

the cure and treatment of such drunkard shall at all times be under the supervision of the board of county commissioners, who may at any time they see proper, stop the treatment of any such drunkard, or change him from one institute to another, as to them shall seem meet and proper; *Provided*, that no county shall be required to send the same person to any such institute a second time at its expense.

§ 3. DRUNKARD DEFINED.] A drunkard, as defined by this act, shall include all persons who use or abuse alcoholic, spirituous, malt, fermented or intoxicating liquors, morphia, laudanum, cocaine, opium or other narcotics to such a degree as to deprive him or her of a reasonable degree of self-control.

§ 4. MAY REIMBURSE THE COUNTY.] Any person who shall be treated for such addictions of the provisions of this act, and who may desire to reimburse the county, at whose expense he has been treated, may tender the county treasurer of said county the amount expended for his treatment, and said treasurer shall give a receipt for the amount so paid, which receipt shall state that such payment is for reimbursement as aforesaid, and the amount so paid shall be covered into the treasury of the county.

Approved, March 6, 1895.

HERD LAW.

CHAPTER 69.

[S. B. No. 86.]

ABOLISHING HERD LAW.

AN ACT to Provide for the Abolishment of the Provisions of Chapter 38 of the Code of Civil Procedure, Entitled "Herd Law," in Counties Where a Majority of the Qualified Electors so Elect; to Provide for an Election Upon the Question of Such Abolishment, and to Establish a Fence Law in Such Counties.

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

§ 1. COUNTY COMMISSIONERS SHALL ORDER AN ELECTION—HOW CONDUCTED.] The board of county commissioners of any county shall, whenever they shall be presented with a petition signed by one-third of the qualified electors of said county, asking that the provisions of Chapter 38 of the Code of Civil Procedure be abolished therein, order an election to be held, at which election the qualified electors of such county shall vote upon the question of abolishing the provisions of Chapter 38 of the Code of Civil Procedure in such county. Such election shall be in all respects

conducted as general elections are conducted, and the order of the board of county commissioners calling for such election shall be made at least sixty days before such election is held, and notice of such election shall be given in the same manner and for the same length of time as notices of general elections.

§ 2. **BALLOTS.]** The ballots to be used at such election shall be in the following form: "For the Herd Law" and "Against the Herd Law." In voting on the question, each voter must place to the left of the proposition he favors, the mark X.

§ 3. **WHEN ABOLISHED.]** Should a majority of the ballots cast at such election be "against the herd law," the provision of said Chapter 38 of the Code of Civil Procedure, entitled "Herd Law," shall be thereby abolished in such county.

§ 4. **WHEN THE PROPOSITION MAY BE SUBMITTED AGAIN.]** At any subsequent general election, but no other time, after an election has been once held under the provisions of this chapter, the question of re-establishing the provisions of said Chapter 38 of the Code of Civil Procedure within any county having abolished the same, or of abolishing the provisions of said Chapter 38 of the Code of Civil Procedure in any county which has once refused to abolish the same under the provisions of this chapter, may be again submitted by the board of county commissioners of any such county to a vote of the qualified electors thereof, to be voted upon in the same manner as provided for the first election, as set forth in Section 1, 2 and 3 of this act. The result of any election held under the provisions of this act shall remain in force until changed at some subsequent election held hereunder.

§ 5. **WHEN FENCES SHALL BE SUFFICIENT AND LAWFUL.]** If any county in which an election has been held under the provisions of this act, and where the result of such election shall have been declared to be in favor of abolishing the provisions of Chapter 38 of the Code of Civil Procedure, a fence constructed as hereinafter described shall be sufficient and lawful.

§ 6. **HOW FENCES SHALL BE CONSTRUCTED.]** Posts or other uprights of reasonable strength and firmness in position, not more than thirty-two feet distant from each other, with two suitable stays between posts, nearly equally dividing such space in three parts, with three strands of ordinary barbed fence wire well stretched and firmly fastened to such posts, upright and stays, with the upper strand not more than forty-eight nor less than forty-two inches above the general surface of the ground thereunder, and the lower strand shall not be more than eighteen nor less than twelve inches above the general surface of the ground thereunder, and the middle strand shall nearly equally divide the space between the upper and lower strands; *Provided*, That all corral fence, exclusively for purposes of enclosing stacks, if outside of any lawful enclosure, shall not be less than sixteen feet distant from such stacks so enclosed, shall be substantially built with posts not more than eight feet distant from each other, and

with not less than five strands of barbed fence wire, and shall be not less than five feet high.

§ 7. FENCES EFFECTIVE FOR BARRIER LAWFUL.] Any other kind of a fence or barrier, as effective for the purpose of a fence as that provided in Section 6 of this chapter, is hereby declared sufficient and lawful.

§ 8. LIABILITY OF OWNERS OF BREACHY CATTLE.] Any person owning or having in charge any horses, mules, cattle, sheep or goats, or any such animals, which shall breach or break through, over or under any lawful fence, not the property of the owner of such offending animals, shall be liable to the party having sustained injury by reason of such breaching or breaking, to be recovered in a civil action, before any court of competent jurisdiction, and it shall be sufficient in any such action, that it was a lawful fence where the breach was made, and the proceedings shall be the same as in other civil actions, except as herein modified.

