

L A W S

PASSED AT THE

THIRTEENTH SESSION

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF DAKOTA.

BEGUN AND HELD AT YANKTON, THE CAPITAL OF SAID TERRITORY, ON TUESDAY, THE 14TH DAY OF JANUARY, A. D. 1879, AND CONCLUDED FEBRUARY 22, A. D. 1879.

YANKTON, D. T.,
BOWEN & KINGSBURY, PUBLIC PRINTERS, PRESS AND DAKOTAIAN OFFICE,
1879.

PUBLIC LAWS.

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AUTHENTICATION.

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

I 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 thirteenth session thereof, begun and held at Yankton, January 14, A. D. 1879, now on file in this office, with the exception of clerical errors appearing enclosed in brackets.

IN TESTIMONY WHEREOF, I have hereunto set my hand and
{ L. S. } affixed the Great Seal of the Territory of Dakota,
this first day of March, A. D. 1879.

GEO. H. HAND,
Secretary of the Territory of Dakota.

PUBLIC LAWS.

Appeals.

CHAPTER 1.

AN ACT to amend Section Twenty-two of the Code of Civil Procedure.

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

§ 1. APPEAL NOT ALLOWED BEFORE FINAL DETERMINATION OF ACTION.] That there be added to the end of section twenty-two of the Code of Civil procedure as paragraph five, the following paragraph: "5. It is further provided that this section shall not be construed to allow an appeal from any order to the supreme court before the final determination of the action in which such order is made; but upon the final judgment or decision being rendered, the appellant, on his appeal from such final judgment or decision, may have any intermediate order enumerated in this section, reviewed by the supreme court by designating such order sought to be reviewed in his notice of appeal from the final judgment or decision; and an appeal from such order may be taken within two years after such final judgment or decision shall be perfected by filing the judgment roll."

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

Approved, February 20, 1879.

Apportionment.

CHAPTER 2.

AN ACT amending Chapter 48 of the Political Code, relating to Apportionment of Representation in the Legislative Assembly.

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

§ 1. **FIRST DISTRICT.]** That chapter 48 of the Political Code of this Territory, be and the same is hereby amended as follows: "§ 1. The county of Union shall constitute the first council and representative district, and shall be entitled to one member of the council and two members of the house of representatives."

§ 2. **SECOND DISTRICT.]** The county of Clay shall constitute the second council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

§ 3. **THIRD DISTRICT.]** The county of Yankton shall constitute the third council and representative district, and shall be entitled to one member of the council and three members of the house of representatives.

§ 4. **FOURTH DISTRICT.]** The counties of Bon Homme, Charles Mix, Brule and Buffalo, shall constitute the fourth council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

§ 5. **FIFTH DISTRICT.]** The counties of Lawrence, Pennington and Custer shall constitute the fifth council and representative district, and shall be entitled to two members of the council and five members of the house of representatives.

§ 6. **SIXTH DISTRICT.]** The county of Lincoln shall constitute the sixth council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

§ 7. SEVENTH DISTRICT.] The county of Minnehaha 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.

§ 8. EIGHTH DISTRICT.] The counties of Lake, Moody, Brookings, Deuel, Hamlin, Codington, Wood and Grant shall constitute the eighth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives.

§ 9. NINTH DISTRICT.] The counties of Cass, Richland, Barnes, Ransom and La Moure shall constitute the ninth council and representative district and shall be entitled to one member of the council and two members of the house of representatives.

§ 10. TENTH DISTRICT.] The counties of Traill, Grand Forks and Pembina shall constitute the tenth council and representative district, and shall be entitled to one member of the council and two members of the house of representatives.

§ 11. ELEVENTH DISTRICT.] The counties of Burleigh, Kidder, Morton, Emmons, Stutsman, Foster, Ramsey, Stark, Billings, and Stevens shall constitute the eleventh council and representative district, and shall be entitled to one member of the council and one member of the house of representatives.

§ 12. THIRTEENTH DISTRICT.] The counties of Turner and McCook shall constitute the thirteenth representative district, and shall be entitled to one member of the house of representatives.

§ 13. FOURTEENTH DISTRICT.] The counties of Hutchinson, Armstrong, Hanson and Davison shall constitute the fourteenth representative district, and shall be entitled to one member of the house of representatives.

§ 14. All acts and parts of acts in conflict with this act are hereby repealed.

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

Approved, February 21, 1879.

Appropriations.

CHAPTER 3.

AN ACT making an Appropriation for Completing and Furnishing and Maintaining Dakota Hospital for the Insane, and to Build, Furnish and Maintain a Territorial Penitentiary.

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

§ 1. FOR COMPLETION OF ASYLUM AND RETURN OF PATIENTS.] There is hereby appropriated out of the territorial treasury the sum of three thousand nine hundred (\$3,900) dollars, or so much thereof as may be necessary to complete, furnish and paint the Dakota Hospital for the Insane, and the further sum of one thousand dollars, or so much thereof as may be necessary for the return to this Territory of patients now in confinement at St. Peters, in the State of Minnesota, and at Lincoln, in the State of Nebraska.

§ 2. FOR MAINTAINING PATIENTS AND SALARY OF OFFICERS.] There is hereby appropriated for the maintenance of patients and their necessary clothing, and the maintenance of employes for the period of two years, the sum of nine thousand dollars; for the salary of the superintendent and physician, and matron, two thousand dollars for a period of two years; for salary of steward for a period of two years, one thousand five hundred dollars; for pay of seven other employes for two years, five thousand and twenty dollars; for incidental expenses, including fuel, lights, tools, pay and expense of trustees, books and stationery, the sum of two thousand four hundred and sixty dollars; for insurance of building for two years, the sum of ninety dollars, or so much thereof as may be found to be absolutely necessary for each of the objects mentioned in this section.

§ 3. DISBURSING OFFICERS TO TAKE DUPLICATE VOUCHERS. ACCOUNTS HOW AUDITED.] The officers of the Dakota Hospital for the Insane shall in all cases take from parties furnishing la-

bor, material or supplies, duplicate vouchers showing every item of labor, material or supplies furnished, and its cost, which shall be duly verified under oath, showing that the labor, material or supplies were furnished as stated, and that they have not been paid therefor; and all such vouchers shall have endorsed thereon the approval of the chairman of the board of trustees, one copy of which shall be filed with the territorial auditor; and it shall be the duty of said auditor when such vouchers, duly verified and certified as aforesaid, to draw his warrant on the territorial treasurer therefor, and the other copy shall be kept in the office of the superintendent and physician for the inspection of the governor, board of trustees, and any committee of the Legislative Assembly appointed for that purpose.

§ 4. FOR ERECTION OF A PRISON.] There is hereby appropriated out of the territorial treasury the sum of ten thousand dollars, or so much thereof as may be necessary to erect a building for a prison, and a sufficient number of cells in which persons sentenced to hard labor may be safely confined, and the erection of an enclosure or stockade in which such persons can be worked during the day.

§ 5. FOR SALARIES OF OFFICERS.] There is also appropriated for salary of warden for such prison for a period of two years the sum of eighteen hundred dollars; for assistant warden and pay of other employes for two years, three thousand dollars; for office, furniture of office; stoves, fuel, lights and incidental expenses of prison, board, including traveling expenses and per diem, in the discharge of their duties, the sum of two thousand dollars, or so much thereof as may be necessary.

§ 6. FOR MAINTENANCE OF PRISONERS.] There is also appropriated for subsistence, clothing and incidental expenses for prisoners for two years the sum of four thousand dollars, or so much thereof as may be necessary for such purposes.

§ 7. DISBURSING OFFICERS TO TAKE DUPLICATE VOUCHERS. ACCOUNTS HOW AUDITED.] The officers of said territorial penitentiary shall in all cases take from parties furnishing labor, material or supplies for such prison, duplicate vouchers showing every item of labor, material or supplies furnished, and its cost, which shall be duly verified under oath, showing that

the labor, material or supplies were furnished as stated, and that they have not been paid therefor, and all such vouchers shall have endorsed thereon the approval of the chairman of the prison board, one copy of which shall be filed with the territorial auditor; and it shall be the duty of said auditor, when such vouchers duly verified and certified as aforesaid, to draw his warrant on the territorial treasurer therefor, the other copy shall be kept in the office of the warden of said prison for the inspection of the governor, prison board and any committee of the Legislative Assembly appointed for that purpose.

§ 8. This act shall take effect from and after its passage and approval.

Approved, February 22, 1879.

Banking.

CHAPTER 4.

AN ACT concerning Corporations and Persons engaged in the Business of Banking.

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

§ 1. BANKING CORPORATION TO PUBLISH AND FILE STATEMENT. CAPITAL DEFINED.] Every corporation and all persons and every person hereafter doing a banking business in this Territory, shall in January of every year, publish in at least one newspaper published in the county in which the principal office of such corporation may be situated, or in which said persons or person may reside, and also file for record in the office of the secretary of the Territory, a sworn statement, verified, in the case of any such corporation, by its president or manager, and by its secretary or cashier; and in the case of

any such individual or individuals, by him or them, of the amount of capital actually paid into such corporation, or into such banking business: *Provided*, That nothing shall be deemed capital actually paid in except money *bona fide* paid into the treasury of such bank; and under no circumstances shall the promissory note, check, or other obligation of any director, stockholder, or of the proprietors or proprietor of any such bank be treated, computed or in any manner considered any part of such paid in capital. If no newspaper be published in the county in which the principal office of said corporation may be situated, or in which said persons or person may reside, then and in that case such publication of said statement shall be made in the nearest newspaper having a general circulation in the county where such business is done.

§ 2. SHALL PUBLISH AND FILE SWORN STATEMENT OF ASSETS AND LIABILITIES.] Every corporation and all persons and every person hereafter doing a banking business in this Territory, shall likewise publish in such newspaper, and shall also file for record in the office of the secretary of the Territory, in January of each year, a sworn detailed statement of the actual condition and value of its assets and liabilities, and a particular description of the same and where said assets are situated.

§ 3. LIABILITY FOR PUBLISHING FALSE STATEMENT.] The directors of every such corporation who shall publish or file for record as aforesaid a false statement of the amount of capital actually and *bona fide* paid into such corporation, a false statement of the actual condition and value of its assets and liabilities, or as to where said assets are situated, shall be jointly and severally liable to any person thereafter dealing with such corporation, and to the full extent of such dealing; and no corporation and no person or persons who fail to comply with the provisions or any of the provisions of this law shall maintain or prosecute any action or proceeding in any of the courts of this Territory until they shall have first duly filed the statement herein provided for, and in all other respects complied with the provisions of this law; nor shall any assignee or assignees of any such corporation, or person whose assignment shall be made subsequent to any such fail-

ure to comply with the provision of this law, maintain any action or proceeding in any court of this Territory until his or their assignor or assignors shall have first duly complied with the provisions of this law.

§ 4. FOREIGN BANKING CORPORATION STATEMENT TO BE VERIFIED BY AGENT.] Where any such banking corporations shall be foreign, the statements herein before provided for shall be verified by the agent or manager of the business of such corporation resident in this Territory, who shall be subject to the same liabilities herein provided as against directors of any such banking corporation, and also as against every such bank officer.

§ 5. SECRETARY OF TERRITORY TO RECORD STATEMENTS.] The secretary of the territory shall keep two sets of well bound books for the record of the sworn statements herein provided for respectively—one of which sets of books shall be labeled “Statements of Banking Capital,” and the other “Statements of Banking Assets;” and said secretary of the territory shall upon the payment of his fees for the same record separately said respective sworn statement in its appropriate book, and shall keep a separate index of each of said sets of books. Said original sworn statement need not be acknowledged in order to be recorded as aforesaid, but must be verified as aforesaid by some judge or officer authorized to take affidavits, and shall always remain and be kept on file in the office of the secretary of the territory.

§ 6. FEES OF SECRETARY.] The secretary of the territory shall receive for recording any of the statements herein provided for, for every folio, ten cents, and for noting on any such sworn statement the time when and the place where recorded, twenty-five cents; and for certified copies of such sworn statements, to which any one paying for the same shall be entitled, ten cents per folio.

§ 7. This act shall take effect and be in force from and after its passage.

JOHN R. JACKSON,
Speaker of the House.

GEO. H. WALSH,
President of the Council.

TERRITORY OF DAKOTA, }
YANKTON, February 20, 1879. }

This act being entitled, "An act concerning corporations and persons engaged in the business of banking," originated in the House of Representatives of this Territory; passed the House, January 23, A. D. 1879; was transmitted to the Council and passed that body February 19, A. D. 1879; was presented to the Governor of this Territory the 13th day of February, A. D. 1879, and returned without his approval February 17, and accompanied by his objections, which were entered at length on the journal; and the question being, "Shall the bill pass, notwithstanding the objections of the Governor?" the bill was passed, the necessary two-thirds of all members voting in the affirmative. The act was on the same day passed by the council by the vote of two-thirds of that branch of the Legislative Assembly, and to these facts of the action of the House I hereby certify of my own knowledge, and of the council of my belief.

Attest:

T. A. KINGSBURY,
Chief Clerk.

JOHN R. JACKSON,
Speaker of the House.

I hereby certify that on this nineteenth day of February, this bill, together with the objections of the Governor, was received from the House by the Council, and the Council 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 Council voting to pass the bill, and then it was approved by the Council.

Attest:

ALBERT O. HUBBARD,
Chief Clerk of the Council.

GEO. H. WALSH,
President of the Council.

CHAPTER 5.

AN ACT to prevent Fraudulent Banking

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

§ 1. **INSOLVENT BANKER NOT TO RECEIVE DEPOSITS. PENALTY FOR.]** No bank, banking house, exchange broker or deposit office or firm, company, corporation or party engaged in the banking, broker or deposit business, shall accept or receive on deposit, with or without interest, any moneys, bank bills, or notes, or United States notes, or United States treasury notes, or currency, or other notes, bills or drafts circulating as money or currency, when such bank, banking house, exchange broker, or deposit office, firm, company or corporation or party is insolvent; and if any such bank, banking house, exchange broker, or deposit office, firm, company, corporation or party shall receive or accept on deposit any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party or managing party thereof knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit or connive at the receiving or accepting on deposit therein or hereby, any such deposit as aforesaid, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the territorial prison for a term not to exceed ten years, or by imprisonment in the county jail not to exceed one year, or by both fine and imprisonment, the fine not to exceed ten thousand dollars.

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

Approved, February 12, 1879.

Bonds of Officers.

CHAPTER 6.

AN ACT to amend Section six, Chapter five of the Political Code.

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

§ 1. BONDS OF TERRITORIAL AND COUNTY OFFICERS.] That section six of chapter five of the Political Code of this Territory be amended as follows: "§ 6. The bond of the territorial auditor shall be in the penal sum of two thousand dollars; of the territorial treasurer in the penal sum of twenty thousand dollars; of the clerk of the district court in the penal sum of one thousand dollars; of the district attorney in the penal sum of one thousand dollars; of notaries public in the penal sum of one thousand dollars. The bonds of the county register of deeds, judges of the probate court, sheriffs, coroners, treasurers, and all assessors, justices of the peace and constables, whether of the county or any township therein, and all township treasurers shall each be in a penal sum to be fixed by the board of county commissioners, but that of the county treasurer shall not be in a less penal sum than four thousand dollars except when the total amount of taxes to be by him collected in any year is less than two thousand dollars, then in double the amount of taxes to be collected: *Provided*, That in no case shall the bond of said county treasurer be less than one thousand dollars. Those of justices of the peace shall not be in a less penal sum than three hundred dollars each, and those of constables shall not be in a less penal sum than two hundred dollars each; and the penalty of the bond shall be uniform within the county for all officers of each class where there is more than one of a class."

§ 2. All acts and parts of acts in conflict with this act are hereby repealed.

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

Approved, February 21, 1879.

Compensation for Attorneys.

CHAPTER 7.

AN ACT providing Compensation for Attorneys in certain Criminal Cases.

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

§ 1. COUNTY TO EMPLOY COUNSEL FOR INDIGENT DEFENDANT.] That in all criminal cases triable in the Territory of Dakota, where it is satisfactorily shown to the court that the defendant has no means, and is unable to employ counsel, the court shall in all such cases, where counsel is appointed and assigned for defense, allow and direct to be paid by the county in which such trial is had, a reasonable and just compensation to the attorney or attorneys so assigned for such services as they may render: *Provided, however,* That such attorney or attorneys shall not be paid a sum to exceed twenty-five dollars in any one case.

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

Approved, February 22, 1879.

Corporations.

CHAPTER 8.

AN ACT to amend Section Five Hundred and Sixty-five of the Civil Code.

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

§ 1. ORGANIZATION OF AGRICULTURAL FAIR SOCIETIES.] That section 565 of the Civil Code of this Territory be amended as follows. After the last word in said section add the following: “*Provided*, That agricultural fair corporations may also be organized by three or more persons, as in the case of other corporations, with all the rights, privileges and liabilities appertaining to such corporations under the corporation laws of this Territory, including such rights and privileges as are specified in this and the two preceding sections.”

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

Approved, February 22, 1879.

CHAPTER 9.

AN ACT to amend Section Four Hundred and Thirteen of the Civil Code.

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

§ 1. LIABILITY OF STOCKHOLDERS. DUTY OF COURT IN CASE OF SUIT. STOCKHOLDER DEFINED.] That section four hundred and thirteen of the Civil Code, be and the same is hereby amended so as to read as follows: “§ 413. Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation

may institute joint or several actions against any of its stockholders that have not wholly paid the capital stock held by him, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. And in no other case shall the stockholders be individually and personally liable for the debts of the corporation. The term "stockholder" as used in this section shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability."

Approved, February 22, 1879.

CHAPTER 10.

AN ACT to amend Chapter three (3) of Title two (2), Part three (3) of the Civil Code of this Territory, in relation to Corporations.

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

§ 1. INTEREST OF DELINQUENT MEMBER OF INCORPORATED COMPANY MAY BE SOLD.] Whenever any member of an incorporated company, organized under articles 10, 12 and 13 of chapter 3, title 2, part 3 of the Civil Code, duly organized under the laws of this Territory, where the same is not a stock company, shall refuse, fail or neglect to pay any assessment levied by the company of which he is a member, in accordance with law, after having been notified of such assessment as provided in said chapter, his share, interest or membership in such company may be sold in the same manner and like proceedings had as in the sale of the stock of incorporated companies, under said chapter, and the title to such share, interest or membership when so sold shall vest absolutely in the purchaser thereof.

§ 2. PURCHASER OF INTEREST IN INCORPORATED COMPANY BECOMES A MEMBER THEREOF. INTEREST MAY BE SOLD, WHEN.] Any member of an incorporated company, not being a stock company, may, by deed, transfer his interest, share or membership therein, whereupon the purchaser thereof shall become a member of such company; and if any assessment or amount of money shall at the time be due and unpaid thereon, such share, interest or membership may be sold as in other cases, if such assessment or amount remains unpaid, after said purchaser has due notice of such delinquency.

§ 3. TIME EXTENDED FOR COMPLETION OF WORKS.] Every incorporated company transacting business within this Territory shall be allowed twice the length of time now allowed under said chapter three (3) for the completion of its works, without working any forfeiture whatever until the expiration of such extended time, and then only upon failure to complete such works.

§ 4. CERTAIN ASSOCIATIONS TO BE HELD STRICTLY TO THE LAW.] Any person or persons, or association of persons now en-

gaged in or that may hereafter engage in the construction of any street railway, toll road, ditch for conveying water, or any other works or improvements specified in said chapter three (3), shall be required to comply strictly with all the provisions of said chapter in the same manner as therein provided for incorporated companies, so far as the same can be done; and upon failure of any such person or persons, or association of persons, to comply as aforesaid, the same shall work a forfeiture of any and all rights he or they may have acquired in accordance with law.

§ 5. COUNTY COMMISSIONERS SHALL NOT FIX RATES.] No board of county commissioners shall hereafter have power to fix the rates or tolls at which water is to be furnished by the owners of any ditch or flume constructed for the purpose of conveying water.

§ 6. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 7. This act shall take effect and be in force from and after its passage.

JOHN R. JACKSON,

Speaker of the House.

GEO. H. WALSH,

President of the Council.

COUNCIL CHAMBER, February 19, 1879.

I certify that this act, known in the records of the Council as Council bill No. 15, has passed both Houses of the Legislative Assembly of Dakota Territory, at the 13th session thereof, the objections of his excellency the Governor to the contrary notwithstanding, by the necessary majority of two-thirds.

ALBERT A. HUBBARD,

Chief Clerk of the Council.

Note by the Secretary.

The foregoing act, together with the certificate of the chief clerk of the Council attached, was deposited in the office of the Secretary of the Territory on the 20th day of February, and afterwards and on the 22d day of February, 1879, at 7 o'clock P. M. of said day, the following certificate relating to said act was deposited in the Secretary's office by the committee on enrollment from the Council:

COUNCIL CHAMBER, YANKTON, D. T.. }
SATURDAY, February 22, 1879. }

I hereby certify that in the Council of the 13th session of the Legislative Assembly of the Territory of Dakota, begun and held at Yankton, D. T., on

the 14th day of January, A. D. 1879, there was introduced by W. L. Kuykendall, member of the Council from the 13th Council and Representative District, a bill known in the records of the Council as Council bill No. 15, and entitled "A bill for an act to amend chapter three of title two, part three of the Civil Code of this Territory, in relation to corporations;" which said bill was introduced in the Council on the 20th day of January, 1879, had its three several readings and was passed by the Council on the 24th day of the same month and as I verily believe, and as the records of the Council show, was passed by the House of Representatives and returned to the Council on the 10th day of February, 1879, with certain amendments which were concurred in by the Council on the same day, and the bill was presented to his excellency the Governor for his approval at 12 o'clock, noon, on the 13th day of February; was returned to the Council by him without his approval and with his objections thereto, which were entered at large on the journal of the Council; and on the 18th day of February the objections of the Governor having been duly considered, and the question being, "Shall the bill pass, his objections to the contrary notwithstanding?" the bill was so passed by the necessary two-thirds vote; and on the 19th day of February the said bill was passed by the House of Representatives over the veto of the Governor by a two-thirds vote, and was deposited with the secretary of the territory at 10 o'clock A. M., February 20, 1879; and this I know, as far as the transactions in the Council are concerned, of my own knowledge, and as far as the transactions in the House of Representatives are concerned, to the best of my belief.

Attest:

ALBERT O. HUBBARD,
Chief Clerk.

GEO. H. WALSH,
President of the Council.

I hereby certify that I have read the above statement, and know of my own knowledge that the statements therein made, as far as they refer to the House of Representatives, are true and correct, and as far as they refer to the Council, are true and correct to the best of my belief.

Attest:

T. A. KINGSBURY,
Chief Clerk.

JOHN R. JACKSON,
Speaker of the House.

Counties.

CHAPTER 11.

AN ACT to define the Boundaries of certain Counties.

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

§ 1. BOUNDARIES OF BURLEIGH COUNTY DEFINED.] The county of Burleigh shall be bounded and described as follows: Beginning at the southeast corner of township one hundred and thirty-seven, between ranges seventy-three and seventy-four; thence north to the eleventh standard parallel; thence west along said parallel to the west bank of the Missouri river; thence south along the west bank of said river to a point where the range line between ranges eighty-three and eighty-four produced would intersect said river; thence south to the southwest corner of township one hundred and thirty-seven, range eighty-three; thence east along the ninth standard parallel to the place of beginning.

§ 2. EMMONS COUNTY.] The county of Emmons shall be bounded and described as follows: Beginning at a point on the east bank of the Missouri river where the seventh parallel line intersects said river; thence east along said parallel to the tenth meridian guide; thence north along said meridian to the ninth standard parallel; thence west along said parallel to the Missouri river; thence southerly along the east shore of said river, at low water mark, to the place of beginning.

§ 3. MORTON COUNTY.] The county of Morton shall be bounded and described as follows: Beginning at the mouth of the Cannon Ball river where said river empties into the Missouri river; thence up said river westerly and along the boundary of the Big Sioux reservation to the one hundred and second degree of west longitude; thence north along the said degree [of] longitude to the tenth standard parallel; thence east along said parallel to the west boundary of Burleigh county; thence south along the west line of Burleigh county to the southwest corner thereof; thence east to the

west bank of the Missouri river, at low water mark; thence south down said river to the place of beginning.

§ 4. STARK COUNTY.] The county of Stark shall be bounded and described as follows: Beginning at a point on the north boundary of the Sioux reservation where the one hundred and second degree of west longitude intersects said reservation; thence north to the forty-seventh degree of latitude; thence west to the one hundred and third degree of longitude; thence south to the forty-sixth degree of latitude; thence east to the place of beginning.

§ 5. BILLINGS COUNTY.] The county of Billings shall be bounded and described as follows: Beginning at a point on the west boundary of the Territory of Dakota where the forty-seventh degree of latitude intersects said boundary line; thence east to the northwest corner of the county of Stark; thence south to the southwest corner of said county; thence west to the west line of the Territory of Dakota; thence north to the place of beginning.

§ 6. COMMISSIONERS OF MORTON COUNTY MAY LOCATE COUNTY SEAT.] The county commissioners of Morton county are hereby authorized to relocate the county seat of Morton county, temporarily, the same as is provided for the organization of counties under the laws of this Territory.

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

Approved, February 10, 1879.

CHAPTER 12.

AN ACT to define the Boundaries of certain Counties and to combine and consolidate others, and for other Purposes.

Be it enacted by the Legislative Assembly of Dakota Territory.

§ 1. BOUNDARIES OF M'COOK COUNTY DEFINED.] All of that district of country included within the following boundary lines shall be and the same is hereby made, constituted and declared the county of McCook, viz: Beginning at the southwest corner of the county of Minnehaha and running thence north and along the west boundary of said Minnehaha county to the northwest corner of the same; thence west along the first standard parallel to the northeast corner of township number 104, north of range number 56 west; thence south and along the line between ranges number 56 and 57 west, to the southwest corner of township number 101 of range number 56 west, and thence east and along the south boundary of township number one hundred and one to the place of beginning; and the organization of said McCook county shall continue until changed according to law.

§ 2. HUTCHINSON COUNTY.] All that district of country included within the following boundary lines shall be, and the same is hereby made, constituted and declared the county of Hutchinson, viz: Beginning at the southeast corner of township number ninety-seven, north of range number 56 west, and running thence north and along the line between ranges number 55 and 56 to the base line, the south boundary of township number one hundred and one; thence west and along said base line to the northwest corner of township number one hundred, north of range number 61 west; thence south and along the line between ranges number 61 and 62 west, to the line of the Yankton Indian reservation; thence along the boundary line of said reservation southeastward and southwestward to the south boundary of township number ninety-seven, and thence east and along the line between townships number 96 and 97 to the place of beginning; and the organization of said Hutchinson county shall continue according to

law, except as provided in the succeeding section; and the jurisdiction of Hutchinson county shall upon the taking effect of this law immediately take effect and extend over all the district embraced in the above boundaries.

§ 3. WHO SHALL BE OFFICERS OF HUTCHINSON COUNTY.] The county commissioner of Hutchinson county now in office, whose term expires the first Monday in January, in the year 1882, shall continue in said office for said term as provided by law; and the county commissioner of Hutchinson county now in office, whose term expires the first Monday in January, 1880, shall continue in said office for said term as provided by law; and Fred Heiser of said county is hereby appointed county commissioner for said county for the term ending the first Monday in January, 1880, and shall qualify as such officer according to law, upon the day this act takes effect. All other officers of Hutchinson county, except the county commissioner, whose term expires the first Monday in January, 1880, shall continue in office until succeeded according to law. All justices of the peace and all constables within and for the county of Armstrong, in office as such when this act takes effect, shall continue by virtue of their election as justices of the peace and constables, within and for Hutchinson county for the remainder of their terms, as well as those now holding such offices in Hutchinson county.

§ 4. HUTCHINSON COUNTY TO ASSUME ALL DUTIES AND OBLIGATIONS OF ARMSTRONG COUNTY.] Immediately upon the taking effect of this act, all process and business of every kind within said district of country shall run in the venue of and be transacted in the corporate name of Hutchinson county, and the county of Hutchinson shall collect, receive and enforce payment to it of all debts, dues, taxes and obligations of every kind then due to the county of Armstrong, the same to all legal intents and purposes as if from the first due to Hutchinson county; and said Hutchinson county shall pay all debts, dues and obligations then due from the said county of Armstrong as fully as if payable by it from the first. All the officers of Armstrong county, except justices and constables, shall, when this law takes effect, immediately take to and deliver to the like officers of Hutchinson county all such money, papers and property pertaining to their offices respectively, which is re-

quired to be delivered to successors in office by section 14 of chapter 5 of the Political Code; and immediately their offices shall cease and the terms thereof end. They shall be paid by the county of Hutchinson for all necessary expense in so doing, and two dollars per day for the time so actually engaged.

§ 5. BOUNDARIES OF HANSON COUNTY DEFINED.] All that district of country included within the following boundary lines shall be, and the same is hereby made, constituted and declared the county of Hanson, viz: Beginning at the southwest corner of the county of McCook as hereinbefore described, and running thence north and along the west boundary of McCook county to the northwest corner of the same; thence west and along the first standard parallel to the northwest corner of township number 104, north of range number 62 west; thence south and along the line between ranges number 62 and 63 west, to the base line, the south boundary of township number 101, and thence east and along said base line to the place of beginning; and the organization of said Hanson county shall continue as now constituted and according to law, except as hereinafter provided, and immediately upon the taking effect of this act the jurisdiction of Hanson county shall extend over all the district embraced in the above boundaries.

§ 6. OFFICERS OF DAVISON COUNTY TO DELIVER BOOKS AND PAPERS TO OFFICERS OF HANSON COUNTY.] All justices of the peace and constables of the county of Davison, in office as such upon the taking effect of this act, shall continue until the end of their terms as justices of the peace and constables of Hanson county. All the officers of Davison county shall immediately upon the day this act takes effect, deliver to the like corresponding officers of Hanson county respectively, all the books, records, money and other property in their hands as such officers and belonging to Davison county, the same as required by section 14 of chapter 5 of the Political Code, to be delivered to their regular successors in office. They shall take the same to the county seat of Hanson county, and deliver the same, and shall be paid by the county of Hanson all the actual expenses necessarily paid in doing the same, and two dollars per day for each day necessarily employed in doing the same.

§ 7. LEGAL PROCESS, ETC., OF DISCONTINUED COUNTY MERGED IN

JURISDICTION OF THE COUNTY RECEIVING IT.] All process, writs, orders, papers, documents and records of every kind of any county by this act discontinued, shall be treated the same as if issued in the name of the county into which the discontinued county shall be included; and all bonds, obligations, recognizances and bail of every kind shall be deemed in law as running to the county which includes the territory or which receives the records of the discontinued county; and all fines, forfeitures and penalties, licenses, fees and demands of every kind, due to and collectable by a discontinued county shall belong to and be collectable by the county receiving the records of such discontinued county the same as if originally given to such county so receiving the records.

§ 8. **LAKE COUNTY DEFINED.]** All that district of country included within the following boundary lines shall be, and is hereby made, constituted and declared the county of Lake, viz: Beginning at the southwest corner of the county of Moody, and running thence north and along the west boundary of Moody county to the northwest corner of the same; thence west and along the second standard parallel to the northwest corner of township number 108, north of range number 55 west; thence south and along the line between ranges number 55 and 56 west, to the first standard parallel; thence east and along the first standard parallel to the place of beginning; and the organization of the said county of Lake shall be and continue as now constituted and according to law; and the jurisdiction of said county of Lake shall immediately upon the taking effect of this act extend over all the district embraced in the said boundaries, and the county seat of said county shall be and continue at the town of Madison where it is now located.

