

Domestic Animals.

CHAPTER 58.

ESTRAY LAW. EXEMPTING CERTAIN COUNTIES.

AN ACT Exempting the Counties of Lawrence, Pennington, Custer, Forsyth and Mandan from the Provisions of Certain Sections of Chapter 34 of the Political Codes of Dakota Territory.

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

§ 1. COUNTIES EXEMPT.] That the Counties of Lawrence, Pennington, Custer, Forsyth and Mandan be and the same are hereby exempted from the provisions of sections three to twenty, both inclusive, of chapter 34 of the Revised Codes of Dakota Territory, entitled, "Domestic Animals," and of all acts amendatory thereof, in so far as to animals bearing recorded brands or marks, and the same are hereby declared to be of no force and effect in said counties, being locally inapplicable.

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

ENDORSED.—Received at Executive Office, February 16th, at 5 P. M.

Note by the Secretary of the Territory.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the Council of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

GEO. H. HAND,

Secretary of the Territory.

CHAPTER 59.

HERD LAW. EXEMPTING CERTAIN COUNTIES,

AN ACT Exempting the Counties of Lawrence, Custer, Pennington, Mandan and Forsythe from the Provisions of Chapter 38 of the Code of Civil Procedure.

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

§ 1. COUNTIES EXEMPT.] That the Counties of Lawrence, Pennington, Custer, Mandan and Forsythe be and the same are hereby exempted from the provisions and effects of chapter thirty-eight of the Code of Civil Procedure of Dakota Territory, known as the Herd Law, and of all acts amendatory thereof, and the same are hereby declared to be of no force and effect in said counties, being locally inapplicable.

§ 2. This act shall take effect and be in force from and after October 1st, 1881.

ENDORSED.—Received at Executive Office, February 2d, at 9:50 A. M.

Note by the Secretary of the Territory.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the House of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

GEO. H. HAND,
Secretary of the Territory.

CHAPTER 60.

HERDING AND DRIVING.

AN ACT Regulating the Herding and Driving of Stock.

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

§ 1. STOCK GROWER AND DROVER DEFINED.] Every person who shall keep neat cattle, horses, mules, sheep, swine or goats

for their growth or increase within the Territory, shall be deemed a stock grower. Any person who shall drive or bring live stock into or through this Territory shall be deemed a stock drover.

§ 2. PENALTY FOR DRIVING OFF ANOTHER'S STOCK.] That any stock drover or his employee, who shall drive off any neat cattle, horses, asses, swine or sheep belonging to another, intentionally or through neglect, shall on conviction thereof by any court of competent jurisdiction, be fined in any sum not more than one hundred (100) dollars for each and every head of cattle, horses, mules, swine or sheep so driven off.

§ 3. SUFFICIENT DESCRIPTION IN LAW.] In any indictment or complaint under this act the description of any kind or class of live stock shall be deemed sufficient, if described as live stock, and for the purpose of this act, the proof of brand shall be deemed to be *prima facie* evidence of ownership of such stock.

§ 4. CERTAIN ANIMALS PROHIBITED FROM RUNNING AT LARGE. PROVISOR.] That no stallion over the age of eighteen months; nor any Mexican, Texan or Cherokee bull over the age of ten months; nor any Mexican ram over the age of eight months, shall be permitted to run at large in the Territory of Dakota. The owner or person in charge of such animal or animals that are prohibited from running at large by this section, who shall permit such animal or animals to run at large, may be fined for each offense not less than ten (\$10) dollars nor more than fifty (\$50) dollars, and it shall be lawful for any person to castrate or cause to be castrated any such animal found running at large. *Provided:* That if any person shall castrate any stallion, bull or ram and it shall on proper evidence before any competent court, be proved to the satisfaction of said court, that such animal was not of a class of stock prohibited from running at large by this act, said person shall be liable for damages to the amount of the value of said animal so castrated, and the costs of suit. *Provided:* That for the purpose of this act, that any bull possessing not more than one-half ($\frac{1}{2}$) Texan, Mexican or Cherokee blood, shall not be deemed a Texan, Mexican or Cherokee bull, as the case may be, and any ram possessing not more than one-half Mexican blood, shall not be deemed a Mexican ram.

