GENERAL LAWS,

AND

MEMORIALS AND RESOLUTIONS,

OF THE

Territory of Dakota,

PASSED AT THE EIGHTH SESSION OF THE

LEGISLATIVE ASSEMBLY

Commenced at the City of Yankton, December 7th, A. D. 1868, and concluded January 15th, A. D. 1869.

PUBLISHED BY AUTHORITY.

YANKTON, DAKOTA TERRITORY,
GEO. W. KINGSBURY, PUBLIC PRINTER, UNION & DAKOTAIAN OFFICE.
1868:69.

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DAKOTA TERRITORY.

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AUHENTICATION.

DAKOTA TERRITORY,
Secretary's Office, Yankton.

I HEREBY certify, that I have this day delivered to George W. Kingsbury, Public Printer, for Dakota Territory, true and correct copies of all the public and private laws, memorials and resolutions, passed and approved, during the eighth session of the Legislative Assembly of said Territory.

WITNESS my hand and seal, this twentieth day of January, A. D., 1869.

{L. S.}

S. L. SPINK,
Secretary.

UNION AND DAKOTAIAN OFFICE,
YANKTON, D. T., April 19, 1869.

I HEREBY certify that the following Laws, Memorials, and Resolutions, are true and correct copies, as given me for publication by the Secretary of Dakota Territory, as set forth in the preceding authentication.

GEO. W. KINGSBURY,
Public Printer, Dakota Territory.

GENERAL LAWS.

CRIMINAL PROCEDURE.

CHAPTER 1.

AN ACT TO ESTABLISH A CODE OF CRIMINAL PROCEDURE FOR DAKOTA TERRITORY.

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

PRELIMINARY PROVISIONS.

Section 1. Title of the code.
2. Divisions of the code.
3. Definition of a public offense.
4. Divisions of public offenses.
5. Definition of a felony.
6. Definition of a misdemeanor.
7. No person punishable, but on legal conviction.
8. Public offenses, how prosecuted.
9. Criminal action defined.
10. Parties to a criminal action.
11. The party prosecuted known as defendant.
12. Rights of a defendant in a criminal action.
13. Second prosecution for the same offense, prohibited.
14. No person shall be a witness against himself in a criminal action, or be unnecessarily restrained.
15. No person to be convicted, but upon verdict or judgment.

Title of Code.

Section 1. This act shall be known as THE CODE OF CRIMINAL PROCEDURE OF THE TERRITORY OF DAKOTA.

Divisions of code

Sec. 2. This code is divided into six parts.

The first relates to the courts having original jurisdiction of criminal actions;

The second relates to the prevention of public offenses:

The third relates to judicial proceedings for the removal of public officers by impeachment or otherwise;

The fourth relates to the proceedings in criminal actions prosecuted by indictment or information;

The fifth relates to proceedings in the justices courts;

The sixth relates to special proceedings of a criminal nature.

Definition of public offense

Sec. 3. A crime or public offence is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

1; Death: 2, Imprisonment: 3, Fine: 4, Removal from office; or, disqualification to hold and enjoy any office of honor, trust or profit under this Territory.

Divisions of public offenses

Sec. 4. Public offenses are divided into, 1, Felonies; and 2, Misdemeanors.

Definition of a felony.

Sec. 5. A felony is a public offence, punishable with death, or which is, or in the discretion of the court may be, punishable by imprisonment in a penitentiary.

Definition of a misdemeanor.

Sec. 6. Every other public offense is a misdemeanor.

Persons, when punishable

Sec. 7. No person can be punished for a public offense, except upon legal conviction in a court having jurisdiction thereof.

Public offenses, how prosecuted

Sec. 8. Every public offense must be prosecuted by indictment or information, except, 1, Where proceedings are had for the removal of a civil officer of the Territory, on an impeachment by the House of Representatives, for willful or corrupt misconduct in office;

2, Where proceedings are had for the removal of justices of the peace;

3, Offences arising in the militia, when in actual service; and in the land and naval forces in time of war, or which this Territory may keep, with the consent of Congress, in time of peace;

4, Petit larceny, not charged as a second offense;

5, Assault and battery, not charged to have been committed riotously, or upon a public officer in the execution of his duties;

6, Poisoning, killing, maiming, wounding, or cruelly beating an animal;

7, Racing animals, within one mile of the place where a court is held;

8, Committing a willful trespass, or severing any produce or article from the freehold, not amounting to grand larceny;

9, Selling poisonous substances, not labelled as required by statute

10, Maliciously removing, altering, defacing, or cutting down monuments or marked trees;

11, Maliciously breaking, destroying or removing mile-stones, mile-boards or guide-boards, or altering an inscription thereon.

Criminal action defined.

Sec. 9. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

Parties to a criminal action

Sec. 10. A criminal action is prosecuted in the name of the people of the Territory of Dakota as a party, against the party charged with the offense.

Party known as defendant.

Sec. 11. The party prosecuted in a criminal action is designated in this code as the defendant.

Rights of defendant.

Sec. 12. In a criminal action the defendant is entitled, 1, To a speedy and public trial; 2, To be allowed counsel, as in civil actions; or he may appear and defend in person and with counsel; and 3, To produce witnesses in his behalf, and to be confronted with the witnesses against him in the presence of the court; except that where the charge has been preliminarily examined before a magistrate, and the testimony reduced by him to the form of a deposition, in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally, according to sections 179 and 180, the deposition of the witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found in the Territory.

Second prosecution for the same offense prohibited

Sec. 13. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted.

No person compelled to be witness against himself.

Sec. 14. No person can be compelled, in a criminal action, to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

Persons, how convicted.

Sec. 15. No person can be convicted of a public offense, where he is entitled to a trial by jury, unless by the verdict of a jury accepted and recorded by the court, or upon a plea of guilty.

PART I.

OF THE COURTS HAVING ORIGINAL JURISDICTION IN CRIMINAL ACTIONS

Title I. Of courts of original criminal jurisdiction in general.
II. Of the court for the trial of impeachments.
III. Of the courts of districts.
IV. Of the justices courts.

TITLE I.

OF THE COURTSOF ORIGINAL CRIMINAL JURISDICTION IN GENERAL.

Section 16. The courts of original criminal jurisdiction.

Courts having original jurisdiction.

Sec. 16. The following are the courts of justice in this Territory having original jurisdiction of criminal actions: 1, The court for the trial of impeachments; 2, The district courts; 3, The justices courts. They are courts of recoad, except the justices courts.

TITLE II.

OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.

Section 17. Its jurisdiction.
18. Members of the court.
19. Presiding officers.

Section 20. Clerk and officers.
21. Time of holding the court.
22. Oath to members of the court.
23. Compensation of members and officers of the court.

Its jurisdiction.

Sec. 17. The court for the trial of impeachments has power to try impeachments, when presented by the House of Representatives, of all civil officers of the Territory, except justices of the peace, for willful and corrupt misconduct in office.

The Court, members of

Sec. 18. The court is composed of the president of the council and the councilmen, or a majority of them.

Presiding officers

Sec. 19. The president of the council is the presiding officer of the court.

Clerk and officers

Sec. 20. The secretary and officers of the council are the clerk and officers of the court for the trial of impeachments.

Time of holding Court.

Sec. 21. There are no stated terms of this court; but upon the delivery of an impeachment from the House of Representatives, the president of the council must cause the court to be summoned to meet at the capitol in the city of Yankton, on a day not less than thirty nor more than sixty days from the day of the delivery of the articles of impeachment.

Oath of members of Court.

Sec. 22. At the time and place appointed, and before the court proceeds to act on the impeachment, the secretary must administer to the presiding officers, and the presiding officers to each of the members of the court then present, an oath or affirmation truly and impartially to hear, try and determine, the impeachment; and no member of the court can act or vote upon the impeachment, or any question arising thereon, without having taken this oath or affirmation.

Compensation of members and officers.

Sec. 23. When the court is held during the recess of the legislature, the president of the council, the councilmen, and the secretary and officers of the court, are entitled to the same compensation for their attendance thereon, and for traveling to and from the place where it is held, as is allowed them at a meeting of the council.

TITLE III.

OF THE COURTS OF DISTRICTS.

Section 24. Courts of district or county.
25. Its jurisdiction.

Courts of District or County.

Sec. 24. There is in each of the districts of this Territory, a court denominated the district court with the jurisdiction conferred by the next three sections, and no other. But nothing contained in this section affects its jurisdiction in actions, or proceedings now pending therein. The district court may be held in several different counties in the same district, as the legislature may direct.

Its jurisdiction,

Sec. 25. The district court has jurisdiction:

1, To inquire, by the intervention of a grand jury or by the imformation of the district attorney, of all public offenses committed or triable in the county or district for which the court may be held;

2, To inquire into the cause of the detention of persons imprisoned in the jail of the county or district, and make an order for their re-commitment or discharge, or otherwise, according to law;

3, To exercise the powers conferred upon it by other provisions of this code.

TITLE IV.

THE COURTS OF JUSTICES OF THE PEACE.

Section 26. Courts of justices of the peace.

Courts of justices of the Peace.

Sec. 26. The justices courts have jurisdiction concurrent with the district court, of all misdemeanors committed in their respective counties where the maximum punishment fixed by law does not exceed a fine of one hundred dollars or imprisonment in the county jail for a period of thirty days, or both such fine and imprisonment.

PART II.

OF THE PREVENTION OF PUBLIC OFFENSES.

Title I. Of lawful resistance.
II. Of the intervention of officers of justice.

TITLE I.

OF LAWFUL RESISTANCE.

Chapter I. General provisions.
II. Resistance by the party about to be injured.
III. Resistance by other parties.

CHAPTER I.

GENERAL PROVISIONS RESPECTING LAWFUL RESISTANCE.

Section 27. Lawful resistance by whom made.

Sec. 27. Lawful resistance to the commission of a public offense may be made : f lawful esistance,

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2, By other parties.

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Section 28. In what cases, and to what extent.

Sec. 28. Resistance sufficient to prevent the offense, may be made by the party about to be injured: In what cases, o what extent.

1, To prevent an offense against his person :

2, To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

CHAPTER III.

RESISTANCE BY OTHER PARTIES.

Section 29. In what cases.

In what cases.

Sec. 29. Any other person, in aid or defence of the person about to be injured, may make resistance sufficient to prevent the offense.

TITLE II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

Chapter I. Intervention of public officers in general.
II. Security to keep the peace.
III. Police in cities and villages, and their attendance at exposed places.
IV. Suppression of riots.

CHAPTER I.

INTERVENTION OF PUBLIC OFFICERS IN GENERAL.

Section 30. In what cases.
31. Persons acting in their aid, justified.

In what cases.

Sec. 30. Public offenses may be prevented by the intervention of the officers of justice:

1, By requiring security to keep the peace;

2, By forming a police in cities and villages, and by requiring their attendance in exposed places;

3, By suppressing riots.

Persons, when justified;

Sec. 31. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who by their command, act in their aid, are justified in so doing.

CHAPTER II.

SECURITY TO KEEP THE PEACE.

Section 32. Information of the threatened offense.

