC. 24. When the special tax is levied, it shall be the duty of the engineer of the city to calculate the amount of the tax on any block, or piece of ground, and file a statement thereof with the city clerk, who shall, as soon as the tax is due on any block or piece of ground, issue a certificate describing it by its number and block, and stating the amount of tax due thereon, and the name of the person charged with the same, and the purpose for which said tax was levied; and such certificate so given shall be the tax warrant of the contractor, and shall be by the clerk placed in the hands of the treasurer, who shall give notice through the official paper of the city when the penalty will accrue; and he shall keep a record of all such warrants and enter in the margin of such records all amounts paid, and by whom paid.

Tax warrant.

SEC. 25. It shall be sufficient in any case to describe the lot or piece of ground as the same is platted or recorded, although the same may belong to several persons, but in case any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

Description  
of lot.

SEC. 26. The mayor and council shall have power to provide for the sale and conveyance of any lot or piece of ground for non-payment of such taxes, and the deed given to convey the same may be recorded in the office of register of deeds of the county, as other conveyances. The conveyance shall be to the person owning the certificate of sale at the time such conveyance is given: *Provided*, That any lot or piece of ground may be redeemed within two years after the day of sale, or at any time thereafter until the tax deed is issued, by paying to the treasurer the tax, penalty, cost and interest at the rate of forty per cent. per annum. Lots or lands belonging to minors, or any interest they may have in any lands sold for special taxes, may be redeemed in the same manner at any time before such minor becomes of age and during one year thereafter.

Provision for  
selling property  
at tax rate.

SEC. 27. When any improvement mentioned in this act is completed according to contract, it shall be the duty of the engineer of the city to carefully inspect the same, and if the improvement is found to be properly done, such engineer shall accept the same and forthwith report his acceptance thereof to the city council, who may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of, or along any block or piece of ground, then the engineer may accept the same in sections, from time to time, if found to be done according to contract, always reporting acceptance to the city council for confirmation or rejection.

Duty of en-  
gineer respect-  
ing improve-  
ments.

SEC. 28. Special taxes shall be a lien on the lots or pieces of ground subject to the same, from the time the amount thereof shall have been ascertained, and in case any error or irregularity should occur in levying or collecting any such special tax, proceedings may be taken anew, so as to obviate any such error or irregularity.

Special taxes  
to be a lien.

Manner of appropriating private property.

SEC. 29. Whenever it shall become necessary to appropriate property for the use of the city, and such appropriation shall be declared necessary by resolution, the mayor, with the approval of the council, shall appoint three disinterested freeholders of the city, who after being first duly sworn to perform the duties of their appointment with fidelity and impartiality, shall assess the damage to the owners of the property, respectively, affected by such appropriation. Such assessment shall be reported to the council, and when confirmed by them the damages shall be payable as provided in the next section.

Payment of damages.

SEC. 30. Such damage shall be paid to the owners of such property, and be deposited with the city treasurer, subject to the order of such owners, respectively, before such property shall be taken for the use of the city.

Where assessment is not confirmed.

SEC. 31. If the assessment of the freeholders be not confirmed by the council, proceedings may be taken anew to assess the damages.

Concerning sinking fund.

SEC. 32. The mayor and council is hereby required to make provisions for a sinking fund, to redeem at maturity the bonded indebtedness of the city, and the tax levied for the sinking fund shall be paid in cash.

Concerning interest on city bonds.

SEC. 33. The mayor and council shall make provisions for the payment of interest on the bonds of the city; and taxes levied for the payment of such interest shall be payable in cash.

How sinking fund may be used.

SEC. 34. The sinking fund to redeem at maturity the bonded indebtedness of the city, may be used to purchase such bonds before maturity, on such terms and in such manner as may be prescribed by an ordinance to be enacted for that purpose: *Provided*, That bond holders shall be given an opportunity to compete for the sale of bonds held by them; and the bonds that can be purchased upon the most favorable terms shall be preferred.

How money to be expended

SEC. 35. No money shall be expended or payment made by the city, except in pursuance of a specific appropriation made for that purpose by ordinance or resolution. And the residents of said city shall be exempt from payment of a poll tax for the benefit of roads as required under the present laws relating to roads; but in lieu thereof the mayor and council of

said city shall have power to require each able-bodied male person between the ages of 21 and 60 years, resident within the city, to perform by himself or substitute, in each and every year, one day's labor upon the streets and highways of said city: *Provided*, That acting volunteer firemen shall be exempt from performing said one day's labor: *And provided further*, That such labor, when so required may be commuted by the payment of the sum of two dollars in each year, to be expended upon the streets and highways where such labor would have been applied. Road poll tax.

SEC. 36. At the first meeting in each month the mayor and council shall provide, by ordinance or resolution, for the payment of all liabilities of the city incurred during the preceding month, or at any time previous thereto, except the bonded indebtedness of said city which shall be paid at the maturity of such bonds. Liabilities of city to be provided for.

SEC. 37. Any ordinance or resolution appropriating money shall be subject to the veto of the mayor as any other ordinance, and the mayor may veto any single item in any such ordinance over fifty dollars, and if such item be not passed on a reconsideration thereof, the veto of the mayor to the contrary notwithstanding, in the same manner as in other ordinances, such item shall be stricken out and shall not be allowed or paid by the city. Mayor may veto single item of appropriation bill.

### ARTICLE III.

#### MAYOR.

SEC. 38. The mayor shall have power to sign or veto any ordinance or resolution passed by the city council. Any ordinance or resolution vetoed by the mayor may be passed over the veto by a vote of two-thirds of the whole number of aldermen elected, notwithstanding the veto; and should the mayor neglect or refuse to sign any ordinance, or return the same with his objections, in writing, within ten days, the same shall take effect without his signature. Veto power of mayor.

SEC. 39. All orders and drafts upon the treasury for money shall be signed by the mayor, and shall be attested by the city clerk, who shall also affix the seal of the city, and keep an accurate record thereof in a book to be provided for that purpose. Treasury drafts—how signed and attested.

Mayor may be  
superintendent  
of city affairs.

SEC. 40. The mayor shall have the superintending control of all the offices and affairs of the city, and shall take care that the ordinances of the city and this act are complied with.

Mayor to sign  
commissions.

SEC. 41. He shall sign the commissions or appointments of all the officers appointed in the city government.

Mayor to ap-  
point special  
policemen.

SEC. 42. He shall be a conservator of the peace throughout the city, and shall at all times have power by and with the consent of the city council, to appoint any number of special policemen which he may deem necessary to preserve the peace of the city, and to dismiss the same at pleasure.

Shall commu-  
nicate informa-  
tion to city.

SEC. 43. He shall from time to time communicate to the city council such information, and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city.

Who may call  
special meet-  
ings of council.

SEC. 44. The mayor or any five aldermen shall have power to call special meetings of the council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal of the council.

May require  
any city officer  
to report.

SEC. 45. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make a report to the council in writing, touching any subject or matter he may require, pertaining to his office.

Duty and pow-  
ers of mayor.

SEC. 46. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty; he shall have jurisdiction as may be vested in him by ordinance, over all places within the corporate limits of the city, for the enforcement of any health or quarantine ordinance or regulation thereof.

Mayor pro tem

SEC. 47. When any vacancy shall happen in the office of mayor, by death, resignation, absence from the city, removal from office, refusal to qualify, or otherwise, the council shall, by vote of a majority of all the aldermen elected, elect from their number a mayor *pro tem.*, who shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the regular mayor, until such vacancy is filled, or such disability be removed; or in case of temporary absence, until the

mayor shall return; and during the time, he shall receive the same compensation that the mayor would be entitled to, the same to be deducted from the salary of the mayor; and in case of such vacancy other than temporary absence or disability, the person exercising the office of mayor shall forthwith cause a special election to be held, giving ten (10) day's notice thereof by proclamation.

SEC. 48. At the first meeting of the city council after any general election for city officers, they shall cause to be made out and certified by the clerk, a certificate of the election of such officers as are required to be elected by this act; and a neglect of any such officer to qualify within ten days after the delivery of such certificate to him, shall be deemed a refusal to accept the office to which he shall have been elected.

Council to cause certificates of election to be made out.

SEC. 49. The mayor is hereby authorized to call on every male inhabitant of the city, over eighteen years of age, and under the age of fifty years, to aid in enforcing the laws and ordinances of the city; and in case of necessity, to call out the militia within the city to aid in the suppression of any riot, or in the enforcement of any ordinance; and any person who shall not obey such call, shall forfeit to the city a fine not exceeding one hundred dollars.

Mayor may call out militia.

SEC. 50. The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinances of the city, by and with the consent of the council.

Mayor may remit fines.

SEC. 51. The mayor shall have power, by and with the consent of the council, to appoint all officers of the city other than those elected by the people, and all nominations made by him may be confirmed or rejected by a majority of the councilmen present and voting upon such confirmation.

Mayor to appoint certain officers.

## ARTICLE IV.

### CITY JUSTICE OF PEACE.

SEC. 52. A city justice of the peace shall be appointed by the mayor and council from the qualified voters of said city. The city justice of the peace shall have exclusive jurisdiction and it shall be his duty to hear and determine all offenses against the ordinances of the city, and concurrent jurisdiction with other justices in all other cases civil and criminal.

Appointment of city justice, jurisdiction of.

When justice shall issue warrants.

SEC. 53. Whenever complaint shall be made to the city justice of the peace, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which the city justice of the peace has jurisdiction, said justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the city marshal, or the sheriff of the county, or some person specially appointed by said justice for that purpose.

Justice, when to hear complaint.

SEC. 54. When any person shall be brought before the said justice, upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

Postponement of trials.

SEC. 55. Upon good cause shown said justice may postpone the trial of the case to a day certain, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before such justice at the time and place appointed, and then and there to answer the complaint alleged against him.

Summons of witnesses.

SEC. 56. It shall be the duty of said justice to summon all persons whose testimony may be deemed material as witnesses on the trial, and enforce their attendance by attachment if necessary; and when a trial shall be continued by said justice, he may verbally notify such witnesses as may be present at the continuance, to attend before him, to testify in the cause set for trial; and such verbal notice shall be as valid as a summons.

Trials, how governed.

SEC. 57. All trials before the said justice for misdemeanors arising under the laws of the territory, shall be governed by the criminal procedure applicable to justices courts in like cases.

Concerning judgment on conviction.

SEC. 58. In all trials for offenses under the ordinances of said city, if the defendant is found guilty, said justice shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until judgment be complied with; in no case to exceed one day for every seventy-five cents of the fine and costs assessed against said defendant.

Court, when to be open.

SEC. 59. Said justice shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear and determine any and all cases cognizable before him; and shall have power to bring parties forthwith before him for

trial; and no act shall be performed by him on Sunday, except to receive complaints, issue process and take bail.

SEC. 60. In all cases before the said justice, arising under the ordinances of the city an appeal may be taken by the defendant to the district court of Burleigh county except in cases tried by a jury; but no appeal shall be allowed unless such defendant shall, (in case of fine,) within ten days, (and in case of imprisonment,) within twenty-four hours, enter into recognizance, with sufficient securities, to be approved by said justice, conditioned in case of fine, for the payment of said fine and costs, and costs of appeal, and in case of judgment of imprisonment, that he will render himself in execution thereof, if it should be determined against the appellant. Concerning appeals.

SEC. 61. Any person convicted before the said justice of an offense under the ordinances of the city, shall be punished by fine and imprisonment, as may be regulated by ordinance, and under no circumstances shall such justice remit fines or penalties, on payment of costs or otherwise. Justice not to remit fine.

SEC. 62. In case of a vacancy in the office of city justice of the peace, by death, resignation or otherwise, or in case of his absence, interest or disability to perform his duty, it shall be the duty of any acting justice of the peace within the city, who shall be designated by the mayor, to act as city justice of the peace during such vacancy, absence or disability, in the trial of causes cognizable before the said justice. Who to act in case of death of city justice.

SEC. 63. If upon any trial under the provisions of this act, it shall appear to the satisfaction of the city justice of the peace, or the jury (in cases arising under the laws of the territory), that the prosecution was commenced without probable cause, or from malicious motives, the jury or justice trying the case shall state the name of the prosecutor or prosecutors in the finding, and shall impose the costs of the prosecution upon him or them, and judgment shall be rendered against such prosecutor or prosecutors, that he or they pay such costs, and stand committed until the same are paid. Duty of justice when prosecution malicious.

SEC. 64. The city justice of the peace shall have power to enforce due obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court, or to process issued, or orders made by him in the same manner and to the same extent as provided for justice court. On the trial of any case in Power of justice.