§ 5. CONCERNING DRIVING STOCK AND TRESPASSING.] Any person owning or having charge of any drove of cattle, horses, swine or sheep, numbering one (1) head, or more than that number, in any such drove of cattle, horses, swine or sheep, who shall drive the same into or through any county of Dakota of which the owner is not a resident or land owner, or stock-grower, and when the land in said county is already occupied by settlers on ranches, it shall be the duty of said owner or person in charge of said horses, cattle, swine or sheep to prevent the same from mixing with the cattle, horses, swine or sheep belonging to actual settlers, and also to prevent said drove of cattle from trespassing on such land as may be the property of the actual settler, or may be held by him under a homestead, pre-emption, timber culture or leasehold right and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops. If any owner or owners or persons in charge of any such drove of cattle, horses, swine or sheep shall willfully, carelessly or negligently injure any resident within the Territory, by driving said drove of cattle, horses, swine or sheep from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor and shall be punished by a fine of not less than five (\$5) dollars and not more than twenty-five (\$25) dollars, at the discretion of the court, and render the owner or owners or persons in charge of the drove of cattle, horses, swine or sheep liable for such damages as may be done to the property of said settler.

§ 6. PENALTY FOR WRONGFUL DRIVING OF STOCK.] When the stock of any person shall be driven off its range within Dakota, against his will, by the owners of any drove and the same shall be found among such drove, every person engaged as drover of said drove shall be liable for damages to the party injured to the amount of the full value of the animal for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock shall be liable for the same or a sufficient number to cover all damages and costs.

§ 7. DUTY OF DROVER WHERE STOCK OF RESIDENT MIXES WITH

DROVE.] When the stock of any resident of the Territory of Dakota shall mix with any drove of any animals, it shall be the duty of any drover or drovers or persons in charge of such drove to cut out and separate such stock from said droves, immediately. Every person, either owner or drover or otherwise connected with said drove who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one hundred (\$100) dollars, upon conviction in any court of competent jurisdiction.

§ 8. CONCERNING SKINNING DEAD ANIMALS.] It shall be unlawful for any person, other than the owner or his agent or employee, to skin or remove from the carcass the skin, hide or pelt of any neat cattle, swine or sheep found dead except when such stock is killed by railroad trains, when the employes of such railroads may remove the hides from stock so killed.

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

ENDORSED.—Received at Executive Office, February 11, at 12:30 P. M.

Note by the Secretary of the Territory.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the House of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

GEO. H. HAND,
Secretary of the Territory.

CHAPTER 61.

MARKS AND BRANDS.

AN ACT relating to the Use of Marks and Brands on Live Stock.

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

§ 1. OWNER MAY ADOPT BRAND.] Any person having cattle, hogs, sheep, horses, mules or asses shall have the right to adopt a brand or mark, for the use of which he shall have the exclusive right in the county in which earmark or brand is recorded.

§ 2. COUNTY CLERK SHALL PROCURE BRAND BOOK.] The county clerk of each county shall as soon as practicable after the passage of this act, procure a suitable book or books in which all marks and brands shall be recorded, and the county clerk shall be allowed a fee of one dollar for recording such brand and mark, to be paid by the party filing the description of brand or mark for record.

§ 3. SAME MARK OR BRAND NOT TO BE RECORDED TO MORE THAN ONE PERSON.] No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person.

§ 4. STOCK OWNER SHALL MAKE DESCRIPTION OF BRAND.] Any person desiring to use any brand or earmark shall make and sign a certificate, setting forth a *fac simile* and description of the brand and earmark which he desires to use, and shall file the same for record in the office of the county clerk of said county in which he resides. And any person so desiring may in the manner and with like effect as herein provided, record his brand or marks in any county in this Territory into which his stock is liable to stray: *Provided*, That such mark or brand has not been theretofore recorded in such county by some other person.

§ 5. PROCEEDINGS WHERE BRANDS CONFLICT. COMMITTEE.] The authority of deciding whether a brand or mark offered for record does or does not conflict with any previously recorded brand or mark shall be vested in a committee of three, con-

sisting of the county clerk and two respectable stock owners of the county. The two stock owners shall be appointed by the county commissioners; they shall be men of good judgment and experience in brands, and when practicable shall be chosen from those largely interested in cattle. Vacancies occurring in the membership other than the county clerk shall be filled by the county commissioners. All brands offered for record shall be submitted before acceptance to this committee. The objection of any two shall reject a brand. It shall be the duty of the county clerk to file all brands offered for record pending the examination, which he shall cause to be made as promptly as possible; and if the brand is accepted, the ownership shall date from the date of filing.

