

Townsites.

CHAPTER 135.

TOWNSITES LOCATED ON GOVERNMENT LANDS.

AN ACT prescribing Rules and Regulations for the Execution of the Trust arising under the Act of Congress, entitled "An Act for the Relief of the Inhabitants of Cities and Towns, upon the Public Lands," approved, March 2, 1867, and Acts amendatory thereto.

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

§ 1. WHO MAY MAKE ENTRY OF TOWNSITE.] That whenever any portion of the public lands of the United States have been or shall be settled upon and occupied as a townsite, and therefore not subject to private entry under the agricultural pre-emption laws, it shall be lawful and the duty, whenever requested by a majority of the occupants or owners of the lots within the limits of the town, for the corporate authorities of the town, if incorporated, and if not incorporated, then for the judge of the probate court of the county in which such town may be situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupants thereof, and those holding by deed or otherwise, according to their respective interests.

§ 2. MONEYS—HOW RAISED TO PAY ENTRY FEE.] If at the time the petition is presented as provided for in the preceding section, there is not in the treasury of the town moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the probate judge, as the case may be, may raise by subscription or otherwise, sufficient funds to pay for said land and costs of entering the same, and any and all sums so advanced for such purpose shall be repaid in the manner provided for in section five (5.)

§ 3. DISPOSITION OF TOWN PROPERTY.] When the corporate authorities of any city or town, or the judge of the probate court of any county in this Territory, in which any city or

town may be located, shall have entered at the proper land office the land or any part thereof so settled and occupied as the site of such city or town, pursuant to and by virtue of the act of congress of the United States, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved, March 2, 1867, and acts amendatory thereto, it shall be the duty of such corporate authorities or judge of the probate court, his or their successors, to dispose of the trust so created and conferred by said act of congress in the manner hereinafter specified.

§ 4. PARTY MAKING ENTRY TO TRANSFER TO CLAIMANTS.] Any such corporate authorities or judge of the probate court holding the title to any such lands in trust as declared in said act of congress shall, subject to the provisions of this act, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person, persons, associations or corporations, who shall occupy or possess or be entitled to the right of possession or occupancy thereof, according to the several rights and interests of the respective claimants in or to the same, as they existed in law or equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such corporate authorities or judge of the probate court pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded.

§ 5. EXPENSES OF ENTRY AND CLAIMS—HOW TREATED.] Immediately upon making the entry, or passage of this act, if the lands have already been entered, and during the sixty days thereafter, such corporate authorities or probate judge shall proceed to itemize and pass upon the expenses of procuring said entry to be made, including the moneys paid at the land office for such entry, the costs of surveying and platting the townsite, of attorney's fees, witness fees, recording plat, and all other expenses, necessary and incident to procuring the entry and perfecting the title, and for this purpose shall give notice to all persons having any claims for moneys advanced or services rendered, to present and file a certified statement of the same within said sixty days, such notice to be given promptly after making of the entry, or after the passage of

this act, if the entry has been already made, and to be by publication for three weeks in some newspaper published in the county wherein the townsite is located, or if none be so published, then in the newspaper published nearest thereto. And any person having or making any such claim, who shall at the expiration of said sixty days have failed to file such verified statement of account, shall be thereafter barred from presenting the same or recovering thereon. Upon the receipt of such verified statements of accounts, they shall be duly filed by the said corporate authorities, or judge of the probate court, and either allowed, rejected or allowed in part, as in the judgment of such corporate authorities or judge of the probate court may be just and right, due notice of such allowance, rejection or allowance in part to be at once given to the person having filed the verified statement. Any person filing such verified statement, or any lot owner feeling aggrieved at the decision of such corporate authorities, or judge of the probate court making such allowance, rejection or allowance in part of any claim so filed may, within thirty days after the decision, appeal therefrom to the district court of the district wherein such city or town may be located. Such appeal to be taken upon notice to such corporate authorities, or judge of the probate court, in the same manner and subject to the same restrictions as appeals from the board of county commissioners.

§ 6. PUBLICATION OF NOTICE OF ENTRY AND CLAIMS AWARDED.] Immediately upon the expiration of sixty days after the first publication of said notice as hereinbefore provided, at the proper land office, the corporate authorities, or judge of the probate court entering the same, his or their successors, shall give public notice thereof by publishing such notice in a newspaper published in the county in which such city or town shall be situated—or in case there shall be no newspaper published in such county, then in the newspaper published nearest the said city or town; and in the latter case where there is no newspaper published in said county, copies of said notice shall also be posted in not less than ten conspicuous places within the limits of said county. Such notice shall be published not less than once a week for six consecutive weeks, and shall contain an accurate description of the lands entered

as the same is stated in the certificate of entry, and shall also contain a statement of the several amounts awarded and allowed for the expenses of procuring the entry, and which will be assessed against the land constituting the townsite in executing the deeds therefor.