§ 9. **MINER COUNTY DEFINED.]** All that district of country included within the following boundary lines shall be, and the same is hereby made, constituted and declared the county of Miner, viz: Beginning at the southwest corner of the county of Lake, as declared by law, and running thence north and along the west boundary of said Lake county to the second standard parallel; thence west and along said second standard parallel to the northwest corner of township 108, north of range number 62 west; thence south and along the

line between ranges number 62 and 63 to the first standard parallel; thence east and along the first standard parallel to the place of beginning.

§ 10. AURORA COUNTY DEFINED.] All that district of country included within the following boundary lines shall be, and the same is hereby made, constituted and declared the county of Aurora, viz: Beginning at the southwest corner of the county of Hanson as hereinbefore defined, and running thence north and along the line between ranges number 62 and 63 west, to the first standard parallel; thence west and along the first standard parallel to the corner to township number 105 of ranges number 62 and 63 thereon; thence north and along the line between ranges number 62 and 63 to the second standard parallel; thence west and along said second standard parallel to the northwest corner of township number 108, north of range number 66 west; thence south and along the line between ranges number 66 and 67 to the first standard parallel; thence east and along the first standard parallel to closing corner thereon for townships number 104, north of ranges number 66 and 67 west; thence south and along the line between ranges number 66 and 67 west, to the base line, the south boundary of townships number 101, and thence east and along said base line to the place of beginning.

§ 11. KINGSBURY COUNTY.] All that district of country included within the following boundary lines shall be, and is hereby made, constituted and declared the county of Kingsbury, viz: Beginning at the southwest corner of the county of Brookings, and running thence north and along the west boundary of the same to the northwest corner of said Brookings county; thence west and along the third standard parallel to the northwest corner of township number 112, north of range number 58 west; thence south and along the line between ranges number 58 and 59 to the second standard parallel; thence east and along the second standard parallel to the place of beginning.

§ 12. BEADLE COUNTY.] All that district of country included within the following boundaries shall be, and the same is hereby made, constituted and declared the county of Beadle, viz: Beginning at the southwest corner of the county of

Kingsbury as hereinbefore described, and running thence north and along the west boundary of said county to the third standard parallel; thence west and along said parallel to the corner of townships number 113, north of ranges number 58 and 59 west; thence north and along the line between ranges number 58 and 59 west, to the northeast corner of township number 113, north of range number 59 west; thence west and along the line between townships number 113 and 114, north of ranges number 59, 60, 61, 62, 63, 64 and 65 west, to the northwest corner of township number 113, north of range number 65 west; thence south between ranges 65 and 66 west, to the third standard parallel; thence east and along said parallel to the closing corner for township number 112, north of ranges number 65 and 66 west; thence south and along the line between ranges number 65 and 66 west, to the second standard parallel; and thence east and along said standard parallel to the place of beginning. The county of Clark shall remain as heretofore bounded, except as modified by this section.

§ 13. SPINK COUNTY DEFINED.] All that district of country included within the following boundaries shall be, and is hereby made, constituted and declared the county of Spink, viz: Beginning at the southeast corner of township number 114, north of range number 60 west, and running thence north and along the eighth guide meridian to the fifth standard parallel; thence westward and along the fifth standard parallel to the closing corner to township number 120, north of ranges number 65 and 66 west, upon said parallel; thence south and along the line between ranges number 65 and 66 to the fourth standard parallel; thence east and along said parallel to the closing corner to township number 116, north of ranges number 65 and 66 west; thence south and along the line between ranges number 65 and 66 west, to the southwest corner of township number 114, north of range number 56 west; and thence east and along the line between townships number 113 and 114, north to the place of beginning.

§ 14. DAY COUNTY DEFINED.] All that district of country included within the following boundary lines shall be, and the same is hereby made, constituted and declared the county of Day, viz: Beginning at the corner of fractional townships

number 120 and 121, north of range number 54 west, upon the western boundary of the Sissiton and Wahpeton Indian reservation, and running thence west and along the fifth standard parallel to the eighth guide meridian; thence north and along the eighth guide meridian to the seventh standard parallel; thence east and along the seventh standard parallel to the western boundary of the Sissiton and Wahpeton Indian reservation, and thence southerly and along the west boundary of said reservation to the place of beginning.

§ 15. BROWN COUNTY DEFINED.] All that district of country included within the following boundaries shall be, and the same is hereby made, constituted and declared the county of Brown, viz: Beginning at the point where the eighth guide meridian intersects the fifth standard parallel, and running thence north and along said guide meridian to its intersection of the seventh standard parallel; thence west and along the seventh standard parallel to the closing corner thereon for township number 128, north of ranges number 65 and 66 west; thence south and along the line between ranges number 65 and 66 west, to the sixth standard parallel; thence east and along said parallel to the closing corner thereon for township number 124, north of range number 65 and 66 west; thence south and along the line between ranges number 65 and 66 west, to the fifth standard parallel; thence east and along said fifth standard parallel to the place of beginning.

§ 16. HAND COUNTY DEFINED.] All that district of country included within the following boundaries shall be, and the same is hereby made, constituted and declared the county of Hand, viz: Beginning at the corner to township number 109, north of range number 65 and 66 west, in the second standard parallel, and running thence north and along the west boundary of Beadle county and Spink county to the fourth standard parallel; thence west and along said standard parallel to the closing corner thereon for township number 116 north of ranges number 70 and 71 west; thence south and along the line between ranges number 70 and 71 west, including the offset upon the third standard parallel to the second standard parallel, and thence east and along said second standard parallel to the place of beginning.

§ 17. HANSON AND DAVISON COUNTIES TO VOTE ON CONSOLIDATION.]

That the proposition contained in the preceding sections of this act to consolidate the counties of Hanson and Davison shall be submitted to the voters in each of said counties separately at a special election hereby authorized to be held in each of said counties on the second Tuesday of September, 1879; and at said special election there shall be written or printed, or partly written or printed on the ballots, "for consolidation" or "against consolidation."

§ 18. THIS ACT TO TAKE EFFECT AFTER RATIFICATION BY VOTERS.] If a majority of the votes cast at such election in each of any two of said counties which in this act is proposed to be consolidated shall be in favor of consolidation, then as to those counties this act shall be in force and take effect on the first day of October, 1879; and if a majority of the votes cast at such election in either of said counties shall be against consolidation, then as to these counties this act shall have no effect.

§ 19. EACH COUNTY TO DISCHARGE ITS INDEBTEDNESS.] If the counties named in the two preceding sections decide to consolidate, then each of those counties as now organized shall bear and discharge their own indebtedness, and in no case shall any of said indebtedness be paid by another county.

§ 20. CONCERNING OFFICERS OF CONSOLIDATED COUNTIES.] It is further provided that in case of the consolidation of the counties of Hanson and Davison as provided in this act that the county offices of said county become vacant as soon thereafter as the result of said election is officially announced and their successors are elected and qualified at the first general election thereafter.

Approved, February 22, 1879.

Deaf, Dumb and Blind.

CHAPTER 13.

AN ACT to Provide for the Instruction and Education of of Deaf, Dumb and Blind Persons.

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

§ 1. GOVERNOR TO MAKE CONTRACT FOR CARE OF DEAF, ETC.] 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, where the most favorable contract can be made, keeping in view economy and the welfare of the patients, to keep, maintain, instruct and educate any deaf, dumb or blind persons who now is or may hereafter become a *bona fide* resident of the Territory of Dakota.

§ 2. DECLARED TO BE DEAF AND DUMB INSTITUTION OF DAKOTA.] That after such contract is made, the institution of the State, with which such contract is made, shall be the institution for the deaf, dumb or blind of this Territory the same as though such institution was located within the Territory.

§ 3. COUNTY SUPERINTENDENT TO REPORT DEAF, DUMB AND BLIND.] 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 postoffice address of every deaf, dumb and blind person, and all such persons as may be too deaf or blind to acquire an education in the common schools, between the age of five and twenty one years, residing in his county.

§ 4. DUTY OF COUNTY COMMISSIONERS.] That it shall be the duty of the county commissioners, when they have been notified that there are any deaf, dumb or blind persons in their county, who are entitled to the benefits of an institution for the support and education of the deaf, dumb or blind, to at

once report the name, age and residence of such persons in their county to the governor of this Territory.

§ 5. WHO MAY BE EDUCATED AT EXPENSE OF TERRITORY.] That every deaf, dumb or blind person of this territory, and all such as may be too deaf or blind 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 at least five years at the expense of the Territory of Dakota at the said institution for the support and education of the deaf, dumb or blind: *Provided*, That the time that any pupil or pupils have spent in any institution for the education of the deaf, dumb or blind, shall be deducted from the five years above specified: *And provided further*, That whenever the parent, guardian or other person being responsible for the support of such deaf, mute or blind, shall be able thereto; such parent, guardian or other person shall defray the expenses of the support and education of such deaf, mute or blind, at such institution, and the board of the county commissioners shall be the judges of the ability of such person responsible for such support.

§ 6. PROCEEDINGS TO ENTITLE PERSONS TO BENEFITS OF THIS ACT.] That in order to entitle any deaf, dumb or blind person to the benefits of this act, it shall be necessary for such person to obtain a certificate of the superintendent of schools of the county in which such person resides, that such person (giving name, age and residence) is deaf, dumb or blind, or too deaf or blind to acquire an education in the common schools, and is entitled to the benefit 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 or she shall be admitted under the existing contract, such person shall be admitted into such institution and receive all the benefits of the same.

§ 7. AUTHORITIES OF ASYLUM TO NOTIFY GOVERNOR.] 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 person

so admitted, the date when admitted and the time for which such persons are admitted.

§ 8. AUDITOR AUTHORIZED TO AUDIT ACCOUNTS.] 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, dumb or 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.

§ 9. This act shall take effect and be in force from and after its passage and approval.

Approved, February 21, 1879.

Education.

CHAPTER 14.

AN ACT to Establish a Public School Law for Dakota Territory.

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

§ 1. SUPERINTENDENT OF PUBLIC INSTRUCTION, HOW APPOINTED—VACANCY HOW FILLED.] At each biennial session of the legislative assembly, the governor shall nominate, and, by and with the advice and consent of the legislative council of the Territory shall appoint a superintendent of public instruction, who shall hold his office for two years, and until his successor is appointed and qualified: *Provided*, That when any vacancy occurs in said office by death, resignation or otherwise, the governor shall appoint some skilled and suitable person to perform the duties of the office for the remainder of the unexpired term: *And, provided further*, That the governor be and is hereby authorized, and it is expressly made his duty to remove from office any superintendent of public instruction who violates his duty or who, in judgment of the governor, fails at any time to faithfully discharge the duties of his office

as required by this act, and to appoint a successor as herein-before provided.

§ 2. BOND AND OATH.] Before entering upon the duties of his office, the superintendent of public instruction shall give bond to the Territory of Dakota in the penal sum of one thousand dollars, with two or more sureties, to be approved by the governor or any one of the justices of the supreme court of the territory, conditioned that he will faithfully perform the duties of his office as such superintendent of public instruction according to law, and render a faithful, accurate and just account of all public moneys that shall come into his hands, or be in any manner under his control and direction, as such officer. Upon the back of such bond he shall take and subscribe the oath of office required for civil officers before some officer within this territory authorized by law to administer oaths; and such oath and bond shall be filed in the office of the secretary of the Territory.

§ 3. GENERAL DUTIES.] It is the duty of the superintendent of public instruction to make and preserve an official record of his acts as such; to faithfully and constantly labor to promote the interests of public education throughout the Territory and in all the organized counties thereof; to visit the common schools therein, confer and advise with teachers and the county superintendents of schools, direct and aid them in the efficient, systematic and thorough organization of common schools and encourage the opening of additional schools where necessary; to furnish blank forms for collecting statistics and making reports of all the schools within the Territory and of the receipt and disbursement of public school funds. He shall also make a careful study of the school system from his own experience and that of others in the Territory, and shall open such correspondence with other Territories and states as shall be necessary to enable him to secure useful information of systems and improvements therein, and embody the results of such study in recommendations in his reports to the governor; and make such redraft of our school laws or prepare such amendments for the same as in his judgment are necessary to the more successful conduct of our schools, the care of our school funds and the improvement of our system.

§ 4. WHAT TO EMBODY IN HIS REPORT.] The superintendent shall also make careful study of the laws and experience of such northwestern states as have had donations from the United States of public lands for the aid of schools; the methods and limitations adopted by each for the sale of such lands, and the manner in which the proceeds thereof were invested for the benefit of schools. He shall study the successes of such states and their failures in this respect, and show under what laws and systems the best results were secured in any state. He shall make a digest of such examinations and embody it in his report for the year 1880, and therewith shall suggest such drafts of constitutional provisions and statute laws, with reasons therefor, derived from such study as in his opinion will be best suited to secure the best results from the school lands in Dakota when it shall become a state or states. To this end he may for a reasonable time visit the capitals of not more than five of such states and confer and advise with persons of experience upon these subjects.

§ 5. HIS POWERS AND DUTIES RESPECTING TEACHERS AND SCHOOL OFFICERS.] The superintendent of public instruction shall have power to grant certificates of qualification to persons of proper learning, ability and experience, which shall authorize them to be employed and teach in any public school in Dakota for two years from the date thereof; and he shall regulate the degrees and prescribe the examinations necessary to test the qualifications required of persons to receive first, second and third grade certificates from county superintendents of schools. He shall secure, as far as possible, uniformity in the practical working of the school laws and in the standards of qualification for teaching, and to this end may attend public examinations by county superintendents when practicable, and shall be allowed at all times to inspect the records of county superintendents and the examination papers on file with them, and in all respects strive to render the school system and its operations efficient and useful to the people, and prevent by every means in his power any waste or unlawful payment of school funds.

§ 6. SALARY, MILEAGE, AND OTHER EXPENSES.] The salary of the superintendent of public instruction shall be six hundred dollars per annum which shall be paid to him monthly by

warrant on the territorial treasurer by the territorial auditor upon his filing with the auditor his account therefor. He shall also receive necessary mileage for travel required in his duties connected with public education to an amount in all not exceeding three hundred dollars per year. He is also authorized to procure the necessary stationery and postage and record books for his office, and to cause to be printed the necessary lists of questions for the examination of teachers by county superintendents, and the total cost of such stationery, postage, books and printing shall in no case exceed one hundred dollars per annum. All accounts made by him shall be in detail, showing the precise amount and items of money by him actually paid out for traveling expenses and for such supplies and printing, and all such accounts, except his accounts for salary, shall be verified by his oath before presentation to the auditor; and the territorial auditor shall under no pretense audit accounts for these several objects beyond the sums herein appropriated. There is hereby appropriated out of any moneys in the territorial treasury not otherwise appropriated the sum of six hundred dollars for each year for salary; the sum of not to exceed three hundred dollars each year for traveling expenses, and the sum of one hundred dollars each year for printing, stationery, postage and record books, for the superintendent of public instruction: *Provided, however,* That no greater sum than one thousand dollars shall be expended for the office of territorial superintendent of schools in any one year, and said sum shall include salary, mileage, traveling expenses and all incidental expenses.

§ 7. DUTIES CONCERNING BOOKS, APPEALS, BLANK FORMS, AND ANNUAL REPORT.] The superintendent of public instruction shall discourage the use of sectarian books and sectarian instruction in the schools; shall advise in the selection of books for the school district libraries. He shall examine and determine all appeals duly made to him from the decision of any county superintendent in all matters of difference arising between persons in the administration of the school laws, except in the cases of the formation and alteration of school districts and their boundaries which cannot be appealed to him, and his decision of such appeals shall be final. He shall prepare

for the use of common school officers suitable forms for making reports and conducting all necessary proceedings. The county superintendent and the district school officers may decide what text books shall be used in the schools. On or before the fifteenth day of December in each year he shall prepare and present to the governor a report in writing of all his official acts for the preceding year with a full statement of the condition of the common schools in the Territory, the collection and expenditure of the public school funds, and make such further suggestions as are hereinbefore required, and also such as he may deem proper and best to advance, improve and support the common schools; which report, with all accompanying papers, drafts of law and other work, the governor shall submit to the next session of the Legislative Assembly, accompanying his message.

COUNTY SUPERINTENDENT OF PUBLIC SCHOOLS.

§ 8. ELECTION—COMPENSATION—ANNUAL STATISTICAL REPORT.} 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 shall receive three dollars for each day spent in the discharge of his official duties. He shall be allowed a reasonable amount for necessary stationery, and the sum of five cents per mile for each mile actually traveled by him in the necessary discharge of his duty in visiting schools or other official business. Every superintendent of schools shall make out in detail his account for official services, stating date and time spent as well as the kind of service rendered, and make oath or affirmation to the correctness of the same before any officer authorized by law to administer an oath, in the county in which he resides; which oath or affirmation shall be certified by said officer before such superintendent's account shall be presented to the county commissioners for allowance. Said account may be rendered quarterly, and filed with the clerk of the board of county commissioners, who shall audit and allow

said accounts when in proper form, and the same shall be paid out of the county fund the same as other county officers, upon the order of the county commissioners: *Provided, however,* That no order for compensation shall be issued to any superintendent who shall have neglected to make out and transmit to the territorial superintendent his annual statistical report in satisfactory form, and file with the clerk of the board of commissioners a receipt therefor, from said territorial superintendent, on or before the first day of December in any year.

§ 9. OATH AND BOND.] 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 or 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 county clerk's office.

§ 10. TO DIVIDE COUNTY INTO DISTRICTS—JOINT DISTRICTS, ETC.]. 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 and re-arrange the boundaries of the same, when petitioned by a majority of the citizens residing in the district or districts to be affected by said change, if he believes such change to be for the good of the public schools, 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. 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 or 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 county clerk's office of his county.

§ 11. MAY PROVIDE OFFICE.] The county superintendent may provide a suitable office for the transaction of business, and the board of county commissioners may authorize and audit such expenditures for the use and furniture of said office as they may deem just and reasonable.

§ 12. SHALL KEEP RECORD, AND PREPARE MAP OF HIS COUNTY.] It shall be the duty of the county superintendent to keep a book of record of his official acts; he shall safely keep all records, books and papers belonging to his office, and transmit them to his successor. He shall encourage and aid in the establishing of schools wherever there is need thereof. He shall prepare for the board of county commissioners, if not previously supplied, a correct sectional map of the county, showing the boundaries and numbers of all districts; and he shall furnish a similar map each year to the county or township assessors in time to enable said assessors to perform their duties correctly and in proper season.

§ 13. WHAT PETITION FOR DIVIDING DISTRICT SHALL STATE.] Every petition for dividing a district or re-arranging the boundaries of districts shall state distinctly the reasons for the proposed change; and shall be supported by the affidavits of three or more voters residing within the districts concerned, stating that the facts set forth in the petition are true, and that the names signed thereto are those of a majority of the citizens entitled to sign such petition, residing within the area to be affected by said change.

§ 14. MAY ADMINISTER OATHS AND REVOKE CERTIFICATES.] The county superintendent shall have power to administer oaths and examine witnesses under oath, in cases of appeal, of petition, and of revoking the certificate of a teacher, but shall not receive additional pay for administering such oaths.

§ 15. WHEN MAY DECLARE FORMATION OF SCHOOL DISTRICT VOID.] If any school district shall fail or neglect, for two successive years, to hold the school meetings required by law, maintain

its organization by a duly qualified board of officers, and support a public school three months in each year, or shall neglect to organize according to law, and maintain a public school three months within one year after its formation by the county superintendent, said officer may declare the formation of said district null and void, and may then annex the lands in said district to such other districts as he deems best for the education of the children residing therein.

§ 16. WHEN MAY RE-ARRANGE DISTRICT.] Whenever five heads of families in one district shall unite in a petition, supported by affidavits, stating that their children are debarred from school privileges by reason of the improper size or form of the district, or by the distance to the school house, or by natural obstacles, the superintendent of the county may, in his discretion, order such re-arrangement of district boundaries as may remedy their grievance; and such change shall become valid when approved by the board of county commissioners.

§ 17. COUNTY TREASURER TO FURNISH STATEMENT OF SCHOOL MONEY.] It shall be the duty of the county treasurer, on the first Monday in January and July 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.

§ 18. APPORTIONMENT OF SCHOOL MONEYS.] It shall be the duty of the county superintendent of public schools on the second Monday of January and July in each year, or as soon thereafter as he shall receive the statement of the county treasurer provided for in section 17, 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 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, of the amount of money due his district, and he shall draw his orders on the county treasurer in favor of the several district treasurers for the amount apportioned for each district, and he shall deliver said orders to said treasurers upon their application, taking

their receipt therefor: *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 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 year's apportionment without complying with this provision.)

§ 19. **WHEN NOT TO DELIVER WARRANT FOR MONEY.]** The county superintendent shall not deliver said warrant for money apportioned, to any treasurer, unless notice has been given to him by the clerk of that district, that said treasurer's official bond has been duly filed and accepted.

§ 20. **DUTIES RESPECTING VISITATION OF SCHOOLS.]** It shall be the duty of the superintendent to visit each common school within his county at least once in each year, and oftener if he shall deem it necessary. At such visit of inspection he shall examine into the condition of such school, and satisfy himself respecting the progress in learning, the mental and moral instruction given, the order and government prevailing, the regularity of attendance, and the teacher's ability and fitness for the duties of the position; and he shall record suitable notes of his impression concerning the school. He may advise or direct the teacher concerning the government and instruction of the pupils, and the course of study to be pursued, and shall adopt such plans as he deems requisite for improving the schools by inspecting and regulating the work.

§ 21. **DUTY RESPECTING SCHOOL OFFICERS AND APPEALS.]** The superintendent shall see that the several reports of district clerks and treasurers are made correctly and in due time, and if necessary shall visit them personally and examine into their records and accounts. He shall hear and determine all matters of difference pertaining to schools and districts which shall be brought to him for decision, and all appeals from the decisions of district boards.

§ 22. **EXAMINATION OF TEACHERS.]** He shall hold public ex-

amination of all persons offering themselves as teachers of common schools, at the county seat of his county, on the last Tuesdays 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. All examinations shall be conducted chiefly by written answers to prepared lists of questions, and the answer papers of each teacher shall remain on file in the superintendent's office for at least one year thereafter, subject to the inspection of any school officers who may have reason to examine them. Persons applying to the county superintendent for a certificate at any other time than at the public examination, shall be required to show good and satisfactory reasons for not having attended the public examination, and shall pay to the superintendent in advance the sum of two dollars for his time and services in making the examination.

§ 23. MAY REVOKE TEACHER'S CERTIFICATE.] The county superintendent may at any time revoke and annul a teacher's certificate while in force, for any cause which would have justified the withholding thereof, if known at the time the same was issued. Such action shall be taken only after full hearing of the facts in the case, after giving such teacher notice of the time and place of such hearing, and opportunity to make his or her defense, excepting that in cases where the superintendent finds, upon personal inspection of the school, sufficient reason to revoke his or her certificate, no such notice need be given.

§ 24. TEACHER TO SURRENDER ANNULLED CERTIFICATE.] Whenever any certificate shall be annulled the teacher shall return the same to the superintendent, and in case the teacher refuses to surrender the same, the superintendent may issue public notice of such annulling by publication in some newspaper printed or circulated in the county.

§ 25. FORMATION OF NEW DISTRICTS. APPEALS.] 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. Any citizen aggrieved by the action of the county superintendent of schools in the formation of the school district in which he resides, shall have the right to appeal from his decision to the board of county commissioners, who shall have power to hear and determine said appeal, if taken within sixty days from the time of the formation or change of the district.

§ 26. SUPERINTENDENT TO DELIVER BOOKS TO SUCCESSOR IN OFFICE. The county superintendent of public schools shall perform all other duties of said office that now 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.

§ 27. IN CASE OF VACANCY IN OFFICE OF SUPERINTENDENT.] 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 county clerk 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 clerk's 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.

§ 28. ANNUAL REPORT, WHAT TO CONTAIN.] The county superintendents 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 chil-

dren between the ages of five and twenty-one years in the school districts within their respective counties; also the number of qualified teachers employed; the length of time each district school has been taught during the year, the kind of text books used, and the amount expended; the amount raised in each county and district by taxation or otherwise for educational interests, and any other items that may be of service to the superintendent of public instruction in preparing his annual report.

SCHOOL DISTRICT MEETINGS.

§ 29. POWERS OF SCHOOL DISTRICT MEETING.] The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

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

2d. To adjourn from time to time: *Provided, however,* That no annual meeting shall be adjourned for more than thirty days.

3d. To choose persons having the proper qualifications to fill the offices of clerk, director and treasurer.

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

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.

6th. To vote a district tax annually not exceeding one and one-half per cent. on the taxable property of the district for pay of teachers' wages in the district, and necessary fuel and other school expenses.

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.

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-half per cent. in any one year, and may be applied to any other purpose by a vote of the district at any regularly called meeting.

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.

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 in any one year, to procure a district library, consisting of such books as they may direct any person to procure.

§ 30. WHO MAY VOTE] All persons over the age of twenty-one years who are citizens of the United States, or have declared their intention to become such, and who shall have resided in the district five days next preceding any district meeting, shall be entitled to vote at such meeting.

§ 31. FORM OF OATH IN CASE OF CHALLENGE.] 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 the person offering to vote, the following oath or affirmation:

"You do solemnly swear [or affirm] that you have been an actual resident of this district for the past five days, 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 at such meeting.

ORGANIZATION OF DISTRICTS.

§ 32. WHEN DEEMED ORGANIZED. PENALTY FOR REFUSING OFFICE.] 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 wilfully refuse or neglect, without sufficient cause, to accept 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 twenty-five dollars to the school district fund, which amount may be recovered by the district in civil action before any justice of the peace in the county where such district is lo-

cated, and shall be appropriated to the support of schools in his district by whom such action was prosecuted.

§ 33. OFFICERS—WHEN ELECTED.] The officers of each district shall be the director, clerk and treasurer, who shall be qualified voters of the district, one of whom shall be elected at each annual meeting, to serve for three years, and until his successor is elected and qualified; except that in meetings called to organize new districts, the director shall be chosen to serve for one year, the clerk for two years, and the treasurer for three years.

§ 34. VALIDATING ELECTIONS OF DISTRICT OFFICERS.] The elections of all district officers, who may have been illegally elected through a misunderstanding of section twenty-four of the school law, approved February 17th, 1877, but who have accepted their offices in good faith, and served without objection being made, are hereby declared valid, and their proper acts are declared legal and binding.

§ 35. POWERS OF ORGANIZED DISTRICT.] 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 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, 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; but this section shall not be construed to prevent altering district boundaries in the manner herein provided.

§ 36. ANNUAL MEETING—SPECIAL MEETINGS.] An annual school meeting for each district shall be held at the school house or at the place usually occupied for school purposes, or where no school has been held in said district, then at some central place in the district, on the first Tuesday in April, 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, in three of the most public places in said district. 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, [25] 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 the order of a majority of the district board, for which ten days' notice shall be given by the district clerk, said notice stating the business to be acted upon by said meeting. Special school meetings may also be held at the call of any five legal voters of the district who shall subscribe and post three notices in three of the most public places in the district, ten days previous to the call of the meeting. Said notices to specify the business to be acted upon by said school meeting.

§ 37. WHEN NO ANNUAL MEETING IS HELD AT TIME APPOINTED.] 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 five 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 by 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.

§ 38. WHO MAY DETERMINE TERMS OF SCHOOL.] 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.

§ 39. DUTY OF DIRECTOR.] 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 col-

lected 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.

§ 40. ENGLISH LANGUAGE TO BE USED AND TAUGHT.] All reports and records of district officers and proceedings of district meetings shall be in the English language; and if any money belonging to any district shall be expended for supporting a school in which the English language shall not be taught exclusively, the county superintendent, or any taxpayer of the district may, in a civil action in the name of the district, recover said money from the officer so expending it.

§ 41. DUTY OF DISTRICT CLERK.] 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 and the treasurer 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.

§ 42. WHEN VOTERS MAY APPOINT A CLERK.] The said clerk shall be clerk of all district meetings; but if such clerk shall not be present, or being present shall refuse to act 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.

§ 43. CLERK TO CALL DISTRICT MEETINGS.] 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.

§ 44. SCHOOL ORDERS—PAYMENT OF.] The clerk shall draw all warrants or orders for the payment of money for teachers' wages, or any other purpose legally ordered by the school board, or by the voters at any district meeting. Said orders shall also be signed by the director, and paid by the treasurer

on presentation. Each order shall specify whether the money is to be paid from the teachers' fund, the contingent fund or the school-house fund; and in case the treasurer has no money in the fund drawn upon to pay such school warrant, he shall indorse it "not paid for want of funds," and all orders so presented and indorsed shall draw ten per cent. interest after presentation until paid, unless otherwise expressed in writing. If there be money in his hands to pay a portion of such warrant, he shall pay such money and indorse the amount so paid upon the warrant, and interest at ten per cent. shall accrue upon the amount unpaid.

§ 45. DISTRICT TAX. NOTICE TO COUNTY TREASURER.] It shall be the duty of the district clerk on or before the first day of May in each year, to notify the county clerk of the amount of tax, if any, voted at the last annual meeting, and of any tax levied by the district board to pay judgment, of which notice has not been previously given, which notice shall be substantially in the following form:

District clerk's office, school district No. ———, of ——— county, Dakota Territory.

(date) ———— 18—

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 ———, 18—, at ———, the district voted the following tax:

For school house fund,.....	——mills.
For teacher's fund,.....	——mills.
For contingent fund,.....	——mills.
Total,.....	——mills.

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.

§ 46. REPORT OF CLERK—WHAT TO SHOW.] The clerk of each district shall on or before the first day of May 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:

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

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

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

4th. The amount of money raised and received from special tax during the year, the amount received from apportionment of county funds, and the amount of money on hand on the last day of March previous.

5th. The amount and rate of taxes levied and then in the hands of the county treasurer for collection, and the amount of outstanding indebtedness of the district.

6th. The kind of text books used in the school, the kind adopted by the school board as the standard, the date of the last school meeting, and the value of all district property.

7th. The names of school officers, their postoffice address, and the date at which the official term of each will expire.

8th. All other facts and statistics which the county superintendent may require for the preparation of reports to the territorial superintendent.

§ 47. TREASURER'S BOND.] 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.

§ 48. WHEN TREASURER'S OFFICE DECLARED VACANT.] If the treasurer shall fail to give bonds as required in this act, or from sickness or any other cause shall be unable to attend to his duties, said office shall be declared vacant by the remaining officers.

§ 49. COUNTY TREASURER TO PAY MONEYS TO DISTRICT.] The treasurer of each district shall apply for, and the county treasurer shall pay over to the district treasurers all of the school moneys 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, of the county school fund, upon the order of the county superintendent.

§ 50. WHERE TREASURER SHALL REFUSE TO PAY MONEYS TO SUCCESSOR.] 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.

§ 51. WHERE MONEYS ARE LOST.] 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.

§ 52. SCHOOL MONEYS. VARIOUS FUNDS HOW DESIGNATED.] Money collected by district tax or subscription, for the erection of school houses, fences and outbuildings, for the purchase of sites for school houses, and for payment of debts contracted for said purposes, shall be called the school-house fund; money designed for rent, repairs, fuel and contingent expenses, necessary for supporting schools, shall be called contingent fund; and that intended for the payment of teachers' wages, the teachers' fund. The district treasurer shall separate the money received from the county treasurer by district tax, into the different funds in proportion to the rates of taxes levied by the district, and shall keep a separate account with each fund in a suitable and permanent book of record, to be provided by the district board. He shall pay no order which does not specify the fund on which it is drawn, and the use to which the money is applied.