§ 6. BRAND COMMITTEE TO BE APPOINTED BY COMMISSIONERS. COUNTY CLERK'S DUTY. PRESENT BRANDS TO BE INSPECTED.] It shall be the duty of the county commissioners immediately after the passage of this act to make the appointment above specified, one of whom shall serve till the first day of January following, another until the first day of January the next succeeding year, the county commissioners appointing a member to serve for two years at their first meeting in the month of January in each year. After this shall have been done, the county clerk shall at once call together the committee; they shall examine the present record of brands, and in any case where in the judgment of two of them a brand is found which conflicts with one previously recorded, or which might in its use endanger the property of the party owning the brand earliest of record, it shall be the duty of the county clerk to notify the party owning said brand last of record that the further use of the same will be illegal to the same extent as though it had never been recorded, unless previously agreed upon by owners of such brands, and a joint statement be presented to the recorder of brands by such brand owners. The said notice shall be given by letter when possible, and also and in all cases by publication for one month in two newspapers of general circulation in the county, the expense of which shall be paid on a proper voucher by the county commissioners; both forms of notice shall be given immediately after said examination and rejection. It is expressly provided that this enactment shall not in any way affect or

invalidate the ownership of animals which were branded with said brand then registered previous to the examination and rejection, the object of this act being to make illegal and enjoin from the further use of said brand. The date of the last publication shall be considered to be the date of rejection.

§ 7. DUTY OF DROVER WHO DRIVES CATTLE INTO ANY COUNTY FOR GRAZING PURPOSES.] It shall be the duty of any person who, after the passage of this act, brings into any county of this Territory and turns loose for grazing purposes any herd brand or individual animals already branded, to lay before the above committee a statement of the brands of said animals; and if in the judgment of any two of them said brands conflict with any previously recorded in that county, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands there recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the above shall render the party so failing liable for all damages resulting from such failure which damages may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county in this Territory, whose brands are considered by this committee to infringe on previously recorded ones.

§ 8. WHERE BRANDS CONFLICT—DIRECTIONS TO EXAMINING COMMITTEE.] In deciding as to the conflict of brands the committee will reject any one that being the same as one previously recorded has in addition any of the following whether placed across, above, below, at either side or encircling the main brand, viz: a straight bar, a quarter, half or entire circle, a quarter, half or entire diamond, either upright or inverted, the same not constituting a true brand and rendering the owner of the same brand liable to damages by its use, saving only when one or more of these shall be filed by the owner of the first record of the main brand, in which case it may be accepted. The committee shall reject any brand formed by repetition of any letter, number or figure which shall have been previously recorded whether to be placed on the same or on a different part of the animal; the exclusive right of the first record to the letter, number, or figure, and to repetition

of it, being reaffirmed. They shall also reject all brands known as solid brands, and all earmarks which shall remove to exceed one-half of the ear. A variation in the size of a letter, number, or figure, shall not constitute a new brand, and shall be rejected. A combination of letters, numbers, or figures, may be permitted, though the same letters, numbers, or figures, may have been recorded, single or together, if in the judgment of the whole committee said combination is so different from any previous record as to constitute a new brand with no danger of infringement; but in this case the objection of one member shall reject.

§ 9. BRAND TO BE PRIMA FACIE EVIDENCE OF OWNERSHIP. PROVISOR.] In all suits in law or in equity, or in any criminal proceedings, when the title to any stock is involved, the brand on any animal shall be *prima facie* evidence of the ownership of the person whose brand it may be: *Provided*, That such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified by the county clerk of that county, or of any county in which the same is recorded, under the hand and seal of office of such clerk.

§ 10. WHEN COUNTY CLERK GUILTY OF MISDEMEANOR. PENALTY.] If any county clerk shall record the same mark or brand to more than one person he shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction, shall be punished by a fine of not exceeding one hundred dollars, which shall go to the county in which such record shall be made.

§ 11. RUNNING BRAND PROHIBITED.] That it shall be unlawful for any person or persons in branding any neat cattle, horses, mules, asses, sheep, or goats, to use what is known among stock growers as a running brand.

§ 12. PENALTY FOR REFUSAL TO OBEY THIS ACT.] Any person or persons who shall violate or fail to obey the provisions of this act, or shall continue the use of any brand or mark after the same has been rejected by said committee, or shall continue to use any brand or mark after the said committee shall have decided that the same conflicts with a previously recorded brand or mark, shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent juris-

diction, shall be punished by a fine of not exceeding one thousand dollars or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

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

Approved, February 11, 1881.

