raisers, and for the reason that such a law going into effect in the midst of the season would work an inconvenience to the owners of sires; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1891.

SUPREME COURT.

CHAPTER 118.

[S. B. No. 3.]

REGULATING PRACTICE IN SUPREME COURT.

AN ACT Regulating the Practice in the Supreme Court and in the District Court in Certain Instances.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. POWER TO ISSUE WRITS.] The Supreme Court has power in the exercise of its original jurisdiction to issue writs of *habeas corpus, mandamus, quo warranto, certiorari* and injunction; and in the exercise of its appellate jurisdiction, and in its superintending control over inferior courts, it may issue such original and remedial writs as are necessary to the proper exercise of such jurisdiction; *Provided,* That said court shall exercise the said original jurisdiction only in *habeas corpus* cases, and in such cases of strictly public concern as involve questions affecting the sovereign rights of the State, or its franchises or privilege.

§ 2. ISSUE AND RETURN OF WRITS.] The Supreme Court shall be always open for the issue and return of all writs and processes which it may lawfully issue, and for the hearing and determination of the same, subject to such regulations and conditions as the court may prescribe. And any judge of said court may order the issuance of any such writ or process, and prescribe the time and manner of service and time and place of return of the same; *Provided,* That in cases of *habeas corpus* the Judge of the Supreme Court who issues or causes the writ to issue may, at his discretion, direct that the writ shall be made returnable and heard and determined, either before the Supreme Court or any judge thereof; or before any district court of the State, or any judge of any district court of the State; *Provided, further,* That any dis-

trict court or judge thereof before whom any writ is made returnable, as prescribed in this section, is hereby vested with full power and authority necessary for carrying into complete execution all of its judgments, decrees and determinations, subject to appeal as provided by law.

§ 3. POWER TO EXECUTE JUDGMENTS, DECREES, ETC.] Said court is vested with full power and authority necessary for carrying into complete execution all its judgments, decrees and determinations, in the matters aforesaid, and for the exercise of its jurisdiction as the supreme judicial tribunal of the State; and shall by order made at general or special term, from time to time, make and prescribe such general rules and regulations for the conduct and hearing of causes in said court, not inconsistent with the statute law of the State, as it may deem proper; and the said court shall, by order, prescribe the manner of publication, at the expense of the State, of such rules and regulations; and the same shall not be in force until thirty days after the publication thereof.

§ 4. DECISIONS—SYLLABUS.] The said court shall in all cases decided by it, give its decision in writing, which shall be filed with the clerk of said court, with the other papers in the case. Decisions in cases heard at a general or special term, and all orders affecting the same, may be filed in vacation, and judgment entered thereon in pursuance of the finding and order of the court, with the same effect as upon decisions made and filed in term. Said court, at the time of announcing its decisions in any action determined by said court, shall file with the clerk thereof a syllabus of the decision in such action, so prepared as to embody, as briefly as practicable, the principles settled in and by such decision.

§ 5. ADJOURNMENTS.] If any two judges of said court shall not attend on the first, or on any other day of the term, the clerk shall enter such fact on record, and the judge present shall adjourn the court to the next day, and so on from day to day for six days, if neither of the absent judges appear; at the end of which period said court shall be adjourned, and all matters pending therein shall stand continued until the next regular or special term. If none of the judges appear, the clerk of said court may adjourn from day to day, as provided in this section.

§ 6. WHEN CAUSES ON CALENDAR STAND OVER.] Whenever there is no general term of said court at the time fixed therefor by law, for any cause, or whenever there is a continuance of the term of said court, or a change in the time of holding any term by act of the Legislature, all causes then upon the calendar of said court, all writs, recognizances, appeals and proceedings, commenced, taken or made returnable to said court at said term, shall stand over to and be heard at the next general term, with like effect as if no such failure, continuance or change had occurred.

§ 7. REPEAL.] All acts and parts of acts of the Legislative

Assembly of the Territory of Dakota and State of North Dakota inconsistant therewith are hereby repealed.

