

Mining.

CHAPTER 96.

LOCATION OF LODES.

AN ACT to amend Chapter 31 of the Political Code.

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

§ 1. DISCOVERER ENTITLED TO SIXTY DAYS BEFORE RECORDING.] That section 3 of chapter 31 of the Political Code be, and the same is, hereby amended by striking out the word "twenty" where it occurs in the second line thereof, and inserting in lieu thereof the word "sixty."

§ 2. NAME OF LOCATORS.] That subdivision 2 of section 3 of said chapter be amended by adding after the word "locator" the words "or locators."

§ 3. NAME OF LOCATORS.] That section 5 of said chapter be amended by adding after the word "locator" where it appears in the fifth line thereof the words "or locators."

§ 4. MARKING BOUNDARIES.] That section 6 of said chapter be amended by adding after the word "claim" the following: "and plainly marked with the name of the lode and the corner, end or side of the claim that they respectively represent."

§ 5. LOCATORS ENTITLED TO SIXTY DAYS TO PERFORM LABOR.] That section 8 of said chapter be amended by striking out the word "thirty" and inserting in lieu thereof the word "sixty."

§ 6. TIME OF DOING ANNUAL WORK.] That section 14 of said chapter be amended by adding at the end of said section the following: "*Provided*, That the period within which the work required to be done annually on all unpatented claims so located, shall commence on the first day of January succeeding the date of location of such claim."

§ 7. That section 15 of said chapter be and the same is hereby repealed.

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

ENDORSED.—Received at Executive Office, February 28, at 5:30 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 97.

RIGHT OF WAY.

AN ACT Concerning the Right of Way, Easements and other Necessary Means for the Development of Mines.

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

§ 1. OWNERS OF MINES TO HAVE RIGHT OF WAY.] That the proprietor, owner or owners of mining claims, whether patented under the laws of the United States, or held under the local laws and customs of this Territory, shall have a right of way for ingress for the necessary purpose over and across the land or mining claim patented or otherwise of others as hereinafter provided.

§ 2. SAME.] Whenever any such mine or mining claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or tunnel thereto, which road, ditch, cut or tunnel shall necessarily pass over, under, through or across any lands or mining claims owned or occupied by others, either under a patent from the United States or other-

wise, then shall such first mentioned owner or owners be entitled to a right of way for said road, ditch, flume, shaft or tunnel, over, under, through and across such other lands or mining claims upon compliance with the provisions of this act.

§ 3. PROCEEDINGS TO OBTAIN RIGHT OF WAY.] Whenever the owner or owners of any mining claim shall desire to work the same, and it is necessary to enable him or them to do so successfully and conveniently, that he or they shall have a right of way for any of the purposes in the foregoing section, and such right of way shall not have been acquired by agreement between him or them, and the claim, over, under, across and upon which he or they seek to establish such right of way, it shall be lawful for him or them to present to the judge of the district court of the several counties and subdivisions of the Territory of Dakota, in which such right of way or some part thereof sought to be enforced is situated, a petition praying that such right of way be awarded to him or them. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims or lands to be affected by such right or privilege, with the names of the occupants or owners thereof; it may also set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

§ 4. PROCEEDINGS IN COURT.] Upon the receipt of such petition and filing thereof with the clerk of such court, the judge shall direct a citation to issue, under the seal of such court, to the owners named in the petition, of mining claims and lands to be affected by the proceedings, directing them and each of them to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for. Such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

§ 5. JUDGE SHALL APPOINT COMMISSIONERS.] Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties; and if upon such

hearing he is satisfied that the claims of the petitioner should be worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners who shall be disinterested parties and residents of the county, to assess the damages resulting to the lauds or claims affected by such order.

§ 6. ASSESSMENT OF DAMAGE BY COMMISSIONERS.] The commissioners so appointed shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed without unreasonable delay to examine the premises, and shall assess the damage resulting from such right or privilege prayed for, and report the amount to the judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

§ 7. JUDGE MAY SET ASIDE REPORT, ETC.] For good cause shown the judge may set aside the report of such commissioners and appoint three other commissioners, whose duties shall be the same as above mentioned.

§ 8. PETITIONER ENTITLED TO RIGHT OF WAY UPON TENDER OF PAYMENT.] Upon the payment of the sum assessed as damages as aforesaid to the persons to whom it shall be awarded, or a tender thereof to them, then the person petitioning as aforesaid shall be entitled to the right of way prayed for in their or his petition, and may immediately proceed to occupy the same and to erect thereon such work and structures, and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

§ 9. APPEALS.] Appeals from the assessment of the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten days after filing the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summons are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made, a bond with sureties, to be approved by the clerk, in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant shall

pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

§ 10. TRIAL OF APPEAL.] Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or by a jury as other cases in court.

§ 11. PROSECUTION OF APPEAL NOT TO HINDER WORK.] The prosecution of any appeal shall not hinder, delay or prevent the appellee from exercising all the rights and privileges mentioned in section eight of this act: *Provided*, That the appellee shall file with the clerk of the court in which the appeal is pending a bond, with sufficient sureties, to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action, not exceeding the amount of such bond.

§ 12. WHEN APPELLEE TO PAY COSTS] If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs.

§ 13. COSTS AND EXPENSES, BY WHOM PAID.] The costs and expenses under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application: *Provided, however*, That if the applicant shall before the commencement of such proceeding have tendered to the parties owning or occupying such lands or mining claims, a sum equal to, or more than the amount of damages assessed by the commissioners, then all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claims of the applicants.

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

Approved, March 3, 1881.