Section 33. Warrant of arrest.
34. Proceeding, on complaint being controverted.
35. Person complained of, when to be discharged.
36. Security to keep the peace, when required.
37. Effect of giving or refusing to give security.
38. Persons committed for not giving security, how discharged.
39. Undertaking to be transmitted to court.
40. Security when required, for assault, &c., in presence of a court or magistrate.
41. Appearance of party bound, upon his undertaking.
42. Person bound, may be discharged, if complainant does not appear.
43. Proceedings in court, on appearance of both parties.
44. Undertaking, when broken.
45. Undertaking, when, and how to be prosecuted.
46. Evidence of breach.
47. Security for the peace, not required, except according to this chapter.

Information of threatened offense

Sec. 32. An information verified by the oath of the complainant, may be laid before any of the magistrates mentioned in section 111, that a person has threatened to commit an offense against the person or property of another.

Warrant of arrest

Sec. 33. If it appear from the information that there is just reason to fear the commission of the offense threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, or marshal or policeman of the city or town, reciting the substance of the information, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate of the county.

Proceeding, on complaint being controverted.

Sec. 34. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

Person discharged.

Sec. 35. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

Security to keep the peace, when required.

Sec. 36. If, however, there be just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the mean time to keep the peace toward the people of this Territory, and particularly towards the complainant.

Giving or refusing security, effects of.

Sec. 37. If the undertaking required by the last section be given, the party complained of must be discharged. If he do not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

Person committed, how discharged.

Sec. 38. If the person complained of be committed for not giving security, he may be discharged by any justice of the peace of the county or police or special justice of the city, upon giving the same.

Undertaking to be transmitted to Court.

Sec. 39. An undertaking given as provided in section 67, must be transmitted by the magistrate to the next district court of the county.

Security, when required for assault, &c., in presence of court

Sec. 40. A person who in the presence of a court or magistrate, assaults or threatens to assault another, or commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security as provided in section 36, or if he refuse to do so, may be committed as provided in section 37.

Appearance of party bound, upon his undertaking,

Sec. 41. A person who has entered into an undertaking to keep the peace, must appear on the first day of the next term of the district court of the county. If he do not, the court may forfeit his undertaking, and order it to be prosecuted unless his default be executed.

Person bound, when discharged

Sec. 42. If the complainant do not appear, the person complained of may be discharged, unless good cause to the contrary be shown.

Proceedings in Court on appearance of both parties

Sec. 43. If both parties appear, the court may hear their proofs and allegations, and may either discharge the undertaking, or require a new one, for a time not exceeding one year.

Undertaking, when broken

Sec. 44. An undertaking to keep the peace is broken, on the failure of a person complained of to appear at the district court as provided in section 41, or upon his being convicted of a breach of the peace.

Undertaking, when and how prosecuted

Sec. 45. Upon the district attorney producing evidence of such conviction to the district court to which the undertaking is returned, that court must order the undertaking to be prosecuted; and the district attorney must thereupon commence an action upon it in the name of the people of this Territory.

Evidence of breach

Sec. 46. In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and is conclusive evidence thereof.

Security for the peace not required except according to this chapter

Sec. 47. Security to keep the peace or to be of good behavior, cannot be required, except as prescribed in this chapter.

CHAPTER III.

POLICE IN CITIES AND THEIR ATTENDANCE AT EXPOSED PLACES.

Section 48. Organization and regulation of the police.
49. Force to preserve the peace, at public meetings, when and how ordered.

Organization and regulation of the Police

Sec. 48. The organization and regulation of the police in the cities and villages in this Territory, are governed by special statutes.

Force to preserve the peace at public meetings

Sec. 49. The mayor or other officer having the direction of the police in a city or village, must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

CHAPTER IV.

SUPPRESSION OF RIOTS.

Section 50. Powers of sheriff or other officer in overcoming resistance to process.
51. His duty to certify to court the name of resisters and their abettors.
52. Duty of a person commanded to aid the officer.

Section 53. When governor to order out a military force to aid in executing process.
54. Magistrates and officers to command rioters to disperse.
55. To arrest rioters if they do not disperse.
56. Consequences of refusal to aid the magistrate or officers.
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58. Proceedings, if rioters do not disperse.
59. Officers who may order out the military.
60. Commanding officer and troops to obey the orders.
61. Armed force to obey orders.
62. Conduct of the troops.
63. Governor may, in certain cases, proclaim a county in a state of insurrection.
64. May revoke the proclamation.
65. Consequences of resisting process, after a county is proclaimed in a state of insurrection.

Powers of Sheriff or other officers

Sec. 50. When a sheriff or other public officer, authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting, and confining the resisters and their aiders and abettors, to be punished according to law.

His duty &c.

Sec. 51. The officer must certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

Duty of person commanded to aid officer

Sec. 52. Every person commanded by a public officer to assist him in the execution of process, as provided in section 50, who, without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

Governor when to order out Military forces

Sec. 53. If it appears to the governor, that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, he must, on the application of the sheriff, order such a military force from any other county or counties, as is necessary.

Duty of Magistrates

Sec. 54. When persons to the number of twelve or more, armed with dangerous weapons, or to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in a city, or village or town, the sheriff of the county and his under sheriff and deputies, the mayor and aldermen of the city, or the supervisor of the town, or president or chief executive officer of the village, and the justice of the peace or the police justices of the city, village or town, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of this Territory, immediately to disperse.

To arrest rioters if they do not disperse

Sec. 55. If the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law; and for that purpose, may command the aid of all persons present or within the county.

Consequence of refusal &c.

Sec. 56. If a person so commanded to aid the magistrates or officers, neglect to do so, he is deemed one of the rioters, and is punishable accordingly.

Neglect of officer to act, consequences of

Sec. 57. If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section 54, neglect to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Proceedings if rioters do not disperse

Sec. 58. If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in section 54, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary, to disperse the assembly and arrest the offenders.

Officers who may order out Military

Sec. 59. When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to persons or property, or to resist by force the laws of the Territory, and the fact is made to appear to the governor, or to a judge of the supreme court, or to a county judge, or to the sheriff of the county, or to the mayor, recorder or city judge of a city, either of those officers may issue an order directed to the commanding officer of a division, brigade, regiment, battalion or com-

pany, to order his command, or any part of it, (describing the kind and number of troops,) to appear at a specified time and place to aid the civil authorities in suppressing violence, and enforcing the law.

Officers and troops to obey the orders

Sec. 60. The commanding officer to whom the order is given must forthwith obey it; and the troops required must appear at the time and place appointed, armed and equipped with ammunition as for inspection.

Armed force to obey orders

Sec. 61. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto, of either of the officers mentioned in section 59.

Conduct of troops

Sec. 62. The commanding officer must act entirely on the defensive, not suffering his men to fire, and permitting them to use their edged or pointed weapons only to repel actual violence, except in one of the following cases:

1, If an attack be made on any of the troops, by which his life is in danger, or if an attempt be made to disarm him, which he cannot otherwise avoid, he may defend himself by discharging his fire-arms;

2, If a general attack be made by the rioters upon the troops with fire-arms, missiles or other weapons, by which their lives are indiscriminately put in danger, the commanding officer may order the troops to fire; but not until an endeavor has been made to disperse the rioters by means less dangerous to persons who may be engaged in the riot;

3, If the troops cannot be placed between the rioters and the persons or property which they apparently intend to attack, and the illegal purpose of the riot be persevered in by means evidently dangerous to the lives and property of others, although no attack be made on the troops themselves, the magistrates or officers mentioned in section 59, or any two of them, may direct the commanding officer to disperse the rioters, which he is authorized to do by ordering the troops, first to use the bayonet or sword, and if they prove ineffectual to disperse the assembly, but not otherwise, then to discharge their fire-arms against them;

4, The troops must not be brought up to the place, until after the magistrate or other officer has proclaimed the office

which he holds, and ordered the assembly to disperse; nor can they make a discharge of fire arms against the rioters, until after a signal given by three discharges in rapid succession, with blank cartridges, and the lapse of a reasonable time thereafter;

5, Every endeavor must be used, both by the magistrates and civil officers, and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

Governor may do in certain cases —what

Sec. 63. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county, by bodies of men; or that combinations to resist the execution of process by force, exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officer having the process, to execute it, he may, on the application of the officer, or of the district attorney or the county judge of the county, by proclamation to be published in the territorial paper, and in such papers in the county as he may direct, declare the county to be in a state of insurrection, and may order into the service of the Territory such number and description of volunteer or uniform companies, or other militia of the Territory, as he may deem necessary, to serve for such term, and under the command of such officer or officers, as he may direct.

May revoke

Sec. 64. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease, at the time and in the manner directed by him.

Resisting process. Consequence of

Sec. 65. A person who, after the publication of the proclamation authorized by section 63, resists or aids in resisting, the execution of process in a county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting, a force ordered out by the governor to quell or suppress an insurrection, is guilty of a felony, and is punishable by imprisonment in the territorial prison for not less than two years.

PART II.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS, BY IMPEACHMENT OR OTHERWISE.

Title I. Of impeachments.
II. Of the removal of justices of the peace, police justices, and justices of justices' courts and their clerks.

TITLE I.

OF IMPEACHMENTS.

Section 66. Impeachment to be delivered to president of council.
67. Court to be summoned, and copy of impeachment served on defendant.
68. Service, how made.
69. Proceedings if defendant does not appear.
70. Defendant may object to sufficiency of, or deny impeachment.
71. Form of objection or denial.
72. Proceedings thereon.
73. Trial.
74. Two-thirds necessary to conviction.
75, 76. Judgment on conviction, how pronounced.
77. Nature of the judgment.
78. Effect of judgment of suspension.
79. Judicial officer, when impeached, disqualified to act until acquitted.
80. Presiding officer, when president of the council is impeached.
81. Impeachment not a bar to indictment.

Impeachment, to whom delivered

Sec. 66. When a civil officer of the Territory is impeached by the assembly for willful or corrupt misconduct in office, the articles of impeachment must be delivered to the president of the council.

Court summoned and copy served

Sec. 67. The president of the council must thereupon cause the court to be summoned to meet at the capitol, in the city of Yankton, on a day not less than thirty nor more than sixty days from the day of delivery of the articles of impeachment.

He must also cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed for the meeting of the court, to be served on the defendant, not less than twenty days before the day fixed for the meeting of the court.

Service, how made

Sec. 68. The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found in the Territory, the court, upon due proof of that fact, may order that publication may be made in such manner as it deems proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Proceedings if defendant does not appear

Sec. 69. If the defendant do not appear, the court, upon proof of service or publication as provided in the last two sections, may of their own motion, or for cause shown, assign another day for hearing the impeachment; or may then, or at any other time which it may appoint, proceed, in the absence of the defendant, to trial and judgment.

When defendant may object

Sec. 70. When the defendant appears, he must answer the articles of impeachment; which he may do, either by objecting to their sufficiency, or of any article therein, or by denying the truth of the same.

Form of objection

Sec. 71. If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form; it being sufficient, if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral, and without oath, and must be entered upon the minutes.

Proceedings thereon

Sec. 72. If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the court who heard the argument, the defendant must forthwith answer the articles of impeachment. If he plead guilty, or refuse to plead, the court must render judgment of conviction against him. If he deny the matters charged, the court must, at such time as they may appoint, proceed to try the impeachment.