§ 8. EMERGENCY.] Whereas, an emergency exists in that there is no adequate statute regulating the practice in the Supreme Court and it is essential that such practice be adopted as soon as practicable, therefore, this act shall be in full force and effect from and after its passage and approval.

Approved February 5, 1891.

CHAPTER 119.

[H. B. No. 12.]

REGULATING ADMISSION OF ATTORNEYS TO PRACTICE.

AN ACT Regulating the Admission of Attorneys to Practice Law in the Courts of North Dakota.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. POWER TO ADMIT VESTED IN SUPREME COURT.] The power to admit persons to practice as attorneys and counselors in the State Courts is hereby vested in the Supreme Court.

§ 2. QUALIFICATION OF APPLICANT.] Every applicant for such admission must be at least twenty-one years of age, of good moral character, an inhabitant of this State, and must have actually and in good faith pursued a regular course of study of the law for at least two full years, either in the office of a member of the bar of this State residing therein, and in regular practice, or in some reputable law school in the United States, or partly in such office and partly in such law school; *Provided*, That in reckoning such period of study, the school year of any such law school, consisting of not less than thirty-six weeks, exclusive of vacation, shall be considered equivalent to one full year.

§ 3. EXAMINATION OF APPLICANT, HOW CONDUCTED.] Every such applicant shall also be examined by the Supreme Court, or by a committee of not less than three members of the bar appointed by said Court, as to his learning and skill in the law; and the Court must be satisfied before admitting to practice, that the applicant has actually and in good faith devoted the time hereinbefore required to the study of law, and possesses the requisite learning and skill therein.

§ 4. OATH OF OFFICE.] Upon being admitted to practice as attorney or counselor at law, as provided by this act, they shall in

open court take the following oath: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States and the Constitution of the State of North Dakota, and that I will faithfully discharge the duties of the office of attorney and counselor at law to the best of my ability."

§ 5. ADMISSION ON CERTIFICATE, HOW.] Any person becoming a resident of this State after having been admitted to the bar in any of the states of the United States, in which he has previously resided may at the discretion of the court be admitted to practice in this State without examination or proof of period of study, as hereinbefore provided, on proof of the other qualifications by this act required and on satisfactory proof that he has practiced law regularly for not less than one year in the state from which he comes after having been admitted to the bar according to the laws of such state.

§ 6. COURT MAY PRESCRIBE RULES.] The Supreme court may by general rules, prescribe the mode by which examinations under this act shall be conducted and in which qualifications required as to age, residence, character and time of study shall be proved and may make any further rules not inconsistent with this act, for the purpose of carrying out its object and intent.

§ 7. FOREIGN ATTORNEYS, MAY PRACTICE, WHEN.] Any member of the bar of another state, actually engaged in any cause, or matter pending in any court of this State, may be permitted by such court, to appear in and conduct such cause or matter while retaining his residence in another state, without being subject to the foregoing provisions of this act.

§ 8. REPEAL OF CONFLICTING LAWS.] All acts, or so much thereof as are inconsistent with the provisions of this act are hereby repealed, but nothing herein contained shall affect or impair the rights of any person heretofore admitted to practice in any of the courts of this State to continue so to practtce.

Approved March 7, 1891.

CHAPTER 120.

[S. B. No. 2.]

REGULATING APPEALS IN CIVIL ACTIONS.

AN ACT Regulating Appeals from the District Courts to the Supreme Court and to Repeal Chapters 2 and 16 of the Code of Civil Procedure, Dakota Territory, as Published in Levisee's Code; and Chapters 20 and 26 of the Session Laws of Dakota Territory of the Year 1887, and also Sections 5,213 to 5,239, both Inclusive, of the Compiled Laws of Dakota Territory for the Year 1887.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. APPEALS TO SUPREME COURT.] A judgment or order in a civil action, or in a special proceeding, in any of the district courts, may be removed to the Supreme Court by appeal, as provided in this chapter, and not otherwise.

§ 2. TITLE OF ACTION NOT TO BE CHANGED.] The party appealing is known as the appellant and the adverse party as the respondent; but the title of the action is not to be changed in consequence of the appeal.