§ 53. **TEACHERS' WAGES FUND.]** Moneys apportioned to districts by the county superintendent from the general county fund, shall be applied to the payment of teachers' wages, and to no other purpose.

§ 54. **WHEN TREASURER GUILTY OF EMBEZZLEMENT.]** Every district treasurer who shall loan any portion of the money in his hands belonging to the district, whether for a consideration or not, or who shall expend any part thereof for his own or any other person's private use, is guilty of embezzlement, and shall upon conviction be punished as provided by law.

§ 55. **REPORT OF TREASURER.]** The treasurer shall present to the district at each annual meeting, a report in writing containing a statement in three separate funds, 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.

§ 56. **DISTRICT BOARD. MAY BUILD AND SELL SCHOOL BUILDINGS.]** 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.

§ 57. **PROCEEDINGS TO OBTAIN SITE FOR SCHOOL HOUSE.]** It shall be lawful for any board of district officers to take and hold any land not exceeding one acre, legally chosen as a school house site by a lawful district meeting. If the owner of such land refuse or neglect to grant such site to the district, or cannot be found, the superintendent of that county shall, upon application, appoint three disinterested persons of said coun-

ty, unless a smaller number is agreed on by the parties, who, after taking an oath before him to faithfully and impartially perform the duties imposed on them by this section, shall inspect said real estate and assess the damages said owner will sustain by taking the same for school uses, (written notice having been previously given to the owner of the time of appraisal) and said assessors shall file their written report with the county superintendent, giving the exact description of the land and the amount of damages assessed. If said school board shall, before taking said land for school uses, deposit with the county treasurer for the use of said owner, the amount of money so assessed as damages, they shall be thereby authorized to build a house thereon in the name of the district, and maintain the right to said premises: *Provided*, That appeal from said assessment may be taken within twenty days by either party to the district court: *And provided*, That no site shall be thus taken within forty rods of any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park. But this section shall not apply to any incorporated town.

§ 58. TITLE OF GROUNDS TO BE FOR SCHOOL PURPOSES ONLY.] The title acquired to such school site shall be for school purposes only; and if not used for said purpose of maintaining a public school thereon for two successive years, the title shall revert to the owner of the fee, upon repayment of the original sum paid, with value of improvements made by the district, and without interest.

§ 59. POWERS OF DISTRICT BOARD.] The district board shall have the care and keeping of the school house and other property belonging to the district. They shall make such rules and regulations relating to the district library as they may deem proper, and appoint some suitable person as librarian to take charge of the school apparatus belonging to the district.

§ 60. MAY ADMIT NON-RESIDENT SCHOLARS.] The district board shall have power with the consent of the teacher to admit scholars from other 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; and the district officers shall

visit their school and aid the teacher in preserving good order and obedience to rules, whenever the teacher shall require their assistance.

§ 61. EMPLOYMENT OF TEACHERS.] The district board shall employ only qualified teachers, by written contract, specifying the date at or about which the school shall begin, the length of term to continue, the salary per month, and the time of payment, and said contract shall be filed in the district clerk's office.

§ 62. OTHER EXPENSES.] 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.

§ 63. WHO MAY ATTEND SCHOOLS.] The district schools established under the provisions of this act shall be at all times equally free and accessible to all children under twenty-one and over five years of age, residents of the district, subject to such regulations as the district board in each may prescribe.

§ 64. BRANCHES TO BE TAUGHT.] In every school there shall be taught, to all pupils of sufficient capacity to properly attend to the same, the following branches of a common English education: Orthography, reading, writing, geography, arithmetic and grammar, or so many thereof as the ability of each pupil will permit, in the judgment of the teacher; also, such other branches as may be agreed upon by the district board and teacher.

§ 65. VACANCY IN BOARD—HOW FILLED.] If a vacancy should occur in the district board in any district, the remaining member or members of the board shall, within thirty days, call a special district meeting to elect a new member or members to serve until the next annual meeting, at which time a new member or members of the board shall be elected to fill vacancy for the unexpired term, and in case the district neglects for forty days to elect a new member of the board, the county superintendent may, upon petition of five voters of the district, fill the vacancy by appointment.

§ 66. TAX FOR SUPPORT OF SCHOOLS.] 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.

§ 67. COUNTY CLERK TO MAKE TAX LIST.] 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.

§ 68. COUNTY TREASURER TO COLLECT TAX.] 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.

§ 69. MONEYS COLLECTED FOR FINES, ETC. PENALTY FOR WRONGFUL USE OF FUNDS.] 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 superin-

tendent 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.

§ 70. REFUNDING MONEY IMPROPERLY COLLECTED.] 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.

§ 71. CITY SCHOOLS ENTITLED TO SCHOOL FUNDS.] 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.

§ 72. CLERK AND TEACHER TO KEEP REGISTER.] It shall be the duty of the district clerk to provide a suitable school register, at the expense of the district, and keep it as one of the records of his office, except during each term of school, at which time the teacher shall keep said register, and record therein each day the attendance of each pupil present. The teacher shall also record whatever statistics are needful for making accurate reports as herein required.

§ 73. TEACHER TO GIVE NOTICE.] It shall be the duty of every teacher, on commencing a term of school, to give written notice to the superintendent of the time and place of beginning such school, and the probable time when it will end.

§ 74. TEACHER'S REPORT WHAT TO CONTAIN.] It shall be the duty of the teacher of each district school, at the expiration of each term, to make out full duplicate reports, and deliver one copy thereof to the district clerk and one to the county superintendent. Said reports shall show the names, ages and sex of all pupils admitted during such term, the branches taught, the studies pursued by each pupil, the text books used, the number of days taught, the number of days each pupil was present, the average daily attendance, the date

when school begun and ended, the salary per month, including board, and information concerning the school and property. And every teacher who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school, at the discretion of the district board.

§ 75. PENALTY FOR FALSE REPORT.] Every clerk or treasurer of a district board who shall wilfully 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 thirty days.

§ 76. PENALTY FOR REFUSING TO DELIVER RECORDS.] Every school district clerk or treasurer who shall neglect or refuse to deliver to his successor in office all records and books belonging to his office, shall be subject to a fine not exceeding twenty-five dollars.

§ 77. JUDGMENT AGAINST SCHOOL DISTRICT, HOW PAID.] 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.

§ 78. JURISDICTION OF JUSTICES OF THE PEACE.] Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars, and the parties shall have the right to appeal as in other cases.

§ 79. COMPENSATION OF SCHOOL DISTRICT OFFICERS.] 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, out of the contingent fund.

§ 80. DIRECTOR'S DUTY. SCHOOL BOARD TO SUPPLY BOOKS TO POOR CHILDREN.] It shall be the duty of the director to ascertain whether any children in the district between the ages of eight and fourteen years are deprived of school privileges while a school is being taught in the district, and learn and report to the board the causes of any such absence. If any parent or

guardian shall make application to the director of his district, stating that his child is unable to attend school from lack of books, and that the parents or guardian of such child are too poor to provide the same, the district board may, in their discretion, supply to said pupils whatever books and slates the teacher may designate as being necessary to said pupils' attendance at school; and the said board may in like manner provide for children having no parent or guardian within reasonable distance.

§ 81. FINES, HOW COLLECTED.] All fines and penalties not otherwise provided for in this act shall be collected by action in any court of competent jurisdiction.

§ 82. MONEYS DONATED, HOW DISPOSED OF.] Whenever any sum of money shall be paid into the county treasury by an 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 to 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.

§ 83. TEACHERS' INSTITUTE.] The superintendent of public instruction shall, in each year, upon the written request of the superintendents of one or more counties, appoint and hold an institute for teachers, at some convenient place for such counties, to be designated in such request. He shall appoint the time for such institute, and notify the county superintendents thereof, who shall notify all the teachers within their respective counties, and require their attendance. The county superintendents of such counties shall attend such institute, and assist the territorial superintendent in conducting the same. The time of such institute shall be diligently and faithfully employed in normal instruction within the branches

in which instruction is required in our common schools, and in school management, classification, grading and discipline, and in the duties of officers and teachers under the school law. Such institute shall not continue for a longer period than six days, nor less than three days, in any one year.

§ 84. TERRITORIAL SUPERINTENDENT TO HOLD TEACHERS' INSTITUTES IN THE DIFFERENT JUDICIAL DISTRICTS.] If the written request for an institute be not made by the county superintendents as provided for in the preceding section, then the territorial superintendent shall, without such request, appoint and hold in each year two institutes in the third judicial district, two in the second judicial district, and one in the first judicial district. Such institutes shall be held for not less than six days each, and if county superintendents and teachers to the number of fifteen sign a written request that the institute be continued longer, it may be so continued, not to exceed twelve days in all: *Provided, however,* That no expense shall be incurred by the Territory, or by the county in which such institute is held, for the holding of the same, except such as is provided by law.

§ 85. COUNTY SUPERINTENDENT TO GRANT CERTIFICATE CHARACTER OF.] The county superintendent shall grant to teachers attending an institute in his county, a certificate showing the number of days said teacher was present and attending to the duties required therein, and the number of days absent, or refusing to participate in the exercises; and he may refuse to grant certificates to teach in his county to any persons who have not attended all the sessions of the county institute, unless prevented by sickness or other unavoidable occurrence.

§ 86. WHEN PUPIL GUILTY OF A MISDEMEANOR.] Every person, whether a pupil of a school or otherwise, who shall molest or disturb a public school when in session, or who shall interfere with and interrupt the proper management of the school so as to prevent the teacher and pupils from performing their duties, shall be held guilty of a misdemeanor, and shall upon conviction thereof be subject to the penalties provided by law for disturbing a public meeting.

§ 87. SCHOOL MONTH DEFINED.] A school month shall consist of four weeks, of five school days each; but no Saturdays shall be counted as school days.

§ 88. BIBLE MAY BE READ.] The bible shall not be excluded from any public school, nor deemed a sectarian book. It may be read in school without sectarian comment, not exceeding ten minutes daily, and no pupil shall be required to read it contrary to the wishes of his parent or guardian.

§ 89. ASSESSORS TO FURNISH CERTIFICATES OF VALUATION TO CLERKS.] It shall be the duty of all county or township assessors to furnish to the school district clerks within their respective counties or townships, at least three days before the annual school meeting, a certificate of the total valuation of all the taxable property, real and personal, within each school district respectively, for the current year, if possible; otherwise he shall furnish the valuation for the preceding year.

FORMS.

§ 90. The form of notice of the first district school meeting may be substantially as follows:

To....., a householder 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 Schools.

Dated, this.....day of....., 18...

§ 91. The form of notice for annual district meetings may be as follows:

Notice is hereby given to the voters of school district number....., ofcounty, that the annual meeting of said district will be held at.....on the.....day of....., 18..., at... ..o'clock,.....

Dated, this.....day of.. .., 18...

District Clerk.

§ 92. 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...

§ 93. 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 of....., and....., his surety, are held and firmly bound unto said school district number....., 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, and dated this.....day of....., 18... The condition 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 of....., as prescribed by law, then this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered in the presence of [L. S.] [L. S.] [L. S.]

§ 94. 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 ofmonths.

..... Teacher.

§ 95. 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...

Dated, this.....day of....., 18... Clerk. Director. Treasurer. Teacher.

§ 96. The forms of annual reports of district clerks and treasurers shall be in accordance with the forms to be furnished for that purpose by the superintendent of public instruction, if the same are in accordance with the school law.

§ 97. A school teacher's certificate may be in the following form:

DAKOTA TERRITORY, } County. }

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.

§ 98. Chapter 40 of the Political Code of 1877, 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 under and by virtue of said act or parts of 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 under this act, until their successors are duly elected and qualified.

§ 99. This act shall take effect from and after March 15th, 1879: *Provided*, That nothing herein contained shall be construed to interfere or conflict in any manner with the provisions of any act establishing a board of education for any incorporated city, town or village, and regulating the management of the public schools therein.

Approved, February 22, 1879.

Elections.

CHAPTER 15.

AN ACT to amend Section Ten of Chapter Twenty-seven of the Political Code on Elections.

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

§ 1. TIME OF OPENING AND CLOSING THE POLLS.] That section ten (10), chapter 27 of the Political Code on elections, be amended to read as follows: "§ 10. At all elections to be held under chapter 27 of the Political Code, the polls shall be

opened at the hour of eight o'clock in the forenoon, and continue open until five o'clock in the afternoon of the same day, at which time the polls shall be closed. Thirty minutes before the closing of the polls proclamation shall be made that the polls will be closed in half an hour, but the board may, in their discretion, adjourn the polls at twelve (12) o'clock (noon), for one hour, proclamation being made."

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

Approved, February 20, 1879.

Evidence.

CHAPTER 16.

AN ACT relating to the Rules of Evidence in Criminal Proceedings.

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

§ 1. PERSON CHARGED WITH CRIME TO BE COMPETENT WITNESS.] That in the trial of all indictments, information, complaints, and other proceedings against persons charged with the commission of any crime, offenses, and misdemeanors before any court or committing magistrate in this Territory, the person charged shall, at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him.

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

Approved, February 10, 1879.

CHAPTER 17.

AN ACT to amend Section Four Hundred and Forty-six of the Code of Civil Procedure, concerning the examination of Husband and Wife as witnesses for and against each other.

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

§ 1. HUSBAND OR WIFE NOT TO BE WITNESSES AGAINST EACH OTHER WITHOUT CONSENT.] Paragraph number 1 of section 446 of the Code of Civil Procedure, is hereby amended so as to read as follows: "1. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this subdivision does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other."

Approved, February 20, 1879.

Fees.

CHAPTER 18.

AN ACT to amend Sections Five (5) and Six (6) of Chapter Thirty-nine (39) of the Political Code.

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

§ 1. SALARY AND FEES OF DISTRICT ATTORNEY.] That sections five and six of chapter 39 of the Political Code, are hereby amended to read as follows:

“ § 5. The salary of each district attorney shall be ten hundred dollars per annum, which shall be payable quarterly from the territorial treasury; and he shall receive in addition thereto the following fees to be audited and paid like other claims against the counties:

“ For each jury trial in cases of misdemeanor, ten dollars.

“ For each jury trial in cases of felony, twenty five dollars.

“ For each judgment for costs only, five dollars.

“ For all fines and forfeitures actually collected by him, ten per cent. upon all sums less than one hundred dollars, and five per cent. upon all sums above that amount.”

“ § 6. IN CASE OF CONVICTION, FEES TAXED AGAINST DEFENDANT.] In all cases of conviction the fees contemplated in the preceding sections shall be taxed against the defendant, and when collected, paid into the county treasury.”

Approved, February 22, 1879.

CHAPTER 19.

AN ACT prescribing Fees for the Secretary of the Territory, in certain cases.

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

§ 1. FEES OF SECRETARY OF TERRITORY IN CERTAIN CASES.] The secretary of the territory shall be allowed to charge and receive fees for services rendered by him as follows:

For examination of articles of incorporation and issuing certificate of corporate existence or patent upon the same, five dollars.

For recording all papers required by law to be recorded in his office, ten cents per hundred words.

For making transcripts of records or papers in his office, ten cents per hundred words.

For his official certificate and impression of the great seal, one dollar.

For issuing commissions, appointing notaries public, commissioners of deeds, and other officers, and making the proper record of the same, two dollars each: *Provided*, That no charge shall be made for commissions issued appointing the county commissioners of counties about to be organized.

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

Approved, February 21, 1879.

CHAPTER 20.

AN ACT to amend sections Fifteen and Sixteen of Chapter Thirty-nine, and Section Eighty-three of Chapter Twenty-eight of the Political Code, enacted at the Twelfth Session of the Legislative Assembly.

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

§ 1. FEES OF COUNTY TREASURER.] That section fifteen of chapter thirty-nine, entitled "Compensation of public officers," of the Political Code of the Territory of Dakota, approved February 17th, 1877, be amended so as to read as follows: Each county treasurer shall receive for his services the following fees:

"On all money collected by him for each fiscal year, four per cent.

"On all sums collected, percentage shall be allowed but once, and in computing the amount collected, for the purpose of charging percentage, all sums from whatever source derived, shall be included together.

"For advertising and selling lands for delinquent tax an additional fee of five per cent., to be paid only so far as the lands are actually sold and out of the fund received therefor, and to be collected in each case where the lands are sold, and from the purchaser; but for all other cases and services the treasurer shall be paid in the same *pro rata* from the respective funds collected by him, whether the same be in money, territorial or county warrants.

"For each and every levy he or his deputy shall make on personal property, for the satisfaction of a tax or taxes, he shall receive a fee of one dollar and ten cents for every mile actually traveled by him, 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 one dollar, to be collected out of the property so levied on by him."

§ 2. TREASURER OF COUNTY TO PAY MONEY TO TERRITORIAL TREASURER. WHEN.] That section eighty-three, chapter 28, of the Political Code, be amended so as to read as follows: "§ 83.

The treasurers of the several counties shall pay into the territorial treasury all funds in their hands belonging thereto on or before the first Monday of November in each year, and at such other times as the territorial treasurer shall require; and the funds so paid in shall be the identical territorial warrants, if any, received by the treasurer for the payment of the tax, or in coin, or in treasury notes of the United States; and the said county treasurer shall send said money to the territorial treasurer by draft, postoffice order, or by express, for which he shall be allowed the actual expenses of procuring the same and no more."

§ 3. FEE OF COUNTY TREASURER IN CASE OF NON RESIDENT TAX-PAYER.] In all cases where persons residing outside of the territory apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of one dollar for each tax receipt by him sent to such person.

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

§ 5. That this act shall be in force and effect from and after its passage and approval.

Approved, February 14, 1879.

Ferries.

CHAPTER 21.

AN ACT to amend Section Four Hundred and Sixty-one of the Penal Code, in Relation to Ferries.

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

§ 1. PENALTY FOR MAINTAINING FERRY WITHOUT LICENSE.] That section four hundred and sixty-one of the Penal Code, is amended to read as follows: "§ 461. Every person who maintains any ferry for profit, or hire upon any waters

within this Territory, without having first obtained a license as provided by law, is guilty of a misdemeanor. And any license or lease granted by the board of county commissioners of the proper county shall be exclusive to the lessee or licensee for a distance of two miles from the place where such ferry is located, up and down such stream, either way; and any person who shall ferry, transport or carry, or attempt to ferry, transport or carry, any passengers, goods, chattles or merchandise, or who shall have, keep or maintain any scow, skiff or boat, for the purpose of ferrying, transporting or carrying any passengers, goods, chattles or merchandise, upon any water of this Territory, within a distance of two miles of any licensed ferry, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding one hundred dollars, or thirty days' imprisonment in the county jail, or by both fine and imprisonment; when such ferry is upon waters dividing two counties, the offenders may be prosecuted in either county."

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

Approved, February 14, 1879.

Fireguards.

CHAPTER 22.

AN ACT regulating the Time and Manner of Making Fireguards.

Be it enacted by the Legislative Assembly of Dakota Territory:

§ 1. EXEMPTING CERTAIN LAND FROM TAXATION.] That for the purpose of securing protection against prairie fires to homesteads, pre-emptions, timber claimants, and all persons own-

ing or having in charge any tract of land consisting of one hundred and sixty acres, more or less, who shall break or plow a fireguard thirty-three feet in width encompassing entire any such tract as described in this section, that the amount of land contained in such fireguard shall be exempt from taxation: *Provided*, It shall be kept free from grass, weeds and all other combustible matter from September 15th to May 10th in each year, and shall remain exempt as long as the provisions of this section are complied with.

§ 2. WHERE PERSON HAS MORE THAN QUARTER SECTION AND FRACTIONAL PARTS.] That any person claiming or owning any tract of land consisting of more than a quarter section lying in a body, shall not encompass less than that amount with a fireguard, as described in section one of this act, unless they have a fractional part or parts thereof not adjoining each other, in which case they may encompass them severally with fireguards and be entitled to the benefits of this act.

§ 3. DUTY OF ROAD OVERSEER TO MAKE FIREGUARDS.] That where persons have failed to make or cause to have made fireguards in compliance with sections 1 and 2 of this act, it shall be the duty of the road overseer in said district to make or cause to have made along the line of all public roads adjoining such lands a fireguard one rod in width on each side of such road, in the manner prescribed in section 1 of this act, and said overseer shall have power to warn out persons liable for road and poll tax to perform such service as is prescribed by law, and persons performing such service shall be allowed the same rates as for road work. It shall also be the duty of the road overseer to report to the town or county assessor on the first Monday in December in each year, the numbers of the land, and if known, the names of the person owning or claiming the same, where fireguards have been made as specified in this section.

§ 4. THIS ACT SHALL NOT CONFLICT WITH THE ACT OF 1877.] That nothing in this act shall be so construed to deprive of benefit any persons who have or may comply with sections 46 and 47 of the Political Code of 1877, and that such parties shall construct fireguards as specified in section 3 of this act, or by mowing and burning prior to September 15, in each [year],

and such parties shall be liable for all damage done by such fire.

§ 5. All acts in conflict with this act are hereby repealed.

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

Approved, February 21, 1879.

Insane.

CHAPTER 23.

AN ACT establishing the Dakota Hospital for the Insane, providing for the Government of the same, and for the care of the Insane, and for the Organization of a Board of Commissioners of Insanity in each Organized County of this Territory.

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

§ 1. WHERE LOCATED.] The Dakota Hospital for the Insane until otherwise provided by law, is hereby established on the southeast quarter of section number thirty-six (36), in township number ninety-four (94), north of range number fifty-six (56) west, in the county of Yankton, near the city of Yankton, and shall be under the charge of a board of trustees, to consist of three residents of this Territory.

§ 2. TRUSTEES, HOW APPOINTED.] The governor shall, by and with the advice and consent of the council, appoint said trustees, whose term of office shall be for two years and until their successors are appointed and qualified.

§ 3. OATH OF TRUSTEES. The trustees so appointed before entering upon their duties shall take and subscribe an oath to support, protect and defend the constitution of the United States, and the act organizing the Territory of Dakota, and to faithfully, honestly and impartially discharge the duties of trustee of the Dakota Hospital for the Insane, which oath shall be filed with the secretary of the territory.

§ 4. PAY OF TRUSTEES.] The trustees shall be paid their actual and necessary expenses incurred in the discharge of their official duties, and no more, out of the territorial treasury, out of moneys appropriated for the purpose, by an order drawn by the secretary of the board and countersigned by the president and audited by the territorial auditor.

§ 5. ANNUAL AND SPECIAL MEETING OF TRUSTEES.] The board of trustees shall hold an annual meeting upon the first Wednesday, of December, each year at the hospital, at which meeting they shall choose one of their number secretary, who shall hold such office one year and until his successor is elected and qualified. The board may hold such additional sessions as may be deemed necessary, on the call of the president.

§ 6. TRUSTEES TO INSPECT HOSPITAL AND MAKE REPORTS.] The board of trustees or a majority thereof, shall inspect the hospital at each of their regular meetings; and the board or a committee thereof may visit and inspect the hospital at any time. The board shall make a record of their proceedings in books kept for the purpose, and at the annual meetings preceding the regular sessions of the Legislative Assembly, they shall make a report of the condition and wants of the hospital, which shall be accompanied by full and accurate reports of its superintendent and steward, and an account of all moneys received and disbursed, which report shall be, by the governor, transmitted to the Legislative Assembly.

§ 7. POWERS AND DUTIES OF TRUSTEES.] The board of trustees shall have the general control and management of the hospital; shall make all by-laws necessary for the government of the same not inconsistent with the laws of the Territory, and conduct the affairs of the institution with the laws and by-laws for the government of the same. They shall appoint a medical superintendent, and upon the recommendation of such superintendent, a steward shall be appointed, who shall reside in the hospital, and be styled resident officers of the same, and be governed and subject to all the laws and by-laws for the government of said institution. The board of trustees shall from time to time fix the salaries and wages of the resident officers and other employes of the hospital, and certify the same to the territorial auditor, and may remove any resident officer or employe of such institution.

§ 8. MAY TAKE AND HOLD LANDS, ETC.] The board of trustees may take in the name of the Territory and hold in trust for the hospital, any land conveyed or devised, and any money or other personal property given or bequeathed, to be applied for any purpose connected with the institution.

§ 9. SHALL NOT BE PARTY TO CONTRACT.] No trustee or officer of the hospital shall be either directly or indirectly interested in any contract for the purchase of building material, supplies or any other article for the use of the institution.

§ 10. TRUSTEE NOT ELIGIBLE TO OTHER OFFICE.] No trustee shall be eligible to the office of steward or superintendent of the hospital during the term for which he was appointed.

§ 11. STEWARD'S BOND AND DUTIES.] The steward shall execute a bond to the Territory of Dakota for the use of the hospital in such sum as may be fixed by the board, to be approved by the board, conditioned that he will faithfully perform the duties of his office and pay over and account for all moneys that shall come into his hands, which bond shall be filed with the secretary of this territory. Upon authority granted by the board he may draw from the territorial treasury, upon his order, approved by the superintendent and president of the board, and under the seal of the hospital, from time to time, from the appropriations made by the Legislative Assembly for that purpose, such sums as may be requisite to meet the current expenses of the hospital. Upon the presentation of such order to the territorial auditor he shall draw a warrant upon the territorial treasury for the amount therein specified. No part of the money drawn for current expenses shall be used in making improvements. Money appropriated for the purpose of building or other improvements shall in like manner be drawn from the territorial treasury by the steward of the hospital: *Provided*, That an itemized account shall be presented and filed with said auditor before auditing any account under this act.

§ 12. SUPERINTENDENT—HIS DUTIES AND POWERS.] The superintendent of the hospital shall be a physician of acknowledged skill and ability in his position. He shall be the chief executive officer of the hospital, and shall hold his office during the pleasure of the board of trustees. He shall have the entire control of the medical, moral and dietetic treatment of

the patients, and he shall see that the several resident officers and employes of the institution faithfully and diligently discharge their respective duties, and may at any time discharge any of them from service.

§ 13. STEWARD—HIS DUTIES.] The steward shall, under the direction of the trustees, make all purchases for the hospital where and in such manner as can be made on the best terms, keep the accounts, pay all employes and have personal superintendence of the farm. He shall take duplicate vouchers for all purchases made and for all wages paid by him, which he shall submit to the trustees at their regular meetings, for their examination and approval. Such settlement of accounts shall be made by the board of trustees in open session, and shall not be intrusted to a committee. The trustees shall, after examining and approving such vouchers, file one set with the auditor of this Territory. The books and papers of the steward shall be open at all times to the inspection of any one of the trustees, territorial officers, or members of the Legislative Assembly.

§ 14. HOSPITAL SEAL.] The board of trustees shall provide a seal, upon which shall be inscribed the name of the hospital, to-wit: "The Dakota Hospital for the Insane," with the name of the Territory, with such other words and devices as they may deem appropriate.

§ 15. TRUSTEES TO ADVERTISE FOR SUPPLIES QUARTERLY.] The board of trustees shall advertise quarterly for proposals for all supplies necessary for the patients and employes of the hospital, and shall award the contract to the lowest responsible bidder, reserving the right to reject any and all bids. The party to whom such contract shall be awarded shall give a bond, approved by the board of trustees, to the Territory of Dakota, for the use of the hospital, conditioned for the faithful performance of such contract.

§ 16. COUNTY COMMISSIONERS OF INSANITY. HOW APPOINTED.] In each organized county of this Territory there shall be a board of commissioners, consisting of three persons, to be styled "Commissioners of Insanity," two of whom shall constitute a quorum. The judge of probate shall be a member of said board and its chairman. The other two members shall be appointed by the board of county commissioners,

one of whom shall be a respectable practising physician, and the other a respectable practising attorney; and appointments shall be made of persons residing as near as may be to the county seat. Immediately on the taking effect of this act these appointments shall be made as provided in this section. One of these commissioners shall be appointed for one year; the other for two years. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent, who shall hold his office until his successor shall be appointed and qualify. In case of the temporary absence or inability to act of two of the commissioners, the judge of probate shall call to his aid a respectable practising physician or lawyer, who after qualifying as in other cases, may act in the same capacity. The record in such cases must show the fact of such absence.

§ 17. OATH OF COMMISSIONERS—ORGANIZATION AND MEETINGS.] Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath or affirmation to support the constitution of the United States and the Organic act of the Territory of Dakota, and to faithfully discharge their duties according to law as such commissioners, which obligation shall be filed with the clerk of said board who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number clerk of said board. They shall hold their meetings for business at the office of the judge of probate, unless for good reasons they shall fix on some other place. If they deem it necessary or advisable, they may hold sessions at such regular times as they may fix. They shall also meet on notice from the chairman of the board.

§ 18. DUTIES OF CHAIRMAN—BOOKS TO BE KEPT—NOTICES, ETC.] The chairman of the board shall sign and give or issue all notices, appointments, warrants, subpoenas, or other process required to be given or issued by the commissioners, affixing thereto his official seal as judge of probate. He shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports and other communications. He shall keep separate books in which to minute the proceedings of the board, and his entries shall be sufficiently

full to show, with the papers filed, a complete record of their findings, orders and transactions. The notices, reports and communications herein required to be given or made, may be sent by mail, unless otherwise expressed or implied, and the fact and date of such sending, and of their reception, must be noted on the proper record.

§ 19. POWERS OF COMMISSIONERS. MAY ISSUE SUBPOENAS, ETC.] The said commissioners shall have cognizance of all applications for admission to the hospital, or for the safe keeping otherwise of insane persons within their respective counties, excepting in cases otherwise specially provided for. For the purpose of discharging the duties required of them, they shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act of a court necessary and proper in the premises.

§ 20. ADMISSION TO HOSPITAL. INFORMATION TO BE FILED.] Application for admission to the hospital must be made in writing in the nature of an information verified by affidavit. Such information must allege that the person on whose behalf the application is made is believed by the informant to be insane and a fit subject for custody and treatment in the hospital; that such person is found in the county and has a legal settlement therein, if such is known to be the fact; and if such settlement is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject.

§ 21. SAME. PROCEEDINGS OF COMMISSIONERS.] On the filing of an information as above provided, the commissioners shall at once take steps to investigate the grounds of the information. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his or her presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation shall be concluded. Such warrant may be executed by the sheriff or any constable in the county, or if they shall be of opinion from such preliminary inquiries as they shall make, and in making which they shall take the testimony of the informant, if they deem necessary or desirable, and of other witnesses, if offered, that such course would probably be injurious to such

person, or attended with no advantages, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if any is offered. Any citizen of the county, or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practising physician of the county to visit or see such person and make a personal examination touching the truth of the allegation in the information, and touching the actual condition of such person, and forthwith report to them thereon. Such physician may or may not be of their own number, and the physician so appointed and acting, shall certify under his own hand that he has, in pursuance of his appointment, made a careful personal examination as required, and that on such examination he finds the person in question, insane, if such be the fact, and if otherwise, not insane; and in connection with his examination the said physician shall endeavor to obtain from the relative of the person in question or from others who know the facts, correct answers, so far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogations and answers shall be attached to his certificate.