Bill of ex-  
ceptions.

said court, it shall be the duty of the city justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial: *Provided*, The truth of the matter be fairly stated, and thereupon said exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the district court on writ of error which may be allowed by said district court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall, in such proceedings take judicial notice of all the ordinances of said city. Cases before the city justice of the peace, arising under the city ordinances, shall be tried and determined by the justice without the intervention of a jury, except in cases where, under the provisions of the ordinances of the city, imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial; and when a demand shall be so made it shall be the duty of the city justice of the peace to write down the names of eighteen persons, residents of the city, and having the qualifications of jurors in the district court, and the defendant and the attorney for the city shall each strike off three names, or, in case the defendant shall neglect or refuse so to do, then the city justice of the peace, with the attorney for the city, shall strike off such names; and the said justice shall at once issue his venire to the marshal commanding him to summon the twelve persons whose names remain upon the list as jurymen. And in all trials by jury in said court challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor, and in case the number shall be reduced below twelve by such challenges, or any portion of said number shall fail to attend, then the marshal shall summon in a sufficient number of talesmen, having the qualifications of jurors, to complete the panel, which shall in all cases consist of twelve jurors. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the justice who may examine the juror or other witness under oath. Each and every person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction,

Concerning  
jury.

such fees shall be taxed against the defendant as a part of the costs of the case.

SEC. 65. In all cases not herein specially provided for, the process and proceedings of said court shall be governed by the laws regulating proceedings in justices courts in criminal cases. Proceedings, how governed.

## ARTICLE V.

### TREASURER.

SEC. 66. The city treasurer shall receive all moneys belonging to the city, and shall keep his books and accounts in such manner as the mayor and council may prescribe; and such books and accounts shall be always subject to the inspection of the mayor or any member of the city council. Duty of city treasurer.

SEC. 67. All warrants drawn upon the treasury must be signed by the mayor, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom chargeable; and no money shall be otherwise paid than upon such warrant so drawn, except as hereinafter provided. All warrants shall be paid in the order in which they are presented, and the treasurer shall note upon the back of each warrant presented to him the date of such presentation, and when payment is made the date of such payment: *Provided*, That any warrant shall be paid by the treasurer in case a sufficient amount of money shall remain in the treasury to pay all warrants presented previous to such warrant. Any violation of the provisions of this section on the part of the treasurer of said city shall be sufficient ground for his removal from office by the mayor and city council. Concerning city warrants.

SEC. 68. The city treasurer shall keep a separate account of such fund or appropriation, and the debts and credits belonging thereto. Treasurer to keep separate accounts.

SEC. 69. The city treasurer shall give every person paying money into the city treasury, a duplicate receipt therefor, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the clerk at the date of his monthly report. Treasurer to give duplicate receipts for taxes.

SEC. 70. The city treasurer shall, at the end of each and every month, and oftener if required, render an account to the mayor and city council, or such officer as the mayor and city Treasurer to render account

council may designate, showing the state of the treasury at the date of such account, and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury, and on what account, together with all warrants redeemed and paid by him, which said warrants, with any and all vouchers held by him, shall be delivered to the clerk, and filed with his said account in the clerk's office upon every day of such settlement, taking their receipt for the same. He shall return all warrants paid by him stamped or marked "paid," and shall give a list of said warrants, stating the number and amount of each.

Treasurer prohibited from using city moneys.

SEC. 71. The city treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever; any violation of this provision shall subject him to immediate removal from office by the city council, and upon conviction thereof they are hereby authorized to declare such office vacant; and the city council shall appoint a successor of the term unexpired of such officer so removed.

Penalty.

Treasurer's report.

SEC. 72. The city treasurer shall report to the mayor and council at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last report, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee at the time of making such report.

Warrant register.

Special assessments.

SEC. 73. All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made; and said money shall be used for no other purpose whatsoever.

Bonds of treasurer.

SEC. 74. The treasurer shall be collector of taxes for the city, and shall give bonds in a sum not less than five thousand dollars, and in such further sum as may be provided by

ordinance, said bond to be approved by the mayor and council, for the honest and faithful performance of the duties of his office, said bond to be filed in the office of the clerk of the city.

## ARTICLE VI.

### MISCELLANEOUS.

SEC. 75. The marshal shall possess the powers of constable <sup>Marshal, powers of</sup> in the service of a process, and may arrest offenders within or without the city limits, for offenses committed within the same; and shall at all times have power to make or order an arrest upon view of an offense being committed, with or without process, for an offense against the laws of the territory, or the ordinances of the city, and bring the offender to trial or examination before the proper officers of the city. *Provided*, That any person arrested for an offense without process shall be entitled, on demand before trial, to have filed a complaint on oath in writing.

SEC. 76. The policemen of the city shall have power to ar- <sup>Power of policemen.</sup> rest all offenders against the laws of the territory or ordinances of the city by day or by night, and keep them in the city prison to prevent their escape until they can be brought before the proper officer.

SEC. 77. The marshal, in the discharge of his duties, shall <sup>Marshal to be subject to orders of Mayor.</sup> be subject to the order of the mayor and city justice of the peace, only, and shall be *ex-officio* chief police.

SEC. 78. The policemen of the city in the discharge of their <sup>Policemen, who subject to.</sup> duties, shall be subject to the orders of the mayor and marshal only.

SEC. 79. When, by this act, the power is conferred upon the <sup>Mayor and council to have certain powers</sup> mayor and council to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the mayor and council may provide by ordinance the details necessary for the full exercise of such power.

SEC. 80. The duties, powers and privileges of all officers of <sup>What may be defined by ordinance.</sup> every character, in any way connected with the city government, not herein defined by ordinance, and the defining by this act of the duties of the city officers, shall not preclude the mayor and council from defining by ordinance further and additional duties to be performed by any such officer.

Exempt from  
taxation.

SEC. 81. Lands, houses, moneys, debts due the city, and property and assets of every description belonging to said city, shall be exempt from taxation, and sale on execution; judgments against the city shall be paid out of the general fund, or by a tax to be assessed upon the taxable property of the city.

Fines, to whom  
paid.

SEC. 82. All fines, penalties and forfeitures collected for offenses against the ordinances of the city, and all fines, penalties and forfeitures collected within the city for misdemeanors against the laws of the territory, shall be paid to the officer or officers entitled by law to receive the same.

Penalty where  
city officer is  
intrusted in  
contract.

SEC. 83. Any officer of the city, or member of the council, who shall by himself or agent become a party to, or in any way interested in any contract, work or letting under the authority of the city; or who shall, either directly or indirectly, by himself or other party, accept or receive any valuable consideration or promise, for his influence or vote, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, one-half of which shall go to the informer and the balance to be paid into the city treasury, by the officer collecting or receiving the same.

Compensation  
of city officers.

SEC. 84. The several officers of said city hereinafter named shall for the year 1875, receive the compensation fixed by this act, and no more; and it is hereby made the duty of the mayor and council to fix by ordinance the compensation to be paid the several officers provided for in this act, and such other officers as may be appointed by the mayor and council for said city: *Provided*, That in no case shall the compensation of the mayor and council be increased during their term of office:

1st. The mayor shall receive for the year 1875, the sum of five dollars.

2d. The members of the council shall each receive for the year 1875, the sum of three dollars.

Term of of-  
fice.

SEC. 85. Any officer appointed by the mayor and city council shall hold his office for one year, or during the pleasure of the mayor and council, and may be removed at any time by the appointment of his successor in such office in the manner provided for the appointment of officers: *Provided*, That the mayor shall nominate to the council for confirmation the successor of any such officer upon the request of a majority of all

the members of such council, expressed by resolution, and upon the passage of such resolution the ayes and noes shall be taken and recorded.

SEC 86. That all the district of country and territory west of the middle of Third street shall be the first ward; all the district of country between said middle of Third street and the middle of Fifth street, as the same is now laid out and staked, shall be the second ward; all the district of country east of the middle of Fifth street shall be the third ward.

Boundaries of wards.

SEC. 87. The following named persons are hereby appointed officers, to hold their respective offices until the first election as provided for in this act, and until their successors have qualified: For mayor, Edward Hackett; for members of the council, 1st. ward, John J. Jackman and B. F. Slaughter; 2d ward, R. D. Gutzsell and John H. Richards; 3d ward, Thomas Welch and Alex. McKinzie; for treasurer, James W. Raymond; for clerk, Samuel O'Connel; for marshal, Michael McLear; city justice, H. M. Davis.

Names of city officers.

SEC. 88. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 14, 1875.

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## CHAPTER 12.

### FARGO.

#### AN ACT to Incorporate the city of Fargo.

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

### ARTICLE I.

#### GENERAL PROVISIONS.

SECTION 1. That all of sections seven and eight, and of the south half of section six and lot three, in section five, in township one hundred and thirty-nine north, of range forty-eight west, which lie within the county of Cass, and Territory of Dakota, together with the inhabitants residing thereon, be

Limits of Fargo defined.

and the same is hereby declared to be a corporation, by the name of the "City of Fargo"; and the east line of said city shall extend to the middle of the main channel of the Red River of the North.

Manner of  
laying out city  
property.

SEC. 2. The corporate limits of the city of Fargo shall remain as herein incorporated, except as changed by the provisions of this section. The proprietor or proprietors of any land within the corporate limits of the city of Fargo, or adjoining and contiguous to the same, may lay out said land into lots, blocks, streets, avenues, alleys and other grounds, under the name of ..... addition to the city of Fargo, and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out, and particularly describing the lots, blocks, streets, avenues, alleys and other grounds belonging to such addition. The lots must be designated by numbers, and the streets, avenues and other grounds, by names or numbers; and such plat shall be acknowledged before some officer authorized to take the acknowledgment of deeds, and have appended a survey made by some competent surveyor; and said surveyor shall certify that he has accurately surveyed such addition, and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds, are well and accurately staked off and marked, and when such map or plat is so made out, acknowledged and certified, and after being approved by the mayor and council, the same shall be filed and recorded in the office of the register of deeds of Cass county, and thereupon such plat shall be equivalent to a deed in fee simple from the proprietor or proprietors, of all streets, avenues, alleys, public squares, parks and commons, and such portion of the land as is therein set apart for public and city use, or is dedicated to charitable, religious or educational purposes; and all additions thus laid out within the said corporate limits shall remain a part of such city; and all additions now and hereafter laid out and adjoining and contiguous to the said corporate limits, shall be included within the same, and be and become a part of such city for all purposes whatsoever; and the inhabitants of such addition shall be entitled to all the rights and privileges, and be subject to all the laws, ordinances, rules and regulations of the city to which said land is an addition: *Provided*, The mayor and council shall have con-

Duty of sur-  
veyor.

trol of all such additions, and shall have power, by ordinance, to compel the owners of any such additions to lay out streets, avenues and alleys so as to have the same correspond in width and direction, and be continuations of the streets, avenues and alleys in the city or additions belonging thereto; and no addition shall have any validity, rights or privileges as an addition, unless the terms and conditions of such ordinances are complied with, and the plat thereof shall have been submitted to, and approved by, the mayor and council, and such approval indorsed thereon.

Who to control additions.

SEC. 3. No right of property accrued to said city of Fargo, or any corporation, or person, under any law heretofore in force, shall be affected by this act.

What this act not to affect.

SEC. 4. The city of Fargo, created and governed by the provisions of this act, shall be a body corporate and politic, and shall have power:

Power of the city.

1st. To sue and be sued;

2d. To purchase and hold real and personal property for the use of the city, and real estate sold for taxes;

3d. To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interests of the city;

4th. To make all contracts, and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers, to have a common seal, and to change and alter the same at pleasure;

5th. To exercise such other and further powers as may be conferred by law.

SEC. 5. The powers hereby granted shall be exercised by the mayor and council of the city of Fargo as hereinafter set forth.

Who to exercise powers.

SEC. 6. The city of Fargo shall be divided into three wards, named respectively, the first, second, and third wards.

Wards, number of.

SEC. 7. Each and every process whatever affecting the city of Fargo shall be served upon the mayor, or in his absence, upon the city clerk, or in the absence of both from the city, then upon the city marshal.

Process, upon whom served.

SEC. 8. The council of said city of Fargo shall consist of six citizens of said city, being two from each ward, who shall be qualified electors of their respective wards, under the organic act and laws of this territory.

Council, of whom consist.

Time of holding election. SEC. 9. On the first Monday in April, after the taking effect of this act, and on the same day in each year thereafter, an election shall be held for mayor, six aldermen, clerk, treasurer and marshal, each of whom shall be elected for the term of one year, commencing on the first Monday succeeding the day of their election and shall hold their respective offices until their successors are elected and qualified.

Opening and closing polls. SEC. 10. At all elections authorized by this act, the polls shall be kept open from nine o'clock A. M. until four o'clock P. M., and no longer.