§ 3. TIME FOR APPEALS.] The appeal from a judgment hereafter rendered may be taken within one year after the entry thereof, and from an order within sixty days after written notice of the same shall have been given to the party appealing.

§ 4. APPEALS, HOW TAKEN.] An appeal must be taken by serving a notice in writing, signed by the appellant or his attorney, on the adverse party, and on the clerk of the court in which the judgment or order appealed from is entered, stating the appeal from the same, and whether the appeal is from the whole or a part thereof, and if from a part only, specifying the part appealed from. The appeal shall be deemed taken by the service of a notice of the appeal, and perfected on service of the undertaking for costs, or the deposit of money instead, or the waiver thereof, as hereinafter prescribed. When service of a notice of appeal and undertaking cannot in any case be made within this State, the court may prescribe a mode for serving the same.

§ 5. TRANSMISSION OF PAPERS BY CLERK.] Upon an appeal being perfected, the clerk of the court from which the appeal is taken shall, at the expense of the appellant, forthwith transmit to the Supreme Court, if the appeal is from a judgment, the judgment roll; if the appeal is from an order he shall transmit the order appealed from and the original papers used by each party on the application for the order appealed from. The court may,

however, in case of either judgment or order, direct copies to be sent in lieu of the originals. The clerk shall also, in all cases, transmit to the Supreme Court the original notice of appeal and undertaking given thereon, and he shall annex to the papers so transmitted a certificate under his hand and the seal of the court from which the appeal is taken, certifying that they are the orignal papers or copies, as the case may be, and that they are transmitted to the Supreme Court pursuant to such appeal. No further certificate or attestation shall be necessary; *Provided*, That if the appellant do not, within thirty days after his appeal is perfected, cause a proper record in the case to be transmitted to the Supreme Court, by the clerk of the district court, the respondent may cause such record to be transmitted by the clerk of the district court to the clerk of the Supreme Court, and in such case the respondent may recover the expense thereof as costs on such appeal, in case the judgment or order appealed from be in whole or in part affirmed.

§ 6. DEPOSIT IN PLACE OF UNDERTAKING—RESPONDENT MAY WAIVE UNDERTAKING.] When the appellant is required, under any provision of this act, to give an undertaking, he may in lieu thereof deposit with the clerk of court in which the judgment or order appealed from is entered, who shall give him a receipt therefor, a sum of money equal to the amount for which such undertaking is required to be given, and in lieu of the service of such undertaking serve a notice of the making of such deposit. Such deposit and notice shall have the same effect as the service of the required undertaking, and be held to answer the event of the appeal upon the terms prescribed for the undertaking, in lieu of which the same is deposited. Any such undertaking and deposit may be waived in writing by the respondent for whose benefit the same is required to be made, and such waiver shall have the same effect as the giving of the undertaking would have had.

§ 7. APPELLANT MUST EXECUTE UNDERTAKING.] To render an appeal effectual for any purpose, an undertaking must be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred and fifty (250) dollars.

§ 8. STAY OF EXECUTION—ADDITIONAL UNDERTAKING REQUIRED.] If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment unless an undertaking be executed on the part of the appellant, by at least two sureties, to the effect that if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant on appeal.

§ 9. EXECUTION OF JUDGMENT NOT TO BE DELAYED, EXCEPT

WHEN.] If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be delayed by the appeal, unless the things required to be assigned or delivered be brought into the court or placed in the custody of such officer or receiver as the court or presiding judge thereof shall appoint, or unless an undertaking be entered on the part of the appellant, by at least two sureties, in such sum as the court or presiding judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court on the appeal.

§ 10. EXECUTION OF CONVEYANCE NOT TO BE STAYED, EXCEPT WHEN.] If the judgment appealed from direct the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal, unless the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

§ 11. TO SELL AND DELIVER REALTY, EXCEPT WHEN.] If the judgment appealed from, direct the sale or delivery of possession of real property (except in actions for foreclosure of mortgage), the execution of the same shall not be stayed unless an undertaking be executed on the part of the appellant, by at least two sureties, in such sum as the court or presiding judge thereof shall direct, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment.