Trial

Sec. 73. The oath or affirmation prescribed by section 22, having been administered, the court must proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Number necessary to convict

Sec. 74. The defendant cannot be convicted on impeachment, without the concurrence of two-thirds of the members present; and if two-thirds of the members present do not concur in a conviction, he must be declared acquitted.

Judgement, how pronounced

Sec. 75. After conviction, the court must immediately, or at such other time as it may appoint, pronounce judgment in the form of a resolution, entered upon the minutes of the court. The vote upon the passage thereof must be taken by yeas and nays, and must also be entered upon the minutes.

Same

Sec. 76. On the adoption of the resolution, by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the court.

Nature of judgment

Sec. 77. The judgment may be, that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust or profit, under this Territory.

Effect of judgment

Sec. 78. If judgment of suspension be given, the defendant during the continuance thereof, is disqualified from receiving the salary, fees or emoluments of his office.

Officer when impeached disqualified

Sec. 79. A judicial officer cannot exercise his office after being impeached, until he is acquitted.

Notice given

Sec. 80. If the president of the council be impeached, notice of the impeachment must be immediately given to the council by the House of Representatives, that another president may be chosen.

Indictment not barred

Sec. 81. If the offense for which the defendant is impeached be the subject of an indictment, the indictment is not barred by the impeachment.

TITLE II.

OF THE REMOVAL OF JUSTICES OF THE PEACE.

Section 82. Accusation to be presented to the presiding judge of the court.
83. Form and verification of the accusation.
84. To be transmitted to district attorney, and copy to be served on defendant, with notice to appear and answer.

Section 85. Proceedings, if defendant do not appear.
86. Defendant may object to or deny the accusation.
87. Form of the objection.
88. Manner of denial.
89. If objection overruled, defendant to answer forthwith.
90. Proceedings upon plea of guilty, refusal to answer, or denial.
91. Judgment upon conviction, and its form.

Accusation to whom presented

Sec. 82. An accusation in writing against a justice of the peace, for willful or corrupt misconduct in office may be presented to the presiding judge of the district court of the county in or for which the officer accused is elected or appointed.

What accusation must state

Sec. 83. The accusation must state the offense charged, in ordinary and concise language, without repetition and in such manner as to enable a person of common understanding to know what is intended, and must be verified by the oath of the person making it, to the effect that he believes the charges therein contained, to be true.

To whom the same is transmitted

Copy served

Sec. 84. After receiving the accusation, the judge to whom it is delivered must forthwith cause to be transmitted to the district attorney of the county, who must cause a copy thereof to be served upon the defendant, and require by written notice, of not less than twenty days, that he appear before the district court of the county, and answer the accusation, at a specified time, which must be either at a term of the court, or at any other time appointed by the presiding judge, by a written order filed with the clerk.

Proceedings if defendant do not appear

Sec. 85. The defendant must appear at the time appointed in the notice, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

Defendant may object

Sec. 86. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Form of objection

Sec. 87. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form; it being sufficient if it present intelligibly the ground of the objection.

Manner of denial

Sec. 88. If he deny the truth of the accusation, the denial may be oral and without oath, and must be entitled upon the minutes.

When to answer forthwith

Sec. 89. If an objection to the sufficiency of the accusation be not sustained, the defendant must answer the accusation forthwith.

When judgment is rendered

Sec. 90. If the defendant plead guilty, or refuse to answer the accusation, the court must render judgment of conviction against him. If he deny the matters charged, the court must proceed to try the accusation.

Judgment upon conviction,—its forms.

Sec. 91. Upon a conviction, the court must pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

PART IV.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

Title I. Of the local jurisdiction of public offences.
II. Of the time of commencing criminal action.
III. Of the information, and proceedings thereon to the commitment, inclusive.
IV. Of the proceedings after commitment, and before indictment.
V. Of the indictment.
VI. Of the proceedings on the indictment before trial.
VII. Of the trial.
VIII. Of the proceedings after trial, and before judgment.
IX. Of the judgment and execution.
X. Of appeals.
XI. Of miscellaneous proceedings.

TITLE I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

Section 92. Jurisdiction of offenses committed in this Territory.

Section 93. When the offense is commenced without, but consummated within the Territory.
94. When an inhabitant of this Territory is concerned in a duel out of the same, and a party wounded dies therein.
95. When an inhabitant of this Territory leaves the same to elude the statutes against dueling.
96. When an offense is committed partly in one county and partly in another.
97. When an offense is committed on the boundary of two or more counties, or within five hundred yards thereof.
98. Jurisdiction of an offense on board a vessel.
99. Of indictment for kidnapping, enticing away a child or abduction.
100. Of indictment for bigamy or incest, when committed in one county and defendant apprehended in another.
101. When property is feloniously taken in one county and brought into another.
102. Of an indictment against an accessory after the fact.
103. Conviction or acquittal in another Territory or State, a bar, where the jurisdiction is concurrent.
104. Conviction or acquittal in another county, a bar, where the jurisdiction is concurrent.

Jurisdiction of offences committed in this Territory

Sec. 92. Every person, whether an inhabitant of this or any other Territory, State or county, or district of the United States, is liable to punishment, by the laws of this Territory, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

When commenced without but consummated within the Territory

Sec. 93. When the commission of a public offense commenced without this Territory, is consummated within its boundaries, the defendant is liable to punishment thereof in this Territory, though he were out of the Territory at the time of the commission of the offense charged, if he consummated it in this Territory through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the county in which the offense is consummated.

When an inhabitant is concerned in a duel, and a party wounded dies therein

Sec. 94. When an inhabitant or resident of this Territory, by previous appointment or engagement, fights a duel, or is concerned as second therein, out of the jurisdiction of this Territory, and in the duel a wound is inflicted upon a person whereof he dies in this Territory, the jurisdiction of the offense is in the county where the death happened.

To elude the statutes against dueling

Sec. 95. When an inhabitant of this Territory shall have left the same for the purpose of eluding the operation of the provisions of the statutes relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed, or in any county in which in the opinion of the governor, the evidence can be most conveniently obtained and produced, to be *designed* [designated] by him by a written appointment, filed in the office of the clerk of that county.

Offense committed partly in one and partly in another county

Sec. 96. When a public offense is committed, partly in one county and partly in another county, or the acts or effects thereof, constituting or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

Offenses on boundaries &c.

Sec. 97. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Offenses on board vessels

Sec. 98. When an offense is committed in this Territory, on board a vessel navigating a river, lake or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates.

Kidnapping &c. indictment for

Sec. 99. The jurisdiction of an indictment—

1, For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent against his will, to cause him to be secretly confined or imprisoned in this Territory, or to be sent out of the Territory, or to be sold as a slave, or in any way held to service, or of selling or in any manner transferring for a term the services or labor of a black, mulatto, or other person of color, forcibly taken, inveigled or kidnapped from this Territory, to any other Territory, place or country; or

2, For decoying, or taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having lawful charge of the child; or

3, For inveigling, enticing or taking away an unmarried female of previous chaste character, under the age of twenty-one years, for the purpose of prostitution;

Is in any county in which the offense is committed, or into or out of which the person, upon whom the offense was committed, may in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, aiding or in being an accessory to the commission of the offense, or in abetting the parties concerned therein.

Bigamy, incest &c.

Sec. 100. When the offense either of bigamy or of incest is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county.

Property feloniously taken

Sec. 101. When property feloniously taken in one county, by burglary, robbery, larceny or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if, before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter must upon demand deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon a receipt endorsed thereon by the sheriff of the former county, of the body of the defendant; and is, on filing the copy of the indictment and the receipt, exonerated from all liability in respect to the custody of the defendant.

Indictment against accessory after the fact

Sec. 102. In the case of an accessory after the fact in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

Conviction in another State or Territory

Sec. 103. When an act charged as a public offense, is within the jurisdiction of another Territory, county or State as well as of this Territory, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this Territory.

Conviction or acquittal in another county

Sec. 104. When an offense is in the jurisdiction of two or more counties, a conviction or acquittal thereof in one county, is a bar to a prosecution or indictment thereof in another.

TITLE II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

Section 105. Prosecution for murder may be commenced at any time.

106. Limitation of two years, in indictment for personating another and marrying in such assumed character, and for abduction and seduction.

107. Limitation of three years, in all other cases.

108. Exception, when defendant is out of the Territory.

109. Indictment deemed found, when presented in court and filed.

Prosecution for murder

Sec. 105. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Limitation

Sec. 106. An indictment for a public offense must be found within two years after its commission, in the following cases:

1, Falsely representing or personating any person, and in such assumed character marrying another;

2, Inveigling, enticing, or taking away an unmarried female, of previous chaste character, under the age of twenty-five years, for the purpose of prostitution;

3, Seducing and having illicit connection with an unmarried female of previous chaste character, under promise of marriage.

In other cases

Sec. 107. In all other cases, an indictment for a public offense must be found within three years after its commission.

When defendant is out of Territory

Sec. 108. If when the offense is committed, the defendant be out of the Territory, the indictment may be found within the term herein limited after his coming within the Territory; and no time, during which the defendant is not an inhabitant of or usually resident within the Territory, is part of the limitation.

Sec. 109. An indictment is found, within the meaning of the last three sections, when it is duly presented by the grand jury in open court, and there received and filed. Indictment deemed found, —when

TITLE III.

OF THE PRELIMINARY INFORMATION, AND PROCEEDINGS THEREON TO THE COMMITMENT INCLUSIVE.

Chapter I. The information.
II. The warrant of arrest.
III. Arrest by an officer under a warrant.
IV. Arrest by an officer without a warrrant.
V. Arrest by a private person.
VI. Re-taking after an escape or rescue.
VII. Examination of the case, and discharge of the defendant or holding him to answer.

CHAPTER I.

THE INFORMATION.

Section 110. Preliminary information defined.
111. Magistrate defined.
112. Who are magistrates.

Sec. 110. The preliminary information is the allegation made to a magistrate that a person has been guilty of some designated public offense. Information defined

Sec. 111. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Magistrate defined

Sec. 112. The following persons are magistrates: Who are Magistrates

1, The judges of the supreme court;

2, The judge of the probate court;

3, Justices of the peace;

4, Police and other special justices, appointed or elected in a city, village, or town;

5, The mayors and recorders of cities.

CHAPTER II.

THE WARRANT OF ARREST.

Section 113. Examination of the prosecutor and his witnesses upon the information,

114. Form of the warrant.

115. Name or description of the defendant in the warrant and statement of the offense.

116. Warrant to be directed and executed by a peace officer.

117. Who are peace officers.

118, 119. To what peace officers warrant to be directed and when and how to be executed in another county.

120. Endorsement on the warrant for service in another county how and upon what proof to be made.

121. Defendant to be taken before the magistrate issuing the warrant or another magistrate in the same county.

122. Defendant arrested for a misdemeanor in another county to be taken before a magistrate therein and admitted to bail.

123. Proceedings on taking bail from the defendant in such case.

124. Proceedings where he is admitted to bail in such case but bail is not given.

125. Before what magistrate in the same county defendant is to be taken when the magistrate issuing the warrant is unable to act.

126. Defendant in all cases to taken before a magistrate without delay.

127. If the defendant be taken before another magistrate than the one who issued the warrant, depositions to be sent to the magistrate or witnesses to be examined anew.

Examination of prosecutors witnesses &c.