Election districts. Power of council. Proviso. Who may vote. SEC. 11. Each ward shall constitute an election district, and polls shall be opened at such place therein as may be designated by the mayor, or fixed by ordinance or resolution of the council: *Provided*, That when any ward shall contain over three hundred legal voters, the mayor and council may, by ordinance, re-district said city, and increase the number of wards to six; and when so re-districted, each of said wards shall be entitled to two aldermen: *And provided further*, That every legal voter of the territory, who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all elections thereof: *Provided*, That such citizen has paid all poll tax that may be due from him to the city at the time of offering to vote, and in case any person so offering to vote shall be challenged at said polls, he shall, in addition to the oath now required by law, make oath that he has paid such tax, or, in case he refuses to make such oath, his vote shall be rejected. And no person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding his election: *And provided further*, That every person shall vote in the ward where he resides, and not elsewhere.

## ARTICLE II.

### POWERS OF THE MAYOR AND COUNCIL.

Power of Mayor and council. SEC. 12. The mayor and council of the city of Fargo shall have the care, management and control of the city, and its property and finances, and shall have power to enact and ordain any and all ordinances not repugnant to the organic act, and the laws of this territory, and such ordinances to alter, modify or repeal; and shall have power:

1st. To levy and collect taxes for general purposes, not exceeding four mills on the dollar in any one year, on all the property within the limits of city, taxable according to the laws of the territory, the valuation of such property to be taken from the assessment roll of Cass county; and it shall be the duty of the county clerk of said Cass county, to permit the city clerk to make out, from the assessment rolls of the county, an assessment roll for the city, of all the property liable to taxation as above specified: *Provided*, That the authorities of the said city of Fargo, shall not, in any year, issue warrants or orders to an amount greater than ninety per cent. of the amount of taxes levied for such year, and the amount actually received from other sources; and said city authorities shall not contract or incur any indebtedness in addition to the amount for which they are authorized to issue warrants, or orders, or bonds;

To levy and collect taxes.

2d. To provide for the sale of real estate for the non-payment of taxes due thereon, and for the time and manner of redemption of the same, and conveyance thereof: *Provided*, That the owner may redeem the same within two years after the day of sale, or at any time thereafter, until the tax deed is issued, by the payment of the full amount of tax, and all taxes subsequently paid thereon by the purchaser, and all costs, penalties and charges thereon, together with interest at the rate of forty per cent. per annum;

To sell real estate.

3d. To provide for the sale of personal property for any taxes due from the owner thereof, or assessed upon the property to be sold;

To sell personal estate.

4th. To levy and collect a license tax on runners, hawkers, peddlers, liquor sellers, pawn brokers, taverns, dram shops, saloon keepers of any kind, brokers, shows and exhibitions for pay, billiard tables, ball and ten pin alleys, without regard to the number of pins used; hacks, drays, wagons, or other vehicles used for pay, within the city; theater and theatrical exhibitions for pay, and to adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person or property;

To license liquor sellers, etc.

5th. To restrain, prohibit and suppress tippling shops, billiard tables, ten pin alleys, ball alleys, houses of prostitution and other disorderly houses and practices, games and gam-

To suppress tippling shops, etc.

bling houses, desecrating the Sabbath (commonly called Sunday,) and all kinds of indecencies;

To prevent contagious diseases.

6th. To make regulations to prevent the introduction of contagious diseases into the city; to make quarantine laws for that purpose, and to enforce the same within the limits of the city;

To erect hospitals.

7th. To erect, establish and regulate hospitals, work houses, houses of correction and jails, and provide for the government and support of the same;

To remove nuisances.

8th. To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to make and prescribe regulations for the cleaning and keeping in order all slaughter houses, stock yards, warehouses, stables or other places where offensive matter is kept or liable to accumulate;

To regulate police.

9th. To establish, regulate and support night watch and police, and define the duties thereof;

To light streets.

10th. To provide for the lighting of streets, laying down of gas pipes, and erection of lamp posts, and to regulate the sale of gas and the rent of gas metres within the city;

To establish market houses.

11th. To erect and establish market houses and make market places, and to regulate and govern the same, and to provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city, and to provide for the safety and protection of private property when damages are likely to accrue by the action of the elements, or through the carelessness or negligence of any servant or officer of the city, and to establish, alter and change the channels of streams and water-courses, and bridge the same: *Provided*, That any such improvement mentioned in this subdivision, costing in the aggregate a sum greater than two thousand dollars, shall not be authorized until the ordinance providing therefor shall be first submitted to and ratified by a majority of the legal voters of said city, voting at said election;

To change channels of streams.

When to submit question to vote.

To take census.

12th. To provide for and cause to be taken, an enumeration of the inhabitants of the city;

To provide for elections.

13th. To provide by ordinance for the election of city officers and prescribe the manner of conducting the same, and the return thereof, and for deciding contested elections;

14th. To provide for removing officers of the city for misconduct; to appoint a city attorney, street commissioner and city engineer, and to prescribe the duties and compensation of such officers, and to create any office, or employ any agent they may deem necessary for the good government and interests of the city; To remove officers.

15th. To regulate the police of the city, and impose fines, forfeitures and penalties for the breach of any ordinance, and provide for the recovery and collection thereof, and in default of payment to provide for confinement in the city prison, or for hard labor in the city; To impose penalties.

16th. To regulate and prescribe the duties and powers and compensation of all officers and servants of the city not herein provided for; To fix compensation.

17th. To require of all officers and servants elected or appointed in pursuance of this act, bond and security for the faithful performance of their duties; and no officer shall become security upon the official bond of another; To require bonds.

18th. To issue bonds of the city in such amounts and for such length of time, not to exceed twenty years, and at such rate of interest as they may deem proper, not to exceed ten per cent. per annum; said bonds to express upon their face the purpose for which they were issued, and under what ordinance, and may have interest coupons attached: *Provided*, To issue bonds  
No such bonds shall be issued for any purpose, unless at a regular or special election, after twenty days public notice, stating distinctly the purpose and object for which said bonds are to be issued, and the amount thereof, the electors of said city, by two-thirds of the legal votes at said election, shall determine in favor of issuing said bonds, which said bonds shall in no case be diverted from the object for which they are issued, and shall not be disposed of by the city at less than ninety per cent. of their face; Proviso.

19th. To provide for the prevention of cruelty to animals; To prevent cruelty to animals.

20th. To appropriate money and provide for the payment of the debts and expenses of the city; To appropriate money.

21st. To regulate, license or prohibit the sale of domestic animals, or goods, wares or merchandise at public auction on the streets, alleys, highways, or any public grounds within the city; To regulate auctions.

- Same.** 22d. To regulate, license or prohibit the auctioneering of goods, wares and merchandise, brought into the city for the purpose of being sold at auction;
- To name streets.** 23d. To name and re-name streets, avenues, parks and squares within the city; to vacate streets and alleys, and authorize the laying of railroad switches through the same when in their judgment the interests of the city will be promoted thereby;
- To prevent erection of wooden buildings.** 24th. To prohibit, on the petition therefor of the owners of not less than two-thirds of the ground included in any square or block, the erection of any building, or addition to any building more than ten feet high, unless the outer walls thereof be made of brick and mortar, or of iron, or stone and mortar; and to provide for the removal of any building or additions erected contrary to such prohibition;
- To establish sewerage.** 25th. To lay out the city into districts for the purpose of establishing a system of sewerage and drainage, and to levy and collect a special tax upon real estate in any such district for the purpose of constructing sewers and drains therein, or they may pay for such sewerage and drainage out of the general funds of the city;
- To construct water works.** 26th. To erect and construct water works either within or without the corporate limits of the city, and to make all needful rules and regulations concerning the use of water supplied by such water works, and to do all acts necessary for the construction, completion, management and control of the same;
- To organize fire companies.** 27th. To provide for the organization and support of fire companies, and to establish regulations for the prevention and extinguishment of fires;
- To equalize assessments.** 28th. To act as a board of equalization for the city, to equalize assessments, and to correct any error in the listing or valuation of property, and to supply any omissions in the same; and to make a general increase in the valuation of real estate, as in their judgment they may deem proper; such increase not to exceed twenty per cent. of the valuation for county purposes;
- To require reports from city officers.** 29th. To require from any city officer of the city at any time, a report in detail of the transactions of his office, or of any matter connected therewith;
- To prevent horse racing.** 30th. To prevent horse racing and immoderate riding or driving in the streets, and to compel persons to fasten their

horses or other animals attached to vehicles, while standing in the streets;

31st. To regulate the transportation and keeping of gun-powder and other combustibles and explosive articles;

To regulate keeping gun-powder.

32d. To purchase, hold and improve public grounds and parks, and to provide for the protection and preservation of the same;

To improve parks.

33d. To appropriate private property for the use of the city;

To appropriate private property.

34th. To provide for the punishment of persons disturbing the good order and quiet of the city by clamor and noise, by intoxication, drunkenness, fighting, using obscene or profane language in the streets or other public places, to the annoyance of citizens, or otherwise violating the public peace by indecent and disorderly conduct, or by lewd and lascivious behavior; and to provide for the punishment of vagrants, common street beggars, common prostitutes, habitual disturbers of the peace, known and notorious pick-pockets, gamblers, burglars, thieves, watch-stuffers, ball game players, persons who practice any trick, game or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves, and such punishment may be either by imposing and collecting fines, or by imprisonment at hard labor, or both, at the discretion of the court: *Provided*, That no such person shall be fined for a single offense to exceed fifty dollars, and that such imprisonment at hard labor shall for the first offense not exceed thirty days; for the second offense sixty days; for the third offense ninety days; and they shall have power to provide that all persons who shall refuse or neglect to pay the fine imposed, on conviction of any offense, together with the costs of prosecution, shall be imprisoned and kept at hard labor until, at the rate of seventy-five cents per each day's labor, exclusive of Sundays, they shall have earned an amount equal to such fine and costs. They shall also have power to make suitable regulations to conduct such labor to the best advantage, and in a manner consistent with age, sex and health of the prisoners, and such labor may be done at the city prison, or elsewhere, under the charge of such officers or other persons, as the mayor and council may select: *Provided, however*, That no person shall for the first offense be

To provide punishment for disturbers of the peace.

sentenced to work outside an enclosure. And they shall have power also to provide suitable hospitals for the reception and care of such prisoners as may be diseased or disabled, the same to be under such regulations and under the charge of such persons as the mayor and council may by ordinance direct;

To provide for filling vacancies.

35th. To provide for filling such vacancies as may occur in the office of alderman, or other elective officer of the city, by calling special elections for that purpose;

To provide for keeping prisoners.

36th. To enter into arrangements with the county commissioners of Cass county for the safe keeping of city prisoners.

Manner of passing ordinances.

SEC. 13. All ordinances of the city shall be passed pursuant to such rules and regulations as the mayor and council may prescribe: *Provided*, That upon the passage of all ordinances the yeas and nays shall be entered upon the record of the city council, and a majority of the votes of all the members of said council present shall be necessary to their passage: *Provided*, A majority of all the members elected shall constitute a quorum.

How ordinances may be proven.

SEC. 14. All ordinances of the city may be proven by the ordinance book or certificate of the clerk under the seal of the city; and when printed or published in a book or pamphlet form, and purporting to be published or printed by the authority of the city, shall be read and received in all courts and places without further proof.

Statement to be published.

SEC. 15. The mayor and council shall cause to be published semi-annually, a statement of the receipts and expenditures, and the financial condition of the city.

Grade of streets, how established.

SEC. 16. The mayor and council shall have power to establish by ordinance the grade of any street, alley, avenue or lane within the city; and when the grade of such street, alley, avenue or lane shall have been established, such grade shall not be changed except by a vote of two-thirds of the council, and not then until the damages to property owners which may be caused by such change of grade, shall have been assessed and determined by three disinterested appraisers, who shall be appointed by the mayor, with the consent of the council, for that purpose, who shall make such appraisement, taking into consideration the benefits, if any, to such property, and file their report with the city clerk within ten days after re-

ceiving notice of their appointment; and the amount of damages so assessed shall be tendered to such property owners or their agents, before any such change of grade shall be made.

SEC. 17. The mayor and council shall have power to extend, <sup>Opening and widening of streets.</sup> open, widen, grade, pave, macadamize or otherwise improve and keep in repair in any manner they may deem proper, any street, sidewalk, alley, avenue or lane within the limits of the city, to vacate any portion of any street or alley, and add the portion so vacated to adjoining lots; to re-survey and straighten any street or alley of said city; and to defray the cost and expense of such improvements, or any of them, out of the general funds of the city; or the mayor and council shall have power to levy and collect special taxes upon the lots and pieces of ground adjacent to and abutting upon the streets, sidewalks, alleys, avenues or lanes thus opened, widened, extended or improved, or to be improved as aforesaid.

SEC. 18. Such taxes shall be levied on all the lots and lands <sup>Concerning taxes for improvements.</sup> abounding or abutting on such improvement, said tax to be either in proportion to the feet front so abounding or abutting, or according to the value of such lots or lands (exclusive of improvements thereon) as shown by the last assessment for general city purposes, as the mayor and council may determine. And the mayor and council are hereby required to provide for ascertaining the value of the improvements, in order that the same may be deducted from the valuation of such real estate for general city purposes, in case special tax is to be levied upon the basis of valuation: *And provided,* That when such improvement shall extend into or through any unsubdivided tract or parcel of land, and taxes shall be so levied, if upon the basis of the valuation, as not to be charged upon the real estate adjoining such improvement, for a greater depth than the average distance through the subdivided real estate to be taxed for said purpose.