§ 7. Such notice provided for in section 4 shall direct that each and every person, association or corporation claiming to be an occupant, or to have, possess or be entitled to the right of possession or occupancy of such lands or any lot, share or parcel thereof, shall, within ninety days from the date of the first publication or posting of such notice, in person or by his, her or their, or its duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular lot, lots, parcel or parcels of land in which he, she, they or it, claim to have an interest; and the specified right, interest or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described. Such statement to be verified by the affidavit of the party or parties signing the same.

§ 8. STATEMENTS OF CLAIMANTS TO BE RECORDED.] The statement of the claimant provided for in the preceding section shall, together with the accompanying affidavits, be delivered to the said corporate authorities, or judge of the probate court, within the time specified in said notice, and shall be by him or them filed and an abstract of the contents thereof, with name of claimant and date of filing entered in a well bound book, to be kept for such purpose, which shall be known as "The Record of Claimant's Statements." And all persons failing to furnish such statement as herein required within the time specified in said notice, except minors and insane persons, shall be forever barred of the right of claiming or recovering such lands or any interest or estate therein, or any part or parcel thereof.

§ 9. WHERE CLAIMS CONFLICT.] Should any one or more persons, associations or corporations claim adversely the title to any lot or lots, parcel or parcels of land within the boundaries of such city or town, the party in possession, or if nei-

ther party be in actual possession, then the party first filing his application shall be *prima facie* entitled to a deed of conveyance, and the party or parties claiming adversely shall, within said ninety days after the first publication of the notice provided for in section four of this act, file with the corporate authorities, or judge of the probate court, a sworn statement as provided in section six of this act, and at the same time a notice that he, she or it contests the statement and application for deed hitherto made, and expects at once to begin an action in the district court to determine his, her or its right to the property; whereupon the corporate authorities, or judge of the probate court, must suspend action on such disputed lot or parcel of ground, until a proper certificate be furnished that the dispute has been decided or abandoned. Such party or parties claiming adversely, and having filed such notice of contest, must within ten days thereafter begin action in the district court for the purpose of determining the rights of all parties, in which action all persons claiming adversely to the plaintiff or plaintiffs may be joined as parties defendant, and if not so joined shall have the right to intervene. For the purposes of this section an action shall be deemed begun when a complaint has been filed in the office of the clerk of the court and a summons placed in the hands of a sheriff for service: *Provided*, That personal service must be made or service by publication begun within sixty days thereafter. Upon the presentation of the clerk's certificate that no complaint has been filed and no action begun in accordance with the provisions of this section, the party aforesaid having the *prima facie* right shall be entitled to a deed of conveyance; and in case of action begun, the party recovering therein shall be entitled to a deed of conveyance, upon presentation of a certified copy of the final judgment or decree of the court in such action, with the corporate authorities, or judge of the probate court. Upon receiving the certificate aforesaid or certified copy of judgment or decree, the same shall be filed and an abstract of the contents entered in the Record of Claimant's Statements; and the said corporate authorities, or judge of the probate court, shall thereupon execute deeds of conveyance to the party or parties entitled to receive the same. All persons except minors and insane persons failing to file their notice of contest, and to bring their action

within the time herein prescribed, shall be thereafter forever barred from setting up or asserting any claim, right or title to such lot or lots, parcel or parcels of land so adversely claimed.

§ 10. EXTENT OF GROUND THAT MAY BE CLAIMED.] The amount of ground which any one claimant shall be entitled to receive a deed for in a single tract, under the provisions of this act, unless said claimant or his grantors was in the actual peaceable possession of the same prior to its entry as herein provided for and had improved the same and is still in the occupancy thereof, may equal but not exceed two acres in extent, provided that such ground be exclusively occupied by, or in the possession of such claimant and have improvements thereon of not less than \$200 in value. Such claimant shall also be entitled to a deed for each additional lot not exceeding in area twenty-five hundred square feet on which he may have substantial improvements of not less than \$100 in value. When any claimant shall make application for a deed to more than one tract or parcel, he shall file in addition to his own affidavit, as required by this act, the affidavits of at least two disinterested witnesses, showing the notice, character and actual cash value of the improvements upon such additional lot or lots so claimed.