§ 22. SAME. HOW PATIENT TO BE SENT TO HOSPITAL.] On the return of the physician's certificate the commissioners shall, as soon as practicable conclude their investigations, and having done so, they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county, and if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his or her discharge if in custody. If they find such person insane, and a fit subject for treatment and custody in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding, with the settlement of the person, if found; and if not found, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Such warrant and duplicate, with the find-

ing and certificate of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him or her, with such duplicate and physician's certificate and finding to the superintendent thereof. The superintendent, over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners with his cost and expenses indorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath or affirmation faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff or any other person so appointed, may take to his aid such assistance as he may need to execute such warrant; but no female person shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgment of delivery must state whether there was any such person in attendance, and give the name or names if any. It is, however, hereby provided that if any relative or intimate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant, in preference to the sheriff or any other person, and without taking such oath or affirmation, and for so doing he shall be entitled to his necessary expenses, but no fees.

§ 23. CARE OF PATIENTS TO BE IMPARTIAL, EXCEPT IN CERTAIN CASES.] All patients in the hospital shall be regarded as standing on an equal footing; and the several patients according to their different conditions of mind and body and their respective needs shall be provided for and treated with equal care: *Provided*, That if the relatives or immediate friends of any patient shall desire it and pay the expenses thereof, such patient may have special care and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases the charges for such special care and attendance shall be paid quarterly in advance.

§ 24. RELATIVES OF PATIENT MAY PAY EXPENSES.] The relatives or friends of any patient in the hospital shall have the privi-

lege of paying any portion or all of the expenses of such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid.

§ 25. DISPOSITION OF INSANE PERSON WHEN ACCOMMODATIONS OF HOSPITAL ARE INSUFFICIENT.] If in the case of any persons found to be insane and fit subjects for custody and treatment in the hospital as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein, and they cannot with safety be allowed to go at liberty, the commissioners shall require that such patient shall be suitably provided for otherwise, until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as public or private patients. Those shall be treated as private patients whose relatives or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person a special custodian, who shall have authority and whose duty it shall be, in all suitable ways, to restrain, protect and care for such patient in such manner as to best secure his or her safety and comfort, and in such manner as to best protect the persons and property of others. In the case of public patients the commissioners shall require that they be in like manner restrained, protected and cared for by the commissioners of the county, or overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such commissioners of the county, or overseers of the poor, who shall forthwith comply with the same. If there is no poor house for the reception of such patients, or if no more suitable place can be found, they may be confined in the county jail in charge of the sheriff. Or said commissioners in their discretion may require that such patients be taken to the asylum of any state that may be designated by the governor who is hereby authorized and empowered to make the best terms he can with the authorities of any asylum in any state for the admission of such patient or patients.

§ 26. INSANE PERSONS MAY BE CARED FOR BY COUNTY.] On application to the commissioners on behalf of persons alleged to be insane, and whose admission to the hospital is not

sought, made substantially in the manner above prescribed, and asking that provisions be made for their care as insane, either public or private, within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their care, protection and restraint as in the case of other applications.

§ 27. COMMISSIONERS SHALL PROVIDE FOR INSANE PERSON SUFFERING FOR PROPER CARE.] On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded, they shall make all needful provision for the care of such person as provided in other cases.

§ 28. INSANE, NOT TO BE RESTRAINED OF LIBERTY EXCEPT BY PROPER AUTHORITY.] No person supposed to be insane shall be restrained of his or her liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and such brief period as may be necessary for the safety of persons and property, until such authority can be obtained.

§ 29. PENALTY FOR CRUELTY TO INSANE.] Any person having care of an insane person and restraining such person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable to an action for damages.

§ 30. INSANE WHO HAVE BEEN UNDER COUNTY CARE, MAY BE TRANSFERRED.] Insane persons who shall have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may on application to that effect, be transferred to the hospital, whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest at any time within six months after the inquest already had, unless the commissioners shall deem further inquest advisable.

§ 31. QUESTIONS TO BE ANSWERED ON APPLICATION FOR ADMISSION TO HOSPITAL.] In each case of application for admission to the hospital, correct answers to the following interrogations, so far as they can be obtained, shall accompany the physi-

cian's certificate; and if on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected:

1st. What is the patient's name? Married or single? If any children, how many? Age of youngest child, and age of patient?

2d. Where was the patient born?

3d. Where is his or her place of residence?

4th. What has been the patient's occupation?

5th. Is this the first attack? If not, when did others occur, and what was their duration?

6th. When was the first symptoms of this attack manifested, and in what way?

7th. Does the disease appear to be increasing, decreasing, or stationary?

8th. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?

9th. On what subject or in what way is derangement now manifested? State fully.

10th. Has the patient shown any disposition to injure others?

11th. Has suicide ever been attempted? If so, in what way? Is the propensity now active?

12th. Is there a disposition to filthy habits, destruction of clothing, breaking glass, etc?

13th. What relatives, including grand parents and cousins have been insane?

14th. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits, before the accession of the disease? Any predominant passion, religious impressions, etc?

15th. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharges of sores, or ever had an injury of the head?

16th. Was the patient ever addicted to intemperance in any form?

17th. Has restraint or confinement been employed? If so, what kind and how long?

18th. What is supposed to be the cause of the disease?

19th. What treatment has been pursued for the relief of the patient? Mention particulars and the effect.

20th. State any other matter supposed to have any bearing on the case.

§ 32. PREFERENCE TO BE GIVEN IN RECEIVING PATIENTS.] If at any time it may become necessary for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1st. Recent cases, *i. e.*, cases of less than one year's duration.

2d. Chronic cases, *i. e.*, when the disease is of more than one year's duration, presenting the most favorable prospects for recovery, shall be next preferred.

3d. Those for whom application has been longest on file, other things being equal, shall be next preferred.

4th. When cases are equally meritorious in all other respects, the indigent are to be preferred.

§ 33. PROCEEDINGS TO RELEASE PATIENT ALLEGED TO BE NOT INSANE.] On a statement in writing, verified by affidavit, addressed to the judge of probate of the county in which the hospital is situated, or of the county in which any certain persons confined in the hospital has his or her legal settlement, alleging that such person is not insane and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them, they shall proceed to the hospital, and have a personal interview with such person, so managed as to prevent him or her, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the judge of probate, making the appointment, the result of their examinations and inquiries. Such report shall be accompanied by a statement of the case and signed by the superintendent. If no such report and statement, and the

hearing of the testimony, if any is offered, the judge of probate shall find the person not insane, he shall order his or her discharge. If on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge of probate, with the report and other papers, shall be filed in his office and entered on his records, and shall forthwith notify the superintendent of his finding and order, and the superintendent shall carry out the order. The commissioners appointed as provided in this section, shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by said judge of probate, and paid by the Territory out of any funds not otherwise appropriated: *Provided*, That the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order.

§ 34. SAME. SUCH PROCEEDING NOT TO BE REPEATED OFTENER THAN ONCE IN SIX MONTHS.] The commission so provided for shall not be repeated oftener than once in six months, in regard to the same party, nor shall such commission be appointed in case of any patient within six months of the time of his or her admission.

§ 35. INSANE PERSON ENTITLED TO HABEAS CORPUS.] All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time, whenever it shall be alleged that such person has been restored to reason.

§ 36. PROCEEDINGS WHERE PATIENT ESCAPES FROM HOSPITAL.] If any patient shall escape from the hospital the superintendent shall cause immediate search to be made for such patient, and if the patient cannot be found, he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs; and if such patient is found in the county, the commissioners shall cause him or her to be returned, and shall issue their warrant therefor as in other cases, unless the patient shall be discharged, or unless for good reasons they shall provide for his or her care otherwise, of which they shall notify the superintendent.

§ 37. DISCHARGE OF PATIENT WHEN CURED, OR WHEN INCURABLE.] Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty dollars (\$20), which shall be charged with the other expenses, in the hospital, of such patient. The relatives of any patient not susceptible of cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove such patient on consent of the board of trustees: *Provided*, That in the interim of the meetings of the board the consent of two of the trustees shall be sufficient.

§ 38. DISCHARGE OF PATIENT BEFORE CURE.] On application of the relatives or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county as in other cases, may authorize his or her discharge therefrom: *Provided*, That no patient who may be under charge or conviction of homicide shall be discharged without the order of the board of trustees.

§ 39. DISCHARGE OF PATIENTS WITHOUT APPLICATION.] When patients are discharged from the hospital by the authorities thereof, without application therefor, notice of the order of discharge shall at once be sent to the commissioners of insanity of the county where they belong, and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county, as in other cases, unless such patients are discharged as cured.

§ 40. LIABILITY OF ESTATES OF INSANE PERSONS FOR THEIR SUPPORT, ETC.] The provisions herein made for the support of the insane at public charge shall not be construed to release the estates of such persons, nor their relatives, from liability for their support, and the commissioners of the several counties are authorized and empowered to collect from the property of such patients, or from any person or persons legally bound for their support, any sums paid by the county in their behalf as herein provided, and the certificate from the superintendent, and the notice from the auditor of the Territory

stating the sums charged in such cases, shall be presumptive evidence of the correctness of the sum so stated. If the board of county commissioners, in the case of any insane person who has been supported at the expense of the county, shall deem it a hardship to compel the relatives of such person to bear the burden of his or her support, they may relieve the relatives from any part or all of such burden, as may seem to them reasonable and just.

§ 41. SALARY AND FEES—HOW AND BY WHOM PAID.] The commissioners of insanity shall be allowed at the rate of two dollars per day each for all the time actually employed in the duties of their office. The judge of probate, in addition to what he is entitled to as commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for such notice or process, given or issued under seal, as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for his personal service in conveying a patient to the hospital and returning therefrom, at the rate of three dollars per day for the time necessary and actually employed, and mileage the same as allowed in other cases, and for other service the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner, except those of sheriff, which shall be paid out of the territorial treasury in the usual manner. Whenever the commissioners of insanity issue their warrant for the admission of a person to the hospital, and funds to pay the expenses thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including necessary assistance, including the compensation allowed the sheriff, and on such estimate, certified by the clerk of the commissioners of insanity, the auditor of the Territory shall audit the account and shall issue his order on the treasury of the territory in favor of the sheriff or other

person entrusted with the execution of such warrant. The sheriff or other person executing such warrant shall accompany said statement with a statement of the expenses incurred, and the excess or deficiency may by said auditor be deducted from or added to his compensation, as the case may be. If the funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the admission of such person or persons into the hospital. When the commissioners of insanity order the return of a patient, compensation and expenses shall in like manner be allowed and paid out of the territorial treasury.

§ 42. PENALTY WHEN OFFICER OR PERSON NEGLECTS DUTY.] Any officer required as herein to perform an act, and any person accepting an appointment under the provisions of this act, and willfully refusing or neglecting to perform his duty as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages.

§ 43. SUPERINTENDENT OF HOSPITAL NOT RESPONSIBLE FOR RECEPTION OF PATIENT. WHEN.] The warrant of the commissioners of insanity authorizing the admission of any person to the hospital as a patient accompanied by a physician's certificate as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind, on account of the reception and detention of such persons in the hospital: *Provided*, Such detention shall be otherwise in accordance with the laws and by-laws regulating its management.

§ 44. HOSPITAL SEAL TO BE AFFIXED.] The superintendent shall affix the seal of the hospital to any notice, order of discharge, report or other paper required to be given or issued by him.

§ 45. TERMS "INSANE" AND "IDIOT" DEFINED.] The term "insane" as used in this act includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot shall be admitted into the hospital for insane.

§ 46. TRUSTEES TO FURNISH BLANKS.] The trustees of the hospital shall provide for furnishing the commissioners of insanity of the counties entitled to send patients to the hospital with such blanks for warrants, certificates, etc., as will enable them

with regularity and facility to comply with the provisions of the law, and also with copies of the by-laws of the hospital when printed.

§ 47. PENALTY FOR USING CERTAIN LANDS AS BURYING GROUND.] That it shall be unlawful for any person or persons to use any portion of section 36, township 94, range 56, as a burying ground, or to bury any dead body thereon, and any person or persons violating or causing any other person to violate the provisions of this section shall be guilty of a misdemeanor.

§ 48. EXPENDITURES BEYOND APPROPRIATION FORBIDDEN.] That nothing in this act shall be construed to authorize the board of trustees to expend money under this bill unless an appropriation shall have been made therefor.

§ 49. All acts and parts of acts inconsistent with the above shall be and the same are hereby repealed.

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

Approved, February 15, 1879.

CHAPTER 24.

AN ACT to amend "An Act establishing the Dakota Hospital for the Insane," approved February 15, 1879.

Be it enacted by the Legislative Assembly of Dakota Territory:

§ 1. AMENDING SECTION SEVEN OF AN ACT ESTABLISHING INSANE HOSPITAL.] That section 7 of the act establishing the Dakota Hospital for the Insane, be amended by striking out the words where they occur therein, "and upon recommendation of such superintendent," and the words, "shall be appointed," where they occur therein.

§ 2. DUTY OF SUPERINTENDENT OF HOSPITAL FOR INSANE.] That section 12 shall be amended so as to read as follows: "§ 12.

The superintendent of the hospital shall be a physician of skill and ability in his profession. He shall be the chief executive of the hospital and shall hold his office during the pleasure of the board of trustees. He shall have the entire control of the medical, moral and dietetic treatment of the patients, and he shall report any neglect of duty on the part of the steward or employes of the institution to the board of trustees."

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

Approved, February 22, 1879.

CHAPTER 25.

AN ACT making an Appropriation to Reimburse the Governor of this Territory for money expended in constructing a Hospital for the Insane.

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

§ 1. APPROPRIATION TO REIMBURSE WILLIAM A. HOWARD.] There is hereby appropriated the sum of two thousand three hundred and eighty-six dollars and thirty cents to be paid to William A. Howard, governor of this territory, for money advanced by him in the erection of the Hospital for the Insane of this Territory.

§ 2. AUDITOR DIRECTED TO ISSUE WARRANTS. HOW PAYABLE.] The territorial auditor is hereby directed to issue to Governor Howard three territorial warrants in payment of the sum appropriated in the first section of this act; one for the sum of thirteen hundred and thirty-seven dollars and ten cents, payable in one year, and one for the sum of one thousand dollars payable in two years from the first day of February (1879), eighteen hundred and seventy nine, both bearing interest at the rate of ten per cent. per annum, which interest

shall be paid annually; and one for the sum of forty-nine dollars and twenty cents in payment and liquidation of the interest from the date of advances made by the governor, to the first day of February, eighteen hundred and seventy-nine, from which last date interest shall be calculated on the warrants herein provided to be issued in settlement of his claim.

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

Approved, February 10, 1879.

Intoxicating Liquors.

CHAPTER 26.

AN ACT to Regulate the Sale of Intoxicating Liquors.

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

§ 1. SELLING LIQUOR WITHOUT LICENSE UNLAWFUL.] It shall be unlawful for any person, by himself, by agent or otherwise, to sell in any quantities 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 premises where sold, or to sell such intoxicating liquors for any purpose in any quantities less than five gallons, without first having obtained a license and given a bond as hereinafter provided.

§ 2. LICENSE, HOW GRANTED AND FOR WHAT TIME.] All applications for a license to sell intoxicating liquors shall be made to the board of county commissioners, and shall be granted by said board if they deem it expedient, and the applicant a proper person to engage in the same; and no license shall

run for a longer period than one year without renewal, and not for a longer period than the first Monday of the January next ensuing the date of its issue.

§ 3. LICENSE FEE—AMOUNT OF—BOND AND SURETIES—CONDITIONS.] Before any license is issued the applicant shall produce the receipt of the county treasurer showing that he has paid into the county treasury the amount fixed by the board for such license, to be at the rate of not less than two hundred dollars, nor more than five hundred dollars per year, and execute and deliver to said board his bond to the Territory of Dakota, which bond shall be in the penal sum of five hundred dollars, with at least two good and sufficient sureties, who shall on oath justify in double the penal sum of the bond, to be approved by the board of county commissioners, which said sureties shall be residents of the county, conditioned that the person applying for the license shall keep a quiet and orderly house; that he will not permit any gambling in, upon or about the premises where the intoxicating liquors are sold, or in any adjoining room, building or premises or other place of popular resort connected with said premises where sold, and shall well and faithfully keep and observe the laws of the Territory and the provisions of any ordinances or regulations of the municipality where such business shall be conducted relating to the keeping of saloons, taverns, and the sale of intoxicating liquors, and shall close his place or house of business at the hour of eleven o'clock P. M. every night. All the conditions required to be included in the bond mentioned in this section shall form and constitute a part of every such bond without being expressed therein, or if only partially set forth or referred to therein, and no such bond shall be void upon the first recovery, but it may be sued and recovered upon from time to time as herein authorized, until the whole penalty is exhausted.

§ 4. SELLING TO HABITUAL DRUNKARD. HOW PREVENTED. PENALTY FOR.] Any wife, mother, father, son, daughter, sister or other relative of a person who is in the habit of getting intoxicated, or the county commissioners or the mayor of any city or other territorial, county or municipal officer, may make complaint to any justice of the peace of the county where such person resides or may be staying, alleging the name or

names of the person or persons from whom said person having such habit obtains his liquor, as such relative or such officer believes, and thereupon said justice of the peace shall without charge therefor issue a notice in writing to such person or persons so named, notifying him or them that no intoxicating liquors of any kind must be sold or given away by him or them, or at his or their place of business, to such person having such habit, and which notice must at once be served upon such person or persons as summons are served from justice courts, and after the service of such notice if any person or persons so notified shall sell, give away or permit any person at his place of business to sell or give away any intoxicating liquors to such person about whom he or they have received notice as aforesaid, his license to sell liquor shall from that time be deemed and held to be cancelled and annulled; and said person so selling or giving away shall be fined in any sum not less than one hundred dollars and not more than five hundred dollars, and be liable in a civil action at the suit of such relative to pay him, her or them the sum of five hundred dollars damages for each offense, and no property of any kind shall be exempt from payment of such fine or damages, except property absolutely exempted.

§ 5. LICENSE WHEN REVOKED.] When any person so licensed shall be convicted of a violation of any of the provisions of this chapter or of any of the penal statutes of this Territory relating to the sale of intoxicating liquors, or shall violate any of the conditions of said bond, the board of county commissioners may, and it is hereby made their duty to revoke such license, but such revocation shall not be construed to discharge such licensee or his sureties from liability on said bond for any damage sustained by, or right accrued, to any person prior to such revocation.

§ 6. CITY AND TOWN AUTHORITIES MAY GRANT LICENSE TO CERTAIN PARTIES.] It shall be competent and lawful for any incorporated village, town or city within the county where such bond is filed and license granted to prohibit the party so licensed as well as all others, from engaging in the business of selling intoxicating liquors to be drunk in, upon or about the premises where sold, within the corporate limits, until he shall obtain from the village, town or city authorities a

license, and pay into the village, town or city treasury such sum as may be fixed by ordinance, to be not less than fifty dollars, nor more than five hundred dollars: *Provided*, That no additional bond shall be required, nor shall any license be granted by the authorities of any such village, town or city to any one who has not filed the required bond with the board of county commissioners, and obtained from such board a license: *And provided further*, That no license granted by any such incorporated village, town or city shall run for a longer period than the license granted by such board; and the revocation of the county license by the board of county commissioners shall work a revocation of any license granted under the provisions of this section.

§ 7. POWER GIVEN TO BOTH COUNTY AND TOWN AUTHORITIES TO GRANT LICENSE.] 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 incorporated village, 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, town or village 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 any incorporated village, 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 the ordinances of such village, town or city.

§ 8. LIABILITY OF DEALER FOR INTOXICATION. LIABILITY OF INTOXICATED PERSON.] Every person who shall by the sale or giving away of intoxicating liquors, with or without a license, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person during the time that care or provisions are rendered necessary, by reason of such intoxication, which sum may be recovered in a civil action before the proper court; and any person getting intoxicated as herein mentioned shall be liable to a fine not less than five nor more than twenty-five dollars.

§ 9. LIABILITY OF COMMISSIONER FOR APPROVING INSUFFICIENT BOND.] Any county commissioner who shall knowingly ap-

prove any insufficient bond required by the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars.

§ 10. GIVING AWAY LIQUOR, ETC., IS SELLING WITHIN MEANING OF LAW.] The giving away of intoxicating liquor, or any other shift or device to evade the provisions of this chapter, shall be deemed and held to be an unlawful selling within the provisions of the same.

§ 11. PENALTY FOR VIOLATING THIS LAW.] Every person selling intoxicating liquors in violation of the provisions of this act, or without first having complied with the requirements of the same, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than three hundred dollars for each and every offense, or be imprisoned not exceeding sixty days in the county jail, or by both, in the discretion of the court.

§ 12. FINES, TO WHOM PAID. WHAT EXEMPT.] For the payment of all fines, costs, compensation and damages assessed against any person or persons in consequence of the sale of intoxicating liquors, and all fines collected under the provisions of this section, shall be paid over to the county treasurer to the credit of the school fund, as provided in this act, the real and personal property of such person or persons of every kind except property absolutely exempt from execution, where the party is the head of a family, shall be liable, and such fines, costs and damages shall be a lien upon such real property until paid, and all the furniture kept in the saloon or place of business, together with all liquors, glasses, bottles, kegs and barrels in the custody of any person selling intoxicating liquors, shall be liable to seizure and sale to pay any fine or judgment against such person so selling intoxicating liquors.

§ 13. DRUGGIST MAY SELL WITHOUT LICENSE, WHEN.] It shall be lawful for regular druggists to sell without license spirituous and vinous liquors for medicinal purposes, upon the written prescription of a physician having been in the continuous practice of medicine for the space of five years next preceding

the time of giving such written prescription, or holding a diploma from some regular medical college, who certifies in the said prescription that in his opinion as a physician the health of the party to whom the liquor is to be sold requires or would be promoted by the use of the particular kind of liquor prescribed. It shall also be lawful for such druggist to sell wines for sacramental purposes. It shall also be lawful for druggists to sell alcohol for mechanical purposes.

§ 14. SAME—MAY NOT PERMIT DRINKING ON PREMISES.] It shall be unlawful for druggists to sell spirituous, vinous or malt liquors to be drunk or to permit the same to be drunk in, upon or about the premises where sold or in any room or building connected therewith.

§ 15. SAME—PENALTY.] Any druggist violating the provisions of this act shall be guilty of a misdemeanor.

§ 16. PHYSICIAN—PENALTY FOR GIVING FALSE PRESCRIPTION.] Any physician who shall give a person or persons a prescription to obtain liquor from a druggist to enable such person or persons to evade the provisions of this act, shall be guilty of a misdemeanor.

§ 17. MINOR, UNLAWFUL TO SELL TO.] It shall be unlawful for any person or persons by agent or otherwise to sell or give away any spirituous, vinous or malt liquors to a minor or to a person who is intoxicated or who is in the habit of becoming intoxicated.

§ 18. COMPLAINTS—DUTY OF OFFICERS TO MAKE.] It is hereby made the duty of the district attorney, sheriff and all constables and all peace officers of the county or municipality, knowing of any violations of this act, to make complaint thereof to the grand jury of the next term of the district court of the county or judicial subdivision in which the offense may have been committed or to make complaint to a justice of the peace, who shall have power to bind over the offender to appear and answer at the next term of the district court.

§ 19. COUNTY CLERK TO DELIVER LIST OF LICENSED PERSONS TO GRAND JURY.] Every county clerk shall on the first day of the term of each district court deliver through the court to the grand jury an accurate list of all persons holding license under the provisions of this act within the county, which list

shall show the date and expiration of each license. Any violation of this provision of this section shall be punished by a fine of not less than five dollars nor more than fifty dollars for each and every offense.

§ 20. DUTY OF GRAND JURY.] It shall be the duty of the grand jury at each and every term of the district court in every county or judicial subdivision to make a strict inquiry and return bills of indictment against every person violating any of the provisions of this chapter.

§ 21. INTOXICATING LIQUORS DEFINED.] The words intoxicating liquors as used in this act shall be deemed and construed to include spirituous, vinous and malt liquors and all mixtures or preparations thereof including bitters that may be used as a beverage and produce intoxication.

§ 22. All acts and parts of acts in conflict with this act are hereby repealed.

§ 23. This act shall take effect and be in force after its passage and approval.

Approved, February 22, 1879.

Judicial Districts.

CHAPTER 27.

AN ACT to amend Chapter Thirteen of the Political Code, relating to the Subdivision of Judicial Districts.

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

§ 1. FIRST DISTRICT SUBDIVISIONS. COURTS WHEN HELD.] The first judicial district is subdivided as follows:

1. The counties of Pennington, Custer, and Forsyth constitute one subdivision, and the district court shall be held herein at the county seat of Pennington county on the second Tuesday of April and November of each year.

2. The county of Lawrence and all other portions of said first judicial district, not included in the preceding subdivision shall constitute one subdivision, and the district court shall be held therein at the county seat of Lawrence county on the first Tuesday of August and January of each year, and in addition thereto special terms shall be held at said county seat on the first Mondays of March, July and September.

§ 2. SECOND DISTRICT SUBDIVISIONS. COURTS WHEN HELD.] The second judicial district is subdivided as follows:

1. The county of Clay constitutes one subdivision, and the district court shall be held therein on the third Tuesday of January.

2. The county of Union constitutes one subdivision, and the district court shall be held therein on the second Tuesday of February and on the first Tuesday of September, and in addition thereto a special term shall be held on the second Monday of July.

3. The county of Lincoln constitutes one subdivision, and the district court shall be held therein on the first Tuesday of December and June: *Provided, however,* That the June term shall not be held except upon order of the county commissioners of said county.

4. The counties of Minnehaha, McCook and Lake constitute one subdivision, and the district court shall be held therein on the second Tuesday in June and December in each year, at the county seat of Minnehaha: *Provided, however,* That the December term shall not be held except upon order of the county commissioners of said county of Minnehaha.

5. The county of Moody constitutes one subdivision, and the district court shall be held therein on the third Tuesday of June.

6. The counties of Brookings and Wood shall constitute one subdivision, and the district court shall be held therein at the county seat of Brookings county, on the Thursday next succeeding the third Tuesday of June: *Provided, however,*

That such term shall not be held except upon order of the county commissioners of said county of Brookings.

7. The county of Turner constitutes one subdivision, and the district court shall be held therein on the fourth Tuesday of June.

8. The county of Bon Homme constitutes one subdivision, and the district court shall be held therein on the second Tuesday of March and September.

9. The counties of Hutchinson, Armstrong, Hanson and Davison constitute one subdivision, and one term of the district court shall be held therein each year, at such time at Olivet, the county seat of Hutchinson county, as the judge shall appoint.

10. The county of Yankton and all other portions of said second judicial district not included in any of the preceding subdivisions, constitute one subdivision, and the district court shall be held therein at the county seat of Yankton county, on the first Tuesdays of April and November; and in addition thereto special terms shall be held at said county seat on the first Mondays of January, March, May and July; and the district court for the second judicial district exercising the powers appertaining to the district and circuit courts of the United States shall be held at Yankton on the first Tuesdays of April and November of each year.

§ 3. THIRD DISTRICT SUBDIVISIONS. COURTS WHEN HELD.] The third judicial district is subdivided as follows:

1. The counties of Cass, Stutsman, Barnes, Richland, Ransom, Lamoure, Trail, Foster and Ramsey constitute one subdivision, and the district court shall be held therein at the county seat of Cass county on the first Tuesdays of June and December in each year.

2. The county of Grand Forks constitutes one subdivision, and the district court shall be held therein at the county seat of said Grand Forks county, on the third Tuesday of September in each year.

3. The counties of Pembina and Cavalier constitute one subdivision, and the district court shall be held therein at the county seat of Pembina county, on the first Tuesday after the third Thursday in September in each year.

4. The counties of Hamlin and Codington constitute one subdivision, and the district court shall be held therein on the first Thursday after the third Tuesday of October in each year: *Provided*, That no court shall be held in this subdivision except upon the order of the county commissioners.

5. The counties of Grant and Deuel constitute one subdivision, and the district court shall be held therein at the county seat of Deuel county on the third Tuesday of October in each year.

6. All the remaining portions of said third judicial district constitute one subdivision, and the district court therein shall be held at the county seat of Burleigh county on the first Thursdays of April and September in each year.

§ 4. COURTS, WHERE HELD IN CERTAIN CASES.] The terms of the district courts for subdivisions composed of a single county only, shall be held at their respective county seats.

§ 5. POWER OF JUDGES.] The judges of the district courts respectively 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 as herein provided, and shall itself constitute a subdivision; and the district courts shall be therein held at the times provided in such order.

§ 6. WHAT SHERIFF TO EXECUTE PROCESS.] In subdivisions composed of two or more counties, the sheriff of the county where the court is held shall have authority to execute all proper process in any county or other place embraced within such subdivision, the same as if such subdivision were composed of his county only.

§ 7. EXPENSES, HOW PAID.] For the purpose of paying the expenses of holding courts in those subdivisions composed of two or more counties, the county clerks of the organized counties therein shall, annually, as soon as the assessment roll is received, transmit to the clerk of the court of that county wherein 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 the clerk thereof shall, under the supervision of the judge, calculate the ex-

penses 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 certify to the boards of county commissioners of the respective counties, accounts for such proportionate amounts, and in favor of the persons to whom such expenses shall be due, which accounts shall be audited and allowed and warrants issued accordingly, in like manner as other claims against the county.

§ 8. WHERE COUNTY FAILS TO FURNISH ASSESSMENT ROLL JUDGE MAY MAKE ASSESSMENTS.] If any county shall fail to furnish a statement of the amount of its assessment roll, or if no assessment shall be made therein, the judge of the district court may fix the proportionate amount of the expenses of the court which [each] county shall pay, and may at any time by mandamus, compel the assessment, and levy of a tax, or the doing of any other act necessary to carry out the provisions of this chapter.

§ 9. JUDGE MAY APPOINT ADDITIONAL TERMS OF COURT.] The judges of the district courts respectively, shall have power whenever thereunto requested by the board of commissioners of the county wherein terms of court are regularly holden, or upon their own motion without such request 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 such additional terms shall in all respects be considered the same as the general terms provided in this act. The courts herein appointed shall continue as long as the business therein shall require.

§ 10. REPEALING CLAUSE.] All acts and parts of acts in conflict with this act are hereby repealed; and all acts and parts of acts fixing the terms of courts in the judicial subdivisions and defining the boundaries thereof, are hereby abrogated and annulled.

§ 11. This act shall take effect and be in force from and after its passage and approval.

Approved, February 22, 1879.

CHAPTER 28.

AN ACT defining the Boundaries of the First Judicial District and fixing the Terms of Court therein.

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

§ 1. BOUNDARIES OF FIRST JUDICIAL DISTRICT DEFINED.] That all that portion of the Territory of Dakota west of the right bank of the Missouri river, at low water mark, and south of the forty-sixth parallel of latitude, except the counties of Todd, Gregory, Lyman and Presho, and so much of Boseman county as lies south of Grand river, shall constitute the first judicial district, and the district court therein shall be held at Deadwood, the county seat of Lawrence county, on the first Tuesday of August and the third Tuesday of January in each year: *Provided, however,* That the first term of said court to be held on the first Tuesday of August, 1879, shall be held at Rapid City, in the county of Pennington, and all subsequent terms of said court shall be held at Deadwood, in the county of Lawrence.

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

Approved, February 21, 1879.

CHAPTER 29.

AN ACT to establish the Boundaries and fix the Terms of the Courts in the Second Judicial District.

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

§ 1. SECOND JUDICIAL DISTRICT DEFINED.] That all that portion of this Territory not embraced in the first and third judicial districts shall constitute the second judicial district.