Sec. 113. When an information verified by oath or affirmation is laid before a magistrate of the commission of a public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

Form of warrant

Sec. 114. A warrant of arrest is an order in writing in the name of the people signed by a magistrate commanding the arrest of the defendant and may be substantially in the following form:

"County of Yankton [or as the case may be.]

"In the name of the people of the Territory of Dakota. To any sheriff, constable, marshal or policeman in this Territory [or in the county of Yankton or as the case may be as provided in sections 118 and 119.]

"Information upon oath having been this day laid before me that the crime of [designating it] has been committed, and accusing C. D. thereof,

"You are therefore commanded forthwith to arrest the above named C. D., and bring him before me, at—[naming the place,] or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

"Dated at the City of Yankton [or as the case may be,] this day of , 186 ."

E. F. Justice of the peace [or as the case may be.]

What warrant must specify

Sec. 115. The warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant and the time of issuing it, and the city, town or village where it is issued, and signed by the magistrate with his name of office.

Warrant to whom directed

Sec. 116. The warrant must be directed to and executed by a peace officer.

Who are peace officers

Sec. 117. A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a city, town or village.

To what officer warrant directed

Sec. 118. If the warrant be issued by a judge of the supreme court, or by the presiding judge of a city court, it may be directed generally to any sheriff, constable, marshal or policeman in the territory, and may be executed by any of those officers to whom it may be delivered.

How executed and when

Sec. 119. If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county, or if the defendant be in another county it may

be executed therein, upon the written direction of a magistrate of that county endorsed upon the warrant, signed by him with his name of office, and dated at the city, town or village where it is made, to the following effect:

"This warrant may be executed in the county of" [as the case may be.]

Endorsement

Sec. 120. The endorsement mentioned in the last section cannot, however, be made unless upon the oath of a creditable witness, in writing, endorsed on or annexed to the warrant proving the hand writing of the magistrate by whom it was issued. Upon this proof the magistrate endorsing the warrant is exempted from liability to a civil or criminal action though it afterwards appear that the warrant was illegally or improperly issued.

Defendant before whom taken

Sec. 121. If the offense charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate in the same county as provided in section 125.

When arrested in another county

Sec. 122. If the offense charged in the warrant be a misdemeanor and the defendant be arrested in another county, the officer must upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail and take bail from him accordingly.

Bail, proceedings

Sec. 123. On taking bail the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

Proceedings when he is admitted to bail, bail not given

Sec. 124. If on the admission of the defendant to bail as provided in section 122, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant or some other magistrate in the same county as provided in the next section.

Before what magistrate defendant to be taken

Sec. 125. When by the preceding sections of this chapter, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible

magistrate in the same county. The officer must at the same time deliver to the magistrate, the warrant, with the return endorsed and subscribed by him.

Defendant to be taken before magistrate without delay

Sec. 126. The defendant must in all cases be taken before the magistrate without unnecessary delay.

When defendant be taken before another magistrate than the one who issued the warrant

Sec. 127. If the defendant be taken before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or if they cannot be procured the prosecutor and his witness must be summoned to give their testimony anew.

CHAPTER III.

ARREST BY AN OFFICER UNDER A WARRANT.

Section 128. Arrest defined.
129. By whom an arrest may be made.
130. Every person bound to aid an officer in an arrest.
131. When the arrest may be made.
132. How an arrest is made.
133. No further restraint allowed than is necessary to arrest and detention of defendant.
134. Officer must state his authority, and show warrant if required.
135. If defendant flee or resist, officer may use all necessary means to affect arrest.
136, 137. When officer may break open a door or window.

Arrest defined

Sec. 128. Arrest is the taking of a person into custody that he may be held to answer for a public offense.

Arrest made by whom

Sec. 129. An arrest may be either:

1, By a peace officer under a warrant;

2, By a peace officer without a warrant; or

3, By a private person.

Persons bound to aid officer

Sec. 130. Every person must aid an officer in the execution of a warrant, if the officer require his aid and be present and acting in its execution.

When arrest may be made

Sec. 131. If the offense charged be a felony the arrest may be made on any day, and at any time of the day or night. If it be a misdemeanor the arrest cannot be made on Sunday or at night, unless upon the direction of the magistrate endorsed upon the warrant.

Arrest, how made

Sec. 132. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Amount of restraint

Sec. 133. The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

Officer must State his authority

Sec. 134. The officer must inform the defendent that he acts under the authority of the warrant, and must also show the warrant if required.

Officer may use all necessary means to effect arrest

Sec. 135. If, after notice of intention to arrest the defendent, he either flee or forcibly resist, the officer may use all necessary means to affect the arrest.

Officer may break open door or window, when

Sec. 136. The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if after notice of his authority and purpose, he be refused admittance.

Same

Sec. 137. An officer may break open an outer or inner door or window of a dwelling house for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

CHAPTER IV.

ARREST BY AN OFFICER WITHOUT A WARRANT.

Section 138. In what case allowed
139. May break open a door or window, if admittance refused.
140. May arrest at night, on reasonable suspicion of felony.
141. Must state his authority, and cause of arrest, except where party is committing felony or is pursued after escape.
142. May take before a magistrate a person arrested by a by-stander for breach of the peace.
143. Magistrate may commit by verbal or written order, for offenses committed in his presence.

Arrest without warrant—in what cases

Sec. 138. A peace officer may, without a warrant, arrest a person.

1, For a public offiense, committed or attempted in his presense;

2, When the person arrested has committed a felony, although not in his presence;

3, When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;

4, On charge, made upon reasonable cause, of the commission of a felony by the party arrested.

To make arrest as provided in last section

Sec. 139. To make an arrest as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

May arrest at night

Sec. 140. He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterwards appear that the felony had not been committed.

Must state his authority

Sec. 141. When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.

Person arrested by bystander

Sec. 142. He may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

May commit, —how

Sec. 143. When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

CHAPTER V.

ARREST BY A PRIVATE PERSON.

Section 144. In what cases allowed.
145. Must inform the party of the cause of arrest except when actually committing the offense or on pursuit after escape.
146. May break open a door or window if admittance refused.

Section 147. Must immediately take prisoner before a magistrate or deliver him to peace officer.

In what cases allowed

Sec. 144. A private person may arrest another—

1, For a public offense committed or attempted in his presence;

2, When the person arrested has committed a felony, although not in his presence;

3, When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Must inform the party of cause of arrest

Sec. 145. He must, before making the arrest, inform the person to be arrested of the cause thereof; and require him to submit, except when he is in the actual commission of the offense, or when he is arrested on pursuit immediately after its commission.

May break open door or window

Sec. 146. If the person to be arrested have committed a felony, and a private person, after notice of his intention to make the arrest, be refused admittance, he may break open an outer or inner door or window of a dwelling-house, for the purpose of making the arrest.

Must take prisoner before magistrate

Sec. 147. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

CHAPTER VI.

RE-TAKING, AFTER AN ESCAPE OR RESCUE.

Section 148. May be at any time or in any place in the territory.

149. May break open a door or window, if admittance refused.

At any time or in any place

Sec. 148. If a person arrested, escape or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the territory.

May break open door &c.

Sec. 149. To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling-house.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

Section 150. Magistrate to inform the defendant of the charge, and his right to counsel.
151. Time to send, and sending for counsel.
152. On appearance of counsel, or waiting for him a reasonable time, examination to proceed.
153. When to be completed. Adjournment.
154. On adjournment, defendant to be committed or discharged on deposit of money.
155. Form of commitment.
156. Depositions to be read on examinations, and witnesses examined.
157. Examination of witnesses to be in presence of defendant, and witnesses to be cross-examined in his behalf.
158. Defendant to be informed of his right to make a statement.
159. Waiver of his right, how taken.
160, 161. Statement how taken.
162. How reduced to writing, and how authenticated.
163. After statement or waiver, defendant's witnesses to be examined.
164. Witnesses to be kept apart.
165. Testimony, how taken and authenticated.
166. Depositions and statement, how and by whom kept.
167. Violation of the last section, a misdemeanor.
168. Defendant entitled to copies of depositions and statement.
169. Defendant, when and how to be discharged.
170. When and how to be committed.
171. Order for commitment.
172. Certificate of bail being taken.
173. Order for bail on commitment.
174, 175. Form of commitment.
176. Undertaking of witnesses to appear, when and how taken.
177. Security for appearance of witnesses, when and how required.

Section 178. Infants and married women may be required to give security for appearance as witness.
179. Witness to be committed on refusal to give security for appearance.
180. Witness unable to give security, may be conditionally examined.
181. Last section not applicable to prosecutor or accomplice.
182. Magistrate to return depositions, statement and undertakings of witnesses to the court.

Duty of magistrates,-his right to counsel

Sec. 150. When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, before any further proceedings are had.

Time allowed

Sec. 151. He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel as the defendant may name. The officer must without delay perform that duty, and shall receive fees therefor as upon service of a subpoena.

Reasonable for examination

Sec. 152. The magistrate must, immediately after the appearance of counsel, or if none appear and the defendant require the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

When to be completed —adjournment

Sec. 153. The examination must be completed at one session unless the magistrate for good cause adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

On adjournment —on deposit of money

Sec. 154. If an adjournment be had for any cause, the magistrate must commit the defendant for examination, or discharge him from custody upon sufficient bail, or upon the deposit of money as provided in this code, as security for his appearance at the time to which the examination is adjourned.

Form of commitment

Sec. 155. The commitment for examination is by an endorsement signed by the magistrate, on the warrant of arrest, to the following effect: "The within named A. B., having been

brought before me under this warrant, and having failed to give bail for his appearance, is committed to the sheriff of the county of ———, to await examination on the —— day of ———— 18——, at —— o'clock, at which time you will have his body before me at my office."

Deposition to be read

Sec. 156. At the examination, the magistrate must, in the first place, read to the defendant the information on file before him. He must also after the commencement of the prosecution, issue subpoenas for any witnesses required by the prosecutor or the defendant.

Examination of witnesses

Sec. 157. The witnesses must be examined in the presence of the defendant; and may be cross-examined in his behalf.

Defendant to be informed of right to make a statement

Sec. 158. When the examination of the witnesses on the part of the people is closed, the magistrate must distinctly inform the defendant that it is his right to make a statement in relation to the charge against him, (stating to him the nature thereof;) that the statement is designed to enable him, if he sees fit, to answer the charge and to explain the facts alleged against him, that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

Waiver

Sec. 159. If the defendant waive his right to make a statement, the magistrate must make a note thereof, but the fact of his waiver cannot be used against the defendant on the trial.

Statement, how taken

Sec. 160. If the defendant choose to make a statement, he may do so in writing, or upon his failure so to do, the magistrate must proceed to take it in writing without oath, and must put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Same

Sec. 161. The answer of the defendant to each of the questions must be distinctly read to him, as it is taken down. He may thereupon correct or add to his answer and it must be corrected until it is made conformable to what he declares is the truth.

How reduced to writing,—how authenticated

Sec. 162. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form:

1, It must set forth in detail that the defendant was informed of his rights as provided in section 158, and that after being so informed, he made the statement;

2, It must contain the questions put to him, and his answers thereto, as provided in sections 160 and 161;

3, It may be signed by the defendant, or he may refuse to sign it; but if he refuses to sign it, his reasons therefor must be stated as he gives it;

4, It must be signed and certified by the magistrate.