§ 12. DIRECTING SALE OF MORTGAGED PROPERTY.] If the judgment appealed from direct the sale of mortgaged premises, the execution thereof shall not be stayed by the appeal, unless an undertaking be executed on the part of the appellant, by at least two sureties, conditioned for the payment of any deficiency which may arise on such sale, not exceeding such sum as shall be fixed by the court or presiding judge thereof, to be specified in the undertaking, and all costs and damages which may be awarded to the respondent on such appeal.

§ 13. DIRECTING THE ABATEMENT, OR RESTRAINING THE CONTINUANCE OF A NUISANCE.] If the judgment appealed from direct the abatement, or restraint of the continuance of a nuisance, either public or private, the execution of the judgment shall not be stayed by the appeal unless an undertaking be entered on the part of the appellant, by at least two sureties, in such sum as the court or presiding judge thereof shall direct, to the effect that the appellant will pay all damages which the opposite party may sustain by the continuance of such nuisance.

§ 14. OTHER JUDGMENTS.] If the judgment appealed from direct the doing of any particular act or thing, and no express

provision is made by the statute in regard to the undertaking to be given on appeal therefrom, the execution thereof shall not be stayed by the appeal therefrom unless an undertaking be entered on the part of the appellant, in such sum as the court, or presiding judge thereof shall direct, and by at least two sureties, to the effect that the appellant will pay all damages which the opposite party may have sustained by not doing the particular thing or act directed to be done by the judgment appealed from, and to such further effect as such court or judge shall, in discretion, direct.

§ 15. APPEALS FROM INTERMEDIATE ORDERS.] When the appeal is from an order the execution or performance thereof shall not be delayed, except upon compliance, as the court or presiding judge thereof shall direct, and when so required, an undertaking shall be executed on the part of the appellant, by at least two sureties in such sums and to such effect as the court or presiding judge thereof shall direct; such effect shall be directed in accordance with the nature of the order appealed from, corresponding to the foregoing provisions in respect to appeals from judgments, where applicable, and such provision shall be made in all cases as shall properly protect the respondent, and no appeal from an intermediate order before judgment shall stay proceedings, unless the court or presiding judge thereof shall, in his discretion, so specially order.

§ 16. UNDERTAKING OF APPELLANT.] When a party shall give immediate notice of appeal from an order vacating or modifying a writ of attachment, or from an order denying, dissolving or modifying an injunction, he may within six days thereafter serve an undertaking executed on his part by at least two sureties, in such sum as the court or presiding judge thereof shall direct, to the effect that if the order appealed from or any part thereof be affirmed the appellant will pay all costs and damages which may be awarded against him on appeal, and all which the adverse party may sustain by reason of the continuance of the attachment, or the granting or continuance of the injunction, as the case may be. Upon the giving of such undertaking such court or judge shall order the attachment to be continued, and in his discretion, may order the injunction asked to be allowed, or that before granted to be continued until the decision of the appeal, unless the respondent shall, at any time pending the appeal, give an undertaking, with sufficient surety in a sum to be fixed by the court or presiding judge, to abide and perform any final judgment that shall be rendered in favor of the appellant in the action, but may at any time subsequently vacate such order if the appeal be not diligently prosecuted.

§ 17. UNDERTAKING, WHEN NOT NECESSARY.] When the State or any State officer, or State board, in a purely official capacity, or any municipal corporation within the State shall take an appeal, service of the notice of appeal shall perfect the appeal and

stay the execution or performance of the judgment or order appealed from, and no undertaking need be given; but the Supreme Court may on motion require sureties to be given, in such form and manner as it shall in its discretion prescribe, as a condition of the further prosecution of the appeal.

§ 18. WHEN SURETY BECOMES INSOLVENT.] The Supreme Court, upon satisfactory proof that any of the sureties to an undertaking given under this act has become insolvent, or that his circumstances have become so precarious that there is reason to apprehend that the undertaking is insufficient security, may in its discretion require the appellant to file and serve a new undertaking, with such sureties and in such time as shall be prescribed, and that in default thereof the appeal shall be dismissed or the stay of proceedings vacated, and the execution or performance of the judgment or order be allowed to be enforced without further delay.