§ 2. DISTRICT COURT, WHEN HELD.] That the district court in and for the second judicial district shall be held at Yankton, in Yankton county, on the first Tuesday of April and the first Tuesday of November in each year.

§ 3. ACTS REPEALED.] That all acts and parts of acts in conflict with this act be and the same are hereby repealed, and this act shall take effect from and after its passage.

Approved, February 21, 1879.

CHAPTER 30.

AN ACT defining the boundaries of the Third Judicial District and fixing the Terms of Court therein.

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

§ 1. BOUNDARIES OF THIRD JUDICIAL DISTRICT.] That all that portion of the Territory of Dakota, bounded and described as follows, viz: commencing at the southeast corner of Deuel county; thence along the south line of Deuel and Hamlin

counties to the southwest corner of Hamlin county; thence north along the west line of Hamlin and Codington counties to the northwest corner of Codington county; thence east to the west line of the Sisseton and Wahpeton Indian reservation; thence northerly along the west line thereof to its intersection with the 46th parallel of north latitude; thence west along said parallel to the right bank of the Missouri river, at low water mark; thence down along said 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 Ree river to its point of intersection with the one hundred and third meridian of west longitude; thence due west to the Little Missouri river to the western boundary of the Territory; thence north along the western boundary of the Territory to the northern boundary thereof; thence east along the northern boundary of said Territory to the northeast corner thereof; thence southerly along the eastern boundary to the place of beginning, constitutes the third judicial district.

§ 2. DISTRICT COURT, WHEN HELD.] The district court in and for the third judicial district shall be held at the city of Fargo, in the county of Cass, on the first Tuesdays in June and December in each year.

§ 3. JURISDICTION AND POWERS OF CERTAIN COURT.] The district court in and for the county of Cass shall have and exercise the powers and jurisdiction appertaining to the district and circuit courts of the United States in and for the several judicial districts in which they are respectively located.

§ 4. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

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

Approved, February 21, 1879.

Justices of the Peace.

CHAPTER 31.

AN ACT to amend Section Ninety, Ninety-one and Ninety-two of Justices' Code.

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

§ 1. PROCEEDINGS IN CASE OF APPEAL TO DISTRICT COURT.] That section ninety of the Justices' Code be and hereby is amended so as to read as follows: "§ 90. When a party appeals to the district court on questions of law alone, or desiring a review therein, upon the evidence appearing on the trial below, either of questions of fact or law, he must, within ten days from the rendition of judgment prepare a statement of the case and file the same with the justice. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the justice, and if no amendments be filed the original statement stands as adopted. The statement thus adopted or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial and the notice of appeal, may be used on the hearing of the appeal before the district court."

§ 2. WHEN ACTION TO BE TRIED ANEW IN DISTRICT COURT.] That section ninety-one of the Justices' Code be and hereby is amended so as to read as follows: "§ 91. When a party appeals to the district court on questions of fact, or on questions of both law and fact, and demands in his notice of ap-

peal a new trial in the district court, no statement must be made, but the action must be tried anew in that court.”

§ 3. DUTY OF JUSTICE IN CASE OF APPEAL.] That section ninety-two of the Justices' Code be and hereby is amended, so as to read as follows: “§ 92. Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district if the appeal be on questions of fact or both law and fact, and a new trial in the district court be demanded in the notice of appeal, a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal and the undertaking filed; in all other cases a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered, upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justices' court.”

Approved, February 22, 1879.

CHAPTER 32.

AN ACT to amend Sections Eight and Ninety-two of the Justices' Code.

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

§ 1. PROCEEDINGS WHERE ORDER TRANSFERRING ACTION HAS BEEN MADE.] That section eight of the Justices' Code is amended to read as follows: “§ 8. After an order has been made transferring the action for trial to another court the following proceedings must be had:

“1. The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of one dollar for the transcript, all the papers in the action, together with a certified transcript from his docket of the proceedings therein.

“2. Upon the receipt by him of such papers the justice of the court to which the case is transferred must issue a notice stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial, unless such notice be waived by consent of parties and such consent be entered on the docket of the justice.”

§ 2. DUTY OF JUSTICE ON RECEIVING NOTICE OF APPEAL.] That section ninety-two of the Justices' Code is amended to read as follows: “§ 92. Upon receiving the notice of appeal, and on payment of one dollar for the return of the justice, and filing and undertaking as required in the next section, and after settlement or adoption of statement, if any, the justice must within five days transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal and the undertaking filed; or if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.”

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

Approved, February 14, 1879.

CHAPTER 33.

AN ACT to amend Section Fifty-six of the Justice Code.

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

§ 1. WHEN EITHER PARTY MAY DEMAND JURY. PROCEEDINGS.] That section fifty-six of the Justices' Code is amended to read as follows: " § 56. When the value in controversy or sum demanded exceeds twenty dollars, either party may demand a jury, and upon such demand the justice shall 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, the plaintiff beginning, 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 such list such names; and the justice shall upon the deposit of the jury fee for one day's service, by the party demanding the jury, 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."

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

Approved, February 12, 1879.

CHAPTER 34.

AN ACT increasing the Number of Justices of the Peace and Constables in the Counties of Lawrence, Pennington, Custer, Grand Forks and Burleigh, and Providing for the Election thereof.

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

§ 1. EACH ELECTION PRECINCT ENTITLED TO JUSTICE AND CONSTABLE.] Hereafter every election precinct in the counties of Lawrence, Pennington, Custer, Grand Forks and Burleigh in this Territory shall be entitled to one justice of the peace and one constable, each of whom shall reside and hold his office in the precinct for which he may be elected; and upon the removal of any justice of the peace or constable from such precinct or his attempt to hold his office in any other precinct the board of county commissioners of the county upon due proof thereof, shall declare such office vacant and immediately provide for a special election in each precinct to fill said vacancy.

§ 2. WHEN COUNTY COMMISSIONERS MAY CALL SPECIAL ELECTION.] The board of county commissioners of each of said counties may at any meeting thereof, when satisfied by petition from the residents of any election precinct or otherwise, that a justice of the peace and constable, or either, should be elected therein, they shall immediately call a special election for that purpose in such precinct, and hereafter no votes shall be counted in any election for justice of the peace and constable or either of them, except votes actually polled in the precinct in which said offices are to be held; and the same notice shall be given and like proceedings had in every respect in all special elections held under this act as provided in the election laws of this Territory.

§ 3. TENURE AND JURISDICTION OF OFFICE OF OFFICERS NOW HOLDING.] Every justice of the peace and constable elected at the general election held in each of said counties in the year 1878, shall perform the duties of their offices in the precincts

in which they may be holding the same at the time of the passage of this act, until the general election in the year 1880; and no other justice or constable shall be elected in any such precinct until said election, except in case of a vacancy: *Provided*, That the jurisdiction of said officers, as well as all justices of the peace and constables hereafter elected in each of said counties shall extend over any part of the county in which they are holding such offices.

§ 4. THIS ACT TO APPLY TO COUNTIES NAMED.] This act shall only apply to and be in force in the said counties of Lawrence, Pennington, Custer, Grand Forks and Burleigh.

§ 5. All acts or parts of acts inconsistent with this act are hereby repealed.

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

Approved, February 10, 1879.

CHAPTER 35.

AN ACT to amend Section Three Hundred and Eight and Five Hundred and Eighty-five of the Penal Code.

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

§ 1. PENALTY FOR ASSAULT AND BATTERY.] That section 308 of the Penal Code be amended to read as follows: "Assault, or assault and battery shall be punishable by imprisonment in a county jail not exceeding thirty days, or by a fine of not less than five dollars or more than one hundred dollars, or both, at the discretion of the court."

§ 2. PENALTY FOR PETIT LARCENY.] That petit larceny shall be punishable by a fine of not less than ten dollars or more than one hundred dollars, or imprisonment in the county jail

not to exceed thirty days, or by both such fine and imprisonment, at the discretion of the court.

§ 3. JUSTICES TO HAVE JURISDICTION.] That justices of the peace shall have jurisdiction to fine and imprison in all cases arising under the provisions of this act, and may try and determine the same, subject to appeal by defendant as in other cases.

§ 4. That all acts and parts of acts conflicting with the provisions of this act are hereby repealed.

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

JOHN R. JACKSON,

Speaker of the House.

GEO. H. WALSH,

President of the Council.

COUNCIL CHAMBER, February 19, 1879.

I certify that this act, known in the records of the Council as Council bill No. 44, has passed both Houses of the Legislative Assembly of Dakota Territory, at the 13th session thereof, the objections of his excellency the Governor to the contrary notwithstanding, by the necessary majority of two-thirds.

ALBERT O. HUBBARD,

Chief Clerk of the Council.

Note by the Secretary.

The foregoing act, together with the certificate of the chief clerk of the Council and House of Representatives attached, was deposited in the office of the Secretary of the Territory on the 20th day of February, and afterwards and on the 22d day of February, 1879, at 7 o'clock P. M. of said day, the following certificate relating to said act was deposited in the Secretary's office by the enrollment committee of the Council:

COUNCIL CHAMBER, YANKTON, D. T. }
 SATURDAY, February 22, 1879. }

I hereby certify that in the Council of the 13th session of the Legislative Assembly of the Territory of Dakota, begun and held at Yankton, D. T., on the 14th day of January, A. D. 1879, there was introduced by M. H. Day, member of the Council from the Fourth Council and Representative district a bill known in the records as Council bill No. 44, and entitled "A bill for an act to amend sections 308 and 585 of the Penal Code," which said bill was introduced in the Council on the 29th day of January, 1879, had its three several readings

and was passed by the Council on the 3d day of February, and as I verily believe, and as the records of the Council show, was passed by the House of Representatives, and returned to the Council on the 8th day of February, 1879, and the bill was presented to his excellency the Governor for his approval at 12 o'clock, noon, on the 13th day of February; was returned to the Council by him without his approval and with his objections thereto, which were entered at large on the journal of the Council; and on the 18th day of February the objections of the Governor having been duly considered, and the question being, "Shall the bill pass, his objections to the contrary notwithstanding?" the bill was so passed by the necessary two-thirds vote; and on the 19th day of February the said bill was passed by the House of Representatives over the veto of the Governor by a two-thirds vote, and was deposited with the Secretary of the Territory at 10 o'clock A. M., February 20, 1879; and this I know, as far as the transactions in the Council are concerned, of my own knowledge, and as far as the transactions in the House of Representatives are concerned, to the best of my knowledge and belief.

Attest:

ALBERT O. HUBBARD,
Chief Clerk.

GEO. H. WALSH,
President of the Council.

I hereby certify that I have read the above statement, and know of my own knowledge that the statements therein made, as far as they refer to the House of Representatives, are true and correct, and as far as they refer to the Council, are true and correct to the best of my belief.

Attest:

T. A. KINGSBURY,
Chief Clerk.

JOHN R. JACKSON,
Speaker of the House.

Labor of Convicts.

CHAPTER 36.

AN ACT to amend Section Six Hundred and Forty of the Code of Criminal Procedure.

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

§ 1. SHERIFF MAY EMPLOY CONVICT LABOR OUTSIDE OF PRISON.] That section six hundred and forty of the Code of Criminal Procedure is amended by adding at the end of said section, the following: "And the said sheriff, if in his opinion the said convict can be more profitably employed outside of said jail or yard, either for the county or for any municipality in said county, it shall be his duty to so employ said convict either in work on public streets or highways or otherwise, and in so doing he shall take all necessary precaution to prevent said convicts escape, by ball and chain or otherwise, and fifty per cent. of the profits of such employment, after paying all expenses incident thereto, may be retained by said sheriff as his fees therefor, the balance to be paid into the treasury of the proper county to the credit of the general fund; and when a convict is imprisoned in the county jail for non-payment of a fine he may be employed by said sheriff as provided in this act, or as provided in said section 640; and in case any convict employed outside of the jail yard shall escape, he shall be deemed as having escaped from the jail proper.

§ 2. COURT MAY SENTENCE TO HARD LABOR.] Any court, justice of the peace, police court or police magistrate, in cases where such courts have jurisdiction under the laws of this Territory, or as provided by the ordinances or charter of any incorporated town or city in the Territory, shall have full power and authority to sentence such convict to hard labor as provided in said section six hundred and forty, or as provided in this act.

§ 3. WHEN MARSHAL SHALL SUPERINTEND LABOR.] When the imprisonment is pursuant to the judgment of any court, police court, police magistrate of an incorporated city or town for the violation of any ordinance, by law, or other regulation, the marshal shall superintend the performance of the labor herein contemplated, and shall furnish the tools and materials, if necessary, at the expense of the city or town requiring the labor, and such city or town shall be entitled to the earnings of its convicts.

§ 4. OFFICER MAY PUNISH CONVICT FOR CAUSE.] The officer having charge of any convict for the purpose specified in this chapter may use such means as, and no more, than are necessary to prevent escape, and if any convict attempt to escape either while going from or returning to the jail, or while at labor, or at any time, or if he refuse to labor, the officer having him in charge, after due inquiry, may, to secure such person or to cause him to labor, use the means authorized by section eight of this act: *Provided*, Such punishment shall all be inflicted within the jail or jail enclosure for refusal to work, and shall not be considered as any part of the time for which the prisoner is sentenced.

§ 5. CONVICT'S CREDIT FOR LABOR.] For every day's labor performed by any convict under the provisions thereof, there shall be credited on any judgment for fine and costs against him the sum of two dollars.

§ 6. PENALTY FOR CRUELTY TO CONVICT.] If any officer or other person treat any prisoner in a cruel or inhuman manner, he shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

§ 7. PENALTY FOR ANNOYING CONVICT.] The officer having such prisoner in charge shall protect him from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and he may use such means as are necessary and proper therefor; and any person persisting in insulting and annoying, or communicating with any prisoner after being first commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days.

§ 8. PUNISHMENT OF CONVICT FOR DISORDERLY CONDUCT.] If any person, confined in any jail upon a conviction or charge of any offense, is refractory or disorderly, or if he willfully destroy or injure any article of bedding or other furniture, door or window, or any other part of such prison, the sheriff of the county, after due inquiry, may chain and secure such person or cause him to be kept in solitary confinement not more than three days for any one offense; and during such solitary confinement he may be fed with bread and water only, unless other food is necessary for the preservation of his health.

§ 9. This act shall take effect and be in force from and after its passage and approval.

Approved, February 22, 1879.

Laws.

CHAPTER 37.

AN ACT to amend Section Four (4), of Chapter Three (3) of the Political Code.

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

§ 1. WHO MAY RECEIVE COPY.] That section four (4) of chapter three (3) of the Political Code is hereby amended so as to read as follows: "§ 4. The following named officers of this Territory and of the counties therein, and none other, shall be entitled to receive, without cost to the person holding such office, one copy each of the printed volumes of the session laws hereafter published, 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 the district 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 librarian of the historical society of Dakota Territory; each district attorney; each judge of the probate court; each sheriff; each register of deeds; each county treasurer; each justice of the peace; each coroner; each county superintendent of public schools; each assessor; each member of the board of county commissioners; each chairman of the board of supervisors of any civil townships in this Territory; each township clerk; and one copy to each library association organized for the benefit of the public in any county or town in this Territory; each township treasurer; and one to each member and officer of the Legislative Assembly of the session of which he was a member or officer."

§ 2. LAWS TO REMAIN PROPERTY OF TERRITORY.] The session laws as furnished under the provisions of this act shall remain the property of the Territory of Dakota, except those furnished to the members and officers of the Legislature; and upon the expiration of their several terms of office, such officers shall turn over all such laws to successors in office.

§ 3. All acts in conflict with this are hereby repealed.

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

Approved, February 21, 1879.

Library.

CHAPTER 38.

AN ACT providing for the Expenses of the Territorial Library.

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

§ 1. APPROPRIATION FOR RENT.] There is hereby *appointed* [appropriated] the sum of two hundred dollars, annually, commencing with the first day of July, 1878, out of any moneys in the territorial treasury, not otherwise appropriated, to pay for rent of rooms for the territorial library.

§ 2. APPROPRIATION FOR CARE OF.] The sum of two hundred and fifty dollars, annually, is hereby appropriated out of any money in the territorial treasury, not otherwise appropriated, as compensation to the custodian of said library for care and custody of the same.

§ 3. TO REIMBURSE LIBRARIAN.] There is hereby appropriated out of any moneys in the territorial treasury, not otherwise appropriated, the sum of twenty-three dollars and seventy-five cents to reimburse Geo. H. Hand for money expended by him for shelving for said territorial library.

§ 4. APPROPRIATION FOR INSURANCE.] There is hereby appropriated the sum of seventy-five dollars to insure the territorial library for the period of two years.

§ 5. Section two of chapter nine of the Political Code, is hereby repealed.

Approved, February 21, 1879.

Legislative Assembly.

CHAPTER 39.

(ASSISTANT CLERKS.)

AN ACT to employ Assistant Clerks and to Provide Compensation for the Same.

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

§ 1. CLERKS TO BE ELECTED—COMPENSATION.] That there shall be elected one assistant clerk for each branch of this Legislative Assembly, who shall each receive the sum of four dollars per day for such services.

§ 2. APPROPRIATION.] That the sum of three hundred and twenty dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the territorial treasury, not otherwise appropriated, for the compensation of such clerks.

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

Approved, January 24, 1879.

CHAPTER 40.

(ASSISTANT CLERKS.)

AN ACT to Provide the Amount of time for which the Assistant Clerks of the Council and House of Representatives of the Legislative Assembly shall be paid for.

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

[§ 1.] TIME FOR WHICH CLERKS SHALL BE PAID.] That the assistant clerks of this Legislative Assembly shall be allowed compensation for forty days' services.

Approved, February 20, 1879.

Liens.

CHAPTER 41.

AN ACT to create a Lien for Miners and Laborers, in Certain Cases.

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

§ 1. MINER TO HAVE LIEN UPON MINE FOR WORK DONE OR MATERIAL FURNISHED.] That every miner or other person who, at the request of the owner or owners, or his or their agents of any lode, lead, ledge, mine or deposit bearing gold, cinnabar or copper, or of any coal bank or mine, or at the request of any contractor or sub-contractor, shall perform any labor whatever on said mine, or furnish any timber, rope, nails or

any other materials for timbering shafts or levels for the mine owned by such owner or owners, or who shall furnish any kind of materials for erecting any windlass, whims, or any other hoisting apparatus or machinery, or for any car track, cars, tunnels, drifts or openings thereon, or shall perform any labor on any tunnel, shall have a lien upon such lode, lead, ledge, mine, deposit, bank or tunnel to secure the payment of the same.

§ 2. WHEN LABOR IS PERFORMED FOR CONTRACTOR, OWNER TO PAY, WHEN.] Every miner or other person doing and performing any work or furnishing any materials as specified in section one of this act under a contract, either express or implied, between the owner or owners of any mine, or his or their agent, and any contractor working on such mine whether such work shall be performed or materials furnished as miner, laborer or otherwise, whose demand for work so performed or materials so furnished has not been paid, may deliver to the owner or owners of such mine or tunnel, or to his or their agent or superintendent an attested account of the amount and value of the work and labor thus performed, or of the materials thus furnished and remaining unpaid, and thereupon such owner or owners or his or their agent, shall retain out of the first subsequent payments to such contractor the amount so due for such work and labor, or materials furnished for the benefit of the person so performing or purchasing the same.

§ 3. DUTY OF OWNER, WHEN ACCOUNT FOR LABOR IS PRESENTED.] Whenever any account for labor performed or materials furnished as specified in the last preceding section shall be placed in the hands of the owner or owners of any mine or tunnel or his or their agent, it shall be the duty of such owner or owners or agent, to furnish such contractor with a copy of such papers so that if there be any disagreement between such contractor or his sub contractor and the creditor of either, as the case may be, they may by amicable adjustment or by arbitration ascertain the sum due, if any; and if such contractor or sub contractor shall not within ten days after the receipt of such papers give such owner or owners or agent written notice that he intends to dispute the claim, or if ten days after giving such notice he shall refuse or neglect to have

the matter adjusted as aforesaid, he shall be considered as assenting thereto; and such owner or owners or agent may pay the same when it becomes due, and for that purpose may deduct the amount out of any moneys due such contractor, who may in like manner deduct such amount from any moneys due by him to his sub-contractor in case such account or demand is against such sub-contractor for work and labor performed or materials furnished as aforesaid.

§ 4. AMOUNT DUE FROM CONTRACTOR MAY BE RECOVERED, HOW.] The amount which may be due from any contractor to his creditor may be recovered from said owner or owners by the creditor of said contractor in any action at law to the extent in value of any balance due by the owner or owners to his or their contractor under the contract with him, at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same.

§ 5. PERSON ENTITLED TO LIEN TO MAKE ITEMIZED STATEMENT AND FILE SAME.] Any person entitled to a lien under this act shall make an account in writing of the items of labor, skill, machinery and material furnished as the case may be, and after making oath thereto shall within sixty days from the time of completing such labor and skill, or furnishing the last item of machinery or materials, file the same in the office of the clerk of the district court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank or tunnel may be situated, for or upon which such labor, skill, machinery, or materials shall have been furnished; and also file at the same time a correct description of the property to be charged with said lien, which account and description so made and filed shall be recorded in a separate book to be provided for that purpose by such clerk of court, and thereupon the same shall from the time of the completion of the work or furnishing the last item of machinery or materials, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same or a copy thereof shall be filed with said account and description: *Provided*, That all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid *pro rata* out of

proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale.

§ 6. HOLDER OF LIEN MAY OBTAIN JUDGMENT.] Any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced thereon such lien shall continue until said suit or suits be finally determined and satisfied; and in all actions instituted under this act, all persons claiming liens upon the property charged shall be made parties to such action or proceeding, and the rights of all parties therein shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all such parties under the provisions of this act.

§ 7. WHEN LIEN IS PAID, SATISFACTION THEREOF SHALL BE ENTERED.] Any person who shall have filed his account and perfected his lien under the provisions of this act, shall have received satisfaction of his claim or demand, and the legal cost of his proceedings thereunder, he shall upon the request of any person interested and within six days after such request, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same; and if any person holding a lien as aforesaid shall receive satisfaction as hereinbefore specified, or having been tendered the amount due on his claim or demand with legal costs, shall not within six days after receiving such satisfaction or tender of payment, enter satisfaction as aforesaid, he shall forfeit and pay to the person or persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect: *Provided*, He shall have been requested in such case to enter satisfaction as aforesaid.

§ 8. THIS ACT TO APPLY TO OIL WELLS, ETC.] The provisions of this act shall apply to oil wells or springs, iron and lead mines, as well as all other mines not herein specified, so far as the same may be applicable.

§ 9. This act shall take effect and be in force from and after its passage and approval.

Approved, February 1, 1879.

Malicious Mischief.

CHAPTER 42.

AN ACT to amend Section Seven Hundred and Three of Chapter Fifty-six (56) of the Penal Code, relating to Malicious Mischief.

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

§ 1. AMENDATORY.] That section 703 of chapter fifty-six, be amended by adding at the end of subdivision one (1) of said section, the following: "Driving or riding through, into, or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same, or"—

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

Approved, February 22, 1879.

Opium Smoking.

CHAPTER 43.

AN ACT in Regard to the Smoking of Opium.

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

§ 1. UNLAWFUL TO SELL OPIUM FOR CERTAIN PURPOSES.] It shall be unlawful for any person by himself, by agent or otherwise, to either directly or indirectly sell or give away in any quan-

tity, opium or any other commodity whatever of which opium is an ingredient, to be smoked or used in, upon or about the premises where sold; or to either directly or indirectly sell or give away such opium or other commodity of which opium is an ingredient, to be smoked or used in any adjoining room, building or premises or other place of popular resort connected with said premises where sold, or to be used for the purposes of smoking in any place or in any building or upon and premises whatever.

§ 2. PENALTY FOR VIOLATING SECTION 1.] Any person or persons violating the provisions of section one of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars and costs, or by imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment; and said buildings, rooms and premises shall be considered a public nuisance and liable to be abated as in other cases, and justices of the peace shall have jurisdiction to hear, try and determine any case arising under this act.

§ 3. DUTY OF JUDGE OF DISTRICT COURT AND MINISTERIAL OFFICERS.] The district court or the judge thereof may at any time, upon satisfactory proof that the smoking or use of opium is permitted or carried on in any building or premises, order and cause such building and premises to be abated as a public nuisance; and it is hereby made the especial duty of all ministerial officers to enter complaint in each case of the violation of this act, and they are hereby required to ascertain by inquiry and examination as to any such violations.

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

Approved, February 21, 1879.

Protest.

CHAPTER 44.

AN ACT to amend Section Five (5) of Chapter Seventeen (17) of the Political Code of the Revised Laws of the Territory of Dakota, of 1877.

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

§ 1. MANNER OF SERVING NOTICE OF PROTEST.] That section five (5) of chapter 17 of the Political Code of the revision of laws of Dakota of 1877, be amended as follows, to-wit: Strike out all after the word "against" in the third line of said section "five" and insert in lieu thereof the following:— "or by properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the United States mail, or postoffice most conveniently accessible from the place where the protest was made, and prepaying the postage thereon."

§ 2. COMPENSATION.] That the officer making such protest shall receive the sum of (25) twenty five cents and postage for each and every notice so made out and served.

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

Approved, February 22, 1879.

Notaries Public.

CHAPTER 45.

AN ACT amending Section One, Chapter Seventeen of the Political Code, relating to Notaries Public.

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

§ 1. GOVERNOR TO APPOINT NOTARIES.] That section one (1) of chapter seventeen (17) of the Political Code of this Territory be, and the same is, hereby amended so as to read as follows: "§ 1. The governor shall appoint in each of the organized counties in this Territory from among the eligible citizens thereof, one or more notaries public, *and* [who] shall hold their office for four years, unless sooner removed by the governor, each of whom shall have power and authority anywhere in the Territory, to administer oaths and perform all other duties required of them by law."

§ 2. NOTARY TO FILE COMMISSION, ETC., WITH CLERK OF COURT.] That section nine of said chapter seventeen of the Political Code, is amended to read as follows: "§ 9. Every notary public before he enters upon the duties of his office shall file his commission for record with the clerk of the district court of his county or subdivision, and shall deposit with such clerk an impression of his seal, together with his official signature; and the said clerk shall record the same in a book kept for that purpose; and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force."

§ 3. DUTY OF NOTARY IN CHANGING RESIDENCE.] Whenever such notary public shall change his place of residence from

the county or subdivision in which he was first appointed to another county or subdivision, it shall be his duty to comply with the requirements of section 2 of this act, before he again enters upon the duties of his office.

§ 4. That all acts and parts of acts in conflict with this act be, and the same are hereby repealed.

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

Approved, February 13, 1879.

Railroads.

CHAPTER 46.

AN ACT to amend Chapter Three of Title Two of Part Three of Division Second of the Civil Code, and to provide for the Organization of Railroad Corporations, to regulate the Operation thereof, and to Provide for the Taxation of their Property.

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

§ 1. WHO MAY FORM CORPORATION. ARTICLES, WHAT TO STATE.] Any number of persons not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers, or for the purpose of maintaining and operating any railroad already constructed for the like purpose, by making articles of organization in which shall be stated:

1. NAME—The name of the corporation.

2. TERMINI—The place from and to which such railroad is to be constructed, or maintained and operated, as the case may be.

3. LENGTH AND ROUTE—The estimated length of such railroad and the name of each county in this Territory through or into which it is made or intended to be made.

4. STOCK—The amount of the capital stock of the corporation, the number of shares of which it shall consist, and if such stock shall consist of common and preferred stock, the number and amount of each class.

5. DIRECTORS AND THEIR DUTY—The names and residences of the directors of the corporation, who shall manage its affairs for the first year, and until others are chosen in their places, and who shall be not less than five nor more than thirteen in number; and each such person shall subscribe thereto his name, place of residence, and the number of shares of stock he agrees to take in such corporation. There shall be annexed to such articles an affidavit of at least three of the directors therein named, that the signatures thereto are genuine, and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned; and thereupon said articles and affidavits shall be filed in the office of the secretary of the territory, who shall endorse thereon the date of their filing, and record the same. After such filing, a patent under the seal of the Territory, signed by the governor and secretary of the territory, shall be issued in substantially the following form:

To all whom these presents shall come greeting:

WHEREAS, (naming the persons subscribing the articles of organization) have filed in the office of the secretary of the territory certain articles of organization, with a view of forming a corporation to be known as (here insert the name) and with a capital of (here insert the amount) for the purpose of constructing, maintaining and operating or maintaining and operating a railroad from _____ to _____, and having complied with the provisions of the statutes in such cases made and provided; therefore, the Territory of Dakota hereby grants unto the above named persons and their associates, successors and assigns, full authority by and under the said name of _____, to exercise the powers and privileges of a corporation, for the purpose above stated and in accordance with their said articles of organization and the laws of this Territory.

In witness whereof these presents have been attested with the great seal and signed and countersigned by the governor and secretary of the Territory of Dakota, at _____, the _____ day of _____, in the year one thousand eight hundred and _____.

_____, Governor.

_____, Secretary of Territory.

Upon the issue of such patent, the subscribers to such articles, and all persons who shall thereafter become stockholders in such corporation, shall be a corporation by the name specified in such articles, and shall possess all the powers and privileges, and be subject to all the provisions of the law regulating railroad corporations and the provisions of this chapter applicable thereto.

§ 2. DIRECTORS TO OPEN STOCK BOOKS.] When such patent is issued the directors may in case the whole of the capital stock shall not have been before subscribed, open books of subscription to fill up the capital stock, at such place and after giving such notice as they may deem expedient, and may from time to time receive subscriptions until the capital stock is subscribed.

§ 3. MANNER OF ORGANIZING—NUMBER OF DIRECTORS, ELECTIONS, ETC.] There shall be a board of not less than five nor more than thirteen directors of every such corporation to manage its affairs who shall be elected at such time, in such manner, and for such terms, as shall be prescribed by its by-laws, and shall hold their offices until their respective successors shall be chosen. In the election of directors each stockholder shall be entitled to one vote, either in person or by proxy, for every share of stock owned by him for thirty days next preceding such election. Vacancies shall be filled in the manner prescribed by the by-laws. Inspectors of the first elections of directors shall be appointed by the board of directors named in the articles of organization and thereafter as provided by the by-laws. No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own name, or as trustee or personal representative, and qualified to vote at the election at which he shall be chosen; and at every election of directors the books and papers of such corporation shall be exhibited to the meeting if a majority of the stockholders present shall require it. If, for any reason, the election of directors shall not have been held at the time fixed therefor by law, the same may be held at any time thereafter on a notice of twenty days. Such election may be called by a majority of the directors, or by the stockholders holding a majority of the stock; but at any meeting at which all the

stockholders shall be present or be represented by attorney or proxy, it shall be lawful to waive notice, and proceed to an election of directors.

§ 4. OFFICERS.] The directors shall appoint one of their number president; they may also appoint a vice president, secretary and treasurer, and such other officers and agents as shall be prescribed by the by-laws of such corporation.

§ 5. STOCK, FORFEITURE OF.] The directors may require any amounts unpaid upon the capital stock to be paid in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board, and the board shall have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice nearest his usual place of residence, at least sixty days previous to the day on which said payment is required to be made, stating that he is required to make such payment at the time and place in such notice specified, and that if he fails so to do his stock and all previous payments thereon will be forfeited for the use of the corporation, such board may declare such stock and previous payments forfeited, and they shall be forfeited accordingly, to the use of the corporation, or such board may in any case enforce payment by action at law.