Witnesses examined after Waiver

Sec. 163. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

Witnesses kept apart

Sec. 164. The witnesses produced on the part either of the people or of the defendant, can not be present at the examination of the defendant, and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined, or who are to be examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Testimony, how taken

Sec. 165. The testimony given by each witness must be reduced to writing, as a deposition by the magistrate or under his direction, and authenticated in the following form:

1, It must state the name of the witness, his place of residence, and his business or profession;

2, It must contain the questions put to the witness, and his answers thereto; or may be in narrative form, and read to him, and corrected or added to, until it is made conformable to what he declares is the truth;

3, If a question put be objected to on either side, and overruled, or the witness decline answering it, that fact with the ground on which the question was overruled, or the answer declined, must be stated;

4, The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing, as he gives it;

5, It must be signed and certified by the magistrate.

Deposition

Sec. 166. The magistrate or his clerk must keep the depositions taken on the examination, and the statement of the defendant, if any, until they are returned to the proper court, and must not permit them to be inspected by any person except a judge of a court having jurisdiction of the offense, the district attorney of the county, and the defendant and his counsel.

Violation of last section misdemeanor

Sec. 167. A violation of the provisions of the last section is punishable as a misdemeanor.

Defendant entitled to copies

Sec. 168. If the defendant be held to answer the charge, the magistrate or his clerk having the custody of the depositions taken on examination, and of the statement of the defendant, must, on payment of his fees, at the rate of five cents for every hundred words, and within two days after demand, furnish to the defendant or his counsel, a copy of the depositions and statement, or of either of them, or permit him to take a copy.

When and how discharged

Sec. 169. After hearing the proofs and the statement of the defendant, if he have made one, if it appear, either that a public offense has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an endorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When and how committed

Sec. 170. If, however, it appear from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner endorse on the depositions and statement, an order, signed by him, to the following effect; "It appearing to me by the within depositions [and statement, if any,] that the offense therein mentioned, [or any other offense, according to the fact, stating generally the nature thereof,] has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

Order for commitment

Sec. 171. If the offense be not bailable, the following words or words to the same effect, must be added to the endorsement: "and that he be committed to the sheriff of the county of——."

Certificate of bail

Sec. 172. If the offense be bailable, and bail be taken by the magistrate, the following words or words to the same effect must be added to the endorsement mentioned in section 170: "and I have admitted him to bail, to answer, by the undertaking hereto annexed."

Order for bail

Sec. 173. If the offense be bailable and the defendant be admitted to bail, but bail have not been taken, the following words or words to the same effect must be added to the endorsement mentioned in section 170: "and that he be admitted to bail in the sum of ——— dollars, and be committed to the sheriff of the county of ——— until said bail be given."

Form of commitment

Sec. 174. If the magistrate order the defendant to be committed as provided in sections 171 and 173, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

Same

Sec. 175. The commitment must be to the following effect:

"County of———:

"In the name of the people of the Territory of Dakota:

"To the sheriff of the county of ———.

"An order having been this day made by me, that A. B. be held to answer upon a charge [stating briefly the nature of the offense,] you are commanded to receive him into your custody and detain him until he be legally discharged."

Dated at———, this———day of———, 186 ."

C. D., Justice of the Peace."

[or as the case may be.]

Undertaking, when and how taken

Sec. 176. On holding the defendant to answer, the magistrate must take from each of the material witnesses examined before him on the part of the people, a written undertaking, without surety, to the effect that he will appear and testify at the court to which the depositions and statement are to be sent, or that he will forfeit such sum as the magistrate may fix and determine.

Security

Sec. 177. When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security be required, he may order

the witness to enter into a written undertaking, with such sureties, and in such sum as he may deem proper, for his appearance, as specified in the last section.

Infants and married women

Sec. 178. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

Witnesses, when committed

Sec. 179. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to prison until he comply, or be legally discharged.

Witnesses conditionally examined

Sec. 180. When, however, it satisfactorily appears by the examination on oath of the witness or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people, in the manner and with the effect provided in this code, and must thereupon be discharged.

Last section not applicable, to whom

Sec. 181. The last section does not apply to the prosecutor or to an accomplice in the commission of the offense charged.

Magistrates to return depositions &c. to Court

Sec. 182. When a magistrate has discharged a defendant, or has held him to answer as provided in sections 169 and 170, he must return immediately to the next district court of the county, the warrant, if any, the depositions of all the witnesses examined before him, the statement of the defendant if he have made one, and all undertakings of bail for the appearance of witnesses taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT OR INFORMATION.

Chapter I. Preliminary provisions.
II. Formation of the grand jury.
III. Powers and duties of the grand jury.
IV. Presentment and proceedings thereon.

CHAPTER I.

PRELIMINARY PROVISIONS.

Section 183, 184. Public offenses how prosecuted.

Public offenses how prosecuted

Sec. 183. All public offenses of the grade of felony shall be prosecuted by indictment in the district court. All public offenses of the grade of misdemeanor shall be prosecuted upon the information of the district attorney to the district court of the county wherein such offense is alleged to have been committed; *Provided, however*, That such defendant may, before pleading to such information, demand that the offense with which he is charged be submitted to the grand jury.

Same

Sec. 184. When, however, the proceedings are had for the removal of justices of the peace, they may be commenced by an accusation in writing provided in sections 81 and 82.

CHAPTER II.

FORMATION OF THE GRAND JURY.

Section 185. Grand jury defined.
186, 187. For what courts to be drawn.
188. Manner of designating the additional grand jurors.
189. Summoning the additional grand jurors, and compelling their attendance.
190. When new grand jury may be summoned for the same court.
191. Manner of drawing the new grand jury.
192. Summoning the new grand jury and compelling their attendance.
193. Number to constitute a grand jury.
194. Grand jury how drawn when more than a sufficient number attends.
195. Who may challenge the panel or an individual grand juror.
196. Causes of challenge to the panel.
197. Causes of challenge to an individual grand juror.
198. Manner of taking and trying the challenges.

Section 199. Decision upon the challenge.
200. Effect of allowing a challenge to the panel.
201, 202. Effect of allowing a challenge to an individual grand juror.
203. Appointment of foreman.
204, 205, 206. Oath of the foreman and the other grand jurors.
207. Charge of the court.
208. Retirement of the grand jury.
209. Appointment of a clerk, and his duties.
210. Discharge of the grand jury.

Grand Jury defined

Sec. 185. A grand jury is a body of men, not less than twelve nor more than sixteen in number, returned at stated periods from the citizens of the county, before a court of competent jurisdiction, and chosen by lot, and sworn to inquire of public offences committed or triable in the county.

For what courts drawn

Sec. 186. A grand jury may be drawn for every term of the district court:

1, At the request of the district attorney;

2, When the presiding judge thinks that crimes have been committed that demand examination by a grand jury.

Manner of designating

Sec. 187. If at least twelve persons, qualified to serve as grand jurors, and who have been summoned, do not appear, or if the number of grand jurors attending be reduced below twelve, the court may order the sheriff to summon from the bystanders, a sufficient number, (specifying it,) to complete the grand jury, who must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

Summoning additional grand Jurors

Sec. 188. If an offence be committed during the sitting of the court, after the discharge of the grand jury, or if the panel for any reason be set aside, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

How drawn

Sec. 189. The names of the persons to be summoned, must be drawn in the same manner as the original grand jurors.

ame

Sec. 190. The sheriff must accordingly, in the manner required in respect to the grand jurors originally drawn, forthwith summon the persons whose names are so drawn or designa-

ted, who must attend and serve as if they had been originally summoned as grand jurors, and subject to the same penalties, unless excused or discharged by the court.

Number to constitute same

Sec. 191. No more than sixteen, nor less than twelve persons, can be sworn on a grand jury; nor can a grand jury proceed to any business, unless twelve members at least are present.

When more than sufficient number attends

Sec. 192. When more than sixteen persons summoned as grand jurors attend to serve, the clerk must prepare separate ballots containing their names, folded as nearly alike as possible, and so that the names cannot be seen, and must deposit them in a box. He must then openly draw out of the box sixteen ballots; and the persons whose names are drawn, constitute the grand jury. The names remaining in the box, as well as those drawn, must be returned to the box of drawn grand jurors.

Who may challenge

Sec. 193. A person held to answer a charge for a public offense, may challenge the panel of the grand jury, or an individual grand juror.

Challenge may be interposed —causes

Sec. 194. A challenge to the panel may be interposed for one or more of the following causes only:

1, That the requisite number of ballots was not drawn from the grand jury box of the county;

2, That notice of the drawing of the grand jury was not given;

3, That the drawing was not had in the presence of the officers designated by the code of civil procedure; and

4, That the drawing was not had at least fourteen days before the court.

Challenges to individual grand jurors

Sec. 195. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1, That he is a minor;

2, That he is an alien;

3, That he is insane;

4, That he is the prosecutor upon a charge against the defendant;

5, That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking, as such;

6, That a state of mind exists on his part, in reference to the case or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot act impartially and without prejudice to the substantive rights of the party challenging.

May be oral

Sec. 196. The challenges mentioned in the last three sections may be oral, and must be entered upon the minutes, and tried by the court, in the same manner as challenges in the case of a trial jury which are triable by the court.

Court must allow or disallow challenge

Sec. 197. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes.

If allowed Jury discharged

Sec. 198. If a challenge to the panel be allowed, the grand jury must be discharged.

Effect of allowing challenge.

Sec. 199. If a challenge to an individual grand juror be allowed, he cannot be present at, or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

A violation how punishable

Sec. 200. The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt.

Appointment of foreman

Sec. 201. From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman, when a person already appointed is discharged or excused, before the grand jury are dismissed.

Oath to foreman.

Sec. 202. The following oath must be administered to the foreman of the grand jury: "You, as foreman of this grand jury, shall diligently inquire and true presentment make, of all public offenses against the people of this Territory committed or triable within this county, [or *in* [if] a city court, "within this city,"] of which you shall have or can obtain legal evidence; you shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof: but in all your presentments, or indictments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God."

Oath to other grand jurors.

Sec. 203. The following oath must be immediately thereupon

administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of [you] shall well and truly observe on your part. So help you God."

Same

Sec. 204. If, after the foreman is sworn, any grand juror appear and be admitted as such, the oath, as prescribed in section 203, must be administered to him commencing, "You, as one of this grand jury," and so on to the end.

Charge by the Court

Sec. 205. The grand jury being empannelled and sworn, must be charged by the court. In doing so, the court must read to them the provisions of this code, from section 210 to section 214, both inclusive, and must give them such information as it may deem proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before the grand jury. The court need not, however, charge them respecting violations of a particular statute.

Retirement of Jury

Sec. 206. The grand jury must then retire to a private room, and inquire into the offenses cognizable by them.

Appointment of clerk

Sec. 207. The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings (except of the votes of the individual members on a presentment or indictment,) and of the evidence given before them.

Discharge of grand jury

Sec. 208. The grand jury, on the completion of the business before them, must be discharged by the court; but whether the business be completed or not, they are discharged by the final adjournment of the court.

CHAPTER III.

POWERS AND DUTIES OF THE GRAND JURY.

Section 209. Power of grand jury to inquire into all public offenses committed or triable in the county, and to proceed by presentment or indictment.