§ 19. UNDERTAKINGS MAY BE IN ONE INSTRUMENT — REFUSAL OF JUDGE TO STAY.] The undertakings required by this act may be in one instrument or several, at the option of the appellant; the original must be filed with a notice of the appeal, and a copy showing the residence of the sureties must be served with notice of appeal. When the sum or effect of any undertaking is required under the foregoing provisions to be fixed by the court or judge, at least twenty-four hours' notice of the application therefor shall be given the adverse party. When the court, or the judge thereof, from which the appeal is taken, or desired to be taken, shall neglect or refuse to make any order or direction not wholly discretionary, necessary to enable the appellant to stay proceedings upon an appeal, the Supreme Court, or one of the justices thereof, shall make such order or direction.

§ 20. SURETIES MUST JUSTIFY.] An undertaking upon an appeal shall be of no effect unless it be accompanied by the affidavit of the sureties, in which each surety shall state that he is worth a certain sum mentioned in such affidavit, over and above all his debts and liabilities, in property within this State not by law exempt from execution, and which sum so sworn to by such sureties shall, in the aggregate, be double the amount specified in said undertaking. The respondent may, however, except to the sufficiency of the sureties within ten days after such notice of the appeal, and unless they or other sureties justify in the same manner as upon bail on arrest within ten days thereafter, the appeal shall be regarded as if no undertaking has been given. The justification shall be upon a notice of not less than five days.

§ 21. EFFECT OF PERFECTED APPEAL—SALE OF PERISHABLE PROPERTY.] Whenever an appeal shall have been perfected and the proper undertaking given, or other act done, prescribed by this act to stay the execution or performance of the judgment or order appealed from, all further proceedings thereon shall be thereby stayed accordingly, except that the court below may pro-

ceed upon any other matter included in the action, not affected by the judgment or order appealed from, and except that the court or the presiding judge thereof may order perishable property, held under the judgment or order appealed from, to be sold, and the proceeds paid into the court to abide the event.

§ 22. REFERENCE TO ASCERTAIN DAMAGES, WHEN—BREACH OF UNDERTAKING.] When the amount of damages to be paid by the appellant or [on] affirmance of the judgment or order appealed from, pursuant to an undertaking, is not fixed by the judgment or decision of the Supreme Court on appeal, the district court may, after the remittitur of the record from the Supreme Court is filed, order a reference to ascertain such damages, the expense of which shall be included and recoverable with such damages. In all cases of neglect for the space of thirty days after the affirmance on appeal of a judgment directing the payment of money, to pay the amount directed to be paid on such affirmance, shall be deemed a breach of the undertaking on such appeal. A neglect for a space of sixty days after the confirmation of a report of a referee, to whom a reference has been ordered for the purpose of ascertaining the damages to be paid, on the affirmance of any other judgment or order appealed from, to pay the amount of damages so ascertained and the costs of such reference, shall be deemed a breach of the undertaking on such appeal. The dismissal of an appeal by the appellant, or by the court for the want of prosecution, unless the court shall, at the time, otherwise expressly order, shall render the sureties upon the undertaking or bond, given under this act, liable in the same manner and to the same extent as if judgment or order appealed from had been affirmed.

§ 23. AMENDMENT OR PERFECTION OF APPEALS.] When a party shall in good faith give notice of appeal, and shall omit through mistake or accident, to do any other act necessary to perfect the appeal to make it effectual, or to stay proceedings, the court from which the appeal is taken, or the presiding judge thereof, or [the] Supreme Court, or any one of the justices thereof, may permit an amendment, or the proper act to be done on such terms as may be just.

§ 24. WHAT ORDERS REVIEWABLE.] The following orders, when made by the court, may be carried to the Supreme Court:

First. An order affecting a substantial right, made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken.

Second. A final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment.

Third. When an order grants, refuses, continues or modifies a provisional remedy, or grants, refuses, modifies or dissolves an injunction; when it sets aside or dismisses a writ of attachment for

irregularity; when it grants or refuses a new trial, or when it sustains or overrules a demurrer.