SEC. 19. The mayor and council shall have the power to <sup>Concerning cleaning of sidewalks, etc.</sup> provide for keeping sidewalks clean and free from all obstructions and accumulations, and may provide for the assessment and collection of taxes on unoccupied real estate, and for the sale and conveyance thereof to pay the expenses of keeping the sidewalks adjacent to such real estate clean and free from obstructions and accumulations as herein provided.

Concerning  
drainage and  
filling.

SEC. 20. The mayor and council shall have power to require all lots and pieces of ground within the city to be drained or filled when necessary to prevent stagnant water, or any other nuisance accumulating therein; and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, to cause such lots or pieces of ground to be drained or filled; and the cost and expense thereof shall be levied upon the property so filled or drained and collected as other special taxes; or pay for the same out of the general funds of the city.

Proceedings to  
open or widen  
streets.

SEC. 21. When the mayor and council shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain, or otherwise improve any street, sidewalk, alley, avenue or lane within the limits of the city, for which a special tax is to be levied as herein provided, the mayor and council shall by resolution declare such work or improvement necessary to be done, and such resolution shall be published for four consecutive weeks in the official newspaper of the city; and if a majority of the resident owners of the property liable to taxation therefor, shall not within twenty days thereafter file with the city clerk of said city, their protest against such improvement, then the mayor and council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect the taxes as herein provided.

Concerning  
special taxes.

SEC. 22. Such special taxes shall be due and may be collected as the improvements are completed in front of, or along or upon any block or piece of ground, or at the time the improvement is completed according as shall be provided in the ordinance levying the tax. Such tax, if not paid within thirty days after becoming due, shall have added thereto a penalty of ten per cent., and shall bear interest from the day of sale at the rate of twenty-five per cent. per annum, to be computed on the tax, penalty and cost of sale.

Certain costs  
may be includ-  
ed in special  
tax.

SEC. 23. The cost and expense of grading, filling, paving, macadamizing, culverting, curbing and guttering, or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane, as may be deemed best by the mayor and council.

Duty of en-  
gineer when  
special tax is  
levied.

SEC. 24. When the special tax is levied, it shall be the duty of the engineer of the city to calculate the amount of the tax

on any block, or piece of ground; and file a statement thereof with the city clerk, who shall, as soon as the tax is due on any block or piece of ground, issue a certificate describing it by its number and block, and stating the amount of tax due thereon, and the name of the person chargeable with the same, and the purpose for which said tax was levied; and such certificate so given shall be the tax warrant of the contractor, and shall be by the clerk placed in the hands of the treasurer, who shall give notice through the official paper of the city when the penalty will accrue; and he shall keep a record of all such warrants and enter in the margin of such records all amounts paid, and by whom paid.

Tax warrant.

SEC. 25. It shall be sufficient in any case to describe the lot or piece of ground as the same is platted or recorded, although the same may belong to several persons, but in case any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

Description of lot.

SEC. 26. The mayor and council shall have power to provide for the sale and conveyance of any lot or piece of ground for non-payment of such taxes, and the deed given to convey the same may be recorded in the office of register of deeds of the county, as other conveyances. The conveyance shall be to the person owning the certificate of sale at the time such conveyance is given: *Provided*, That any lot or piece of ground may be redeemed within two years after the day of sale, or at any time thereafter until the tax deed is issued, by paying to the treasurer the tax, penalty, cost and interest at the rate of forty per cent. per annum. Lots or lands belonging to minors, or any interest they may have in any lands sold for special taxes, may be redeemed in the same manner at any time before such minor becomes of age and during one year thereafter.

Provision for selling property at tax rate.

SEC. 27. When any improvement mentioned in this act is completed according to contract, it shall be the duty of the engineer of the city to carefully inspect the same, and if the improvement is found to be properly done, such engineer shall accept the same and forthwith report his acceptance thereof to the city council, who may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as

Duty of engineer respecting improvements.

the improvement is completed in front of, or along any block or piece of ground, then the engineer may accept the same in sections, from time to time, if found to be done according to contract, always reporting acceptance to the city council for confirmation or rejection.

Special taxes to be a lien.

SEC. 28. Special taxes shall be a lien on the lots or pieces of ground subject to the same, from the time the amount thereof shall have been ascertained, and in case any error or irregularity should occur in levying or collecting any such special tax, proceedings may be taken anew, so as to obviate any such error or irregularity.

Manner of appropriating private property.

SEC. 29. Whenever it shall become necessary to appropriate private property for the use of the city, and such appropriation shall be declared necessary by resolution, the mayor, with the approval of the council, shall appoint three disinterested freeholders of the city, who after being first duly sworn to perform the duties of their appointment with fidelity and impartiality, shall assess the damage to the owners of the property, respectively, affected by such appropriation. Such assessment shall be reported to the council, and when confirmed by them the damages shall be payable as provided in the next section.

Payment of damages.

SEC. 30. Such damage shall be paid to the owners of such property, and be deposited with the city treasurer, subject to the order of such owners, respectively, before such property shall be taken for the use of the city.

Where assessment is not confirmed.

SEC. 31. If the assessment of the freeholders be not confirmed by the council, proceedings may be taken anew to assess the damages.

Concerning sinking fund.

SEC. 32. The mayor and council is hereby required to make provisions for a sinking fund, to redeem at maturity the bonded indebtedness of the city, and the tax levied for the sinking fund shall be paid in cash.

Concerning interest on city bonds.

SEC. 33. The mayor and council shall make provisions for the payment of interest on the bonds of the city; and taxes levied for the payment of such interest shall be payable in cash.

How sinking fund may be used.

SEC. 34. The sinking fund to redeem at maturity the bonded indebtedness of the city, may be used to purchase such bonds before maturity, on such terms and in such manner as may be prescribed by an ordinance to be enacted for that

purpose: *Provided*, That bond holders shall be given an opportunity to compete for the sale of bonds held by them; and the bonds that can be purchased upon the most favorable terms shall be preferred.

SEC. 35. No money shall be expended or payment made by the city, except in pursuance of a specific appropriation made for that purpose by ordinance or resolution. And the residents of said city shall be exempt from the payment of a poll tax for the benefit of roads as required under the present laws relating to roads; but in lieu thereof the mayor and council of said city shall have power to require each able-bodied male person between the ages of 21 and 60 years, resident within the city, to perform by himself or substitute, in each and every year, one day's labor upon the streets and highways of said city: *Provided*, That acting volunteer firemen shall be exempt from performing said one day's labor: *And provided further*, That such labor, when so required may be commuted by the payment of the sum of two dollars in each year, to be expended upon the streets and highways where such labor would have been applied.

How moneys to be expended

Road poll tax.

SEC. 36. At the first meeting in each month the mayor and council shall provide, by ordinance or resolution, for the payment of all liabilities of the city incurred during the preceding month, or at any time previous thereto, except the bonded indebtedness of said city which shall be paid at the maturity of such bonds.

Liabilities of city to be provided for.

SEC. 37. Any ordinance or resolution appropriating money shall be subject to the veto of the mayor as any other ordinance, and the mayor may veto any single item in any such ordinance over fifty dollars, and if such item be not passed on a reconsideration thereof, the veto of the mayor to the contrary notwithstanding, in the same manner as in other ordinances, such item shall be stricken out and shall not be allowed or paid by the city.

Mayor may veto single item of appropriation bill.

### ARTICLE III.

#### MAYOR.

SEC. 38. The mayor shall have power to sign or veto any ordinance or resolution passed by the city council. Any ordinance or resolution vetoed by the mayor may be passed

Veto power of mayor.

over the veto by a vote of two-thirds of the whole number of aldermen elected, notwithstanding the veto; and should the mayor neglect or refuse to sign any ordinance, or return the same with his objections, in writing, within ten days, the same shall take effect without his signature.

Treasury drafts  
—how signed  
and attested.

SEC. 39. All orders and drafts upon the treasury for money shall be signed by the mayor, and shall be attested by the city clerk, who shall also affix the seal of the city, and keep an accurate record thereof in a book to be provided for that purpose.

Mayor may be  
superintendent  
of city affairs.

SEC. 40. The mayor shall have the superintending control of all the offices and affairs of the city, and shall take care that the ordinances of the city and this act are complied with.

Mayor to sign  
commissions.

SEC. 41. He shall sign the commissions or appointments of all the officers appointed in the city government.

Mayor to ap-  
point special  
policemen.

SEC. 42. He shall be a conservator of the peace throughout the city, and shall at all times have power by and with the consent of the city council, to appoint any number of special policemen which he may deem necessary to preserve the peace of the city, and to dismiss the same at pleasure.

Shall commu-  
nicate informa-  
tion to city.

SEC. 43. He shall from time to time communicate to the city council such information, and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city.

Who may call  
special meet-  
ings of council.

SEC. 44. The mayor or any five aldermen shall have power to call special meetings of the council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal of the council.

May require  
any city officer  
to report.

SEC. 45. The mayor shall have power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make a report to the council in writing, touching any subject or matter he may require, pertaining to his office.

Duty and pow-  
ers of mayor.

SEC. 46. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty; he shall have jurisdiction as may be vested in him by ordinance, over all places within the corporate limits of the city, for the enforcement of any health or quarantine ordinance or regulation thereof.

SEC. 47. When any vacancy shall happen in the office of <sup>Mayor pro tem</sup> mayor, by death, resignation, absence from the city, removal from office, refusal to qualify, or otherwise, the council shall, by vote of a majority of all the aldermen elected, elect from their number a mayor *pro tem.*, who shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the regular mayor, until such vacancy is filled, or such disability be removed; or in case of temporary absence, until the mayor shall return; and during the time, he shall receive the same compensation that the mayor would be entitled to, the same to be deducted from the salary of the mayor; and in case of such vacancy other than temporary absence or disability, the person exercising the office of mayor shall forthwith cause a special election to be held, giving ten (10) day's notice thereof by proclamation.

SEC. 48. At the first meeting of the city council after any general election for city officers, they shall cause to be made out and certified by the clerk, a certificate of the election of such officers as are required to be elected by this act; and a neglect of any such officer to qualify within ten days after the delivery of such certificate to him, shall be deemed a refusal to accept the office to which he shall have been elected. <sup>Council to cause certificates of election to be made out.</sup>

SEC. 49. The mayor is hereby authorized to call on every male inhabitant of the city, over eighteen years of age, and under the age of fifty years, to aid in enforcing the laws and ordinances of the city; and in case of necessity, to call out the militia within the city to aid in the suppression of any riot, or in the enforcement of any ordinance; and any person who shall not obey such call, shall forfeit to the city a fine not exceeding one hundred dollars. <sup>Mayor may call out militia</sup>

SEC. 50. The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinances of the city, by and with the consent of the council. <sup>Mayor may remit fines.</sup>

SEC. 51. The mayor shall have power, by and with the consent of the council, to appoint all officers other than those elected by the people, and all nominations made by him may be confirmed or rejected by a majority of the councilmen present and voting upon such confirmation. <sup>Mayor to appoint certain officers.</sup>

## ARTICLE IV.

## CITY JUSTICE OF PEACE.

Appointment  
of city justice.  
jurisdiction of.

SEC. 52. A city justice of the peace shall be appointed by the mayor and council from the qualified voters of said city. The city justice of the peace shall have exclusive jurisdiction and it shall be his duty to hear and determine all offenses against the ordinances of the city, and concurrent jurisdiction with other justices in all other cases civil and criminal.

When justice  
shall issue war-  
rants.

SEC. 53. Whenever complaint shall be made to the city justice of the peace, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which the city justice of the peace has jurisdiction, said justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the city marshal, or the sheriff of the county, or some person specially appointed by said justice for that purpose.

Justice, when  
to hear com-  
plaint.

SEC. 54. When any person shall be brought before the said justice, upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

Postpone-  
ment of trials.

SEC. 55. Upon good cause shown said justice may postpone the trial of the case to a day certain, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before such justice at the time and place appointed, and then and there to answer the complaint alleged against him.

Summons of  
witnesses.

SEC. 56. It shall be the duty of said justice to summon all persons whose testimony may be deemed material as witnesses on the trial, and enforce their attendance by attachment if necessary; and when a trial shall be continued by said justice, he may verbally notify such witnesses as may be present at the continuance, to attend before him, to testify in the cause set for trial: and such verbal notice shall be as valid as a summons.

Trials, how  
governed.

SEC. 57. All trials before the said justice for misdemeanors arising under the laws of the territory, shall be governed by the criminal procedure applicable to justices courts in like cases.

Concerning  
judgment on  
conviction.