210. When defendant has been held to answer, grand jury may indict.

211. In all other cases, they can proceed by presentment only.

212. Definition of an indictment.

Section, 213. Definition of a presentment.
214. Foreman may administer oaths.
215, 216. Evidence receivable before the grand jury.
217. Grand jury not bound to hear evidence for the defendant, but may order explanatory evidence to be produced.
218. Degree of evidence to warrant an indictment.
219. Grand jurors must declare their knowledge as to commission of a public offense.
220. Grand jury must inquire as to persons imprisoned on criminal charges and not indicted; the condition of public prisons; and the misconduct of public officers.
221. Grand jury entitled to access to public prisons, and to examine public records.
222. When and from whom they may ask advice and who may be present during their sessions.
223. Secrets of the grand jury to be kept.
224. Grand jury, when bound to disclose the testimony of a witness.
225. Grand juror not to be questioned for his conduct as such.

Power of grand jury

Sec. 209. The grand jury has power and it is their duty to inquire into all public offenses committed or triable in the county, and to present them to the court, either by presentment or indictment, as provided in the next two sections.

Grand jury may indict—when

Sec. 210. Upon such inquiry, they may, where the defendant has been held by a magistrate to answer the charge, and in no other case, if they believe him guilty thereof, find an indictment against him.

In other cases

Sec. 211. In all cases if, upon investigation, the grand jury believe that a person is guilty of a public offense, they can proceed by presentment only.

Definition of

Sec. 212. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

Presentment —definition of

Sec. 213. A presentment is a formal statement in writing by the grand jury, representing to the court that a public offense has been committed, which is triable in the county, and that

there is reasonable ground for believing that a particular individual, named or described, has committed it.

Foreman may administer oaths

Sec. 214. The foreman may administer an oath to any witness appearing before the grand jury.

Evidence receivable

Sec. 215. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than:

1, Such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence; or

2, The deposition of a witness in the cases mentioned in the third subdivision of section 12.

Same

Sec. 216. The grand jury can receive none but legal evidence, and the best evidence in degree to the exclusion of hearsay or secondary evidence.

Grand jury not bound to hear evidence may order explanatory

Sec. 217. The grand jury is not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Degree of evidence

Sec. 218. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Grand jurors must declare their knowledge &c.

Sec. 219. If a member of the grand jury know, or have reason to believe, that a public offense has been committed, which is triable in the county, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Must inquire as to persons imprisoned

Sec. 220. The grand jury must inquire:

1, Into the case of every person imprisoned in the jail of the county on a criminal charge, and not indicted, and into all indictable offenses of which they have or can obtain knowledge.

2, Into the condition and management of the public prisons in the county; and

3, Into the willful and corrupt misconduct in office of public officers of every description in the county.

Sec. 221. They are also entitled to free access at all reasonable times, to the public prisons, and to the examination, without charge, of all public records in the county. Entitled to access to prisons &c.

Sec. 222. The grand jury may at all reasonable times, ask the advice of the court, or of any member thereof, or of the district attorney of the county; but unless such advice be asked, neither of those officers are permitted to be present during the sessions of the grand jury, nor is any other person permitted to be present during their sessions, except the members of the grand jury, and a witness actually under examination. When and from whom they may ask advice

Sec. 223. Every member of the grand jury must keep secret, whatever he himself, or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them. Secrets

Sec. 224. A member of the grand jury may, however, be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor. When bound to disclose

Sec. 225. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors. Not to be questioned

TITLE V.

OF THE INDICTMENT.

Chapter I. Finding and presentation of the indictment.
II. Form of the indictment.
III. Arraignment of the defendant.
IV. Setting aside the indictment.
V. Demurrer.
VI. Plea.
VII. Removal of the action before trial.

CHAPTER I.

FINDING AND PRESENTATION OF THE INDICTMENT.

Section 226. Indictment must be found by twelve grand jurors, and endorsed by foreman.

227. If not so found, depositions, &c., must be returned to the court with dismissal endorsed.

228. Effect of dismissal.

229. Names of witness must be inserted at foot of indictment, or endorsed thereon.

230. Indictment must be presented in presence of grand jury and filed.

Indictment, how found

Sec. 226. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be endorsed, "A true bill," and the endorsement must be signed by the foreman of the grand jury.

How dismissed

Sec. 227. If twelve grand jurors do not concur in finding an indictment, the depositions [and statement, if any,] transmitted to them, must be returned to the court with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Effect of dismissal

Sec. 228. The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction, it cannot be again submitted.

Names of witnesses inserted thereon

Sec. 229. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, as provided in section 216, must, in all cases, be inserted at the foot of the indictment or indorsed thereon before it is presented to the court.

How presented

Sec. 230. An indictment when found by the grand jury, as prescribed in section 227, must be presented by their foreman, in their presence, to the court and must be filed with the clerk, and remain in his office as a public record.

CHAPTER II.

FORM OF THE INDICTMENT.

Section 231. Forms of pleading heretofore existing, abolished.
232. First pleading for the people is indictment.
233. Indictment, what to contain.
234. Indictment must be direct and certain.
235. When defendant is indicted by fictitious or erroneous name, his true name may be inserted in subsequent proceedings.
236. Indictment must charge but one offense and in one form, except where it may be committed by different means.
237. Statement as to time when offense was committed.
238. Statement as to person injured or intended to be injured.
239. Construction of words used in indictment.
240. Words used in a statute need not be strictly pursued.
241. Indictment, when sufficient.
242. Indictment not insufficient for defect of form not tending to prejudice defendant.
243. Presumptions of law and matters of which judicial notice is taken, need not be stated.
244. Pleading a judgment or determination of, or proceeding before a court or officer of special jurisdiction.
245. Private statute, how pleaded.
246. Pleading in indictment for libel.
247. Pleading in indictment for forgery, where the instrument has been destroyed, or withheld by defendant.
248. Pleading in indictment for perjury or subornation of perjury.
249. Upon indictment against several, one or more may be convicted or acquitted.
250. Distinction between accessory before the fact and principal, and between principals in the first and second degree, in felony, abrogated.
251. Accessory after the fact, in felony, may be indicted, tried and punished, though principal neither tried nor indicted.
252. Indictment for compounding a felony, though the person guilty of the original offense be neither indicted nor tried.

Forms of pleading abolished

Sec. 231. All the forms of pleading in criminal actions, heretofore existing, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this code.

First pleading people, indictment

Sec. 232. The first pleading on the part of the people is the indictment or information.

Indictment, what to contain

Sec. 233. The indictment or information must contain:

1, The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2, A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Must be direct and certain

Sec. 234. The indictment or information must be direct and certain, as it regards:

1, The party charged;

2, The offense charged;

3, The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

When indicted by fictitious name

Sec. 235. When a defendant is indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Must charge but one offense

Sec. 236. The indictment must charge but one offense, and in one form only; except that where the offense may be committed by the use of different means, the indictment may allege the means in the alternative.

Statement as to time &c.

Sec. 237. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

Statement as to person

Sec. 238. When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Sec. 239. The words used in an indictment must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. Construction of words

Sec. 240. Words used in a statute to define a public offense, need not be strictly pursued in the indictment; but other words, conveying the same meaning, may be used. Words used in statute not strictly pursued

Sec. 241. The indictment is sufficient if it can be understood therefrom: Indictment, when sufficient

1, That it is entitled in a court having authority to receive it, though the name of the court be not accurately stated;

2, That it was found by a grand jury of the county in which the court was held;

3, That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name;

4, That the offense was committed at some place within the jurisdiction of the court; except where, as provided by sections 93 to 102, both inclusive, the act, though done without the local jurisdiction of the county, is triable therein;

5, That the offense was committed at some time prior to the time of finding the indictment;

6, That the act or omission, charged as the offense, is clearly and distinctly set forth, in ordinary and concise language, without repetition; and in such a manner as to enable a person of common understanding to know what is intended;

7, That the act or omission, charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

Sec. 242. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits. Indictment not sufficient, when

Sec. 243. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an indictment. Presumptions of law &c.

Pleading a judgment &c.

Sec. 244. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

Private statutes how pleaded

Sec. 245. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Pleading in indictment for libel

Sec. 246. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on trial.

For forgery

Sec. 247. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

For perjury

Sec. 248. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court, or before whom, the oath alleged to be false, was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Upon indictment against several, one or more may be convicted or acquitted

Sec. 249. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Distinction between accessory &c.

Sec. 250. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly

commit the act constituting the offense, or aid and abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, as in the case of a misdemeanor.

Accessory after the fact, in felony how tried

Sec. 251. An accessory after the fact to the commission of a felony, may be indicted, tried and punished, though the principal felon be neither indicted nor tried.

Indictment for compounding &c.

Sec. 252. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

CHAPTER III.

INFORMATIONS.

Section 253. An information defined.
254. Information must be based on affidavit and filed with clerk of district court.
255. Duty of clerk after information is filed.
256. Duty of district attorney when informed of public offense.
257. Same.
258. Duty after examination.
259. Duty of magistrate when witness refuse to attend.
260. When witness refuses to answer proper questions.
261. Duty of attorney when defendant committed or held to bail.
262. When defendant fails to elect, duty of attorney.
263. Names of witness to be endorsed on information.
264. Clerk to fix bail.

Information defined

Sec. 253. An information is an accusation in writing preferred by the district attorney of the proper county, accusing the defendant therein named of some misdemeanor punishable under the statutes of this Territory, and triable within such county.

Information, based on what

Sec. 254. Such information must be based upon the affidavit of some person cognizant of the commission of the offense, and may be filed in the office of the clerk of the proper district court, either in vacation or in term time.

Duty of clerk

Sec. 255. Upon the filing of such information in the office of the clerk of the district court of the proper county, such clerk shall forthwith issue a process for the arrest of the defendant, in the same manner as in this act prescribed for the issuance of process upon an indictment. Which warrant shall be served with like effect as a bench warrant.

Duty of District attorney

Sec. 256. Whenever in any manner the district attorney of the proper county shall obtain information of the commission of any public offense triable within his county, upon information, he shall forthwith apply to some magistrate of his county to issue a subpœna requiring such witnesses as such district attorney may direct to appear before such magistrate to testify concerning any misdemeanors of which such witnesses may have knowledge. Which subpœna shall be directed to any officer authorized to serve the process of any court having criminal jurisdiction, and shall be served and returned as other subpœnas in criminal cases.

Same

Sec. 257. Upon the appearance of such witness or witnesses before such magistrate, the district attorney shall proceed to take the testimony of such witness or witnesses, and reduce the same to writing in the presence and hearing of such magistrate, who must cause the same to be read over to and subscribed by the witness. All of which must be duly certified by such magistrate.

Duty afte examination

Sec. 258. If in the opinion of such district attorney, the depositions taken before the magistrate disclose the fact that a misdemeanor has been committed upon information, and implicating any person or persons, as probably guilty of the perpetration thereof, [he] shall thereupon file an information based upon the testimony so taken, and cause a warrant to be issued thereon as in other cases.

Duty of magistrate when witness refuse to attend

Sec. 259. Whenever any person who has been summoned to appear as a witness, as in section 256 provided, shall fail, neglect, or refuse to obey the subpœna served upon him, the magistrate may issue an attachment for such witness as for con-

tempt, and may cause such witness to be brought before him, and shall not discharge him thence until he shall have fully answered such proper questions as the district attorney may propound to him, and until he shall have paid such fine and costs as the magistrate may in his discretion assess against him.