Fourth. When it involves the merits of an action or some part thereof; when it orders judgment on application therefor, on account of the frivolousness of a demurrer, answer or reply; or strikes off such demurrer, answer or reply on account of the frivolousness thereof.

Fifth. From orders made by the district court, vacating or refusing to set aside orders made at chambers where by the provisions of this act an appeal might have been taken, in case the order so made at chambers had been granted or denied by the district court in the first instance. For the purpose of an appeal from an order, either party may require the order to be entered by the clerk of record, and it shall be entered accordingly.

§ 25. DETERMINATION OF APPEAL—QUESTIONS OF FACT REVIEWED—WHEN.] Upon an appeal from a judgment the Supreme Court may review any intermediate order or determination of the court below which involves the merits, and necessarily affect the judgment, appearing upon the record transmitted or returned from the district court, whether the same were excepted to or not; nor shall it be necessary in any case to take any exception or settle any bill of exception to enable the Supreme Court to review any alleged error which would, without a bill of exceptions, appear upon the face of the record. Any questions of fact or of law, decided upon trials by the court or by referee, may be reviewed when exceptions to the findings of fact have been duly taken by either party and returned.

§ 26. COURT'S POWER AS TO JUDGMENT OR ORDER—GRANT REHEARING—CLERK TO TRANSMIT CERTAIN PAPERS.] Upon an appeal from a judgment or order, the Supreme Court may reverse, affirm or modify the judgment or order, and as to any and all of the parties; and may, if necessary or proper order a new trial, and if the appeal is from a part of the judgment or order, may reverse, affirm or modify as to the part appealed from. In all cases the Supreme Court shall remit its judgment or decision to the court from which the appeal was taken, to be enforced accordingly; and if from a judgment, final judgment shall thereupon be entered in the courts below in accordance therewith, except where otherwise ordered. The clerk of the Supreme Court shall remit to such court the papers transmitted to the Supreme Court on the appeal, together with the judgment or decision of the Supreme Court thereon, within sixty days after the same shall have been made, unless the Supreme Court, on application of either of the parties, shall direct them to be retained for the purpose of enabling such parties to move for a re-hearing. In case such motion for a re-hearing is denied, the papers shall be remitted within twenty days after such denial. The clerk of the Supreme Court shall in all cases, except when the order of judgment is affirmed, also transmit with the papers so returned by him a certified copy

of the opinion of the Supreme Court, and his fees for such copy shall be taxed and allowed with his other fees in the case.

§ 27. WHEN NEW TRIAL ORDERED—TIME LIMITED.] In every case on appeal in which the Supreme Court shall order a new trial, or further proceedings in the court below, the record shall be transmitted to such court, and proceedings had therein within one year from the date of such order in the Supreme Court, or in default thereof, the action shall be dismissed, unless upon good cause shown the court shall otherwise order.

§ 28. REPEAL OF CONFLICTING ACTS.] That Chapter 2 and Chapter 16 of the Code of Civil Procedure, Dakota Territory, as published in Levisee's Code; and Chapter 20 and Chapter 26 of the Session Laws of Dakota Territory of the year 1887, also Sections 5213 to 5239, both inclusive, of the Compiled Laws of Dakota Territory for the year 1887, and all acts and parts of acts inconsistent herewith are hereby expressly repealed.

§ 29. EMERGENCY.] Whereas, there is no adequate law governing appeals from the district courts to the Supreme Court and it is essential that the same be fixed as soon as practicable, and long before July 1, 1891; therefore an emergency exists, and this act shall take effect and be in full force from and after its passage and approval.

Approved February 11, 1891.

CHAPTER 121.

[S. B. No. 161.]

AMENDING AN ACT APPROVED FEBRUARY 11, 1891.

AN ACT to Amend Section 25, of Chapter 120 of the Laws of 1891, Entitled "A Bill for an Act Regulating Appeals from the District Courts to the Supreme Court, and to Repeal Chapters 3 and 16 of the Code of Civil Procedure, Dakota Territory, as Published in Levisee's Code; and Chapters 20 and 26 of the Session Laws of Dakota Territory of the Year 1887; also Sections 5213 to 5239, both Inclusive, of the Compiled Laws of Dakota Territory of the Year 1887."