SEC. 58. In all trials for offenses under the ordinances of said city, if the defendant is found guilty, said justice shall

render judgment accordingly. It shall be part of the judgment that the defendant stand committed until judgment be complied with; in no case to exceed one day for every seventy-five cents of the fine and costs assessed against said defendant.

SEC. 59. Said justice shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear and determine any and all cases cognizable before him; and shall have power to bring parties forthwith before him for trial; and no act shall be performed by him on Sunday, except to receive complaints, issue process and take bail.

Court, when to be open.

SEC. 60. In all cases before the said justice, arising under the ordinances of the city an appeal may be taken by the defendant to the district court of Cass county except in cases tried by a jury; but no appeal shall be allowed unless such defendant shall, (in case of fine,) within ten days, (and in case of imprisonment,) within twenty-four hours, enter into recognizance, with sufficient securities, to be approved by said justice, conditioned in case of fine, for the payment of said fine and costs, and costs of appeal, and in case of judgment of imprisonment, that he will render himself in execution thereof, if it should be determined against the appellant.

Concerning appeals.

SEC. 61. Any person convicted before the said justice of an offense under the ordinances of the city, shall be punished by fine and imprisonment, as may be regulated by ordinance, and under no circumstances shall such justice remit fines or penalties, on payment of costs or otherwise.

Justice not to remit fines.

SEC. 62. In case of a vacancy in the office of city justice of the peace, by death, resignation or otherwise, or in case of his absence, interest or disability to perform his duty, it shall be the duty of any acting justice of the peace within the city, who shall be designated by the mayor, to act as city justice of the peace during such vacancy, absence or disability, in the trial of causes cognizable before the said justice.

Who to act in case of death of city justice.

SEC. 63. If upon any trial under the provisions of this act, it shall appear to the satisfaction of the city justice of the peace, or the jury (in cases arising under the laws of the territory), that the prosecution was commenced without probable cause, or from malicious motives, the jury or justice trying the case shall state the name of the prosecutor or prosecutors in the finding, and shall impose the costs of the prosecution

Duty of justice when prosecution malicious.

upon him or them, and judgment shall be rendered against such prosecutor or prosecutors, that he or they pay such costs, and stand committed until the same are paid.

Power of justice.

SEC. 64. The city justice of the peace shall have power to enforce due obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding his court, or to process issued, or orders made by him, in the same manner and to the same extent as provided for justice court. On the trial of any case in said court, it shall be the duty of the city justice of the peace to sign any bill of exceptions rendered to the court during the progress of such trial: *Provided*, The truth of the matter be fairly stated, and thereupon said exceptions shall be entered in the record of such trial and become a part thereof; and any final conviction, sentence or judgment of said court may be examined by the district court on writ of error which may be allowed by the said district court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable, and the revising court shall, in such proceedings take judicial notice of all the ordinances of said city. Cases before the city justice of the peace, arising under the city ordinances, shall be tried and determined by the justice without the intervention of a jury, except in cases where, under the provisions of the ordinances of the city, imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial; and when a demand shall be so made it shall be the duty of the city justice of the peace to write down the names of eighteen persons, residents of the city, and having the qualifications of jurors in the district court, and the defendant and the attorney for the city shall each strike off three names, or, in case the defendant shall neglect or refuse so to do, then the city justice of the peace, with the attorney for the city, shall strike off such names; and the said justice shall at once issue his venire to the marshal commanding him to summon the twelve persons whose names remain upon the list as jurymen. And in all trials by jury in said court challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor, and in case the

Bill of exceptions.

Concerning jury.

number shall be reduced below twelve by such challenges, or any portion of said number shall fail to attend, then the marshal shall summon in a sufficient number of talesmen, having the qualifications of jurors, to complete the panel, which shall in all cases consist of twelve jurors. If either party objects to the competency of a juror, the question thereon must be tried in a summary manner by the justice who may examine the juror or other witness under oath. Each and every person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction, such fees shall be taxed against the defendant as a part of the costs of the case.

SEC. 65. In all cases not herein specially provided for, the process and proceedings of said court shall be governed by the laws regulating proceedings in justices courts in criminal cases. Proceedings, how governed.

## ARTICLE V.

### TREASURER.

SEC. 66. The city treasurer shall receive all moneys belonging to the city, and shall keep his books and accounts in such manner as the mayor and council may prescribe; and such books and accounts shall be always subject to the inspection of the mayor or any member of the city council. Duty of city treasurer.

SEC. 67. All warrants drawn upon the treasury must be signed by the mayor, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom chargeable; and no money shall be otherwise paid than upon such warrant so drawn, except as hereinafter provided. All warrants shall be paid in the order in which they are presented, and the treasurer shall note upon the back of each warrant presented to him the date of such presentation, and when payment is made the date of such payment: *Provided*, That any warrant shall be paid by the treasurer in case a sufficient amount of money shall remain in the treasury to pay all warrants presented previous to such warrant. Any violation of the provisions of this section on the part of the treasurer of said city shall be sufficient ground for his removal from office by the mayor and city council. Concerning city warrants.

Treasurer to  
keep separate  
accounts.

SEC. 68. The city treasurer shall keep a separate account of such fund or appropriation, and the debts and credits belonging thereto.

Treasurer to  
give duplicate  
receipts for  
taxes.

SEC. 69. The city treasurer shall give every person paying money into the city treasury, a duplicate receipt therefor, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the clerk at the date of his monthly report.

Treasurer to  
render account

SEC. 70. The city treasurer shall, at the end of each and every month, and oftener if required, render an account to the mayor and city council, or such officer as the mayor and city council may designate, showing the state of the treasury at the date of such account, and the balance of money in the treasury. He shall also accompany such accounts with a statement of all moneys received into the treasury, and on what account, together with all warrants redeemed and paid by him, which said warrants, with any and all vouchers held by him, shall be delivered to the clerk, and filed with his said account in the clerk's office upon every day of such settlement, taking their receipt for the same. He shall return all warrants paid by him stamped or marked "paid," and shall give a list of said warrants, stating the number and amount of each.

Treasurer  
prohibited  
from using city  
moneys.

SEC. 71. The city treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever; any violation of this provision shall subject him to immediate removal from office by the city council, and upon conviction thereof they are hereby authorized to declare such office vacant; and the city council shall appoint a successor of the term unexpired of such officer so removed.

Penalty.

Treasurer's  
report.

SEC. 72. The city treasurer shall report to the mayor and council at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last report, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and

Warrant reg-  
ister.

person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee at the time of making such report.

SEC. 73. All moneys received on any special assessment shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made; and said money shall be used for no other purpose whatsoever. Special assessments.

SEC. 74. The treasurer shall be collector of taxes for the city, and shall give bonds in a sum not less than five thousand dollars, and in such further sum as may be provided by ordinance, said bond to be approved by the mayor and council, for the honest and faithful performance of the duties of his office, said bond to be filed in the office of the clerk of the city. Bonds of treasurer.

## ARTICLE VI.

### MISCELLANEOUS.

SEC. 75. The marshal shall possess the powers of constable in the service of a process, and may arrest offenders within or without the city limits, for offenses committed within the same; and shall at all times have power to make or order an arrest upon view of an offense being committed, with or without process, for an offense against the laws of the territory, or the ordinances of the city, and bring the offender to trial or examination before the proper officers of the city: *Provided*, That any person arrested for an offense without process shall be entitled, on demand before trial, to have filed a complaint on oath in writing. Marshal, powers of

SEC. 76. The policemen of the city shall have power to arrest all offenders against the laws of the territory or ordinances of the city by day or by night, and keep them in the city prison to prevent their escape until they can be brought before the proper officer. Power of policemen.

SEC. 77. The marshal, in the discharge of his duties, shall be subject to the order of the mayor and city justice of the peace, only, and shall be *ex-officio* chief of police. Marshal to be subject to orders of Mayor.

SEC. 78. The policemen of the city in the discharge of their duties, shall be subject to the orders of the mayor and marshal only. Policemen, who subject to.

Mayor and council to have certain powers

SEC. 79. When, by this act, the power is conferred upon the mayor and council to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the mayor and council may provide by ordinance the details necessary for the full exercise of such power.

What may be defined by ordinance.

SEC. 80. The duties, powers and privileges of all officers of every character, in any way connected with the city government, not herein defined by ordinance, and the defining by this act of the duties of the city officers, shall not preclude the mayor and council from defining by ordinance further and additional duties to be performed by any such officer.

Exempt from taxation.

SEC. 81. Lands, houses, moneys, debts due the city, and property and assets of every description belonging to said city, shall be exempt from taxation, and sale on execution; judgments against the city shall be paid out of the general fund, or by a tax to be assessed upon the taxable property of the city.

Fines, to whom paid.

SEC. 82. All fines, penalties and forfeitures collected for offenses against the ordinances of the city, and all fines, penalties and forfeitures collected within the city for misdemeanors against the laws of the territory, shall be paid to the officer or officers entitled by law to receive the same.

Penalty where city officer is interested in contract.

SEC. 83. Any officer of the city, or member of the council, who shall by himself or agent become a party to, or in any way interested in any contract, work or letting under the authority of the city; or who shall, either directly or indirectly, by himself or other party, accept or receive any valuable consideration or promise, for his influence or vote, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, one-half of which shall go to the informer and the balance to be paid into the city treasury, by the officer collecting or receiving the same.

Compensation of city officers.

SEC. 84. The several officers of said city hereinafter named shall for the year 1875, receive the compensation fixed by this act, and no more; and it is hereby made the duty of the mayor and council to fix by ordinance the compensation to be paid the several officers provided for in this act, and such other officers as may be appointed by the mayor and council for said city: *Provided*, That in no case shall the compensation of the mayor and council be increased during their term of office:

1st. The mayor shall receive for the year 1875, the sum of five dollars;

2d. The members of the council shall each receive for the year 1875, the sum of three dollars.

SEC. 85. Any officer appointed by the mayor and city council shall hold his office for one year, or during the pleasure of the mayor and council, and may be removed at any time by the appointment of his successor in such office in the manner provided for the appointment of officers: *Provided*, That the mayor shall nominate to the council for confirmation the successor of any such officer upon the request of a majority of all the members of such council, expressed by resolution, and upon the passage of such resolution the ayes and noes shall be taken and recorded.

Term of office.

Proviso.

SEC. 86. That all north of the Northern Pacific Railroad track shall constitute the first ward; all south of the railroad track and east of Sixth street shall constitute the second ward; and all south of the railroad track and west of Sixth street the third ward.

Boundaries of wards.

SEC. 87. That S. G. Roberts, Thomas M. Pugh and W. D. Maddocks are appointed judges of election for the first ward; J. E. Haggart, Terance Martin and Harry O'Neil for the second ward; and E. A. Grant, George A. Strout and James McLean for the third ward, who shall have power to hold the first election, to select the place for holding said election and give notice thereof, and to fill vacancies which may occur in said election boards in their several wards.

Names of city officers.

SEC. 88. This act shall take effect and be in force from and after its passage and approval.

When to take effect.

Approved, January 15, 1875.

## HERD LAW.

### CHAPTER 13.

#### BON HOMME ISLAND.

AN ACT exempting Bon Homme Island from the provisions of the herd law.

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

Exempting  
Bon Homme  
Island from the  
herd law.

SECTION 1. That Bon Homme island, situated in township ninety-three, range fifty-eight, in Bon Homme county, D. T., be and is exempt from the provisions and effects of chapter twenty-three, of the laws of 1870-71, approved January 9th, 1871, and known as the herd law, and all acts amendatory thereto.

When to take  
effect.

SEC. 2. This act shall take effect from and after its passage and approval.

Approved, January 12, 1875.

## PISCICULTURE.

### CHAPTER 14.

#### LAKE COUNTY.

AN ACT for the preservation of fish in the waters of Lake county, Dakota Territory.

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

Penalty for  
taking at cer-  
tain seasons of  
year.

SECTION 1. No person or persons shall, between the 15th day of March and the 1st day of May of each year, by the

means of any seine, net, spear, or any other contrivance or device whatsoever, kill, take from, or destroy any fish in the waters of any of the lakes of Lake county, D. T., or any of the streams emptying into or discharging from any of the lakes of the above mentioned county; and any person or persons who shall violate any of the foregoing provisions of this section, shall, on conviction thereof, be subject to a fine for each and every such offense of not less than five dollars nor more than fifty dollars with costs of suit.

SEC. 2. Justices of the peace shall have jurisdiction to hear, <sup>Justice to have jurisdiction.</sup> try and determine all cases arising under the provisions of this act: *Provided*, That defendant shall not be deprived of his right of trial by jury, nor of his right of appeal.

SEC. 3. All moneys collected as fines, under the provisions of this act shall be paid into the county treasury for the use <sup>Disposition of moneys collected.</sup> of common schools of said county.

SEC. 4. This act shall take effect and be in force from and <sup>When to take effect.</sup> after its passage and approval.