When witness refuses to answer proper questions

Sec. 260. Whenever any witness, who under the provisions of this chapter, has been brought before any magistrate, shall refuse to answer any and all proper interrogations propounded to him, said magistrate must commit such witness to the custody of the sheriff of the proper county, as for a contempt, from which custody such witness shall in no case be discharged until he has fully answered such question or questions, and fully paid all costs taxed against him by reason of the legal proceedings had to compel him to testify as provided in this chapter.

Duty of attorney when defendant committed

Sec. 261. Whenever upon any preliminary examination, the defendant shall be committed or recognized by any magistrate to appear at the next term of the district court to answer for a misdemeanor, the district attorney of the proper county shall forthwith notify the defendant that unless such defendant elect to have the charge against him investigated by a grand jury, and serve notice of such election upon such district attorney three days before the first day of the next term of the district court of the proper county, there will be an information filed against him and the cause will be tried without the intervention of a grand jury.

When defendant fails to elect, duty of attorney

Sec. 262. If the defendant fail to serve notice of election as required in the last section he shall be deemed to have waived the right of intervention by a grand jury, and it shall be the duty of the district attorney to immediately file the proper information, based upon the testimony taken before the examining magistrate, upon which information the cause shall be tried as upon an indictment.

Names of witnesses endorsed on information

Sec. 263. The names of all material witnesses must be endorsed upon the back of such information.

Clerk to fix bail

Sec. 264. Upon all warrants issued upon informations, the clerk must fix and endorse the amount of bail, as in cases of indictment for bailable offenses.

CHAPTER IV.

ARRAIGNMENT OF THE DEFENDANT.

Section 265. Defendant must be arraigned in the court in which the indictment is found, or information filed, if triable therein, or if not, in that to which it is sent or removed.

266. If indictment be for felony, defendant must be present; if the information for misdemeanor, he may appear by counsel.

267. When personal appearance is necessary, if defendant be in custody, he must be brought before the court.

268. If discharged on bail, or deposit, bench warrant to issue.

269. Bench warrant, by whom and how issued.

270. Form of bench warrant.

271. Direction in bench warrant, if indictment be for misdemeanor.

272. If offense be bailable, order for bail to be endorsed on bench warrant.

273. Bench warrant, how served.

274. Proceedings on bench warrant, when defendant is brought before a magistrate of another county.

275. Ordering defendant into custody, or increasing bail, when indictment is for felony.

276. Defendant if present, to be committed, if not, bench warrant to issue.

277. Defendant appearing for arraignment without counsel, to be informed of his right to counsel.

278. Court to assign counsel for defendant.

279. Compensation allowed counsel.

280. Arraignment, how made.

281. Defendant to be informed, if the name in the indictment be not his true name, he must then declare it.

282. If he give no other name, to be proceeded against by the name in the indictment or information.

283. If he give another name, subsequent proceedings to be had by that name, referring to name in the indictment or information.

284. Time allowed defendant to answer indictment or information.

285. How defendant may answer indictment or information.

Defendant must be arraigned

Sec. 265. When the indictment or information is filed, the defendant must be arraigned thereon.

If for felony defendant must be present

Sec. 266. If the indictment be for a felony the defendant must be personally present; but if on information for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

When personal appearance is necessary

Sec. 267. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned; and the officer must do so accordingly.

If discharged on bail

Sec. 268. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned, when his personal attendance is necessary, the court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant, by whom issued

Sec. 269. The clerk, on the application of the district attorney may accordingly at any time after the order, whether the court be setting or not, issue a bench warrant into one or more counties.

Form of same

Sec. 270. The bench warrant upon the indictment or information, must if the offense be a felony, be substantially in the following form:

"County of Yankton, [or as the case may be.]

"In the name of the people of the Territory of Dakota.

To any sheriff, constable or marshal in this Territory:

An indictment or information having been found on the —— day of———,———[SEAL] 186 , in the district court of the county of———,[or as the case may be,] charging C. D. with the crime of [designating it generally.]

"You are therefore commanded forthwith to arrest the above named C. D., and bring him before that court, to answer the indictment; or if the court have adjourned for the term, that you deliver *him into* the custody of the sheriff of the county of Yankton.

"City [or town] of——, the ——day of——, 186 .

"By order of the court,

E. F., clerk."

Direction, if for misdemeanor

Sec. 271. If the offense be a misdemeanor, the bench warrant must be in a similar form, adding to the body thereof a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

If offense be bailable

Sec. 272. If the offense charged be bailable, the court, upon directing the bench warrant to issue, must fix the amount of bail; and an endorsement must be made upon the bench warrant and signed by the clerk, to the following effect:

"The defendant is to be admitted to bail in the sum of —— dollars."

How served

Sec. 273. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except, that when served in another county it need not be endorsed by a magistrate of that county.

Proceedings in certain cases

Sec. 274. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon as provided in section 121 to 124, both inclusive.

Ordering defendant into custody

Sec. 275. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court, to which the indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

Defendant if present to be committed

Sec. 276. If the defendant be present when the order is made, he must be forthwith committed accordingly. If he be not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Appearing for arraignment without counsel

Sec. 277. If the defendant appear for arraignment, without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel.

Court to assign counsel

Sec. 278. Upon the arraignment of any defendant, if it appears to the court before which such arraignment is had, that the defendant is unable to procure counsel to conduct his defense, it shall be the duty of the court to assign to said defendant any member of the bar he may select as his counsel in said cause.

Compensation

Sec. 279. Attorneys so assigned shall be, by the court, allowed the following compensation:

In capital cases, fifty dollars; in all other felonies, twenty-five dollars;

In misdemeanors, fifteen dollars; which shall be paid out of the treasury of the proper county.

Arraignment, how made

Sec. 280. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant, and delivering to him, if he requires it, a copy thereof and of the endorsements thereon, including the list of witnesses endorsed on it or appended thereto, as provided in section 229, and asking him whether he pleads guilty or not guilty to the indictment.

Must be informed if name on indictment be his true name

Sec. 281. When the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment or information.

If he give no other name

Sec. 282. If he gives no other name, the court may proceed accordingly.

If he give another name

Sec. 283. If he allege that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment; and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted.

Time allowed to answer &c.

Sec. 284. If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the indictment or information.

How answer may be made

Sec. 285. If the defendant do not require time, as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment or information or may demur or plead thereto.

CHAPTER V.

SETTING ASIDE THE INDICTMENT OR INFORMATION.

Section 286. Indictment or information when set aside on motion
287. Defendant, when precluded from objecting to indictment or information in any other manner.
288. Motion, when heard.
289. If denied, defendant must immediately demur or plead.
290. If granted, defendant discharged, unless the case be submitted to the same or another grand jury.
291. Effect of order for re-submission.
292. New indictment in such case, when to be found.
293. Order to set aside indictment, no bar to another prosecution.

Ind'c'ment when set aside, on motion

Sec. 286. The indictment or information must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1, When it is not found, endorsed and presented or filed as prescribed in this act;

2, When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon;

3, When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section 224.

When precluded from objecting

Sec. 287. If the motion to set aside the indictment be not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Motion, when heard

Sec. 288. The motion must be heard at the time of the arraignment, unless for good cause the court postpone the hearing to another time.

If denied

Sec. 289. If the motion be denied, the defendant must immediately answer the indictment or information either by demurring or pleading thereto.

Sec. 290. If the motion be granted, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him; unless it direct that the case be re-submitted to the same, or another grand jury, or that the district attorney file a new information. *If granted.*

Sec. 291. If the court direct that the case be re-submitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information. *Effect of order for resubmission.*

Sec. 292. Unless a new indictment or information be found before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, discharge the defendant. *New indictment in such case.*

Sec. 293. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense. *Order to set aside indictment no bar to future prosecution.*

CHAPTER VI.

DEMURRER.

Section 294. On'y pleading for defendant, is demurrer or plea.
295. Demurrer or plea, when put in.
296. Grounds of demurrer.
297. Demurrer, how put in, and its form.
298. When heard.
299. Judgment on demurrer.
300. If allowed, judgment a bar to another prosecution, unless direction that the case be re-submitted to the same or another grand jury.
301. If a re-submission not ordered, defendant discharged.
302. Proceedings, if re-submission ordered.
303. If demurrer disallowed, defendant may be permitted to plead. When he must do so, and effect of his omission.
304. When objections, forming ground of demurrer, may be taken at the trial, or in arrest of judgment.

Only pleading, what

Sec. 294. The only pleading on the part of the defendant is either a demurrer or a plea.

Demurrer or plea, when put in

Sec. 295. Both the demurrer and the plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

Grounds of demurrer

Sec. 296. The defendant may demur to the indictment or information when it appears upon the face thereof, either:

1, That the grand jury by which it was found, or in case of an information, that the district attorney had no legal authority to inquire into the offense charged, by reason of its not being within the local jurisdiction of the county;

2, That it does not substantially conform to the requirements of this act;

3, That more than one offense is charged in the indictment or information;

4, That the facts stated do not constitute a public offense;

5, That the indictment or information contains any matter, which, if true, would constitute a legal justification or excuse of the offense charged; or other legal bar to the prosecution.

How put in

Sec. 297. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the ground of the objection to the indictment or information, or it may be disregarded.

When heard

Sec. 298. Upon the demurrer being filed, the objections presented thereby, must be heard, either immediately or at such time as the court may appoint.

Judgment

Sec. 299. Upon considering the demurrer, the court must give judgment, either sustaining or overruling it; and an order to that effect must be entered upon the minutes.

If allowed, a bar, unless

Sec. 300. If the demurrer be sustained, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new indictment or information, direct the case to be re-submitted to the same or another grand jury, or in case of an information, to the district attorney.

Sec. 301. If the court do not direct the case to be re-submitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he have deposited money instead of bail, the money must be refunded to him. If a re-submission not ordered

Sec. 302. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in this act. Proceedings, if ordered

Sec. 303. If the demurrer be overruled, the court must permit the defendant, at his election, to plead; which he must do forthwith, or at such time as the court may allow. If he do not plead, the court must enter a plea of not guilty for him and proceed to the trial of the cause. If demurrer disallowed

Sec. 304. When the objections mentioned in section 296, appear upon the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment. When objections may be taken

CHAPTER VII.

PLEA.

Section 305. The different kinds of pleas.
306. Plea, how put in.
307. Its form.
308. Plea of guilty, how put in.
309. It may be withdrawn, by permission of the court.
310. What is denied by a plea of not guilty.
311. What may be given in evidence under it.
312. 313. What is deemed a former acquittal.
314. Conviction or acquittal on indictment for offense consisting of different degree, when a bar to another indictment.

Sec. 305. There are three kinds of pleas to an indictment or information. A plea of: Pleas—different kinds

1, Guilty;
2, Not guilty;

3, A former judgment of conviction or acquittal of the offense charged; which may be pleaded either with or without the plea of not guilty.

How put in

Sec. 306. Every plea must be oral, and must be entered upon the minutes of the court.