§ 6. STOCK DEEMED PERSONAL ESTATE.] The stock of every such corporation shall be deemed personal estate, and shall be transferable in the manner prescribed in its by-laws, but no shares shall be transferable until all previous calls thereon shall have been fully paid in.

§ 7. CAPITAL STOCK, HOW INCREASED.] The capital stock of any such corporation may be increased to such amount as may by its stockholders be deemed necessary for the construction or operation of its road, by a vote of the owners of at least two-thirds of all its stock, in person or by proxy, at any annual meeting, or at any meeting called by its directors for that purpose, by a notice in writing to each stockholder, or to be served on him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice, if known, nearest his usual place of residence, at least twenty days prior to such meeting. Such notice

shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of all the stockholders voting therefor, and the amount of stock owned by each, shall be entered upon the records of such corporation.

§ 8. WHO SHALL BE LIABLE AS STOCKHOLDERS.] No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholders of such corporation, for any calls or installments on any part paid stock thereof; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, ward or person interested would have been if he had been living, or competent to act, and held the same stock in his own name.

§ 9. POWERS OF CORPORATION.] Every corporation formed under this chapter shall be a body corporate by the name designated in its articles, shall have perpetual succession, shall have the right to sue and be sued, may have a common seal and alter the same at pleasure, and shall also have power:

1. TO MAKE SURVEYS—To cause such examination and surveys for its proposed railroad to be made, as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

2. TO HOLD REAL ESTATE—To take and hold such voluntary grants of real estate and other property as may be made to it, to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. SAME—To acquire under the provisions of this chapter, or by purchase, all such real estate and other property

as may be necessary for the construction, maintenance and operation of its railroad, and the stations, depot grounds, and other accommodations reasonably necessary to accomplish the objects of its incorporation; to hold and use the same, to lease or otherwise dispose of any part or parcel thereof, or sell the same when not required for railroad uses, and no longer necessary to its use.

4. TO LAY OUT ROAD, ETC.—To lay out its road not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments and of obtaining gravel or other material, to take as much land as may be necessary for the proper construction, operation and security of the road, and for the protection of such road from snow, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for lands taken for the use of the corporation.

5. CONSTRUCTION OF ROAD—Subject to the provisions of section sixteen, to construct its railroad across, along or upon any stream of water, water course, street, highway, toll or wagon road, plank road, turnpike, wharf, levee, river front, steamboat or other public landing, or canal, which its route shall intersect or touch; to carry any highway, street, toll or wagon road, plank road, or turnpike, which it shall touch, intersect or cross, over or under its track, as may be most expedient for the public good; to change the course or direction of any highway, street, turnpike, toll or wagon road, or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad, and take land necessary therefor: *Provided*, Such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods.

6. TO CONNECT WITH OTHER ROAD—To cross, intersect, join and unite its railroad with any railroad heretofore or hereafter constructed at any point on its route and upon the grounds of such railroad corporation with the necessary turn-outs, sidings and switches, and other conveniences in furtherance of the objects of its connections. And every corporation whose railroad is or shall be hereafter intersected by any new

railroad shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the ascertainment and determination of damages for the taking of real property. But no corporation which shall have obtained the right of way and constructed its road at the point of intersection, before the application for the appointment of commissioners may be made, shall be required to alter the grade or change the location of its road, or be required to bear any part of the expense of making and maintaining such crossing.

7. DEPOT GROUNDS, ETC.—To have and use equal room, ground, rights, privileges and conveniences for tracks, switches, sidings and turnouts upon any levee, river bank or front, steamboat or other public landing, and upon any street, block, alley, square or public ground within any street, block, alley, square or public ground within any incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding; and to accomplish this, may adjust, with other corporations, the ground to be occupied by each with such tracks, switches, sidings and turnouts; and if such corporations cannot agree upon such adjustment, and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid, the same shall be ascertained and determined, and the common, mutual and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The commissioners provided by law may employ a competent engineer, and define, locate and plat the ground, and assign to each corporation the part for the tracks and other conveniences for each, and may require the removal or purchase of tracks previously laid, so as to justly settle the rights of each corporation upon such ground, and assess the damages to be paid under the law providing for taking real property.

8. TO CARRY PERSONS AND PROPERTY—To take and convey persons or property over their railroad by the power or force

of steam or of animals, or by any mechanical power, and to receive compensation therefor; and to do all the business incident to railroad corporations.

9. To **ERECT BUILDINGS**—To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of their passengers, freight and business subject to the statutes in relation thereto.

10. To **ESTABLISH TIME TABLES**—To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor.

11. To **BORROW MONEY**—To borrow from time to time such sums of money at such rates of interest and upon such terms as the corporation or board of directors shall agree upon and authorize as necessary or expedient, and to execute trust deeds or mortgages, or both, as occasion may require on any railroads or parts thereof, constructed or in process of construction, for amounts borrowed or owing by the corporation, and therein to make provision granting, transferring, or mortgaging their railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, implements, appendages, and appurtenances used in connection with such railroads in any manner whatever then belonging to the corporation, or which may thereafter belong to it, as security for any bonds or evidence of debt therein mentioned in such manner as the corporation or directors shall think proper, and such instruments shall fully convey the same or so much thereof as shall be therein described. In case of sale by virtue of any such trust deed, or upon foreclosure of any such mortgage, the persons acquiring title under such sale and their associates, successors and assigns, or such corporation as they shall organize according to section one, with all the powers conferred upon corporations by this act, shall thereafter have, exercise and enjoy all such described grants which were purchased at such sale, including all rights, privileges, grants, franchises, immunities, and advantages mentioned in such instruments which were possessed by such corporation making the same or contracting such debts, so far as the same relate or appertain to that portion or line of road granted or mortgaged and purchased at such sale and no fur-

ther, as fully and absolutely in all respects as such corporation, its shareholders, officers and agents might have done if such sale had not taken place. And whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and shall also include the persons who owned at the time of the sale a majority in amount of the capital stock of such mortgagor corporation, such purchasers and such corporation as they shall organize as aforesaid, shall also have, possess and enjoy any exemption, privilege or immunity previously granted by any law to such former corporation relating to any of the property so acquired, to the same extent as if such latter corporation had been named in such law as the grantee thereof.

§ 11. EXTENSIONS, BRANCHES, ETC. HOW TO PROCEED.] Any railroad corporation may, under the provisions of this chapter, extend its road from any point named in its charter or articles of organization, or may build branch roads either from any point on its line of road or from any point on the line of any other road connecting or to be connected with its road, the use of which other road between such points and the connection with its own road, such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making such extension or building any such branch road, such corporation shall by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section one, and file a copy of such record, certified by the president and secretary, in the office of the secretary of the territory, and cause the same to be recorded as provided in said section one. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its charter or articles of organization. But this section shall not be construed to authorize any railroad corporations to consolidate with each other.

§ 12. CHANGING ROUTE OF ROAD. PROCEEDINGS.] The board of directors of every railroad corporation may, by a vote of two-thirds of the whole number, at any time after the route

or any portion of the route of their road, or any extension or branch thereof, or part of their road, or any extension or branch as constructed, if it shall appear to them that the line can be improved thereby; but no railroad shall be so diverted from any county, town, city or village which in its corporate capacity shall have extended aid to such road, either while in the hands of the then present owner or any former person or corporation; and no such alteration shall be made in any city or village after the road shall have been constructed therein unless the same shall have been sanctioned by a vote of two-thirds of the legal voters of such county, town, city or village of such city, or the trustees of such village. Before making any such alteration the board of directors shall designate the route thereof by resolution, to be entered in its records, filed and recorded in the office of the secretary of the territory as provided in the preceding section; thereupon it shall have the same rights and privileges to build such road as altered, as if it were the original line.

§ 13. CONSOLIDATING ROADS] Any railroad corporation may consolidate its stock, franchises and property with any other railroad corporation whether within or without the Territory, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line, with or without branches, upon such terms as may be agreed upon and become one corporation, by any name selected, which, within this Territory shall possess all the powers, franchises and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions of this chapter, and such in addition as such corporations peculiarly possess, or were subject to at the time of consolidation by the laws then in force applicable to them, or either of them. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock in person, or by proxy, at a regular annual meeting thereof, or a special meeting called for that purpose in the manner prescribed in section seven, or by the consent in writing of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or such consent, and accompanied by lists of their stockholders

and the number of shares held by each, duly certified by the respective presidents and secretaries, with the respective corporate seals of such corporations affixed, shall be filed for record in the office of the secretary of the territory, before any such consolidation shall have any validity or effect. Any railroad corporation whose line is wholly within this Territory may lease or purchase the railroad franchises, immunities and all other property and appurtenances of any other railroad corporation when their respective railroads can be lawfully connected and operated together, to constitute one continuous main line with or without branches.

§ 14. CHANGING CORPORATE NAME.] Any railroad corporation may change its corporate name and adopt any other by resolution adopted by the stockholders owning a majority of all the stock thereof, at either a regular annual meeting or a special meeting called for that purpose, in the manner prescribed in section seven. Such changes shall not take effect until a copy of such resolution and of the record of its adoption, certified by the secretary under his hand, and the corporate seal, shall be filed with the secretary of the territory. A like certified copy of such resolution shall be published for three successive weeks thereafter, in any newspaper of general circulation published at the seat of government of the Territory. Every proceeding, act, liability or thing done, undertaken or encouraged by or on behalf of the corporation under its former name shall be and continue of the same validity and obligation under such new name as if the name had remained unchanged.

§ 15. RAILROAD CORPORATION SHALL RESTORE STREAM, HIGHWAY, ETC.] Every corporation constructing, owning or using a railroad shall restore every stream of water, water course, street, highway, plank road, toll or wagon road, turnpike or canal, across, along or upon which said railroad may be constructed, to its former state, or to such condition as that its usefulness shall not be materially impaired, and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. When any lands shall be required in order to change any highway, street, turnpike or plank road, toll or wagon road, the same may be condemned, taken, and compensation made in the manner provided by

law; and when taken shall become a part of such highway, street, turnpike or plank road, toll or wagon road, to the same extent as, and by the same tenure, by which the adjacent parts thereof are held.

§ 16. WHEN RAILROAD PASSES OVER HIGHWAY.] When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any highway, street, turnpike or plank road, toll or wagon road, it shall be sufficient to construct the same so as to give a clear passage way of twenty feet, or two passage ways of fourteen feet each.

§ 17. WHAT PROPERTY SHALL BE SUBJECT TO MORTGAGE.] All rolling stock of any railroad corporation organized under the provisions of this act used and employed in connection with its railroad, and all fuel necessary to the operation of the same, are declared and shall be held to be fixtures; and all such property, and all additional rights of way, depot grounds and other real property, acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein, shall be subject to the lien thereof to the same extent as the property therein described, which the corporation owned at the time of its execution.

§ 18. CONVEYANCE OR LEASE, HOW EXECUTED.] Every conveyance or lease, deed of trust, mortgage, or satisfaction thereof, made by any railroad corporation of any franchises, real estate, fixtures, or other real property, in pursuance of law, shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded, and shall be recorded in the office of the secretary of the territory who shall endorse thereon his certificate thereof, specifying the day and hour of its reception, and the volume and page where recorded, which shall be evidence of such facts. Every such record of any such instrument shall from the time of reception have the same effect as to any property in this Territory described therein, as the record of any similar instrument in the office of a register of deeds may have by law as to property in his county, and shall be notice of the rights and interests of the grantee, lessee or mortgagee by such instrument, to the same extent as if it were recorded in each and all of the several

counties in which any property therein described may be situated.

§ 19. DIRECTORS MAY SET ASIDE MONEYS FOR PAYMENT OF DEBTS.] The board of directors of any railroad corporation may annually, or oftener, as may be deemed expedient, set apart and appropriate a sum of money not exceeding fifty per cent. of its net earnings as resources for any one year, after paying the current expenses of their road in the interest on its outstanding indebtedness, in order to sink, redeem, pay off, cancel or discharge the indebtedness of such corporation; and the said sums so set apart shall be annually applied to the payment and discharge of such debts of such corporation as shall be due, and to the purchase and redemption of the outstanding evidences of indebtedness of such corporation, as the board of directors thereof shall deem most for the interest of such corporation, and for no other purpose.

§ 20. DEFENSE OF USURY PROHIBITED.] No railroad corporation shall be allowed to make the defense of usury against the holder of any bond or other obligation for the payment of money issued by such corporation.

§ 21. DIRECTORS MAY BE CLASSIFIED.] Any railroad corporation may by a vote of a majority in amount of the stockholders present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed, as nearly as may be, of one-third of the directors; the term of office of the first class to expire in one year, of the second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire; all other vacancies to be filled in accordance with the by-laws.

§ 22. ANNUAL REPORT.] Every railroad corporation shall make an annual report to the stockholders of its operations during the year ending on the thirty-first day of December, which report shall be verified by the affidavit of the secretary, treasurer and superintendent of the corporation, and shall state:

1. LENGTH OF ROAD, ETC.—The length of the road in operation; the length of single track; the length of double track; the weight of the rail per yard.

2. **CAPITAL STOCK**—The capital stock actually subscribed and the amount paid thereon.

3. **WHOLE COST OF ROAD**—The whole cost of the road showing the amount expended for the right of way, bridging, grading, iron and buildings respectively, and for all other purposes incidental to the construction of such road.

4. **INDEBTEDNESS**—The amount and nature of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness, and the amount due the corporation.

5. **AMOUNT RECEIVED**—The amount received for the transportation of passengers, property and mails, for interest, and from other sources respectively.

6. **AMOUNT OF FREIGHT**—The amount of freight, specifying the quantity in tons or other usual mode of measurement.

7. **AMOUNT PAID OUT**—The amount paid for the repairs of the road, buildings, engines and cars respectively; for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for wages of employes; the aggregate amount paid for salaries of officers, and for any other purpose incidental to the business of transportation so as to give a complete statement of the entire annual expense of the corporation.

8. **AMOUNT OF LOSS**—The amount of loss to the corporation paid for loss and damage to freight and injury to person and property.

9. **DIVIDENDS**—The number and amount of dividends and when made, and in what manner such dividends have been paid.

10. **AMOUNT SINKING FUND**—The amount appropriated to sinking fund, and the manner in which the same has been applied, and the total amount then held by such sinking fund.

11. **PERSONS KILLED**—The number of persons killed or injured, the causes thereof, and whether passengers or persons employed by the corporation.

12. **MANNER OF ACCIDENTS**—Whether any such accidents have arisen from carelessness or negligence of any person in the employ of the corporation, and whether such person is retained in the service of such corporation. The secretary of

each railroad corporation shall mail to every stockholder thereof, whose postoffice address is known, a copy of its annual report, and shall file a certified copy thereof with the secretary of the territory on or before the first day of February in each year.

§ 23. POWERS OF CORPORATION TO ENTER UPON LANDS.] Every railroad corporation incorporated under this act has power and is authorized to enter upon any land for the purpose of examining and surveying its railroad, and to take, hold and appropriate so much real estate as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for buildings, stations, work shops, depots, machine shops, switches, side tracks, turn tables, snow defenses and water stations; all materials for the construction of such road and its appurtenances, and the right of way over adjacent land sufficient to enable such corporation to construct and repair its road and the right to conduct water to its water stations, and to construct and maintain proper drains—and may obtain the right to such real estate by purchase or condemnation in the manner provided by the law.

§ 24. MAKE RETURN OF EARNINGS TO TERRITORIAL TREASURER.] Every railroad corporation organized under the provisions of this act, and every person or corporation operating a railroad in this Territory, except railroads operated by horse power, shall on or before the 10th day of February in each year make and return to the treasurer of this Territory, in such form and upon such blank as shall be furnished by him, a true statement of the gross earnings of their respective roads, for the preceding calendar year; the number of miles operated by each such corporation or person, and the gross earnings per mile during such year. Every such railroad corporation or person operating a railroad in this Territory shall pay to the said treasurer two (2) per centum of the gross earnings of such railroad each year for the first five years after said railroad shall be or shall have been operated in whole or in part; and three (3) per centum of the gross earnings of such railroad for each and every year after the expiration of said five years. One-half of such amount shall be paid at the time that the report to the treasurer of the territory hereinbefore

provided is made, and one half on or before the tenth day of August in each year; and for the purpose of verifying and ascertaining the accuracy of any such report of gross earnings made to the treasurer of the territory, the governor or any other person by law appointed, shall have power to examine the books and papers of said corporation, and to examine under oath the officers and agents of said corporation and other persons; and if any person so examined shall knowingly or willfully swear falsely, or if any officer attesting such report shall knowingly and willfully swear falsely in relation thereto, every such person shall be subject to the pains and penalties of perjury. The percentage of gross earnings hereinbefore specified to be paid in pursuance of the provisions of this section shall be in lieu of all other taxation of the road bed, right of way, station or depot grounds, track, rolling stock, water stations, water tanks, turn tables, engine houses, machine shops, depots and necessary buildings, tools, machinery, material for repairs, gravel beds, furniture, telegraph instruments and lines, and fuel of such railroad corporation used in or incident to the operation of such railroad. All property of railroads not above enumerated, subject to taxation, shall be treated in all respects, in regard to assessment, equalization and taxation, the same as similar property belonging to individuals, whether said lands are received from the general government or from other sources. One-third of the sums so received by the treasurer of the territory, shall remain in the territorial treasury, to be used in the same manner as other revenues of the Territory, and the other two-thirds of said sums shall be apportioned by the treasurer of the territory to the several counties, into or through which railroads respectively run, in proportion to the number of miles of main track of railroad in each such county, and shall be paid by him to the treasurers of the counties so entitled thereto; and any person making or causing to be made, or filed, any false statement required in this section, shall be deemed guilty of a felony, and on conviction thereof shall be punishable by imprisonment in the territorial prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both such fine and imprisonment; and the jurisdiction to try and punish any such offense pro-

vided in this section shall be in any county where such false statement is made or caused to be made, and also in the county where such false statement is filed or caused to be filed.

§ 25. PENALTY FOR NEGLECTING REPORT.] If any railroad corporation or person operating a railroad in this Territory shall neglect to make such report to the treasurer, or to pay in the several sums of money hereinbefore specified, or any part thereof, as hereinbefore provided, such company or persons shall absolutely forfeit to the Territory the sum of ten thousand dollars, to be recovered in an action brought in the name of the Territory; and such neglect shall also be a cause of forfeiture of all the rights, privileges and franchises obtained under any law of this Territory, under which said railroad has been constructed or is operated. Any such corporation or person at any time before the final judgment of forfeiture of such rights, privileges and franchises is rendered, may be permitted to make the return and pay the amount herein provided for, to the court in which the action is pending, upon such terms as the court may direct.

§ 26. AMENDMENT TO CIVIL CODE.] Section 450 of the Civil Code, is amended by inserting after the word "corporation" in the first line thereof, the words "organized in this Territory or chartered by or organized under the laws of the United States, or any state or territory."

§ 27. CORPORATION ORGANIZED OUTSIDE THIS TERRITORY, HOW TO PROCEED BEFORE ENTERING TERRITORY.] Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this Territory at any point, may extend its railroad into this Territory from any such point or points to any place or places within the Territory, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section one, and file a copy of such record, certified by the president and secretary in the office of the secretary of the territory, and cause the same to be re-

corded as provided in said section one. Thereupon such corporations shall have all the rights and privileges to make such extension or build such branch, and receive such aid thereto as it would have had had it been authorized so to do by articles of association duly filed in accordance with the provisions of this act.

§ 28. REGULATIONS CONCERNING RECEIVING AND SHIPMENT.] All railroad corporations organized under the provisions of this act, and all persons or corporations operating a railroad in this Territory, who shall receive or transport grain in bulk or otherwise, shall deliver the same to any consignee thereof or any elevator or public warehouse to which it may be consigned, at any regular station on said road, and shall receive grain for shipment from any elevator or public warehouse situated upon or adjacent to any station or depot ground of such railroad: *Provided*, Such consignee, or the elevator or public warehouse can be conveniently reached by any track owned, leased or used by such corporation; and all such corporations or persons shall permit connections to be made with their track so that such consignee, elevator or warehouse can be conveniently reached by the cars of such corporation or person: *Provided, however*, That such corporation or person shall not be required to pay the cost of making and maintaining such connection, or of the siding or switch track necessary to make the same.

§ 29. PROVISIONS OF FORMER LAWS REPEALED, AND TO REMAIN OPERATIVE.] All the provisions of chapter 3 of title 2 of part 3 of division second of the Civil Code, so far as the same relate to railroad corporations that are in conflict with the provisions of this act, and all the provisions of said chapter imposing additional restrictions, limitations, duties and liabilities upon the stockholders; or officers of railroad corporations, than are imposed by the provisions of this act, are hereby repealed, except sections four hundred and seventy-four to four hundred and eighty-five inclusive, of article nine of said chapter, which sections shall be operative and binding upon every railroad corporation operating a railroad in this Territory, as well as those organized under the provisions of this act, and except sections four hundred and fifty to four hundred and fifty-nine inclusive, of said chapter, which shall

be and remain in force, except as modified by the provisions of this act.

§ 30. REPEALING CLAUSE.] Section twelve hundred and fifty-seven (1257) of the Civil Code, and sections six hundred and forty-two (642) and six hundred and fifty-six (656) of the Penal Code, are hereby repealed.

§ 31. This act shall take effect and be in force from and after its passage and approval.

Approved, February 18, 1879.

Recording Instruments.

CHAPTER 47.

AN ACT to amend Section Six Hundred and Forty-seven of the Civil Code.

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

§ 1. LETTERS PATENT AND RECEIVER'S RECEIPTS.] That subdivision three of section six hundred and forty-seven of the Civil Code, is amended to read as follows: "3. Letters patent from the United States and final receiver's receipts from United States land offices, may be recorded without acknowledgment or further proof."

Approved, February 22, 1879.

Revenue.

CHAPTER 48.

(EXEMPTIONS.)

AN ACT to amend Subdivision Five of Section Two of Chapter Twenty-eight of the Political Code of 1877.

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

§ 1. PROPERTY EXEMPT FROM TAXATION.] That subdivision five of section two of chapter twenty-eight of the Political Code of 1877, be and the same is hereby amended as to read as follows: "The grounds and buildings of library, scientific, educational, benevolent and religious institutions, colleges or societies, devoted solely to the appropriate objects of these institutions, not exceeding ten acres in extent and not leased or otherwise used with a view to pecuniary profit."

§ 2. CONFLICTING ACTS REPEALED.] All acts or parts of acts conflicting with the provisions of this act be and the same are hereby repealed.

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

Approved, February 22, 1879.

CHAPTER 49.

(CHANGE OF TIME FOR LISTING, ETC.)

AN ACT to amend Chapter Twenty-eight of the Political Code, entitled "Revenue," passed at the 12th Session of the Legislative Assembly.

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

§ 1. TIME FOR COMMENCING ASSESSMENT.] That section seven of said chapter, be and the same is hereby amended by striking out the words, "first Monday in," and insert the words, "fifteenth day of"—

§ 2. WHAT PROPERTY TO BE LISTED.] That the first clause of section eight of said chapter twenty-eight, be and the same is hereby amended so as to read as follows: "All taxable property, real and personal, shall be listed and assessed each year in the name of the owner thereof as soon as practicable on and after the 15th day of February, including all property owned on the first day of January of that year.

§ 3. SAME.] That section 17 of said chapter, be and the same is hereby amended by striking out the word "February" where it occurs in said section, and inserting in lieu thereof the word "January."

§ 4. DATE WHEN TAXES BECOME DELINQUENT.] That section fifty-four of said chapter, be and the same is hereby amended by striking out the word "January" where it occurs in said section, and inserting the word "February."

§ 4. SAME.] *That section fifty-four of said chapter, be and the same is hereby amended by striking out the word "January" where it occurs in said section, and inserting the word "February."*

§ 5. PENALTY.] That section fifty-five of said chapter, be and the same is hereby amended as follows: After the words "there shall be added as a penalty" five per cent. on the amount so remaining unpaid, and one per cent. per month

thereafter until paid, to be added on the first day of each month.

§ 6. DATE OF TREASURER'S NOTICE OF SALE.] That section sixty-one of said chapter, be and the same is hereby amended by striking out the word "August" where it occurs in said section, and inserting the word "September."

§ 7. DATE OF SALE.] That section sixty-two of said chapter, be and the same is hereby amended by striking out the word "September" where it occurs in said section, and insert the word "October."

§ 8. DATE OF FILING RETURNS OF SALE] That section sixty-five of said chapter, be and the same is hereby amended by striking out the word "October" where it occurs in said section, and inserting the word "November."

§ 9. WHEN AUDITOR TO FORWARD LIST OF NEW TAXABLE LANDS.] That section eighty-five of said chapter, be and the same is hereby amended by striking out the words "fifteenth day of February" in the last line of said section, and inserting the words "thirtieth day of January."

§ 10. COUNTY COMMISSIONERS TO ASCERTAIN AMOUNT OF REDEMPTION MONEY.] It shall be the duty of the board of county commissioners in the several counties of this Territory, at each annual meeting of said board, to examine the county treasurer's "tax-sale book" and "stub receipts," and ascertain the amount of redemption money in the treasury and compel the said treasurer to account for the same.

§ 11. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

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

Approved, February 22, 1879.

Sales on Execution.

CHAPTER 50.

AN ACT to amend Section Three Hundred and Thirty-six of the Code of Civil Procedure.

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

§ 1. PUBLIC NOTICE TO BE GIVEN.] That section three hundred and thirty-six of the Code of Civil Procedure, is amended to read as follows: “§ 336. Before any real property or interest therein taken on execution shall be sold, the officer making such sale must cause public notice of the time and place thereof, in manner following:

“ 1. IN A NEWSPAPER—If there be a newspaper printed in the county or subdivision, where the real property to be sold is situated, such notice must be given by advertisement in some newspaper printed in such county or subdivision, once a week, for at least thirty days prior to making such sale.

“ 2. BY POSTING NOTICES—In case there be no newspaper printed in such county or subdivision, then the officer making such sale must cause such advertisement to be made by posting a copy of such advertisement on the outer door of the court house or building wherein the district court of the county or subdivision was last held, and in five other public places in the county. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.”

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

Approved, February 14, 1879.

Sale of Unclaimed Property.

CHAPTER 51.

AN ACT to provide for the Sale of Unclaimed Property by Common Carriers, Warehousemen and Inn-keepers.

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

§ 1. WHEN SALE OF UNCLAIMED PROPERTY MAY BE MADE.] That whenever any trunk, carpet bag, valise, bundle, package or article of property transported or coming into the possession of [any] railroad, or express company, or any other common carrier in the course of his or its business as common carrier, shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction, after giving the owner or consignee fifteen days' notice of time and place of sale, through the postoffice and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the [amount] over, if any, shall be paid to the owner or consignee upon demand.

§ 2. SALE OF PERISHABLE PROPERTY.] Perishable property which has been transported to destination, and the owner or consignee notified of its arrival, or being notified, refuses or neglects to receive the same, and pay the legal charges there-

on; or if upon diligent inquiry the consignee cannot be found, such carrier may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, after deducting the freight and charges and expenses of sale, shall be paid to the owner or consignee upon demand.

§ 3. TO APPLY TO HOTEL KEEPERS.] The provisions of this act shall apply to hotel keepers and warehousemen.

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

Approved, January 22, 1879.

Stenographer.

CHAPTER 52.

AN ACT authorizing the Appointment of Short-hand Reporters for the District Courts of this Territory.

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

§ 1. JUDGE MAY APPOINT.] The judges of the district courts in each judicial district may appoint whenever in his judgment it will expedite public business, and tend to the more economical administration of justice, a short-hand reporter who shall be well skilled in the art and competent to perform the duties required of him.

§ 2. DUTY OF REPORTER.] It shall be the duty of such reporter under the direction of the court, to take down in short hand the oral testimony of witnesses, the rulings of the court, the oral instructions of the judge, if any such oral instructions are given, the objections made and exceptions taken during the trial in all criminal cases, and in civil cases when either of the parties or the judge direct it; and also such

other matter as the court shall order, and for each day actually and necessarily employed in the performance of such duties he shall receive such sum as may be fixed by the judge, not exceeding ten dollars per day, to be audited and paid by the county or subdivision wherein such service shall be rendered upon the order of the judge.

§ 3. REPORTER TO MAKE TRANSCRIPT. COMPENSATION.] The judge may on the application of either party in a criminal case, direct such reporter to make out and file with the clerk of the court a transcript of his short-hand notes in long hand, when the same is needed in such cause, and he shall receive as a compensation therefor such sum as may be fixed by the judge not exceeding fifteen cents for each one hundred words to be audited and paid as provided in section 2.

§ 4. SAME. REPORTER'S FEE TO BE TAXABLE COSTS.] Such reporter shall, on the request of either party in a civil or criminal case, make out such transcript and deliver the same to the party desiring it, on payment of his fees therefor by such party at the rate per folio as provided in section three, and the amount allowed such reporter for transcripts required in the case shall be taxable costs.

§ 5. REPORTER TO ATTEND COURTS IN SEVERAL COUNTIES.] Such reporter 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.

§ 6. TENURE AND OATH.] Such reporters shall hold their offices until removed by the judges of the district court for which they are appointed, for misconduct, incapacity or inattention to duty, 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.

§ 7. ACT NOT TO APPLY TO CERTAIN COUNTIES.] This act shall not apply to the counties of Bon Homme, Clay, Lincoln and Union, in the second judicial district.

§ 8. This act shall take effect from and after its passage and approval.

Approved, February 14, 1879.

Supreme Court.

CHAPTER 53.

(PLACE OF HOLDING.)

AN ACT to amend Section Twenty-six of the Code of Civil Procedure.

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

§ 1. PLACE OF HOLDING SUPREME COURT.] That section twenty-six of the Code of Civil Procedure, is amended to read as follows: "§ 26. The supreme court may be held in other buildings than those designated by law as places for holding courts, and at a different place in the same city from that at which it is appointed to be held. Any one or more of the justices may adjourn the court with the like effect as if all were present, and may announce and have placed on file the opinion of the court."

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

Approved, February 22, 1879.

CHAPTER 54.

(TERMS.)

AN ACT to amend Chapter Ten of the Political Code.

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

§ 1. TWO TERMS PROVIDED FOR.] That chapter ten of the Political Code, is amended to read as follows: "§ 1. There shall be held at Yankton, two terms, annually, of the supreme court, commencing on the second Tuesday of May and the first Tuesday of October."

§ 2. WRITS OF ERROR—WHEN RETURNABLE.] All writs of error heretofore issued from the supreme court to any of the district courts, returnable at the next June term as provided in said chapter ten, shall be returnable to the next May term of the supreme court as provided in this act, in the same manner and with the same effect as though such writs were so returnable on their faces.

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

Approved, February 22, 1879.

CHAPTER 55.

(REPORTS.)

AN ACT to authorize the Purchase and Distribution of One Hundred and Fifty Copies of the First Volume of Dakota Supreme Court Reports.