Approved, January 6, 1875.

## CHAPTER 15.

### SWAN LAKE.

AN ACT to preserve fish in the waters of Swan Lake, D. T., and the Vermillion river, and for other purposes.

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

SECTION 1. No person or persons shall between the 1st day <sup>At what season taking of fish prohibited.</sup> of March, and the first day of May of each year, by the means of any seine, net, spear, or any other contrivance except it be with a hook and line, take from, or destroy any fish in the waters of Swan Lake, or any stream emptying into or discharging from said lake, or in the waters of the Vermillion river within the limits of Turner county, D. T.

Duty of persons having constructed dams.

SEC. 2. *Be it further enacted*, That each and every person having constructed any dam or other obstacle across the Vermilion river, or any other stream within the limits of Dakota territory, that will prevent or retard the access of fish to the head-waters of any of the aforesaid streams, shall provide shoots or other means to facilitate the passage of fish over such dam, or other obstruction.

Justices shall have jurisdiction.

SEC. 3. Justices of the peace shall have jurisdiction to hear, try, and decide all cases resulting from a violation of any of the provisions of the 1st and 3d sections of this act: *Provided*, That the right of an appeal, or trial by jury shall not be withheld from the defendant.

Penalty for violating this act.

SEC. 4. Any person or persons who shall violate any provisions of the 1st and 2d sections of this act shall on conviction thereof, be subject to a fine for each and every such offense of not less than five dollars nor more than fifty dollars, and costs of suit.

Moneys collected, how disposed of.

SEC. 5. All moneys collected as fines under the provisions of this act shall be paid into the treasury of the county wherein the offense is perpetrated, for the use of the public schools of said county: *Provided*, This act shall not apply to the dams at the falls of Sioux Falls, D. T. *Provided further*, That this act shall not apply to the mill dam at Dell Rapids, D. T.

When to take effect.

SEC. 6. This act shall take effect and be in force from and after its passage and approval.

Approved, January 13, 1875.

# MEMORIALS.

## MEMORIALS.

### NUMBER 1.

A MEMORIAL to the Honorable, the Senate and House of Representatives of the United States in Congress assembled.

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully beg leave to petition your honorable bodies to take immediate action in the matter of opening the Black Hills of Dakota for settlement, because of its great mineral wealth and its being so well adapted for agricultural pursuits, and respectfully call your attention to the following reasons:

Opening of  
the Black Hills

1st. That General Custer has explored the Black Hills, and reports the finding of gold in every locality where the miners prospected.

2d. That no section of country in the west has more beautiful valleys than this hitherto unknown country, all being well watered, and so favorably adapted to farming and stock raising.

3d. That gold, silver, platinum, and inexhaustible pine forests were found.

4th. That the most favorable reports published in the press throughout the country will scarcely convey an idea of the actual and enormous wealth of the region when developed by the diggers of our "nation's specie basis."

5th. That Prof. Hayden and Gen. Warren in their several explorations and surveys of exterior portions of the Black Hills report "officially" that they found gold, silver, iron, and forests of unknown limits, within 130 miles of steamboat navigation on the Missouri river.

6th. That the Sioux Indian treaty, still respected by the government, but numberless times violated by the Sioux Indians, prevents white men from acquiring homesteads, pre-emptions or mining rights within the great Sioux reservation.

Opening of  
the Black Hills

The legislative assembly of Dakota territory most earnestly petitions congress to abrogate the treaty now in force, or if such action be deemed unjust to the Indians, in lieu thereof, extinguish the Indian title to that portion of the reservation known as the Black Hills of Dakota, so that the nation may receive the benefit of its great wealth, and we further pray that congress during the present session will make due and ample provisions to buy the right of way, or treat for the same with said Indians, so that all men may pass through said reservation in pursuit of peace, happiness and prosperity.

Your memorialists would further represent that some legislation as prayed for in this memorial is absolutely needed at the earliest possible day, if the government wishes to prevent a repetition of the bloody scenes in California between the miners and the Indians, which resulted in the almost total destruction of the latter.

Humanity, justice, and the rights of a free and enlightened people respectfully ask for speedy action on this important question.

And your memorialists, as in duty bound, will ever pray.

*Be it resolved* by the legislative assembly of the Territory of Dakota: That a copy of this memorial be forwarded to the President of the United States, the President of the Senate, and speaker of the House, and our Delegate in Congress, and further, that his Excellency, Gov. Pennington, be requested to sign this memorial and unite with us in securing favorable action by congress.

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## NUMBER 2.

A MEMORIAL to the Congress of the United States, praying for a division of Dakota Territory, and the organization of a new territory out of the northern part thereof.

*To the Honorable the Senate and House of Representatives of the United States in Congress Assembled.*

Division of Da-  
kota territory.

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully petition your honorable body for the passage of the bill now pending in Congress for

the erection and organization of the Territory of Pembina, <sup>Division of Dakota territory.</sup> out of the northern portion of Dakota Territory, or of some bill of a similar character, that will provide for a division of the territory as it is now constituted.

The principal settlements in the territory extend along the Missouri river and tributary streams in the southern portion of the territory, forming a belt of from sixty to one hundred miles in width, and along the Northern Pacific Railroad and in the Red river valley in the northern portion. The two sections have no interests in common, and a vast unsettled tract of country divides them, so that communication between the northern and southern settlements is difficult and almost impossible except by way of St. Paul, in Minnesota, by which route the expense is necessarily large and the distance great. No north and south lines of communication within the territory can be expected soon. The trade, commerce and enterprise, the markets and communications of each part are distinct and separate. Different motives and interests govern the citizens of each part, and it is hardly practicable to represent and promote the best interest of both sections in the same territorial legislature, or under the same territorial government. In all matters of local enterprise, the encouragement of immigration and the settlement of the country, the best good and the largest results can only be attained through separate organizations.

The late election showed a population in the territory north of the forty-sixth parallel, of fully eight thousand persons, and the prospect is that this will be largely increased within the next two years; while the rapid settlement of the southern portion indicates that within that time it will have both a population and wealth that will justify the admission of this territory into the Union as a state.

For these, and other reasons, your memorialists earnestly ask that the division of the territory be authorized at an early day.

And your memorialists as in duty bound will ever pray.

I approve the object of this memorial,

JOHN L. PENNINGTON,

December 19, 1874.

*Governor.*

## NUMBER 3.

A MEMORIAL to his Excellency, the President of the United States.

Concerning  
land offices in  
southern Da-  
kota.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that at least one-half or more of the entire population of this territory, engaged in agricultural pursuits, are persons of foreign birth, composed principally of Germans and Scandinavians; that the immigration to this territory of the people who settle upon and occupy the public lands under the homestead and pre-emption laws, is composed principally of those classes of immigrants, are industrious, frugal, sober and prosperous people, of incalculable benefit to the territory, and eventually to the Nation.

Your memorialists would further represent and call to your attention the fact that there are three land districts and three land offices in Southern Dakota, and not one of the officers thereof can speak or understand any other language than the English. That in consequence, at least one-half of all the persons taking advantage of the homestead and pre-emption laws cannot communicate with such officers or transact their business with them, except through the aid of an interpreter, that this occasions them much trouble, expense and annoyance, and frequently leads to the grossest errors and consequent wrongs and losses to these people. There are many educated gentlemen in the territory perfectly competent to fill those positions, who speak fluently and write readily both the English and German, or English and Scandinavian languages, and in many instances all of these languages.

Your memorialists therefore ask and most earnestly pray that to the appointment to those positions in this territory, the evil may be corrected, and that one of the officers in each of the districts shall be a person speaking and writing at least two of the languages.

And your memorialists will ever pray.

*Resolved*, That in addition to the usual number of copies, a copy of the memorial be sent to the Hon. J. P. Kidder, delegate elect, and that he be respectfully requested to use his influence to have the object of this memorial carried out.

## NUMBER 4.

A MEMORIAL to the Postmaster General of the United States, asking for an increase of service on mail route No. 13,910, from Yankton to Sioux Falls, Dakota Territory.

*To the Honorable, the Postmaster General of the United States:*

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that there is already an urgent necessity for a daily mail between Yankton, the capital of Dakota, and Sioux Falls, Dakota Territory. That owing to the fact that there is but a tri-weekly mail between these places, the commercial relations between the two points, as well as those of the towns and settlements intermediate, are greatly retarded and injured. That the county of Turner, now containing about one thousand voters, and other counties contiguous mainly rely upon this route for the carrying and delivery of their mail matter, and it is a general cause of complaint and a positive hindrance to the improvement of the intermediate points, that the mail accommodations are insufficient to meet the present demand. That almost daily, urgent public business, requiring intercourse with citizens of Turner, Minnehaha, Moody, McCook and other counties, arises at Yankton the capitol of Dakota, which would be facilitated to the great benefit of all parties by the increase of service on this route to a daily mail. That the settlement and occupation of the public lands in the district of country referred to has progressed with unprecedented rapidity during the year now drawing to a close, and the promise of a speedier growth during the coming year, is of the most reliable character.

Daily mail  
from Yankton  
to Sioux Falls.

Your memorialists would therefore request that daily service be ordered on the said route No. 13,910, as soon as expedient, and we, as in duty bound, will ever pray.

*Resolved*, That copies of this memorial, properly enrolled, and signed by the officers of the respective houses and the Governor, be forwarded, one to the Honorable, the Postmaster General, and one to Hon. M. K. Armstrong, our Delegate in Congress, and that the chief clerk of the House be instructed to forward these memorials.

## NUMBER 5.

A MEMORIAL to the honorable Senate and House of Representatives of the United States in Congress Assembled.

**Mail route  
from Yankton  
to Childstown.**

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully ask that a mail route may be established by your honorable bodies between Yankton, Yankton county, and Childstown, Turner county, Dakota Territory, *via* Jamesville, that weekly service be put upon the same at an early day.

Your memorialists, as a reason for said request and prayer, would respectfully represent and make known to your honorable bodies that the nearest mail route at present established by law is at a distance varying from eight to fifteen miles from the places through or to which this proposed route is to run, by reason of which a numerous and growing population are compelled to depend wholly upon uncertain and private sources to obtain their mail or any of the facilities or benefits of the postal laws of the United States.

That the distance of said route, which your memorialists pray may be established, will not exceed forty miles, and the road through and between said points is in good condition at all seasons of the year, viz: From Yankton, north, following the county road to Jamesville, in township 96, range 56; thence through the German Russian settlement in townships 97 and 98; thence on the most practicable route to Childstown, in Turner county.

That the road is in good condition at all seasons of the year, having been established and improved the greater part of the way for many years.

That at all points along said route there is a dense and permanent population of enterprising and industrious citizens, being mostly settled by the German Russian and Menonite immigrants. And your memorialists will as in duty bound ever pray.

*Resolved*, That our delegate in congress be requested to call the attention of the proper committees of congress to the object of this memorial.

## NUMBER 6.

A MEMORIAL to Congress for the establishment of a mail route from Lake Kampeska, the terminus of the Chicago & Northwestern Railroad, by James river, to Ashmore, on the Missouri river.

The people of Dakota represented in Council and House of Representatives, respectfully represent that the interests and convenience of the people of a large extent of country would be greatly promoted and the settlement of the country encouraged by the establishment of a mail route from Lake Kampeska, the terminus of the Chicago & Northwestern Railroad, by James river, to Ashmore, on the Missouri river, and they respectfully ask the Congress of the United States to establish said route.

Mail route  
from Lake  
Kampeska to  
Ashmore.

## NUMBER 7.

A MEMORIAL to the Postmaster General of the United States, praying that mail service may be ordered on that portion of the established mail route No. 35,027, between the city of Yankton and the town of Lodi.

*To the Honorable Postmaster General of the United States:*

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that the town of Lodi is on mail route No. 35,027, established between the city of Yankton and the town of Eden, and that at present there is no mail service on said route between Yankton and Lodi, a distance of about twenty-five (25) miles, and that there is service on that portion of said route between Lodi and Eden.

For mail ser-  
vice from  
Yankton to  
Lodi.

And that the most direct line of communication by mail between Yankton and Lodi is by the way of Vermillion, and that in consequence thereof, it is carried over a circuitous route many miles further than if service was established on the whole route.

And your memorialists would further represent that all the land south, and many miles north of said route is settled by a permanent population of enterprising and industrious citi-

For mail service from Yankton to Lodi.

zens, and that it is very important to their interest that mail service be established on the whole route between Yankton and Eden.

Your memorialists would therefore most earnestly pray that service be ordered on the whole mail route No. 35,027, from Yankton, D. T., *via* Lodi, to Eden, D. T.

And that this request may be promptly granted your memorialists as in duty bound will ever pray.

#### NUMBER 8.

A MEMORIAL to the Postmaster General of the United States, praying that the mail service on Route No. 35,029, from Vermillion to Canton, Dakota Territory, be increased.

For increase of mail service from Vermillion to Canton.