CHAPTER 62.

PROTECTION OF STOCK.

AN ACT for the Protection of Stock in the Territory of Dakota, and to Punish Certain Offenses Concerning the same.

Be it enacted by the Legislative Assembly of Dakota Territory :

§ 1. PENALTY FOR INTERFERING WITH BRANDS ON STOCK.] Any person or persons who shall with intent to defraud, brand or misbrand, mark or mismark any neat cattle, horse, sheep, goat, ass or mule, not his own; any person who shall intentionally brand over a previous brand, or in any manner alter, deface or obliterate a previous brand, or shall cut out or obliterate a previous mark or brand, on any neat cattle, horse, sheep, goat, ass or mule, shall upon conviction in any court of competent jurisdiction, be punished by imprisonment in the Territorial prison not exceeding ten years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars.

§ 2. PENALTY FOR MALICIOUSLY KILLING NEAT CATTLE.] If any person or persons shall willfully and maliciously kill or destroy any neat cattle, horse, mule, ass or sheep of any age or value, the property of another or others, or shall willfully or maliciously injure any such animal or animals, the property of another or others, he or they shall be punished by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars.

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

Approved, February 14th, 1881.

CHAPTER 63.

SHEEP HUSBANDRY.

AN ACT for the Protection and Encouragement of Sheep Husbandry, and Providing a Bounty for Wolf Scalps.

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

§ 1. BOUNTY FOR KILLING WOLVES.] That the county commissioners of each county in this Territory may, in their discretion, offer a bounty not to exceed the sum of two dollars for each and every wolf killed within the limits of their county.

§ 2. CLAIMANT OF BOUNTY TO MAKE AFFIDAVIT AND PRODUCE SCALP.] That before payment of said bounty the applicant therefor must subscribe and make oath before the county clerk of the county in which the wolf was killed, setting forth that the wolf was killed within said county, giving the date thereof and by whom, and that the scalp which is produced is the scalp of such wolf, and that no allowance or bounty has been received or paid for the killing of such wolf: *Provided*, No claim shall be allowed unless the applicant exhibits and furnishes to such county clerk at the time of making such affidavit the scalp of the wolf killed which shall embrace both ears.

§ 3. COUNTY CLERK TO RETAIN AFFIDAVIT. DESTRUCTION OF SCALP.] The county clerk shall retain said affidavit until the next regular meeting of the board of county commissioners, and the board shall audit the claim and order a warrant drawn upon the county treasurer for the bounty in favor of the party killing said wolf; the county clerk is further required to destroy such scalp by burning the same.

§ 4. COMMISSIONERS TO FURNISH BLANKS.] The county commissioners are hereby authorized to furnish all blanks and make all needful regulations for the carrying out of this act.

§ 5. CLERK'S FEE.] The county clerk shall be entitled to a fee of twenty-five cents for each affidavit, to be paid by the county.

§ 6. WHEN LAWFUL TO KILL DOG.] It shall be lawful for any person to kill any dog off of the premises of the owner of such dog found chasing or worrying sheep.

§ 7. OWNER OF DOG LIABLE FOR DAMAGES.] That any person keeping, owning or harboring a dog after receiving notice that such dog is addicted to chasing, worrying or killing sheep, and who refuses or neglects to kill such dog shall be liable for all damages, after receiving such notice, committed by such dog upon any sheep, to the owner of such sheep, and shall not be entitled to any benefit from the laws exempting property from execution, but all property shall be subject to execution on judgment for such damages and costs.

§ 8. That all laws or parts of laws in conflict herewith are hereby repealed.

§ 9. That this act shall be in force and effect from and after its passage and approval by the governor.

Approved, February 14, 1881.

Education.

CHAPTER 64.

APPORTIONMENT OF FUNDS.

AN ACT to amend An Act, entitled "An Act to Establish a Public School Law for Dakota Territory," approved, February 22, 1879.

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

§ 1. CITY SCHOOLS ENTITLED TO PROPORTION OF FUNDS. PROVISOR.] That section 71 of an act, entitled "An act to establish a public school law for Dakota Territory," approved, February 22, 1879, be amended so as to read as follows: "§ 71. The public schools of any city, town or village which may be regulated by special law or by the charter of said city, town or village shall be entitled to receive their proportion of the public funds: *Provided*, That the clerk or secretary of the board