§ 9. OWNERS OF SWINE LIABLE—WHEN.] Any person owning or having in charge in any county adopting the provisions of this chapter, as herein provided, any swine which shall trespass upon the lands or premises of another, including premises in towns, villages and cities, whether such lands or premises are fenced or not fenced, such person owning or having in charge such trespassing swine shall be liable to any party sustaining such injury for all damage he may sustain by reason of such trespassing, to be recovered in a civil action before any court having jurisdiction thereof, and the proceedings shall be the same in all respects as in other civil actions, except as herein modified.

§ 10. DAMAGES BY TRESPASSING ANIMALS.] The parties sustaining damages done by such trespassing animals, as mentioned in Sections 8 and 9, before commencing action thereon, shall notify the owner or person having in charge such offending animals of such damages, and the probable amount thereof, provided he be known, to whom such offending animals belong, and that the owner or person in charge resides in and is within the county, and he may retain and keep in custody such offending animals until the damages so sustained and costs are paid, or until sufficient security be given for the same; *Provided*, that the person so restraining such offending animals shall, without unnecessary delay, notify the owner or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, providing such owner or person who had the same in charge is known to the person making such seizure to be within or to reside within the county.

§ 11. FEES FOR SERVING NOTICE.] For serving notice as provided in Section 10 of this act, the person making such service shall be entitled to the same fees and mileage allowed a sheriff in serving a summons.

§ 12. DAMAGES A LIEN UPON THE ANIMALS.] Upon the trial of

an action under the provisions of this act, the plaintiff shall prove the amount of damages sustained, and the amount of expense incurred for restraining and keeping the offending animals, if such have by him been restrained, and any judgment rendered for damages against the defendant shall be a lien upon the animals having committed the damages, and they may be sold and the proceeds applied to the satisfaction of the judgment.

§ 13. SERVICE IN CASE OF UNKNOWN DEFENDANT.] If upon the trial it shall appear that the defendant is not the owner or person in charge of such offending animals, he shall be discharged, and the suit may proceed against the defendant, whose name is unknown, and, if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring a suit against a defendant unknown. In such case service shall be made by publishing a copy of the summons, with a notice stating the nature of the action, in a newspaper, if there be one published in the county, and, if not, by posting copies of the summons and notice in three public places in the county, in either case at least ten days previous to the day of trial.

§ 14. JUDGMENT AND COSTS COLLECTED—HOW.] After judgment shall have been rendered against the defendant, unknown as aforesaid, the offending animals, or so many of them as may be necessary, shall be sold as in other civil actions, and after said judgment and costs have been satisfied, if there is any surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same within six months from the day of sale, it shall be placed into the school fund, for the use of the public schools of the county.

§ 15. MISDEMEANOR—WHEN.] Taking or attempting to take, or advising or assisting in the taking from the possession of the person having them in charge, without the consent of such person, except by due course of law, any animals restrained and held by virtue of the provisions of this act, is hereby declared to be a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty (50) dollars, or by imprisonment in the county jail not to exceed thirty days, or by both fine and imprisonment, at the discretion of the court.

§ 16. JUDGMENT OF COURT FINAL—WHEN—JURY TRIAL.] In all actions under and by virtue of the provisions of this act, wherein the amount of damages claimed does not exceed twenty-five (25) dollars, the judgment of the court having original jurisdiction thereof shall be final; *Provided*, that either party to such suit shall be entitled, upon demand thereof, to a jury trial.

§ 17. ACTIONS COMMENCED—WHEN BARRED.] No property shall [be] exempt from seizure and sale under execution upon judgment obtained under and by virtue of the provisions of this act, unless commenced within six months from the date of alleged damages, are hereby declared barred by statute of limitation.

§ 18. CONFLICTING ACTS REPEALED.] All acts, so far as they conflict with the provisions of this act, are hereby repealed.
Approved, March 11, 1895.

HISTORICAL COMMISSION.

CHAPTER 70.

[S. B. No. 147.]

DUTIES PRESCRIBED.

AN ACT Creating an Historical Commission for the State, Prescribing Its Duties and the Place for Preserving Its Records.

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

§ 1. HOW CONSTITUTED.] The Governor, Auditor, Secretary of State, Commissioner of Agriculture, William H. Moorhead and President of the North Dakota Historical Society, shall constitute an historical commission for the State of North Dakota.

§ 2. DUTIES.] It shall be the duty of this commission to collect and preserve the records and relics pertaining to the early history, early settlement and development of North Dakota. It shall collect, arrange and preserve a library of books, pamphlets, papers, manuscripts, photographs, paintings, sketches, cabinets of minerals, Indian archeological and other curiosities and material illustrative of the civil, political, religious, literary and natural history of the State. It may receive bequests for the purposes of this act, and shall expend the same for the purchase of historical, geneological and other books and collections suitable for this purpose, and may receive contributions from societies, corporations and individuals of books, pamphlets, papers and other matter herein contemplated, and shall faithfully preserve or apply the same for the purposes herein stated. They shall provide a room in the capitol for the safe keeping and arrangements of the records and collections of this commission and the North Dakota Historical Society when co-operating with it.

§ 3. EMERGENCY.] *Whereas*, There is an emergency in this that contributions and collections have already been offered the State and there is no authority to accept the same or to provide a room for their safe keeping, this act shall take effect and be in force on and after its passage.

Approved, March 8, 1895.