SIR:—Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that the increase of mail service on route 35,029, from Vermillion to Canton, Dakota Territory, is necessary for the public good. That said route runs across a prairie where several towns and villages are springing up along said route, and for the want of greater mail facilities the growth and prosperity of the same is retarded, and that an increase of service would do much to advance the future prosperity of the country.

Your memorialists would therefore earnestly request that service be increased to three times per week.

And as in duty bound your memorialists will ever pray.

#### NUMBER 9.

A MEMORIAL to the Postmaster General of the United States, praying that the mail service on Route No. 35,018, from Yankton via Ziskov to Tarbox, Cooley and Springfield, Dakota Territory, be increased.

For increase of service on mail route No. 35,018.

Your memorialists, the Legislative Assembly of Dakota Territory, would most respectfully represent that an increase of mail service on Route No. 35,018, from Yankton via Zis-

kov to Tarbox, Cooley and Springfield, Dakota Territory, is necessary for the public good.

For increase  
of service on  
mail route No.  
35,018.

That the said route runs through the most densely populated portion of Yankton and Bon Homme counties, a distance of thirty (30) miles; several towns and villages are springing up along said road, and for the want of greater mail facilities the growth and prosperity of the same is retarded, and that an increase of service would do much to advance the further prosperity of the country.

Your memorialists would therefore request that service be increased to two (2) times per week.

And as in duty bound your memorialists will ever pray.

#### NUMBER 10.

A MEMORIAL to the Second Assistant Postmaster General of the United States, asking increased service on mail route No. 35,028, from Canton to Milltown, Dakota Territory.

*To the Honorable Second Assistant Postmaster General of the United States:*

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that there is a necessity and urgent demand that the service on mail route No. 35,028, from Canton to Milltown, be increased in early spring to a semi-weekly service, at least as far as from Canton to Childstown, and your memorialists would further represent that Maple Grove post office, on said route, at a flourishing village in this territory, has but this one mail, weekly, and consequently business men therein have their mail sent to offices 12 miles away, and send after it, which would be remedied by the increased service asked for.

For increased  
mail service  
from Canton to  
Milltown.

And your memorialists as in duty bound will ever pray.

*Resolved,* That the chief clerk of the House forward one copy each of this memorial to the Second Assistant Postmaster General and our Delegate in Congress, at Washington.

## NUMBER 11.

A MEMORIAL to Congress asking the establishment of a mail route from Sioux Falls via Pennington and Rosedale, in the county of Minnehaha, and Territory of Dakota, to Pipestone and Lake Benton, in the county of Lincoln, in the State of Minnesota; and that service from Sioux Falls, in said territory, once a week, be ordered on said route.

For a mail route from Sioux Falls to Lake Benton, Minnesota.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that the commercial and social interests of Sioux Falls, Dakota, and Lake Benton, in the State of Minnesota, demand the establishment of a mail route with weekly service on the same from Sioux Falls, Dakota, to Lake Benton, in the State of Minnesota, a distance of sixty-five miles, and that service should be placed on same. That there is no mail route established between said Sioux Falls, Dakota Territory, and Lake Benton, in the State of Minnesota, and they are destitute of mail facilities except what is carried by private individuals.

Therefore your memorialists would most earnestly ask the early establishment of said route, with weekly service on same, from Sioux Falls, Dakota Territory, and Lake Benton, in the State of Minnesota.

And as in duty bound will ever pray.

## NUMBER 12.

A MEMORIAL to the Postmaster General of the United States, praying that mail service on route No. 35,011, from Elk Point, Dakota Territory, to Ponca, Nebraska, be increased.

*To the Honorable Postmaster General of the United States:*

For increased service from Elk Point to Ponca, Neb.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that an increase of mail service on route No. 35,011, from Elk Point, Dakota Territory, to Ponca, Nebraska, is necessary for the public good; and that the interests of the citizens both at Elk Point and Ponca, and also along the mail route between said places, require increased mail facilities on said route.

Your memorialists therefore urge that service be increased on said route to six times per week.

And as in duty bound your memorialists will ever pray.

## NUMBER 13.

A MEMORIAL to Congress, asking mail service from Beloit, Iowa, to Firesteel and Fort Thompson, Dakota Territory.

*To the Honorable Postmaster General of the United States, and Congress Assembled:*

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that the interests of the people residents of this territory require the establishment of a post route and weekly service thereon from Fort Thompson east to James river, to a settlement known as Sauttees; thence south through the Belcher settlement to Firesteel; thence east, through the Prairie Settlements, *via* Pleasant Home and Canton, to Beloit, in Iowa, the terminus of stage lines from the east and of railroads now building. And that service should be placed on this route in July, 1875, as the settlements are now so numerous that post roads along the rivers do not accommodate the settlers, some of whom at the settlements named, now have to go thirty miles to the nearest post office.

For mail service from Beloit, Iowa, to Firesteel and Ft. Thompson.

And your petitioners as in duty bound will ever pray.

*Resolved*, That the chief clerk of the House cause a copy of this memorial to be sent to the Postmaster General, the Second Assistant Postmaster General, and to our Delegate in Congress, to present and urge before the proper authorities.

## NUMBER 14.

A MEMORIAL to Congress asking an appropriation of lands to the University of Dakota.

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

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that while the appropriation of public lands by your honorable body for

For an appropriation of lands to the University of Dakota.

For an appropriation of lands to the University of Dakota.

the maintenance and support of common schools to the future State of Dakota, is large and magnificent, it is of no practicable benefit to the present territorial condition of our people, who feel an active interest in the education of the youth of the territory; nor can we confidently look forward to any very early period when Dakota can, by being admitted as a state into the Union, be in a position to make any practical use of the school lands. At the time the policy of granting public lands to foster and support educational institutions was adopted by the government, less than two-thirds the population now required was then deemed ample to entitle a people to organize a state government and ask admission into the Union on an equality with the older states.

In the Territory of Dakota, an excellent system of public schools is now maintained, and the most perfect methods of educating the youth in common schools has been adopted, and is now in successful operation; yet there is an urgent demand for a more advanced system of education in a territorial school of a higher grade and character, and it is an established fact that such an institution is as essential to the perpetuity of republican institutions as is the common school.

And your memorialists would further represent that the initial steps have already been taken for the organization of a University in Dakota. Its location has been amicably fixed upon, and we now appeal to your honorable bodies to grant to this territory a small proportion of the public school lands or of other lands as to you may seem best, to enable us to erect our University and set its educational machinery in motion.

And we as in duty bound will ever pray.

*Resolved*, That copies of this memorial, duly enrolled and attested, be forwarded to the Speaker of the House of Representatives at Washington, and two copies to Hon. M. K. Armstrong, our Delegate in Congress, and the enrolling clerk of the House be instructed to forward such memorials.

## NUMBER 15.

A MEMORIAL to the Congress of the United States, praying for an appropriation to erect a Territorial Prison in Dakota Territory.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully represent, that while Congress has uniformly made appropriations to erect prisons in other organized territories, not a dollar has been appropriated for Dakota for this purpose, and that this territory is without a prison, where convicts may be securely confined, but that all persons convicted and sentenced by both the Federal and Territorial district courts must be sent to prison in distant states: and that the expense of conveying convicts to such prisons, and of keeping and maintaining them there amounts to several thousand dollars annually, which might be saved to the general government and to this territory if a suitable and secure prison should be erected in this territory.

For an appropriation for a territorial prison.

That the peace and prosperity of the people of the territory largely depends on the speedy and certain punishment of criminals, which can be best secured by the establishment of a prison within the limits of this territory.

Therefore, your memorialists respectfully ask that an appropriation of twenty thousand dollars be made for the object above mentioned.

And in duty bound your memorialists will ever pray.

## NUMBER 16.

A MEMORIAL to Congress asking for an appropriation to erect a building in Dakota Territory for the use of the Governor, Secretary, Supreme and District Courts, and Legislative Assembly.

*To the Honorable the Senate and House of Representatives of the United States in Congress Assembled.*

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that the interests of the United States government, as well as those of this

For an appropriation to erect a capital building.

For an appropriation to erect a capitol building.

territory, requires the immediate erection of a suitable building for the accommodation of the Governor, Secretary, U. S. Marshal, Internal Revenue officers, U. S. Supreme and District Courts, and the Legislative Assembly of Dakota, at the capital of Dakota.

That Congress has in times past made abundant appropriations for the erection of suitable buildings in the former territories of Iowa, Wisconsin, Minnesota, Kansas and Nebraska, and the assistance thus rendered met the unanimous approval of the citizens of the United States, who will unquestionably sustain and endorse a similar appropriation made to this territory, now so much in need of a suitable edifice for the accommodation of its various public officers, its courts and legislature, and the large amount of valuable public property and records which have accumulated since the organization of the territory.

Your memorialists would further represent that it would be in the interest of economy for the parent government to erect a suitable building at the capital of Dakota, for the accommodation of the federal officials, courts and legislature, as hereinbefore set forth.

That the annual rental of suitable offices, legislative halls, storerooms and rooms for the United States court, now amounts to a sufficient sum to pay fifteen per cent. per annum on twenty thousand dollars, which sum would be nearly sufficient to erect such a building as would comfortably accommodate this territory at present, and until we would be able as a state, to erect our own public buildings.

Your memorialists therefore firmly believing in the justice of this request, and further believing that the parent government should treat its wards, the territories, impartially, urgently request your honorable bodies to make an appropriation of not less than twenty-five thousand dollars, to be expended under the direction of the Secretary of the Interior, in the erection of a building at the capital of Dakota Territory, for the use and purpose hereinbefore set forth.

And your memorialists as in duty bound will ever pray.

*Be it resolved*, By the Council and House of Representatives of the Territory of Dakota, that copies of this memorial, properly enrolled and signed by the officers of the two houses, and the Governor of the territory, be forwarded, one to the

Speaker of the House of Representatives, Hon. James G. Blaine, one to Hon. Columbus Delano, Secretary of the Interior, and three copies to Hon. M. K. Armstrong, Delegate from Dakota, and that the chief clerk of the House be instructed to forward these memorials.

For an appropriation to erect a capitol building.

## NUMBER 17.

A MEMORIAL to the Honorable Senate and House of Representatives of the United States in Congress Assembled.

Your memorialists, the Legislative Assembly of the Territory of Dakota, in behalf of the citizens whose petitions have been laid before us, would most respectfully represent that there are many of the inhabitants of our territory who suffered the loss of their crops by the "grasshopper plague," some of whom are now destitute of the necessaries of life owing to said plague, and many more will require assistance before another crop can be raised, while of the more fortunate ones who raised enough to support themselves there are very few who have more than is absolutely necessary for their own support, thereby making it inevitable for us to apply for aid outside of the territory. And as there is a bill now pending before congress making an appropriation for the relief of the destitute inhabitants of the northwestern states; therefore your memorialists would most respectfully pray that the said bill be so changed as to include Dakota Territory, and that such provisions may be made in our behalf as your honorable body may deem just and requisite.

For relief for the destitute.

And your memorialists as in duty bound will ever pray.

## NUMBER 18.

A MEMORIAL to the Honorable Senate and House of Representatives of the United States in Congress assembled.

Your memorialists, the people of the Territory of Dakota, through its General Assembly, respectfully represent to your honorable body that while the lands in the eastern part of

For a grant of land to aid in building rail-roads.

For a grant of  
land to aid in  
building rail-  
roads.

said territory are rich in soil, they are with few exceptions destitute of timber of any kind, and the distance from timber of most of the land will, in the opinion of your memorialists, prevent their settlement unless means of transportation shall be devised to connect such lands with the timber region beyond. This timber region is too far distant to be reached without a railroad, and never can be of any benefit to most of the territory unless cheap means of transportation shall be created to bring the timber to the vast prairies lying east of it; that while there is on White river and in and around the Black Hills immense forests of pine and other timber and vast deposits of coal, they are worthless so long as they are inaccessible. The cost of providing the only proper means of bringing these staples to the prairie country and thereby make the lands valuable, is a railroad, and this cannot be built without the aid of the government, which your memorialists ask for in such form as it seems to them can be given with profit, both to the people of the Territory and the government of the United States.

The long residence in the Territory of most of your memorialists has convinced them that the Territory has the elements to make it one of the greatest states in the Union if its growth is encouraged and promoted by the government with the same liberal spirit that has built up all the states east of here, and your memorialists feel that they have a just claim upon the government for its protection and aid in equal measure to that which has been given to Nebraska, Iowa and Minnesota.

The land in the territory west of the Missouri river is Indian reservation, and yet a part of this reservation is the richest portion of the Territory of Dakota because of the great forests of pine and other timber, and the immense deposits of coal and minerals of various kinds. These lands with their promised stores of wealth to the Territory and nation, should at once be made free to every citizen of the Republic, and by means of railroad communication be accessible so as to bring out the timber and coal so much needed east of the Missouri river.

