

Depositions.

CHAPTER 42.

AN ACT to Amend Section 471 of the Code of Civil Procedure.

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

§ 1. DEPOSITIONS TAKEN BEFORE WHAT OFFICERS.] That section four hundred and seventy-one (471) of the Code of Civil Procedure, be and the same is hereby amended so as to read as follows :

“Depositions may be taken in this Territory before a judge or clerk of the Supreme Court, or District Court, or before a justice of the peace, notary public, United States Circuit or District Court commissioner, or any person empowered by a special commission.”

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 All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

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

Approved, February 19, 1883.

District Attorneys and Clerks of Court.

CHAPTER 43.

AN ACT to Create the Office of District Attorney for the Several Counties of Dakota Territory, and for other Purposes.

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

§ 1. DISTRICT ATTORNEY TO BE ELECTED—OATH AND BOND.] A district attorney shall be elected in each county in this Territory organized for judicial purposes, at the general election in the year 1884, and biennially after the last mentioned election, a district attorney for such county, who shall hold his office for the term of two years and until his successor shall be elected and qualified ;

and shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by law, and shall execute a bond to his county in the penal sum of one thousand dollars, with two or more sureties, to be approved by the county clerk of such county, which bond shall be conditioned for the faithful performance of his duties as such district attorney, and that he will pay over to the treasurer of his county, in the manner prescribed by law, all moneys which come to his hands by virtue of his office, and shall deposit such oath and bond in the county clerk's office :

Provided, That no person shall be eligible to the office of district attorney, who is not duly admitted to practice as an attorney in some court of record in this Territory.

§ 2. DUTIES.] It shall be the duty of the district attorney of the several counties to appear in the District Courts of their respective counties, and prosecute and defend on behalf of the Territory, or his county, all actions or proceedings, civil or criminal, in which the Territory or county is interested, or a party; and whenever the venue is changed in any criminal case, or in any civil action or proceeding in which his county or the Territory is interested or a party, it shall be the duty of the district attorney of the county where such indictment is found, or the county interested in such civil action or proceeding, to appear and prosecute such indictment, and to prosecute or defend such civil action or proceeding in the county to which the same may be changed.

§ 3. SHALL APPEAR FOR COUNTY.] Each district attorney shall when requested by any magistrate of his county, appear on behalf of the Territory before any such magistrate, other than those exercising police jurisdiction of incorporated cities and villages, and prosecute all complaints made in behalf of the Territory, except for common assault and battery, of which such magistrate shall have jurisdiction.

§ 4. SHALL GIVE COUNSEL TO CERTAIN OFFICERS.] The district attorney shall, without fee, give opinions and advice to the board of county commissioners and other civil officers of their respective counties, when requested by such board or officers, upon all matters in which the *counties* [county] is interested, or relating to the duties of such board or officers in which the Territory or county may have an interest.

§ 5. SALARY.] The district attorneys shall severally receive such salary for their services as the board of county commissioners of the proper county shall allow, not less than four hundred dollars a year; but the salary of such district attorneys shall not be increased or diminished during the term for which he shall be elected or appointed. All fees and costs recovered in civil actions in which the county is the successful party, shall be paid into the

county treasury for the use and benefit of the county; and it shall not be competent or lawful for the board of county commissioners to give and pay said fees and costs, or either, or any part thereof, to said district attorney as a part of his salary, or in addition to his salary, and every order made by said board for the purpose shall be void

§ 6. CERTAIN FEES PROHIBITED.] Said district attorneys shall not receive any fee or reward from or on behalf of any prosecutor or other individual, for services in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counsel for either party other than for the Territory or county in any civil action depending on some state of facts upon which any criminal prosecution commenced but undetermined shall depend, nor shall any district attorney while in office be eligible to or hold any judicial office whatever, but if the district attorney of one county shall be requested to go to another county, or from one part to another part of his county to transact any business as district attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business in addition to the salary fixed by the county board.

§ 7. WHEN COURT MAY APPOINT.] Each of the District Courts whenever there shall be no district attorney for the county, or when the district attorney shall be absent from the court, or unable to attend to his duties, may, if the court shall deem it necessary, appoint by an order to be entered in the minutes of the court, some suitable person to perform for the time being the duties required by law to be performed by the district attorney, and the person so appointed shall thereupon be vested with all the powers of such district attorney for that purpose.

§ 8. MONEYS RECEIVED FOR FINES, HOW DISPOSED OF.] It shall be the duty of every district attorney, whenever he shall receive any moneys for fines, recognizances, penalties or costs, to deliver to the officer or person paying the same, duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer.

§ 9. SHALL FILE STATEMENT.] Every district attorney shall on or before the first day of January in each year, file in the office of the county treasurer an account in writing, verified by his affidavit, to be filed with said account, of all moneys received by him during the preceding year by virtue of his office, or any fines, recognizances, forfeitures, penalties or costs; and he shall specify in such account the name of each person from whom he may have received such moneys, the particular amount paid by each person and the cause for which each payment was made. But he shall pay over to the county treasurer all money he may receive as such district attorney within ten days after he receives it.

§ 10. PENALTY FOR NEGLECT.] Whenever such district attorney shall refuse or neglect to account for or pay over the moneys so received by him as required by the foregoing section, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars; but it shall be the duty of the county treasurer in his official name and capacity to cause an action to be instituted upon the bond of such district attorney for the recovery of the moneys so received and unpaid by him.

§ 11. SHALL ATTEND GRAND JURY.] Whenever required by the grand jury it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence, or of giving them any advice in any legal matter, or to issue subpoenas and other processes to enforce the attendance of witnesses.

§ 12. CLERK OF COURT TO BE ELECTED—PROVISO.] There shall be elected at the same time as provided in this act for the election of district attorneys, for each organized county in this Territory, a clerk of the District Court, who shall be a resident of the county for which he is elected and a qualified voter thereof, and shall possess the necessary qualifications for holding office as provided in section 47, chapter 27 of the Political Code; and all of the provisions of chapter 24 of the Political Code not inconsistent with the provisions of this section, shall be applicable in governing said clerks of the District Court:

Provided, That in the counties of Brookings and Moody the clerk of the District Court herein provided for shall be elected at the election in November, 1883, and thereafter as otherwise provided in this act.

§ 13. WHEN TO QUALIFY.] Said clerks of the District Court shall qualify within ten days after receiving their certificates of election, and immediately after qualifying shall enter upon the discharge of the duties of their offices.

§ 14. CERTAIN ACT REPEALED.] That chapter 14 and 15 of the Political Code, and chapter 18 of the session laws of 1879, shall cease to have effect, and shall be void on and after January 1st, 1885.

§ 15. This act shall take effect after its passage and approval.
Approved, March 7, 1883.