§ 11. CLAIMANT TO PAY CERTAIN EXPENSES.] Each person shall, upon filing an applicant's statement, as herein provided, be required to pay to the said corporate authorities or judge of the probate court, his proper and due proportion of the money lawfully expended in perfecting the title and procuring the entry of said land, including all streets, alleys, public grounds and parks, and all expenses necessarily incurred in making the survey and plat, for recording plat and publishing notices as required by this act, such proportion to be determined by the relation which the value, extent and area of such claimant's land bears to the whole amount of land claimed during the 90 days, and in addition thereto, the sum of two dollars for the principal tract claimed and fifty cents for each additional lot of 2,500 square feet claimed by the same person or persons, association or corporation, as a fee for executing the trust, taking affidavits, filing and abstracting statements and affidavits, and executing and acknowledging the deed as required by this act, which charges

shall be in full payment for all expenses attending the execution of the trust. In case of appeals provided for in section three of this act, the sum of one dollar shall be paid for certified copy of statement of account filed and certificate of decision and award made and pending such appeal, and the review by the district court of any award or allowance of claims for expenses in procuring the entry of land as provided for in the third section of this act, the corporate authorities or judge of the probate court must in making and apportioning expenses, take care that their estimate be sufficient to meet the same and any possible increase made by the appellate tribunal. Any surplus resulting from such estimate to be applied as herein provided. In case of any contest and deposit of money as in this section provided by both parties, the corporate authorities or judge of the probate court, shall after final judgment and decree, refund to the unsuccessful party or parties all money so advanced by such party or parties, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, certified copy of decree, etc.

§ 12. DEEDS TO BE GIVEN.] After the expiration of ninety days from the date of the first publication of the notice required by section four of this act, the corporate authorities or judge of the probate court shall proceed to award the lot or lots, parcel or parcels of land as provided in this act, and for that purpose shall, as soon as practicable, and as near as practicable in the order of the time of the filing of claimant's statements, examine each and every claim, read proofs filed and hear additional testimony if deemed advisable, and if the claim shall be found to comply with the provisions of this act, and no adverse claim and notice of contest shall have been filed, the said corporate authorities or judge of the probate court shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots, or parcels of land so claimed.

§ 13. UNCLAIMED PROPERTY—HOW DISPOSED OF.] When any lots or parcels of land within the limits of any city or town shall remain unclaimed, after the expiration of the time allowed by this act for the filing of claimant's statements, it shall be the duty of the corporate authorities or judge of the

probate court to convey the lots or parcels of ground so remaining unclaimed by good and sufficient deed to the board of education of said city or town, if there be such a body qualified to take, to be taken and held by such board in trust for school purposes. And if there be no such board of education legally authorized to take and hold real property, then the said corporate authorities or judge of the probate court shall hold the said lots or parcels of land so remaining unclaimed in trust for school purposes in the city or town wherein such lots or parcels of land are located, such trust to be administered under the direction of the district court and for the best interests of the people of the city or town aforesaid, such unclaimed land to be sold under such rules and regulations as may be made from time to time by the party or parties directing the trust. *Provided:* That the land shall be disposed of in tracts not exceeding an acre in area to any one person and all such sales shall be approved by the district court. In case there shall be found any surplus on hand over and above receipts for fees and award for expenses, arising from sales and conveyances of the lots as provided in section ten of this act, then such surplus shall, so soon as ascertained, be turned over to such board of education for school purposes, or if there be no such board, then to the county treasurer to be credited to the school fund of the school district in which such city or town is located.

§ 14. WHEN TERM OF OFFICE OF PARTY MAKING ENTRY EXPIRES.] Whenever the term of office of any corporate authorities or judge of the probate court having made entry of a town site shall expire, or he or any one or more of said corporate authorities shall resign or be removed from office, he or they shall turn over all books and papers relative to such entry to his or their successor or successors in office, with full report of the condition of the trust and receipts and disbursements thereunder and thereafter the said trust shall be executed in every particular by such successor or successors. Any willful violations of the provisions of this act by the corporate authorities or judge of the probate court shall be held and considered a misdemeanor; any such corporate authorities or judge of the probate court, willfully making a deed to any party not entitled to receive the same shall be guilty of a misdemeanor; and any such corporate authorities or judge

of the probate court willfully misappropriating funds received by them in the execution of this trust shall be held guilty of embezzlement.

§ 15. Chapter twenty-five of the Political Code, entitled "Townsites," is hereby repealed.

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

ENDORSED.—Received at Executive Office, February 16, at 5:00 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.

Usury.

CHAPTER 136.

AN ACT to repeal Section 427 of the Penal Code in Certain Counties.

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

§ 1. CERTAIN COUNTIES EXEMPT FROM USURY LAW.] Section 427 of the Penal Code is hereby repealed in the counties of Lawrence, Pennington, Custer, Mandan and Forsythe.

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

ENDORSED.—Received at Executive Office, February 15, 1881, at 1:40 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.