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

WHEREAS, The first volume of Dakota supreme court reports, embracing the decisions of the supreme court of this Territory from its organization up to and including the December term, A. D. 1877, reported by Hon. G. G. Bennett, ex-associate justice of the supreme court, has just been published in book form; and

WHEREAS, The Territory of Dakota has received from the several states and territories of the United States, for several years past, the court reports and public documents of such states and territories, which are now a part of the public law library of this Territory; and

WHEREAS, It is just and proper that the Territory of Dakota should reciprocate the courtesies shown her by contributing to the libraries of her sister territories and the several states, a volume of the reports of her supreme court decisions, and should also furnish copies to those of her public officers whose duties would be aided thereby; therefore

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

§ 1. LIBRARIAN AUTHORIZED TO PURCHASE.] That the territorial librarian of the Territory of Dakota is hereby authorized to purchase of the publishers of the first volume of Dakota reports, one hundred and fifty volumes thereof at a price not exceeding five dollars per volume: *Provided, however,* That if he cannot obtain one hundred and fifty volumes of said reports at the price herein stated, then he shall not purchase any of said reports.

§ 2. PAYMENT PROVIDED.] That said books shall be well bound in law sheep and shall be delivered to the said librarian, who shall thereupon approve the publishers account for said one hundred and fifty copies at the price agreed upon, not exceeding the amount named in section 1; and when said account so approved shall be presented to the auditor, he is authorized and it is made his duty to audit said account and to issue to said publishers a territorial warrant for said account, and the territorial treasurer is authorized to pay said warrant the same as other warrants drawn upon the territorial treasurer.

§ 3. APPROPRIATION.] There is hereby appropriated out of any moneys in the territorial treasury the sum of seven hundred and fifty dollars to defray the expenses of such purchase.

§ 4. HOW DISTRIBUTED.] That it is hereby made the duty of the librarian of the territory, upon receiving said books, to distribute them as follows, to-wit: One copy to each of the judges of the supreme court of the territory; one copy to each of the district attorneys of Dakota Territory, and one copy to the U. S. attorney for Dakota; also to transmit one copy by mail to the public library of each state and organized territory in the United States, that have exchanged or will exchange with this Territory; also one copy to the library of congress; one copy to the library of the supreme court of the United States; and one copy to the attorney general of the United States, and the remaining copies shall be disposed of as provided by law.

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

Approved, February 22, 1879.

CHAPTER 56.

(REPORTER.)

AN ACT creating the Office of Reporter of the Supreme Court, providing for filling the same, and for other Purposes.

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

§ 1. FIRST VOLUME DECLARED AUTHENTIC.] That the first volume of reports of the decisions of the supreme court of the territory, prepared for publication by Granville G. Bennett, be and the same is hereby declared to be authentic, and shall be considered and received in all the courts of this Territory as *prima facie* evidence of the decisions of the supreme court so far as it purports to give the same, as fully and to the same extent as if their publication had been authorized and directed by specific legislative enactment under the supervision of an official reporter.

§ 2. SUPREME COURT TO APPOINT REPORTER.] The supreme court shall appoint a person of known integrity, experience and learning in the law, reporter of the decisions thereof, and said reporter shall hold his office for the term of four years, unless sooner removed by the court, who shall be deemed an officer of said court for said purpose.

§ 3. BOND AND OATH OF REPORTER.] Said reporter shall give bond to the Territory, with at least two sufficient sureties, to be approved by the chief justice of the supreme court, in the sum of one thousand dollars, upon condition for the faithful performance of his official duties, and shall further take and subscribe an oath or affirmation, to be filed with his bond in the office of the clerk of said court that he will support, protect and defend the constitution of the United States and the act organizing the Territory of Dakota, and that he will perform the duties of his said office with correctness, impartiality and fidelity, and that the volumes of reports printed under his charge shall, in every respect, comply with the provisions of this act.

§ 4. REPORTER TO RECEIVE RECORDS OF CAUSES.] It shall be lawful for the reporter to receive, at the close of each term of the supreme court, the records of all causes decided at such term, with the opinions therein, and retain the same for such reasonable time as he may require to prepare the report thereof, when they shall be returned to and remain in the office of the clerk.

§ 5. REPORTS TO BE PUBLISHED.] As often as the material shall be sufficient to constitute a volume of five hundred and fifty pages, it shall be the duty of the reporter to cause the same to be printed and published in a manner, form and style, and as neat and substantial as the first volume of Dakota reports, provided that not more than one volume, annually, shall be published. And the reporter shall be entitled to obtain and hold the copyright of his reports.

§ 6. TERRITORY NOT RESPONSIBLE FOR PUBLICATION, ETC.] The Territory shall in no event be pecuniarily responsible for any cost incurred in the preparation and publication of such reports, nor shall the reporter be entitled to any fee or remuneration to be paid from the territorial treasury.

§ 7. This act shall take effect and be in force from and after its passage and approval.

Approved, February 21, 1879.

Sunday Observance.

CHAPTER 57.

AN ACT repealing Section 43 of the Penal Code.

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

§ 1. REPEAL OF LAW PROHIBITING TRAVELING ON SUNDAY.] That section 43, of the Penal Code, be and is hereby repealed.

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

Approved, February 21, 1879.

Territorial Warrants.

CHAPTER 58.

AN ACT entitled "An act for the Protection of the Public Credit."

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

§ 1. TEN PER CENTUM INTEREST LEGALIZED.] The payment of interest at the rate of ten per cent. per annum is hereby legalized upon all warrants heretofore paid by the territorial treasurer, and it shall be lawful for the territorial treasurer to pay the same rate upon all outstanding territorial warrants

that have been presented for payment and registration. Warrants hereafter issued shall bear the same rate of interest provided in this section, after presentation at territorial treasurer's office and indorsement by that officer, "not paid for want of funds," as provided by law.

§ 2. TREASURER TO ISSUE FUNDING WARRANTS AT EIGHT PER CENT.] The territorial treasurer, with the advice and consent of the auditor and governor, is hereby authorized and directed to pay all territorial warrants legally issued, that may have been or that may hereafter be presented to him for payment: *Provided*, The money to pay the same can be obtained at a rate of interest not greater than eight per cent., and the auditor is hereby authorized and directed to issue funding warrants in lieu of the warrants so paid, and the treasurer is hereby authorized and directed to apply all territorial funds by him received and not otherwise lawfully appropriated, to the payment and cancellation of the so-called funding warrants.

§ 3. OBJECT OF THIS ACT.] The object and intent of this act shall be so construed as to protect the public credit, to secure the funding of all floating warrants at the lowest rate of interest possible to be provided for, and to prevent the sale of any territorial warrants hereafter issued at a sum less than their par value.

§ 4. ACT—HOW CONSTRUED.] This act shall not be construed so as to authorize in any manner the increase of the public debt.

§ 5. CONFLICTING ACTS REPEALED.] All acts and parts of acts in conflict with the provisions of this act are hereby so modified and amended as to be made to conform to this act.

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

Approved, February 22, 1879.

Townships.

CHAPTER 59.

AN ACT. providing for the Organization of Civil Townships and the Government thereof.

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

§ 1. SPECIAL ELECTION TO ADOPT TOWNSHIP GOVERNMENT.] Whenever a petition from fifty legal voters in any county is presented to the county commissioners of any county, they shall submit, at a special election, the question whether the system of township government as hereinafter provided, shall be adopted in said county, and at such special election there shall be written or printed on the ballots the words, "For township organization," or "Against township organization."

§ 2. DUTY OF COUNTY BOARD WHEN MAJORITY VOTE FAVORS TOWNSHIP GOVERNMENT.] If a majority of the votes cast at such election shall be in favor of township organization, the board of county commissioners shall immediately proceed to divide the county into civil townships, fix and determine the boundaries thereof, and number the same, and in so doing shall have regard for natural boundaries, and may at any time thereafter alter and change the same: *Provided*, That the number of civil townships shall not exceed the number of congressional townships or fractional parts thereof greater than one-half, in any county.

§ 3. NAME OF TOWNSHIP.] At the first township meeting, which shall be on the day of the next general election, held under the provisions of this chapter, the electors of each township shall choose by ballot a name for their respective township to be substituted in lieu of the number fixed by the board, which shall be recognized by them and entered upon their records, after which such township shall be known and

designated in law by the name so elected, and should the elector of any township fail to choose a name as provided, the board shall select one, and so record it.

§ 4. COUNTY CLERK TO TRANSMIT PLAT OF COUNTY TO AUDITOR.] The county clerk shall, within thirty days after the first township election held under the provisions of this chapter, transmit to the territorial auditor a plat of the county showing the boundaries and name of each civil township therein, and shall record a copy of the same, together with all proceedings had or done under this act, in a book to be kept for that purpose.

§ 5. DUTY OF AUDITOR WHEN TWO TOWNSHIPS HAVE SAME NAME.] If the auditor, on comparing the report with those previously made from other counties, finds that any two or more townships have the same name, he shall transmit to the county last adopting the township organization, the name of the township to be altered, and the board of county commissioners shall at their next meeting thereafter adopt for such township some name different from those theretofore adopted, so that no two townships organized under the provisions of this chapter shall have the same name; and when such name is adopted the county clerk shall inform the auditor thereof, as before directed, and note the same in the county record.

§ 6. BOUNDARIES OF PRESENT TOWNSHIPS. WHAT OFFICERS NOT TO BE CHOSEN IN COUNTY.] The limits, boundaries and organization of every organized township shall remain as now established until otherwise provided by law; and in any county hereafter organized into civil townships under the provisions of this chapter, there shall be elected no county justices of the peace, constables or assessor, and all provisions of law relating to county government in conflict with the provisions of this chapter, shall not apply to each and every county so organized.

POWERS OF ELECTORS.

§ 7. TO ELECT OFFICERS.] The electors of each township shall have power at the annual election to elect such officers for the township as are by law required to be chosen, and shall be elected and named upon the same ballot of county, district and territorial officers, at the general election.

§ 8. OFFICERS TO BE ELECTED.] There shall be elected the following township officers:

Three supervisors;
One clerk;
One treasurer;
One assessor;
Two justices of the peace;
Two constables;
One or more pound masters, and
One overseer of highways,

for each road district in the township, who shall be residents of the township for which they were elected, and shall hold their office for the term of one year except justices of the peace and constables, who shall hold their office for the term of two years, and until their successors are elected and qualified.

§ 9. ELECTION BOARD TO MAKE SEPARATE RETURN.] When the votes cast at the general election shall have been canvassed, and the number received by each person voted for, for each office, counted and ascertained, as provided in the general election law, the election board shall, in addition to the return to the county clerk therein provided, make a separate return in like manner and form to the township clerk of the persons voted for, and the votes for each person cast for each township office.

§ 10. TOWN CLERK TO GIVE CERTIFICATE. PROCEEDINGS IN CASE OF TIE.] The township clerk shall, within ten days after the canvass of the votes, as provided in the next section, transmit to each person elected to any office in the township a certificate of his election: *Provided*, That in case of a tie vote for any office it shall be determined by the township clerk in the same manner as provided for settling tie votes in county officers.

§ 11. RETURNS OF ELECTION—HOW CANVASSED.] On the second Tuesday after the election, the clerk of every township shall meet, together with the chairman of the township board, and one of the justices of the peace of the township, or these failing to meet with said clerk, he may take to his assistance any other two elective township officers and proceed to canvass the returns mentioned in section 9 of this chapter, and make an abstract thereof, which shall be signed by the officers making the same, and filed in the office of the township clerk with the other records of said office.

§ 12. OFFICERS—HOW TO QUALIFY.] All township officers shall qualify by oath of office, in writing, which oath shall be filed with the township clerk and within the period required for county officers to qualify; said oath may be taken and subscribed before the township clerk or any other officer legally qualified to administer oaths, without fee or compensation, who shall certify thereto, with the date of taking the same.

§ 13. BOND OF CERTAIN OFFICERS.] Township treasurers, clerks, assessors, overseers of highways, justices of the peace, and constables, shall before entering upon and discharging the duties of the office, give bond conditioned that they will faithfully and impartially discharge the duties of their office (naming it fully) and render a true account of all moneys, credits, accounts and property of any kind that shall come into their hands as such officer, and pay over and deliver the same according to law, which bond shall be approved by the chairman of the board of supervisors of the township, and shall be given to the county and filed in the office of the clerk of the district court of the county.

§ 14. OATH OF TOWNSHIP OFFICER.] Every township officer who is required to give bond shall take and subscribe on the back of his bond, or a paper attached thereto, to be certified by the officer administering it, an oath that he will support the constitution of the United States and the act organizing this Territory, and to faithfully and impartially, to the best of his knowledge and ability, perform all the duties of his office (naming it fully) as provided by the conditions of his bond written within.

§ 15. BONDS.] The bonds of township officers as mentioned in section 13 of this chapter, shall each be in a penal sum to be fixed by the board of county commissioners; but that of the justices of the peace shall not be in a less penal sum than three hundred dollars each; and those of constables shall not be in a less penal sum than two hundred dollars each; and the penalty of the bond shall be uniform within the county for officers of each class where there is more than one of a class, except township treasurers, which shall be in a penal sum double the amount of township taxes to be collected in each year.

§ 16. TERM OF OFFICE—WHEN TO COMMENCE.] The regular term of office for all township 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 of election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office; and in newly organized townships the election board and clerks of election shall constitute the board of canvassers mentioned in section 11 of this chapter, and empowered and required to perform all the duties required of said officers therein mentioned.

§ 17. WHO TO BE JUDGES AND CLERKS OF ELECTION.] The township supervisors of each township shall be the judges of election for all elections held in the county, and if there shall be any vacancy in said board of judges, the electors present at the time of opening the polls on the morning of the election shall choose *viva voce* from the qualified electors of said township, so many judges as there shall be vacancies in such board. The township clerk shall be clerk of elections, and the board shall have power to appoint one of the qualified electors of such township to act as the other clerk of election, and the said board and clerks shall each receive the sum of two dollars for their services as such officers out of the treasury of their respective townships.

§ 18. OATH OF JUDGES AND CLERKS.] Every judge and clerk, or other person, as prescribed in the preceding section, shall, before they enter upon the duties of their office take and subscribe to the following oath: "I, A B, do solemnly swear (or affirm as the case may be) that I will perform the duties of judge (or clerk as the case may be) according to law and the [best] of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same." The said election shall be conducted in the manner as prescribed in chapter 27 of the Political Code, entitled "Elections," so far as applicable and in conformity with this chapter.

§ 19. TOWNSHIP TO BE BODY CORPORATE.] Every civil township heretofore organized, or which may be organized under the provisions of this chapter, is a body corporate for civil and political purposes, and as such has power and authority to sue and be sued; to purchase and hold lands in its name

within its limits for the public use of its own inhabitants; to make such contracts, purchases and hold such personal property as may be necessary for the exercise of its corporate or administrative powers; to make such orders for the disposition or use of its corporate property as may be deemed conducive to the interest of its own inhabitants.

§ 20. WHAT POWERS TOWNSHIP CAN EXERCISE.] No civil township shall possess or exercise any corporate powers except such as are enumerated in this chapter, or are especially given by law, or necessary to the exercise of the power enumerated or granted.

§ 21. ACTIONS HOW BROUGHT. CONVEYANCES.] All actions or proceedings brought by or against a township in its corporate capacity, shall be in the name of the township, but all conveyance of lands made in any manner for the use and benefit of its inhabitants, has the same effect as if made to the township by name.

§ 22. POWERS OF BOARD OF SUPERVISORS.] The board of supervisors of each township shall have power:

1. To direct the institution or defense of actions in all controversies wherein such township is interested.

2. To levy a tax to raise such sums of money for the repair and construction of roads and bridges, and for other necessary township charges, as they may deem expedient.

§ 23. POWERS AND DUTIES.] The said board shall have charge of such affairs of the township as are not by law committed to other township officers, and which properly belongs to the duties of said board; and they shall have power to draw warrants on the township for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the township, and for all other moneys raised by the township to be disbursed for any other purpose, and shall have power to divide their township into road districts as they may deem proper.

§ 24. WHEN INCORPORATED TOWN IS INCLUDED IN TOWNSHIP.] Whenever any incorporated town which is laid out into streets is included within the limits of an organized township, the supervisors are authorized to cause improvements to be made in any street that may be needed as a highway, if the corpo-

rate authorities of such town neglect to make such improvements.

§ 25. SUPERVISORS HAVE POWER TO PROSECUTE.] The board of supervisors of any township shall have power to prosecute, in the name of the township, for any trespass committed upon any public enclosure or other property belonging to the township, and shall pay all moneys collected under this section to the township treasurer.

§ 26. QUORUM OF SUPERVISORS.] Any two of the supervisors constitute a quorum for the transaction of business or the performance of any duty required by law of the township supervisors, except when otherwise provided: *Provided*, That when the board are equally divided upon any question they shall defer a question until a meeting of the full board, and then the question shall be decided by a majority vote of the board.

§ 27. VACANCIES IN TOWNSHIP OFFICES.] All vacancies in township officers, except justices of the peace, shall be filled by appointment by the justices of the peace of the township, together with the board of supervisors, or a majority of them, by warrant under their hand; and if a vacancy occurs from any cause in the foregoing board of appointment, the remaining officers of such board shall fill any vacancy therein.

§ 28. ACCOUNTS.] The board of supervisors shall audit all accounts payable by said township, and if from any cause there be not three supervisors present to constitute said board, the chairman, and in his absence, either of the other supervisors may notify any one, or so many of the justices of the peace of the said township as will, together with the supervisors present, make a board of three; and the board so constituted shall have power to act as the township auditing board.

§ 29. WHEN BOARD TO MEET. SETTLEMENT OF ACCOUNTS.] The township board shall meet on the first Monday in January in each year, and at such other times as they may deem necessary and expedient, for the purpose of auditing and settling all charges against said township; and they shall state on each account the amount allowed by them; but no allowance shall be made upon any account which does not specifically

state each item of the same, and the nature thereof, and the township clerk shall keep a record of all accounts filed and audited, to enable the said board to settle and audit the accounts of the township treasurer; and when the account is allowed the said board shall draw a warrant on the treasurer of the township in favor of the person entitled thereto, which shall be signed by the chairman of the board and attested by the clerk.

§ 30. TOWNSHIP BOARD TO AUDIT ACCOUNTS.] The said township board shall also at their annual meeting in each year, examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as such officer, and they shall in like manner audit accounts and settle with all other township officers, who are authorized by law to receive or disburse any money of the township by virtue of their office.

§ 31. TOWN ORDERS TO BE PAID BY TREASURER, AND TO BE RECEIVED FOR TAXES.] The amount of any account audited and allowed by the township board shall be paid by the township treasurer, on the order of said board, as provided in section 29 of this act, and all orders issued to any person by the township board for any sum due from the township shall be receivable in payment of township taxes in said town.

§ 32. TOWNSHIP BOARD TO LEVY TAX.] On the second Monday after the board of county commissioners have met and equalized the assessment in the county, the township board of supervisors shall meet with the township clerk and must levy the necessary tax for the current year; and if from any cause said board fail to meet at that time and make such levy, they may make such levy at any time thereafter, not less than thirty days previous to the time fixed by law for the tax list to be placed in the hands of the county treasurer.

§ 33. CLERK OF TOWN TO NOTIFY COUNTY CLERK OF RATE OF LEVY.] It shall be the duty of the township clerk, immediately after the township board of supervisors have made the levy of taxes, or within three days thereafter, to notify the county clerk of the amount levied, who shall enter the same on the county tax list, to be collected by the county treasurer as county taxes are collected.

§ 34. TOWN BOARD TO DETERMINE AMOUNT OF CERTAIN TAX.] The

township board of supervisors shall determine the amount of property-tax to be levied for highways, and shall levy the same, which shall not be less than one or more than ten mills on the dollar on the assessed valuation of the township; they shall also determine the amount of bridge tax necessary for the repair and construction of bridges in the township, and shall levy the same, which shall not be less than one nor more than five mills on the dollar on the assessed valuation of the township, and the said bridge tax when collected shall not be used for any other purpose than the repair and construction of bridges in the township. And that all organized townships shall be exempt from the payment of a general road tax for the support and keeping in repair the highways, which may be levied by the board of county commissioners or any other board, officer, or tribunal, other than the said board of township supervisors.

§ 35. COUNTY CLERK TO NOTIFY TOWN OF CHANGE OF HIGHWAY.] Whenever the board of county commissioners shall locate, vacate or change any highway in any organized township, their county clerk shall transmit to the township clerk in which such location, vacation, or change is made, a copy of the record thereof, who shall cause notice of such change to be given to the proper road overseer.

§ 36. COUNTY CLERK MUST FURNISH TO TOWN RECORD OF ALL HIGHWAYS.] The county clerk shall furnish each organized township in his county with a copy of the record of all the highways in said township, to be transmitted to the township clerk, who shall furnish each overseer of highways in his township with the records of all the roads in each road district respectively.

§ 37. THIS ACT HOW CONSTRUED RESPECTING HIGHWAYS.] Nothing in this act contained shall be so construed as to give power to any board or officer to locate, vacate or change any highway, other than the board of county commissioners. Neither shall it be so construed as to prevent the board of county commissioners from levying a general county bridge tax for the purpose of building and maintaining county bridges in their respective counties.

TOWNSHIP BOARD OF HEALTH.

§ 38. BOARD OF HEALTH.] The township supervisors shall

constitute a board of health, and within their respective townships shall have and exercise all the powers necessary for the preservation of the public health.

§ 39. TO ORDER REMOVAL OF NUISANCE.] Whenever any nuisance, source of filth or cause of sickness is found on private property, the board of health shall order the owner or occupant thereof, at his own expense, to remove the same within twenty-four hours; and if the owner or occupant neglects so to do he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the township.

§ 40. TO REMOVE NUISANCES IN CERTAIN CASES.] Whenever such owner or occupant shall not comply with such order of the board of health, said board may cause the said nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as has caused or permitted the same.

§ 41. MAY ENTER BUILDING. IF REFUSED.] Whenever the board of health thinks it necessary for the preservation of the health of the inhabitants to enter any building or vessel in their town for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his township, stating the facts in the case so far as he has knowledge thereof.

§ 42. JUSTICE TO ISSUE WARRANT—WHEN.] Such justice shall thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and the same destroy, remove or prevent, under the direction of the members of such board of health.

§ 43. CARE OF PERSON INFECTED WITH CONTAGIOUS DISEASE.] When any person coming from abroad, to, or residing in any township within this Territory is infected, or lately has been infected with any contagious disease dangerous to the public health, the board of health of the township where such sick or infected person may be, may immediately cause him to be

removed to a separate house, if it can be done without danger to his health, and shall provide for him nurses and necessaries which shall be at the charge of the person, his parents, guardian or master, if able, otherwise at the charge of the county in which such township is situated.

§ 44. SAME.] If such infected person cannot be removed without danger to his health, the board of health shall make provision as directed in the preceding section for such person in the house where he may be; and in such case they may cause the persons in the neighborhood to be removed, and may take such other measure as they may deem necessary for the safety of the inhabitants.

§ 45. WHEN BOARD TO PROVIDE HOSPITAL.] When a disease, dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick or infected person to be removed thereto, unless his condition will not admit of such removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and with all its inmates subject to the regulations of the board.

§ 46. CLERK TO PRESERVE TOWN RECORDS.] The township clerk shall have the custody of records, books and papers of the township when no other provision is made by law; and he shall duly file and safely keep and preserve all records, oaths and other papers required by law to be filed in his office.

§ 47. SHALL KEEP RECORD OF MEETINGS.] He shall record in the book of records of his township minutes of the proceedings of every meeting of the board of supervisors of the township, and he shall enter therein every order or direction by them made; and shall also file and preserve all accounts audited by the township board, and enter a statement thereof in such book of records.

§ 48. CLERK SHALL MAKE TAX LIST. The township clerk shall, within four weeks after the board of supervisors have levied the property tax, make out a tax list for each highway district in his township, which list shall be in numerical and

alphabetical order, having distinct columns for lands, town lots, and personal property, and carry out in a column the amount of the tax on each piece of land and town lot, and on the amount of personal property belonging to each individual; and the said list shall contain the names of all persons required to pay a poll tax; and to enable the township clerk to make out such tax lists, the township assessor shall furnish the township clerk as soon as the assessment has been equalized, with a correct copy of the assessment lists of said township for that year, which list shall be the basis of such tax list. The county clerk shall furnish the several township clerks of his county with printed blanks necessary to carry the provisions of this chapter into effect.

§ 49. CLERK TO DELIVER HIGHWAY TAX LIST TO ROAD SUPERVISOR.] The township clerk shall make an entry upon such tax list showing what it is, for what highway district, and for what year, and shall attach to the list his warrant under his hand in general terms, requiring the supervisor of such road district to collect the taxes therein charged as herein provided; and no informality in the above requirements shall render any proceedings for the collection of such taxes illegal. The clerk is required to cause such lists to be delivered to the proper road supervisors of his township and take his receipt therefor; and such list shall be full and sufficient authority for the road supervisor to collect all taxes therein charged against resident property holders in his district in the manner provided by law.

§ 50. COUNTY TREASURER TO PAY MONEYS TO TOWN TREASURERS.] The county treasurer shall, on the first Monday in April and October in each year, pay to the township treasurer all the highway and other township taxes belonging to his township which are at such times in his hands, taking the duplicate receipts of such township treasurer therefor, one of which shall be delivered by such treasurer, on or before the first Monday in May and November in each year, to the township clerk.

§ 51. DUTY OF TOWNSHIP TREASURER.] Every township treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided, at the expense of the town-

ship, for that purpose, and exhibit such account, together with his vouchers, to the township board at its annual meeting for adjustment; and he shall deliver all books and property belonging to his office, the balance of all moneys in his hands as such treasurer, to his successor in office on demand, after such successor has qualified according to law.

§ 52. FEES OF TOWNSHIP TREASURER.] The township treasurer shall be allowed and entitled to retain two per centum of all moneys paid into the township treasury, for receiving, safe keeping, and paying over the same according to law.

§ 53. ANNUAL STATEMENT OF TOWN TREASURER.] Each township treasurer shall make out and present to the township board, on the day of its annual meeting, a statement in writing of the moneys by him received into the township treasury from the county treasury, and from all other officers and persons on any account, and also of all moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person, and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall state in such report the amount of moneys remaining in his hands as treasurer. Such report shall be filed by him in the office of the township clerk, and shall by such clerk be carefully preserved and recorded in the township record book.

§ 54. COUNTY BOARD TO PROVIDE ASSESSMENT NOTICES AND LISTS FOR TOWN ASSESSORS.] The board of county commissioners shall provide for the use of the township assessors suitable notices and blank forms for the listing and assessment of all property, and such instructions as shall be needful to secure full and uniform assessment and returns; and a list of all the entered lands in each separate township in the county subject to taxation.

§ 55. TOWN ASSESSORS—HOW GOVERNED.] The township assessors shall be governed by and make assessments and returns as provided in chapter 28 of the Political Code of 1877, and in conformity with the provisions of this chapter, and shall be paid for their services out of the township treasury.

OF OVERSEERS OF HIGHWAYS.

§ 56. COMMENCING WORK.] The overseer of highways of each road district or township shall, on receiving the tax list as provided in section 49 of this chapter, commence working the highways in his road district.

§ 57. WHO LIABLE TO ROAD TAX.] Every male citizen between the age of twenty-one and fifty years, shall be subject to a poll tax of one dollar and fifty cents, which must be paid in money or by one day's labor in each year on the public highway within his road district, at the time and place directed by the overseer of highways; and in case there is any person residing in any road district subject to a poll tax, whose name is not on the list as furnished by the township clerk, the overseer shall enroll his name and he shall be liable to labor on the roads at the same time and in the same manner that those originally enrolled on said list; but any person who has labored that year in any road district and has a receipt therefor, shall not be liable to perform such labor.

§ 58. SUPERVISOR TO ORDER OUT PERSONS LIABLE.] The overseer of highways must order out every person subject to road labor as aforesaid, between the first days of April and December, annually, to perform the work necessary on the public highways within their respective road districts.

§ 59. ROAD TAX—IN WHAT DISTRICT TO BE PAID.] Any road tax levied by the board of supervisors, in addition to the poll tax, may be worked out in the road district in which such person resides, when it is a personal tax, or tax on personal property; or, if on real property, then in the district where such property is situated, on which the tax is levied, at the rate, in all cases, of one dollar and fifty cents per day for a man, and three dollars for a man and team, and the receipt of the overseer for the amount worked out must be taken by the county treasurer in payment to that amount of said tax.

§ 60. OVERSEER OF HIGHWAY TO REMOVE OBSTRUCTIONS.] It shall be the duty of any overseer of highways, having personal knowledge of or on being notified in writing of any obstruction in the highway or public street in his district, to immediately remove or cause to be removed any such obstruction.

§ 61. PENALTY FOR REFUSING TO ACT AS OVERSEER.] No person shall be required to serve as overseer of highways who is exempt from performing labor on the highway, and if any person who is elected or appointed overseer of highways, having received notice thereof, shall fail to qualify, as required by law, unless prevented by sickness, he shall forfeit and pay the sum of ten dollars, and if he fail or refuse to pay the same, his successor in office shall collect the said amount by suit or otherwise, and pay the same into the township treasurer, and take his duplicate receipt therefor and file one with the township clerk.

§ 62. OVERSEER TO POST NOTICES.] The overseer of highways shall, within six days after receiving the tax list as mentioned in section 49, post up in three conspicuous places in the road district, written notices of the amount of highway tax assessed to each taxpayer in said district.

§ 63. ROAD TAX—WHERE EXPENDED.] The money collected on road and poll tax in any township, whether collected by the overseer or treasurer, shall be expended for highway purposes in the proper road district, and in no other.

§ 64. DIRECTING THE MANNER OF WORKING HIGHWAYS.] The overseer of highways in each road district shall give at least three days' notice of the day and place designated to work the highways, to all persons subject to work thereon, or who are charged with a highway and poll tax residing in his district, and all persons so notified must meet said overseer at such time and place with such tools, implements, and teams as the overseer may designate, and shall labor diligently under the direction of the overseer for eight hours each day; and if requested by the overseer, shall continue to work from day to day, as above stated, until he shall have worked out all the tax charged to him on the list of the overseer, at the rate as provided in section 59 of this chapter; and for such labor performed, the overseer shall give to the person a receipt, which shall be evidence of the payment of said tax to the amount specified in *in* the receipt.

§ 65. PENALTY FOR NEGLECTING TO PERFORM ROAD TAX.] Every person liable to perform labor on the highway, as provided by law, who shall fail or neglect to attend, either in person or

by satisfactory substitute, at the time and place appointed, with the required tools, implements or team, having had three days' notice thereof, or, having attended, shall spend his time in idleness, or disobey the overseer, or fail to furnish to said overseer, within five days thereafter, some satisfactory excuse for not so attending, shall forfeit and pay the sum of five dollars together with the amount of the taxes charged to him on the overseer's list, and the costs of collecting the same; and in case of failure to pay such forfeit within ten days, the overseer shall recover the same by action, in the name of the overseer, before any justice of the peace in the proper county or township, which money, when collected, shall belong to the road fund, and shall be expended on the public highway: *Provided*, That any person may, at his option, when notified to work, pay to the overseer the amount charged to such person for road and poll tax: *And provided further*, That no personal property shall be exempt from execution on judgments obtained under the provisions of this section.

§ 66. OVERSEER'S COMPENSATION.] The overseer of highways shall perform the same amount of labor as is required of an able bodied man, except when he is necessarily engaged in superintending the work, for which he shall be allowed the sum of two dollars per each day's labor, including the time necessarily spent in notifying the hands and making out his returns, which sum shall be paid out of the road fund, after deducting the amount of his own tax, upon the order of the chairman of the board of supervisors and township clerk.

§ 67. LIABILITY OF OVERSEER FOR UNSAFE HIGHWAY.] When notified in writing, that any bridge, or any portion of the highway is unsafe, the overseer shall be liable for all damages resulting from the unsafe or impassable condition of the highway or bridge, after allowing a reasonable time for repairing the same.