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. APPEAL WITHOUT MOTION FOR NEW TRIAL, WHEN.] That Section 25, of Chapter 120, of the Laws of 1891, be and the same is hereby amended to read as follows: "Upon an appeal from a judgment the Supreme Court may review any intermediate order or determination of the court below which involves the merits and necessarily affects the judgment, appearing upon the record trans-

mitted or returned from the district court, whether the same are accepted to or not; nor shall it be necessary in any case to take any exception or settle any bill of exceptions to enable the Supreme Court to review any alleged error which would, without a bill of exceptions, appear upon the face of the record. Any question of fact or law decided upon trials by the court or by referee; and appearing upon the record properly accepted to, in cases in which an exception is necessary, may be reviewed by the Supreme Court whether a motion for a new trial was or was not made in the court below, and such questions of fact or of law and such exceptions may be made a part of the record by statement of the case made within the time and in the manner provided in Section 9, Chapter 21, Laws of 1887; but questions of fact shall not be reviewed in the Supreme Court in jury cases unless a motion for a new trial is first made in the court below."

§ 2. EMERGENCY.] Whereas an emergency exists in this that there is no law providing for a review of the decision of the district court without a motion for a new trial, this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1891.

CHAPTER 122.

[S. B. No. 191.]

AMENDING AN ACT APPROVED FEBRUARY 11, 1891.

AN ACT to Amend Section 28, of Chapter 120, of the Session Laws of 1891, Approved February 11, 1891, Entitled "An Act Regulating Appeals in Civil Actions."

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 28, of Chapter 120, of the Session Laws of 1891, entitled "An Act Regulating Appeals in Civil Actions," be amended so as to read as follows:

Sec. 28. REPEAL OF CONFLICTING LAWS.] That Chapter 2 and Chapter 16 of the Code of Civil Procedure, Dakota Territory, as published in Levisee's Code; and Chapter 20 and Chapter 26 of the Session Laws of Dakota Territory of the year 1887, also Sections 5213 to 5239, both inclusive, of the Compiled Laws of Dakota Territory for the year 1887, and all acts and parts of acts inconsistant herewith are hereby expressly repealed; *Provided*, That this act shall not apply to, cut off or effect the right of appeal in cases where judgments and orders have been made or entered prior to the approval of this act.

Approved March 7, 1891.

CHAPTER 123.

[H. B. No. 197.]

PROVIDING FOR PUBLICATION OF SUPREME COURT REPORTS.

AN ACT to Provide for the Publication of Reports of Opinions Rendered by the Supreme Court of the State of North Dakota, by Amending Section 7, of Chapter 171, of the Laws Passed by the First Legislative Assembly of the State of North Dakota.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 7, of Chapter 171, of the laws passed by the First Legislative Assembly of the State of North Dakota, be and the same is hereby amended to read as follows:

Sec. 7. WHEN REPORTS TO BE PRINTED—HOW SOLD.] It shall be the duty of the Supreme Court Reporter to publish in book form the opinions of the Supreme Court, together with other matters as contemplated in Section 2 of this act, when the Judges of said Court shall direct such publication to be made; *Provided*, That each book shall contain not less than 550 pages octavo of printed matter. The publication shall be let and paid for in the same manner as other public printing; but the printed matter shall be stereotyped and the stereotyped plates shall be the property of the State and shall be deposited in the office of the Secretary of State. The first edition of each volume shall consist of 750 copies, which shall be delivered to the Secretary of State to be by him distributed according to law; and volumes remaining undistributed shall be sold by him at three (3) dollars per volume.

Approved March 6, 1891.

USURY.

CHAPTER 124.

[S. B. No. 90.]

DEFINING USURY AND MAKING THE TAKING OF SAME A MISDEMEANOR.

AN ACT Defining Usury, Making the Taking of Usury a Misdemeanor, Also the Assignment or Disposition of Usurious Contracts, and Providing a Penalty Therefor.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. USURY DEFINED.] That the taking, receiving or accepting of a greater rate of interest upon any bond, bill of exchange,