Your memorialists therefore, do earnestly appeal to your honorable body, for the right to be granted to them and all citizens of the nation to occupy so much of the Territory of

Dakota west of the Missouri river as lies between latitude forty-three (43) and forty-six (46) degrees, north; and that the one-half of the proceeds of the sale of thirty (30) sections of land to the mile be granted to assist in the building of a railroad from Yankton, D. T. to the Great National Park, by way of the Black Hills.

For a grant of land to aid in building railroads.

In making this request your memorialists feel that they ask nothing more than what is due to them, and what should be freely granted. The lands if a railroad is built would sell for two dollars and fifty cents per acre, whereas, without the road they will not sell at all; therefore, what is asked for can be given without any cost to the government or the people, and will result in a great good to your memorialists and the nation's citizens.

#### NUMBER 19.

A MEMORIAL AND JOINT RESOLUTION asking Congress for a grant of land for right of way, and not exceeding four sections of land for each ten miles, for stations, timber culture, etc., to aid in the construction of railroads from Beloit, Iowa, by Canton and Sioux Falls, to Fargo or Pembina. Also from Sheldon, Iowa, *via* Canton, to the Missouri river at or near Brule City. Also from Yankton, *via* Beloit, to a connection with the St. Paul railroad.

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

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that by act of Congress approved May 12th, 1864, a grant of land was made to aid in the construction of a railroad from McGregor, Iowa, westward, as near as practicable on the 43d parallel, to O'Brien county, Iowa, intersecting a railroad from Sioux City to St. Paul, to which congress also made a grant of lands to aid in its construction, and

For a grant of land to the Canton and Pembina railroad.

WHEREAS, the said railroad from McGregor is mostly built and the next season will undoubtedly finish it in accordance with its line as provided in said act, and as the said

For a grant of land to the Canton and Pembina railroad.

railroad must eventually build westward into Dakota Territory, where the country is now rapidly being settled up, the lands being subject only to homestead, pre-emption or tree-culture entry, it is impossible to secure right of way except from the government, or lands suitable for stations and timber culture. And as the portion of Dakota mentioned in the title hereto is a large, unbroken, beautiful and fertile prairie, well watered and capable of being a very productive and highly cultivated agricultural country, which must depend upon coal for fuel, and lumber from the pine regions of Wisconsin and Minnesota until a railroad can be built to the Missouri river, and as it is now impracticable to raise grain, being so far from market, and the Sioux City and St. Paul Railroad is now built to within a few miles of the Territory and desire to get a line of road, if the right of way and aid could be secured through the Territory, to the capital at Yankton, which is not in any way connected by railroad with the large settlements along the Red river and Northern Pacific railroad, except by St. Paul, at least 300 miles out of the way, and a railroad is now being built, the Sioux City & Pembina, as far north as Beloit, Iowa, on the borders of Dakota, having subsidies voted to there. Therefore your memorialists do ask, and claim it as a right, that your honorable body do make a grant of land to the territory of Dakota wherever it is owned by the United States at the time the surveys shall be made along the lines of the proposed railways from Beloit, Iowa, by Canton and Sioux Falls, to Fargo or Pembina; also from Sheldon, Iowa, *via* Canton, to the Missouri river, at or near Brule City; also from Yankton, *via* Beloit, to St. Paul, to aid in the construction of the same, under regulations as you may impose, granting to said railroads a strip of the government domain of not less than eight rods in width, and as often as every five miles at least two sections of land. That the lands surveyed and selected by the companies in compliance with this request be withheld from entry on homestead or other filings, and when each ten miles shall be graded that the right of way and one-half of the land for the next ten miles be confirmed by patent to the company; and when the iron is laid that the remaining land be confirmed by patent to the company, or in lieu of the land above asked for, that a strip of land not over 160 rods

in width where the lands are surveyed be granted in aid of the proposed roads.

For a grant of land to the Canton and Pembina railroad.

*Resolved*, That a copy of this memorial be sent to our Delegate in Congress, Hon. Jackson Orr, M. C. from Iowa, to the Secretary of the Interior, and to the Commissioner of the General Land Office.

## NUMBER 20.

A MEMORIAL to the Congress of the United States, for aid to the Northern Pacific Railroad.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully represent that the interests of the great, undeveloped northwest, and of the entire country, require the speedy completion of the Northern Pacific Railway across the continent, and we most respectfully but earnestly recommend the passage of one of the bills now pending in congress by means of which the aid required to insure the completion of this National enterprise may be given with safety and security to the government, and with certainty as to the object sought.

For aid to the Northern Pacific railroad.

And your memorialists as in duty bound will ever pray.

## NUMBER 21.

A MEMORIAL to Congress asking for an appropriation to improve the navigation of the Red River of the North.

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

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully call the attention of your honorable body to the carrying trade on the Red River of the

For an appropriation to improve the navigation of the Red River of the North.

For an appropriation to improve the navigation of the Red River of the North.

North, both by steamboats and flatboats, in the year 1874, to-wit. By steamboats from Moorhead, Minnesota, down said river: freight, seventeen thousand two hundred and forty (17,240) tons; passengers, three thousand nine hundred and ten (3,910): Freight up said river, two hundred and eighty-five (285) tons; passengers, six hundred and seventy-six (676), and from Breckenridge, Minnesota, four hundred (400) flatboats, loaded with eight thousand nine hundred and fifty (8,950) tons of freight, besides flatboats built and loaded at various points along the river, whose number cannot be definitely ascertained, which would at least make an aggregate of twenty-seven thousand (27,000) tons, most of which went into the British province of Manitoba, which is rapidly filling up with emigrants both from Europe and Canada, and whose only practicable inlet to said British province is through the United States by way of the Red River of the North; besides our own Territory in the valley of the said river is being rapidly settled by an industrious population, all of which leads us to believe that the carrying trade on the said Red River of the North will continue to increase in a much greater ratio than it has done in the last five years, and more especially if the "Goose" and "Conly Rapids" in said river are improved so as to admit of unimpeded navigation for steamboats of one hundred and fifty (150) tons burthen from Breckenridge, Minnesota, to Pembina, Dakota Territory.

Therefore, your petitioners considering such an improvement a work of national importance and of vital interest to the northern portion of this Territory, would respectfully ask your honorable body for such an appropriation as may be necessary to make the foregoing improvements, reference being made to the reports of engineers on file with the Hon. Secretary of War.

And your memorialists as in duty bound will ever pray.

## NUMBER 22.

A MEMORIAL to the Congress of the United States, praying for an appropriation to aid in the construction of a wagon road from some point on the table lands in Union county, Dakota, across the marsh lands to the Ponca landing, on the Missouri river.

For an appropriation to aid in the construction of a wagon road in Union county.

We, the Legislative Assembly of the Territory of Dakota, having been petitioned by the citizens of Union county, Dakota, praying for an appropriation to aid in the construction of a road from the village of Richland, or some other point on the Big Sioux, would most respectfully represent as follows:

That, whereas, the character of the land in the valley of the Missouri river is such, that during certain seasons of the year, travel is greatly impeded by reason of a partial overflow of low marsh lands, which extend from the table lands to the Ponca landing, a distance of twelve miles, rendering the transportation of grain and other products of the country, very difficult.

And, whereas, the products of the soil for a distance of seventy-five miles in a north and northwesterly direction, are for the most part marketed at Elk Point, Dakota, (which necessitates the crossing of said low lands), that place being the nearest and most available market town.

And, whereas, the native lumber, which by reason of its cheapness, is universally used in the construction of all buildings in the surrounding country, together with all the fuel by which said country is supplied, has to be transported across said low lands of the Missouri bottom.

And, whereas, the United States mails which are transported daily from Elk Point by the same route, are oftentimes delayed and put to great trouble and inconvenience, by reason of the bad, and at times impassable, condition of the roads across said low lands above mentioned.

And, whereas, owing to a partial failure of the crops, low prices of products and consequent scarcity of money, the inhabitants of the section of country alluded to, are unable to take upon themselves the entire burden of constructing a public road across the said low lands without some assistance.

For an appropriation to aid in the construction of a wagon road in Union county.

Therefore, we, your memorialists, earnestly request of your honorable body, that an appropriation of ten thousand dollars (\$10,000) be made to aid in the construction of a suitable public road, from the village of Richland across said low marsh lands, to the Ponca landing, on the Missonri river, a distance of twelve miles, which will prove a great and lasting benefit to the inhabitants of said section of country.

And for which your memorialists as in duty bound will ever pray.

#### NUMBER 23.

A MEMORIAL to the Congress of the United States, praying for an appropriation to construct a wagon road from Rockport, in Hanson county, Dakota Territory, to Jamestown, on the Northern Pacific Railroad, in Dakota Territory.

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

For an appropriation to construct a wagon road from Rockport to Jamestown.

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent, that the valley of the Dakota river is fast becoming settled by industrious and energetic farmers who have occupied the public lands along said river for a distance of nearly one hundred miles from its mouth, and have also settled in considerable numbers in the valley of said river in the vicinity of Jamestown, the point where the Northern Pacific Railroad crosses the said Dakota river; that the distance between the settlements at Jamestown and those along the said Dakota river first above named is about two hundred miles, and that communication between the settlements and the occupants of the public lands lying between, is greatly hindered and retarded for the want of a suitable thoroughfare along the valley of the Dakota river connecting the settlements aforesaid. The main expense in constructing a suitable thoroughfare would be in the construction of bridges across the tributaries of the Dakota river, an expense which the Territory of Dakota can illy

afford to stand during the next few years, and one which the settlers of the country connected by the proposed road are in no condition to submit too. The construction of the road in question would hasten the settlement and occupation of tens of thousands of acres of public lands that otherwise must remain vacant for years, and by this means the government would receive an hundred fold greater sum through the sale of its lands to settlers than the improvements would cost; the road would also prove of inestimable benefit to settlers in procuring fuel and other supplies necessary for their comfort and subsistence. The character of the country being largely prairie land, settlers are compelled to haul material for constructing their cabins, and their fuel in frequent instances from long distances, to accomplish which good thoroughfares must be provided. The pioneer settler on the public lands remote from timber and market, as is the case in the locality referred to in this memorial, has many difficulties to encounter and obstacles to overcome in providing a comfortable dwelling place for his family and in opening up his claim sufficiently to make it available for his support, and it is but justice to him that his burden be made as light as possible and that the government extend to him all the assistance it can consistently render, and there will be no doubt in the minds of your honorable body that the construction of a thoroughfare along this valley leading from the settled portions of Southern Dakota to Fort James, in Northern Dakota, appropriately belongs to the parent government, it being through public lands, and furnishing accommodation to the trains transporting government supplies as well as affording a benefit to the settler.

For an appropriation to construct a wagon road from Rockport to Jamestown.

Your memorialists would therefore ask that an appropriation of twenty-five thousand dollars, to be expended under the direction of the Secretary of the Interior, be made for the purpose of carrying out the object of this petition.

*Resolved*, That copies of this memorial duly signed and attested be forwarded, to-wit: One to our Delegate in Congress, Hon. M. K. Armstrong; one to Hon. Columbus Delano, Secretary of the Interior; one to the Speaker of the House of Representatives, Hon. James G. Blaine; and that the chief clerk of the House be instructed to forward said copies.

## NUMBER 24.

A MEMORIAL to Congress for an additional appropriation on the military wagon road from the Big Sioux river to Fort Randall.

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

For an additional appropriation on the military wagon road from the Big Sioux river to Ft. Randall.

WHEREAS, Your honorable body has heretofore, to-wit, in 1863-4, established a military wagon road in Dakota Territory, from the Big Sioux river to White Swan, opposite Fort Randall, upon which road several important bridges have been constructed and other improvements made along the said line of road in the way of grading and other work; and

WHEREAS, The appropriation made by your honorable body became exhausted before the said wagon road was completed and made safe for the passage of teams at a point about two miles east of Fort Randall, where the said line of road passes across the face of several high and very precipitous chalk bluffs, at which point, after completing the bridges along the line of road, there was left, of such appropriation, a sum barely sufficient to excavate one track for wagons, which single track was left in an unfinished state, by reason of the exhaustion of said appropriation; and

WHEREAS, The incomplete, unsafe and dangerous point in said military road is situated on the Yankton Indian reservation, where there is no resident population except Indians; and

WHEREAS, It is believed from careful estimates made by competent military and civil engineers, that the said road can be made safe, for the passage of heavily loaded teams, by a judicious expenditure of five thousand dollars.

Now, therefore, your memorialists, the Legislative Assembly of Dakota Territory, most respectfully pray your honorable body to cause such improvements to be made in said military wagon road, at the point indicated, as will render the passage of teams safe to the public, such improvements to be under the direction of such officers of the government as your honorable body shall be pleased to designate.

And your memorialists as in duty bound will ever pray.

I approve the object of this memorial,

JOHN L. PENNINGTON,

December 19, 1874.

Governor.

# GENERAL INDEX.

# GENERAL INDEX.

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