§ 68. POWER OF OVERSEER WHEN MAKING EXTRA REPAIRS.] For making such extraordinary repairs, the overseer may call out any or all the able bodied men of the district in which they are to be made, but not more than one day at any time without their consent, and persons so called out shall be entitled to receive a certificate from the overseer, certifying the number of days' labor performed, which certificate shall be re-

ceived in payment for highway tax for that or any succeeding year, at the rate per day as provided in section 59 of this chapter.

§ 69. LIABILITY FOR FAILURE.] If any able bodied man, who is duly summoned for any such purpose, fails to appear and labor diligently by himself or substitute, or send satisfactory excuse therefor, or pay the value of such work in money at any time before suit is brought, he is liable to a fine of five dollars, to be recovered by suit before any justice of the peace in the name of the overseer, and for the use of the road fund of the district.

§ 70. LIABILITY OF OVERSEER FOR NEGLIGENCE.] The overseer of highways shall keep the highways in as good condition as the funds at his disposal will permit, and any overseer failing to perform the duties required by this chapter shall forfeit and pay for the use of the highway fund of his district the sum of fifty dollars; the township clerk shall, in case of such failure or neglect, commence suit in his name for the collection of the same, before any justice of the peace in the proper county.

§ 71. ROAD SUPERVISOR'S REPORT.] On or before the first Monday of January of each year, the several road overseers shall each make a report to the board of township supervisors of his doings as such overseer during the preceding year, the amount of labor performed, the number of day's labor necessarily performed by himself in the discharge of his duties, and the said board shall thereupon cause a warrant to be drawn on the treasury of the township for the amount actually due him for such services, payable out of the moneys belonging to the road fund of the township.

BRIDGES.

§ 72. BRIDGES PART OF HIGHWAY.] Bridges erected or maintained by the public constitute a part of the public highway.

§ 73. PERSON DITCHING ACROSS HIGHWAY TO MAINTAIN BRIDGE.] Every person digging and making a ditch, drain or mill race across the public highway, shall, at his own expense, build, maintain and keep in repair a proper and lawful bridge across such ditch, drain or mill race; and any person refusing or neglecting to build, maintain and keep in repair any such bridge as specified in this section, shall be personally

liable to any person or persons for damages sustained by reason of such neglect or refusal.

§ 74. WHEN COUNTY SHALL BUILD BRIDGE.] Whenever it shall appear to the board of county commissioners of any county that any one of the townships in such county would be immeasurably burthened by erecting or repairing any necessary bridge in said township, such board of county commissioners shall cause such sum to be raised and levied upon the county as will be sufficient to defray the expenses of erecting or repairing such bridge; and such money when collected shall be applied by the said board of commissioners to the purposes for which the same were raised: *Provided*, That no board of commissioners shall, under the provisions of this section, cause any levy to be made for the repair or construction of any bridge when the cost of such repair or construction shall be less than two hundred dollars.

§ 75. CONTRACTING DEBTS RESTRICTED.] No township board has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year.

§ 76. ELECTION PRECINCT.] Each lawfully organized township shall constitute an election precinct.

POUNDS.

§ 77. MAY PROVIDE POUND.] Each township board may at the expense of the township, and in such places therein as such board shall deem necessary, provide and maintain one or more sufficient pounds in which swine, sheep, horses, asses, mules, goats and neat cattle may be restrained and kept from going at large, contrary to law, and the same shall be under the care and direction of such pound masters as are chosen or appointed for that purpose.

§ 78. DUTY OF POUND MASTER—FEES, ETC.] It shall be the duty of the pound master of each township to receive and keep all beasts delivered to them, in the public pound, and may retain and keep in custody such animals until all damages and costs are paid, or until good and sufficient security shall be given for the same, and if the owner of such animals fail to appear and pay all damages and costs as provided in this section, within 3 days after such impounding, the pound master shall advertise the same for sale, giving ten days' no-

tice of such sale by advertising in the manner as is required in case of constable's sale of goods and chattels taken by execution or attachment: *Provided*, That if the owner or owners of such animals be known to the pound master, it shall be his duty to notify the owner or owners of such animals, within two days after taking such animals in charge if such owner shall reside in the county. Such notice shall specify the time when and the place where such beasts were distrained, the number of such beasts, and the amount of damages and costs, if known.

§ 79. PROCEEDS OF SALE—HOW DISPOSED OF.] From the proceeds of the sale mentioned in section 78, the pound master shall retain a sufficient amount to pay his fees, and the costs of keeping and advertising, and the costs of sale; and if there be any surplus money, the same shall be paid to the owner of such beasts, if known; if no owner appear at the time of sale or within ten days thereafter and claim such surplus, the same shall be paid by the pound master to the treasurer of the township where such sale is made.

§ 80. SURPLUS MONEYS—HOW DISPOSED OF.] The several township treasurers to whom any moneys may be paid, in pursuance of the last section, shall keep the same for one year from the time of such sale, unless the owner of such beasts shall sooner demand the same. But if the said money shall be so demanded, the same shall be paid to the owner of such beasts, the said treasurer deducting therefrom two per cent. for his fees. But if the money be not demanded by the owner within one year, the said treasurer shall place the same in the treasury of his township, for the use of the township, subject to the order of the township board.

§ 81. ACT—HOW CONSTRUED.] Nothing in this act shall be so construed as to prevent any person or persons from taking advantage of the provisions of chapter thirty-eight of the Code of Civil Procedure, approved February 17, 1877.

PENALTY WHERE PERSON ELECTED FAILS TO QUALIFY.]—And every person elected to any township office who shall fail to qualify as provided by this section shall forfeit and pay the sum of ten dollars, to be collected by suit before any justice of the peace in the county where such person resides, and the said fine when collected to be paid into the township treasury for the use of the township.

COUNTY CLERK TO MAKE ASSESSMENT ROLL.—It shall be the duty of the county clerk when the several assessors have made returns of the assessments, to make out the county assessment roll as provided for in section 26 of chapter twenty-eight of the Political Code of the Revised Codes of 1877.

ACTIONS BY AND AGAINST TOWNSHIPS.

§ 82. **LEGAL PROCEEDINGS AGAINST TOWNSHIP.]** In legal proceedings against a township by name, all papers shall be served on the chairman of the boards of supervisors, and in case of his absence on the township clerk; and whenever any action or proceeding is commenced, said chairman shall attend to the defense thereof and lay before the other members of the township board a full statement of such proceedings, and shall take such steps in the matter as a majority of the said board shall there agree upon.

§ 83. **CERTAIN ACTIONS NOT TO BE BROUGHT BEFORE RESIDENT JUSTICE.]** No action in favor of any township shall be brought before any justice of the peace residing in such township.

§ 84. **POWER OF COURT IN RELATION TO TOWNSHIP LANDS.]** Whenever by decree or decision, in any action or proceeding brought to settle any controversy in relation to township commons or other lands the common property of a township, or for the partition thereof, the rights of any township are settled and confirmed, the court in which such proceedings are had may partition such lands according to the right of parties.

§ 85. **JUDGMENT AGAINST TOWNSHIP—HOW PAID.]** When a judgment is recovered against any township in an action prosecuted by or against said township, no execution shall be awarded or issued upon such judgment; but the same unless reversed or stayed on appeal, shall be paid by the township treasurer upon demand and the delivery to him of the certified copy of the docket of the judgment, if there is sufficient money belonging to such township in his hands not otherwise appropriated. If he fails to do so he shall be liable on his bond for the amount, unless the collection thereof is afterwards stayed upon appeal.

§ 86. **WHEN TOWNSHIP BOARD TO CAUSE EXTRAORDINARY LEVY.]** If judgment for the recovery of money is rendered against any township and the judgment is not satisfied, or proceedings

thereon stayed by appeal or otherwise before the next annual meeting of said township board to levy taxes, a certified copy of the docket of the judgment may be presented to to said township board at said annual meeting. The township board shall thereupon cause the amount due on the judgment with interest from the date of its recovery, to be levied as a special tax for the payment of said judgment.

FEEES OF TOWNSHIP OFFICERS.

§ 87. SALARY AND FEES OF OFFICERS.] The township supervisors shall each receive one dollar and fifty cents for each day necessarily engaged in the duties of their office, except when acting as judges of election, when they shall each receive two dollars per day. The township clerk shall receive one dollar and fifty cents for each day necessarily engaged in the discharge of the duties of his office, and two dollars per day when acting as clerk of election: *Provided*, That the township clerk shall be paid fees for the following, and not a per diem:

Serving notices of election upon township officers as required by law, twenty-five cents each.

Filing any paper required by law to be filed in his office, ten cents each.

For posting up notices as required by law, twenty-five cents each.

For copying any record or instrument on file in his office and certifying the same, ten cents for each folio, to be paid for by the person applying for the same.

§ 88. PAY OF ASSESSORS.] The township assessors shall receive for their services while necessarily engaged in the duties of their offices, the sum of two dollars per day.

§ 89. FEE OF TREASURER.] The township treasurer shall receive two per cent. on all money received and by him disbursed for the township according to law.

§ 90. PAY OF OVERSEER OF HIGHWAYS.] The overseer of highways shall each receive the sum of two dollars per day for each day necessarily engaged in the discharge of the duties of his office.

§ 91. FEES OF POUND MASTER.] The pound master shall receive the following fees, to-wit:

For taking into pound and discharging therefrom any horse, ass, mule, sheep or hog, and all neat cattle, ten cents each.

For keeping each head twenty-four hours in pound, twenty cents each.

For serving notices, advertising and selling animals, the same fees as are allowed constables for like services, and he shall have a lien on such animals for his legal fees.

§ 92. FEES OF CONSTABLES.] Constables shall be entitled to receive the same fees as are allowed sheriffs for like services.

§ 93. FEES OF JUSTICES. Justices of the peace shall receive the same fees as are or may be provided in chapter 39 of the Political Code.

§ 94. CERTIFICATE TO OFFICIAL ACTS OF JUSTICE.] The bond and oath of office of a justice of the peace, filed in the office of the clerk of the district court for the county or judicial subdivision, are sufficient authority for said clerk to certify to the official acts and signature of such justice of the peace.

§ 95. CONSTABLE MAY MAKE ARREST. FINE FOR DRUNKENNESS.] Any constable in any organized township containing any village not incorporated shall be a proper officer for arresting and detaining any person for disorderly conduct within the village arising from drunkenness or otherwise, without process first issuing, and any person deemed guilty of such disorderly conduct shall be taken before any justice of the peace of such township, and upon conviction thereof be fined in the sum of not less than five nor more than ten dollars and all costs arising from such complaint and trial.

§ 96: SPECIAL ELECTION FOR JUSTICES.] The supervisors of any organized township may call a special election at any time to fill all vacancies occurring in the office of justice of the peace, but the township clerk shall give at least ten days' notice of such special election by posting a notice in three of the most public places in the township.

§ 97. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed.

§ 98. This act shall take effect from and after its passage and approval.

Approved, February 18, 1879.

Laws of Local Application.

CHAPTER 60.

(BURLEIGH COUNTY—BRIDGES.)

AN ACT to attach the Counties of Walette and Mountraille to Burleigh County, for Certain Purposes.

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

§ 1. COUNTIES ATTACHED FOR BRIDGE PURPOSES.] That the counties of Walette and Montraille are hereby attached to Burleigh county for the purpose of bridge corporations, subject to all the provisions of the law in relation thereto. And the commissioners of Burleigh county shall have the same authority and control over all bridge corporations within said counties of Walette and Mountraille, the same as if they were a part of the said county of Burleigh. And said counties of Walette and Mountraille shall be attached as aforesaid for the purposes mentioned in this act, but for no other purpose.

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

Approved, February 10, 1879.

CHAPTER 61.

(CLAY COUNTY—LIQUOR LICENSE.)

AN ACT to authorize the County Commissioners of Clay County to Require the Payment of a License and the Giving of a Bond for the Sale of Intoxicating Liquors, as Provided by the General Laws of Dakota Territory.

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

§ 1. MAY REQUIRE PAYMENT OF LICENSE.] The county commissioners of the county of Clay are hereby authorized and empowered to require the payment of a license and the giving of a bond for the sale of intoxicating liquors in said county, anything in the charter of the city of Vermillion to the contrary notwithstanding. The intention being to allow both the county commissioners of said county and also the mayor and city council or other authorities of any town or city situated in said county, to require the payment of the license as herein provided, or as provided by the general laws of this Territory.

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

Approved, February 22, 1879.

CHAPTER 62.

(KINGSBURY COUNTY—ELECTION PURPOSES.)

AN ACT to attach the County of Kingsbury for Election Purposes.

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

§ 1. PART OF EIGHTH DISTRICT.] The county of Kingsbury shall be and hereby is attached to the eighth legislative district for election purposes.

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

Approved, February 22, 1879.

CHAPTER 63.

(LAKE COUNTY—BOUNDARIES.)

AN ACT to define the Boundaries of Lake County, Dakota Territory.

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

§ 1. BOUNDARIES DEFINED.] The county of Lake shall be bounded and described as follows: Beginning at the southwest corner of the county of Moody; thence north and along the west boundary of said county to the second standard

parallel; thence west and along said parallel to the northwest corner of township one hundred and eight, range fifty-four; thence south and along the range line between ranges fifty-four and fifty-five to the first standard parallel; thence east along said parallel to the place of beginning.

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

Approved, February 22, 1879.

CHAPTER 64.

(LAWRENCE COUNTY—FIRE WARDEN.)

AN ACT authorizing the Appointment of Fire Warden in the Town of Deadwood, Lawrence County, and for other Purposes.

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

§ 1. COUNTY COMMISSIONERS MAY ESTABLISH FIRE LIMITS.] The county commissioners of Lawrence county may at any regular meeting, or at any special meeting thereof, called for the purpose, clearly and definitely designate and establish such an area or portion of the town of Deadwood, including South Deadwood, as they may deem proper, which area or portion of said town when so designated and established and entered in the journal or record of proceedings of said county commissioners shall be known as the fire limits of said town, and in which all buildings that now are or may be erected where fire is now or may be used shall be provided throughout with flues or chimneys by the owners thereof, constructed in a good and substantial manner, with good merchantable brick or other durable material, as said county commissioners may designate by resolution.

§ 2. FIRE WARDEN. HIS DUTIES.] The county commissioners of said county shall have power to appoint one fire warden for said town, whose duty it shall be to inspect all flues, chimneys, stovepipes and other things appertaining to and used in and about any building in said town for fire purposes, at least once in every three months, and as much oftener as necessity may seem to require, or when so directed by said board of county commissioners; he shall also cause the owner or owners or occupant of any such building to secure all stoves and stovepipes therein in accordance with the resolution of said board of county commissioners that may be adopted for the better securing of buildings against fire, and he shall perform such other duties as may be required of him by law or any legal order of said board of county commissioners.

§ 3. WARDEN TO GIVE BOND. COMPENSATION.] Said fire warden shall hold his office for one year, or until the first Monday of January in each year, unless sooner removed by said board of county commissioners; and he shall, before acting as such warden, give bond to said county in such sum as may be fixed by said commissioners, not exceeding one thousand dollars, with not less than two sureties, to be approved by said county commissioners, conditioned that he will faithfully and impartially perform the duties of fire warden of said town as required by law, and for his services he shall be allowed such compensation as may be allowed by said board of county commissioners, not exceeding four dollars per day for each day actually and necessarily engaged in the performance of his duties, which shall be paid quarterly out of the "fire tax of Deadwood" by the treasurer of said county, on the order of said board of county commissioners, in the manner hereinafter specified.

§ 4. PENALTY FOR TRANSGRESSING FIRE LIMIT'S REGULATION.] Any person who shall so negligently keep and maintain any chimney, flue, stovepipe, fire, fireplace, forge, bake-oven, furnace or other appliance wherein is kept or used any fire, in or near any building or premises within the fire limits, when established as aforesaid, that the same shall be unsafe and in danger of communicating fire to said building or premises or to any other building or buildings, shall be guilty of main-

taining a public nuisance, and on conviction thereof shall be fined in any sum not less than five dollars and not exceeding one hundred dollars and costs, or imprisonment in the county jail not exceeding ten days, or by both such fine and imprisonment.

§ 5. PENALTY FOR REFUSING TO CONSTRUCT PROPER CHIMNEYS, ETC.] Any person owning any building within the limits aforesaid, who shall, after three days' notice given by said fire warden, neglect or refuse to build or construct therein such chimneys or flues and other safeguards against fire, and of such material and in such manner as may be required by law, or the order or resolution of said board of county commissioners, as specified in this act, shall be guilty of maintaining a public nuisance, and on conviction thereof shall be subject to the same fine or imprisonment, or both, as specified in the last preceding section; and any lessee of such property may make and pay for such necessary improvements and deduct the amount thereof out of rent due or that may become due from time to time, to such owner.

§ 6. PENALTY FOR EXPOSING COMBUSTIBLE MATERIAL.] Every person who shall within such fire limits place and keep large quantities of wood, hay, straw, powder, or other combustible or explosive materials of any kind so as to endanger the dwelling houses or other buildings in the neighborhood thereof from fire, shall be deemed guilty of establishing or keeping and maintaining a public nuisance; and if such person, after being notified by said fire warden to remove such combustible or explosive materials above mentioned, shall neglect or refuse to remove the same, such person shall, on conviction, be fined in any sum not exceeding one hundred dollars, and said board of county commissioners shall have power at any regular meeting thereof to curtail or extend said fire limits.

§ 7. OBSTRUCTIONS IN STREETS MAY BE REMOVED. PENALTY FOR REFUSING.] Said board of county commissioners may at any regular meeting thereof, by resolution adopted, provide for the removal of any wood, lumber, boxes or other material or obstructions in any street or alley in said town, or on any sidewalk; and after the adoption of such resolution, if any person, after three days' notice given by said fire warden, shall

neglect or refuse to remove any wood, lumber, boxes, or other material or obstructions from immediately in front of any building owned or occupied by him or her, shall be deemed guilty of maintaining a public nuisance, and upon conviction thereof may be fined in any sum not exceeding one hundred dollars for each offense, and in such cases said fire warden may remove such obstructions at the expense of the party chargeable therewith, and collect the same out of the property so removed or otherwise: *Provided*, That this section shall not apply to persons erecting buildings during the time of the construction thereof, but no longer; and such persons shall, on the completion of any building erected by them, remove all obstructions caused thereby, or be liable to punishment as aforesaid: *Provided further*, That no person shall at any time place any such material or obstruction in any street in such manner as to prevent the free passage of wagons or other vehicles.

§ 8. TAX FOR SUPPORT OF FIRE DEPARTMENT.] The board of county commissioners of said Lawrence county are hereby authorized and empowered to levy a special tax for the year 1879, and each year thereafter, not exceeding in any one year the sum of one mill on each dollar of taxable property, both real and personal, in said town of Deadwood, including South Deadwood, for the support and maintenance of the fire department of said town and the payment of the per diem of the fire warden; said tax shall be paid in lawful money of the United States and shall be known as the "fire tax of Deadwood," and shall be levied and collected in the same manner and at the same time as are the general taxes of said county, and shall be kept by the treasurer of said county as a separate fund from all other taxes collected.

§ 9. FIRE TAX—FOR WHAT PURPOSES DEVOTED.] No warrant shall be drawn on said fire tax or fund by said board of county commissioners, except for per diem of said fire warden and for the purchase of and furnishing said department, or the several companies composing the same, with all necessary apparatus for better securing the efficiency of said fire companies and for making repairs to all such apparatus and such improvements as shall be actually necessary for the purposes aforesaid, and nothing in this act shall authorize or

shall be so construed as to make said county, in any manner, liable for any amount over and above the amounts of said tax collected in each year, including what other moneys may be collected and become part of said fire tax or fund; and said county treasurer shall pay no money out of said tax or fund, except on a warrant or warrants drawn thereon by said board of county commissioners, and said commissioners shall not issue warrants amounting in the aggregate in any one year to more than the amount of such fire tax for that year.

§ 10. COMMISSIONERS MAY MAKE CONTRACT FOR WATER SUPPLY.]
Said board of county commissioners may at any time, after three months from and after the passage and approval of this act, have power to enter into a contract in writing with any person or persons, company or corporation, for furnishing an ample supply of good water for fire and other public purposes, including domestic purposes in said town, for any term of years not exceeding twenty, which contract when recorded in the register of deeds office of said Lawrence county, shall be binding on the contracting parties thereto, and said town of Deadwood, whether as an incorporated or unincorporated town, for and during the term specified in said contract: *Provided*, That the water to be so furnished shall have at least one hundred feet hydraulic pressure and as much over one hundred feet, as may be deemed necessary in the opinion of two competent and disinterested engineers, to secure or materially aid in the extinguishment of fires in said town, and shall be a constant and steady supply at all seasons of the year; and said board of county commissioners shall have power to grant the right of way through any of the streets and alleys of said town, for water mains and pipes, by specifying such grant and the terms thereof in such contract.

§ 11. QUESTION OF WATER SUPPLY TO BE SUBMITTED TO VOTERS.]
Before any such contract shall be entered into, said board of county commissioners shall submit the question of "water contract" or "no water contract" to the legal voters of said town, and shall at the same time publish in some newspaper published therein, an accurate and short description of the terms of the proposed contract, and if a majority of the votes of said town shall be in favor of "water contract" then said

commissioners may make and enter into such contract, otherwise they shall have no such power.

§ 12. SAME.] Said board of county commissioners shall have power to negotiate for the purchase of or otherwise secure as trustees in trust for said town or the people thereof, any good and sufficient title to the permanent use and enjoyment of any water right or supply of water of the same capacity and quality in every respect as specified in section ten of this act, and which shall be reported upon favorably by two competent and disinterested engineers. Before any purchase shall be made under this section or any money shall be expended on the construction of any works on any such water right, said board of county commissioners shall submit the question of "water supply" or "no water supply" to the legal voters of said town, and if a majority thereof shall be in favor of "water supply" then said board of county commissioners may contract with the lowest responsible bidder for the construction and completion of all works necessary to make such water supply permanently available for the purposes aforesaid, provided that the sum to be expended shall not exceed the sum of six thousand dollars, the money for the payment of which shall be levied by said board of county commissioners on the taxable property, both real and personal, in said town, and shall be known as the "water tax;" said tax shall be collected at the same time and in the same manner as are the county taxes of said county, and paid out by the county treasurer thereof as in other cases: *Provided*, That if any warrants shall be issued on account of said contract of work, that the same shall be taken at par by the contractor or person to whom the same shall be issued, and no difference between cash and such warrants shall be allowed in awarding the contract.

§ 13. ESTIMATES FOR WATER SUPPLY SHALL BE MADE ON CASH BASIS.] The estimates for the construction and completion of such works shall be made on a cash basis, and no bid shall be entertained by said board of county commissioners that bears evidence of allowing for any difference between such estimates and such warrants at par; and said board of county commissioners shall have the right to reject any or all bids that may be presented under this act, and when said works

are completed, the same, together with the water right, secured as aforesaid, shall belong to and be the property of said town; and shall be held by said board of county commissioners in trust for said town or the people thereof, until such time as said town may be incorporated. The contractor shall give bond to said board of county commissioners and their successors in office as trustees as aforesaid, in double the amount of said contract, to secure the faithful performance of the terms or stipulations thereof, and the construction of the works aforesaid by such contractor shall be subject to the inspection and supervision of a competent civil engineer, to be selected by said board of county commissioners for that purpose.

§ 14. ELECTIONS—HOW HELD.] All elections held under this act shall be called, conducted, canvassed and result declared in the same manner as provided in the election laws of this Territory, so far as the same is applicable, and all fines and forfeitures collected under this act shall be paid to the county treasurer as in other cases, and shall belong to and be credited to said "fire tax" or "fund" by said treasurer.

§ 15. JURISDICTION OF JUSTICES.] The justice of the peace of the precinct in which said town is located, shall have and exercise jurisdiction of all cases arising under this act, and on complaint may hear, try and determine the same as in other cases where he has concurrent jurisdiction as such justice with the district court, and the like proceedings shall be had therein in every respect as in other cases where justices of the peace have such jurisdiction.

§ 16. PROVISIONS OF THIS ACT MAY APPLY TO ALL TOWNS IN THE COUNTY.] The provisions of this act may at any time be made to apply to any other town in said Lawrence county, so far as it can be done, whenever a majority of the citizens of such town shall petition said board of county commissioners to call an election for that purpose; and said board of county commissioners, upon receiving such petition, shall, at the next regular or special meeting thereof, (unless it is within sixty days of a general election in said county) call a special election in such town to determine whether the provisions of this act shall apply to said town or not, and if such petition shall be received within sixty days of any general election,

said board of county commissioners shall submit the question to the legal voters of such town at said general election.

§ 17. SAME.] If a majority of the legal voters of such town shall vote in favor of "fire warden law," then the provisions of this act shall apply and be in full force in such town from and after the date of publication of the result of said election, which said board of county commissioners shall cause to be published immediately after the result thereof is canvassed; but if a majority of said voters shall vote "against fire warden tax," then this act shall in no manner apply or be in force in such town.

§ 18. This act shall take effect and be in force from and after its passage.

Approved, February 20, 1879.

CHAPTER 65.

(UNION COUNTY—HIGHWAYS.)

AN ACT concerning Public Highways, Road Districts and Road Supervisors and their Duties and Compensation in Union County, and to cause the same to Conform to the General Laws.

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

§ 1. GENERAL LAWS RELATING TO ROAD MATTERS TO HAVE FULL FORCE IN UNION COUNTY.] From and after the passage and approval of this act the general laws of the Territory relating to highways, roads, road districts, road supervisors and other road officers and their duties and compensation, and all parts of the general laws, or acts amendatory thereof relating to

counties and townships and their officers, so far as the same apply to roads, road officers and road and bridge taxes and the levy, collection and payment of the same, shall apply to and have full force in the county of Union and all the civil townships which have been or may be organized therein; and all the proper officers shall be elected or appointed according to law to carry the same into effect; and no special or local laws concerning these subjects shall have any force against the provisions of this act and the laws herein referred to, except so far only as may be necessary to preserve any rights of property or use accrued to or vested in the said county or any township therein, or any individual or officer, or to execute, complete or pay consideration for any contract now in force under such local laws.

§ 2. ACTS REPEALED.] All acts and parts of acts so far as inconsistent with this act, and no farther, are hereby repealed; but this act shall not be construed to repeal or in any manner affect the force of chapter 9 of the special and private laws of 1872-3, approved January 9th, 1873, establishing commissioners districts in said Union county.

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

Approved, February 20, 1870.

TITLES OF LOCAL LAWS PASSED AT THE THIRTEENTH SESSION OF THE LEGISLATIVE ASSEMBLY AND NOT PUBLISHED IN THIS VOLUME.

- AN ACT** authorizing the county of Burleigh to issue bonds for the purpose of building a court house and jail.
- AN ACT** to amend section 4 of chapter 20 of the laws of 1872-3, approved January 4, 1873, to change the name of the county seat of Richland county from Chahinkapa to Wahpeton to agree with its present name and post-office.
- AN ACT** appropriating territorial taxes due or to become due from Grand Forks county, for the years 1878 and 1879, for the use of the county and for other purposes.
- AN ACT** authorizing school district No. 1, of the county of Richland, to issue bonds for the purpose of building a school house.
- AN ACT** authorizing the county commissioners of Richland county to fund the outstanding indebtedness of said county.
- AN ACT** to amend an act, entitled "An act authorizing the county commissioners of Yankton county to fund the outstanding indebtedness of said county, and for other purposes," approved February 16, 1877.
- AN ACT** to authorize and appoint E. A. Sherman as a special agent to make temporary arrangements with the proper authorities of the state of Minnesota for the care and custody of the insane.
- AN ACT** to authorize the county commissioners of Deuel, Grant, Codington and Hamlin counties to pay their representative.
- AN ACT** to authorize the funding into bonds of the indebtedness of Hutchinson county, outstanding July 1st, 1879, and to provide for the payment of the same and interest thereon.
- AN ACT** for the relief of Lawrence county.
- AN ACT** to remove doubts as to the eligibility of certain officers (relating to Deuel, Grant, Codington and Hamlin counties.)

AN ACT to amend section thirty-six of chapter twenty-seven of the Political Code, entitled "elections," (Grand Forks county.)

AN ACT to fund the outstanding indebtedness of the counties of Moody, Brookings, Burleigh and Grand Forks.

AN ACT authorizing the board of county commissioners of Lawrence county to fund the outstanding indebtedness thereof.

AN ACT to amend an act, entitled "An act to incorporate the city of Bismarck."

AN ACT to amend an act, entitled "An act to incorporate the city of Fargo," passed at the eleventh session of the legislature, approved January 15, 1875.

AN ACT to authorize school district No. 45, of the county of Lincoln, to issue bonds for building a school house.

AN ACT authorizing the city of Fargo, Dakota Territory, to issue bonds for certain purposes.

AN ACT to amend an act passed at the twelfth session of the Legislative Assembly, entitled "An act to fund the indebtedness of Minnehaha and Lincoln counties."

AN ACT providing a board of education for the city of Fargo, Dakota Territory, and regulating the management of the public schools therein.

AN ACT to amend an act, entitled "An act to incorporate the village of Sioux Falls," passed at the twelfth session of the Legislative Assembly.

AN ACT to authorize the board of education of the village of Sioux Falls to fund its outstanding indebtedness.

JOINT RESOLUTION relative to the pay of members of the Legislative Assembly.

AN ACT to amend section fifty-four (54), chapter twenty-nine (29) of the Political Code of 1877. (Ferries Grand Forks county.)

AN ACT providing a board of education for the village of Sioux Falls, Dakota Territory.

AN ACT to authorize school districts to issue bonds in the counties of Minnehaha, Moody, Brookings and Lake for building school houses.

AN ACT authorizing the board of county commissioners of

Custer and Pennington counties to fund the outstanding indebtedness thereof.

AN ACT to annex certain territory to the Yankton city school district.

AN ACT to amend an act, entitled "An act to incorporate the city of Yankton," approved January 8, 1873, as amended.

AN ACT to incorporate the village of Dell Rapids.

AN ACT to incorporate the village of Valley Springs.

AN ACT to vacate the town plat of the town of Valley Springs.

AN ACT to incorporate the village of Flandreau.

AN ACT to amend "An act to incorporate the village of Sioux Falls."

AN ACT to fund the outstanding indebtedness of Union county.

AN ACT amending "An act providing a board of education for the city of Vermillion, Dakota Territory, and regulating the management of the public schools therein," approved February 17, 1877.

AN ACT locating the county seat of Grand Forks county.

AN ACT to amend "An act to incorporate the city of Vermillion," approved February 17, 1877.

AN ACT authorizing school district No. 2, of the county of Grand Forks, to issue bonds for the purpose of building a school house.

AN ACT authorizing the county of Grand Forks to issue bonds for the purpose of building a court house and jail.

AN ACT extending and enlarging the boundaries of the county seat of Clay county, in the Territory of Dakota.

AN ACT to give the town justice of the peace of the incorporated town of Grand Forks, Dakota Territory, co-equal jurisdiction with county justices of the peace to try and examine offenses.

AN ACT authorizing the townships of Canton, Linn, Dayton, and Grant, in the county of Lincoln, Dakota Territory, to issue bonds to aid in the construction of railroads.

AN ACT for the relief of Frederick Wells in the matter of his accounts as treasurer of the county of Bon Homme.

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