Its form

Sec. 307. The plea must be entered in substantially the following form:

1, If the defendant plead guilty:—"The defendant pleads that he is guilty of the offense charged in this indictment or information;"

2. If he plead not guilty:—"The defendant pleads that he is not guilty of the offense charged in this indictment or information;"

3, If he plead a former conviction or acquittal:—"The defendant pleads that he has already been convicted [or acquitted, as the case may be,] of the offense charged in this indictment or information, by the judgment of the ——— [naming it] rendered at ———, [naming the place,] on the ——— day of ———."

Plea of guilty, how put in

Sec. 308. A plea of guilty can in no case be put in, except by the defendant himself in open court, unless upon an indictment or information against a corporation; in which case it can be put in by counsel.

May be withdrawn—by whose permission

Sec. 309. The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

What is denied by a plea of not guilty

Sec. 310. The plea of not guilty is a denial of every material allegation in the indictment or information.

Evidence under it

Sec. 311. All matters of fact, tending to establish a defense other than that specified in the third sub-division of section 305, may be given in evidence under the plea of not guilty.

What is deemed a former acquittal

Sec. 312. If the defendant were formerly acquitted on the ground of a variance between the indictment or information and the proof, or the indictment or information were dismissed upon an objection to its form or substance, without a judgment of acquittal, it is not an acquittal of the same offense.

Same

Sec. 313. When, however, he was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the indictment or information on which he was acquitted.

Conviction or acquittal &c.

Sec. 314. When the defendant shall have been convicted or acquitted upon an indictment or information for an offense consisting of different degrees, the conviction or acquittal is a bar to another indictment or information for the offense charged in the former, or for any inferior degree of that offense, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information.

CHAPTER VIII.

REMOVAL OF THE ACTION BEFORE TRIAL.

Section 315. Existing writs and proceedings to remove indictment before trial abolished.
316. When, and in what cases indictment may be removed before trial.
317. Order of removal to be filed, and pleadings and proceedings to be transmitted.
318. Proceedings on removal, if defendant be in custody.
319. Order for removal must be filed before a juror is sworn. Authority of the court to which the indictment is removed.

Existing writs and proceedings &c.

Sec. 315. All writs and other proceedings heretofore existing, for the removal of criminal actions prosecuted by indictment, from one court to another before trial, are abolished; and the *only* mode of removing a criminal action, prosecuted by indictment or information, from one court to another, before trial, is that prescribed by this chapter.

Indictment may be removed—in what cases

Sec. 316. A criminal action prosecuted by indictment or information may at any time before trial, on the application of the defendant, be removed from the court in which it is pending.

Order of removal to be filed

Sec. 317. If the court order the removal of the action, a certified copy of the order for that purpose must be delivered to

and filed by the clerk of the court where the indictment or information is pending; who must thereupon transmit the same with a certified copy of the pleadings and proceedings in the action, including the undertakings for the appearance of the defendant or of the witnesses, to the court to which the action is removed.

Proceedings on removal

Sec. 318. If the defendant be in custody, and the removal be to another county than that where the indictment or information is pending, the order must provide for the removal of the defendant, by the sheriff of the county where he is imprisoned, to the custody of the proper officer of the county to which the action is removed; and he must be removed according to the terms of such order.

Order for removal, must be filed, when

Sec. 319. An order for the removal of the action is of no effect, unless a certified copy thereof be filed, as required by section 318, before a jury is sworn to try the indictment or information. The court to which it is removed, must thereupon proceed to trial and judgment therein.

TITLE VI.

OF THE PROCEEDINGS ON THE INDICTMENT OR INFORMATION BEFORE TRIAL.

Chapter I. The mode of trial.
II. Formation of the trial jury.
III. Postponement of the trial.
IV. Challenging the jury.

CHAPTER I.

THE MODE OF TRIAL.

Section 320. Issue of fact defined.
321. How tried.
322. On trial for a misdemeanor, defendant may appear by counsel. In felony his personal appearance is necessary.

Sec. 320. An issue of fact arises: Issue of fact defined

1, Upon a plea of not guilty, or

2, Upon a plea of a former conviction or acquittal of the same offense.

Sec. 321. An issue of fact must be tried by a jury of the county in which the indictment or information was found unless the action be removed, by order of the district court, into the district court of another county. How tried

Sec. 322. If the indictment or information be for a misdemeanor, the trial may be had in the absence of the defendant if he appear by counsel; but if for a felony, he must be personally present. On trial for misdemeanor may appear by counsel—if for felony

CHAPTER II.

FORMATION OF THE TRIAL JURY.

Section 323. Jurors in district courts.
324. Ballots of the jurors returned, to be deposited in a box.
325. When indictment or information called for trial, names of jurors to be called. Proceedings as to those who are absent.
326. Drawing the jury.
327, 328. Ballots of jurors drawn, how disposed of.
329. Ballots of absent jurors, how disposed.
330. If twenty-four jurors not present, court must order sheriff to summon others.
331. Their names to be deposited in a box.
332. Drawing of a jury thereon.
333. Of whom the jury consist.
334. Talesmen how ordered and summoned.

Sec. 323. The jurors duly drawn and summoned for the trial of issues of fact in actions at law, at a district court, are also the jurors for the trial of issues of fact upon indictment or information at the district court held at the same time. Jurors in district courts

Sec. 324. At the opening of the court, the clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as pos- Ballots

sible, and so that the same cannot be seen, and must deposit them in a sufficient box.

Names of jurors may be called

Sec. 325. When the cause is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court may, in its discretion, wait or not, for the return of the attachment.

Drawing jury

Sec. 326. Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box through a hole in the lid, so large only as conveniently to admit the hand.

Ballots drawn, how disposed of

Sec. 327. When the jury is completed, the ballots containing the names of the jurors sworn, must be laid aside, and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

Same

Sec. 328. After the jury are so discharged, the ballots, containing their names must be again folded and returned to the box; and so on, as often as a trial is had.

Ballots of absent jurors, how disposed of

Sec. 329. If a juror be absent when his name is drawn, or be set aside, or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

If twenty-four jurors not present

Sec. 330. When a jury has been duly summoned, if, upon calling the cause for trial, twenty-four of the jurors summoned do not appear, the court must order the sheriff to summon from the bystanders as many persons as it may think proper, at least sufficient to make twenty-four jurors, from whom a jury for the trial of the cause must be selected.

Names to be deposited in a box

Sec. 331. The names of the persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box mentioned in section 324.

Drawing of a jury thereon

Sec. 332. The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

Sec. 333. The jury consists of twelve men, chosen as prescribed in this chapter, and sworn to try and determine the issue by a unanimous verdict. Of whom the jury consist

Sec. 334. If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon from the bystanders so many persons qualified to serve as jurors as it deems sufficient to form a jury. The jurors so summoned must be called from the list returned by the sheriff, and so many of them not excused or discharged, as may be necessary to complete the jury must be impaneled and sworn. Talesman how ordered and summoned

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POSTPONEMENT OF THE TRIAL.

Section 335. When and how ordered. Affidavits to be filed.
336. If defendant appear for trial, and cause for postponement be not shown by district attorney, indictment or information to be discharged unless otherwise specially ordered.
337. Effect of the discharge.

Sec. 335. When an indictment or information is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term, or to another term. The affidavits read on both sides upon the application, must at the same time be filed with the clerk. When and how ordered

Affidavits to be filed

Sec. 336. If, when the cause is called for trial, the defendant appear for trial and no sufficient cause for postponing the same be shown by the district attorney, the court must order the defendant to be discharged, unless being of opinion that the public interests require the defendant to be retained for trial, it direct him to be so retained. If defendant appear for trial

Sec. 337. If the court order the defendant to be discharged, the order is not a bar to another prosecution for the same offense, unless the court so direct; in which case judgment of acquittal must be entered. Effect of discharge

CHAPTER IV.

CHALLENGING THE JURY.

Section 338. Definition and division of challenges.
339. When there are several defendants, they must unite in their challenges.
340. Challenge to the panel defined.
341. Upon what founded.
342. When and how taken.
343. If sufficiency of the facts be denied, adverse party may except. Exceptions how made and tried.
344. If exception overruled, court may allow denial of challenge. If allowed, may permit challenge to be amended.
345. Denial of challenge, how made, and trial thereof.
346. Who may be examined on trial of challenge.
347. If challenge allowed, jury to be discharged. If disallowed, jury to be impanneled.
348. Defendant to be informed of his right to challenge an individual juror.
349. Kinds of challenge to individual jurors.
350. Challenge, when taken.
351. Peremptory challenge, what, and how taken.
352. Number of peremptory challenges to which defendant is entitled.
353. Challenge for cause, by whom taken.
354. Definition and kinds of challenge for cause.
355. General cause for challenge.
356. Particular causes of challenge.
357. Grounds of challenge for implied bias.
358. Grounds of challenge for actual bias.
359. Exemption not a ground of challenge.
360. Causes of challenge, how stated.
361. Exceptions to challenge and denial thereof.
362. Challenge, how tried, if denied.
363. Triers, how appointed. Majority may decide.
364. Oath of triers.
365. Juror challenged may be examined as a witness.
366. Rules of evidence on trial of challenge.
367. Challenge for implied bias, how determined.
368. Instructions to triers on challenge for actual bias.

Section 369. Verdict of triers, and its effect.
370. Challenge, first by defendant, and then by the people, Each must exhaust challenges before the other begins.
371. Order of challenges.
372. Peremptory challenges may be taken after challenges on both sides exhausted.

Sec. 338. A challenge is an objection to the trial jurors, and is of two kinds: Definition of challenges division of

1, To the panel;

2, To an individual juror.

Sec. 339. When several defendants are tried together, they cannot sever their challenges, but must join therein. When there are several defendants

Sec. 340. A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party. Challenge to panel, defined

Sec. 341. A challenge to the panel can be founded only on a material departure from the forms prescribed by the code of civil procedure, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn. Upon what founded

Sec. 342. A challenge to the panel must be taken before the jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge. When and how taken

Sec. 343. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court; and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true. Sufficiency

Sec. 344. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge. If exception overruled, court may allow &c.

Sec. 345. If the challenge be denied, the denial may, in like manner, be oral, and must be entered upon the minutes of the court; and the court must proceed to try the question of fact. Denial of challenge—how made—trial thereof

Who may be examined

Sec. 346. Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

If challenge allowed

Sec. 347. If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, so far as the trial of the cause in question is concerned; and another jury for the trial thereof can be summoned for the same term from the bystanders. If it be disallowed, the court must direct the jury to be impanneled.

Defendant to be informed of right

Sec. 348. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge an individual juror, he must do so when the juror appears, and before he is sworn.

Kinds of challenge

Sec. 349. A challenge to an individual juror, is either:

1, Peremptory, or

2, For cause.

Challenge, when taken

Sec. 350. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge—what —how taken

Sec. 351. A peremptory challenge can be taken by the defendant only, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Number of

Sec. 352. If the offense charged be punishable with death or imprisonment in a state prison for life, the defendant is entitled to twenty peremptory challenges. In other felonies ten challenges are allowed. On a trial of any misdemeanor he is entitled to five peremptory challenges.

Challenge for cause

Sec. 353. A challenge for cause may be taken either by the people or the defendant.

Kinds of

Sec. 354. It is an objection to a particular juror, and is either:

1, General, that the juror is disqualified from serving in the case on trial;

2, Particular, that he is disqualified from serving in any case on trial.

Sec. 355. General causes of challenges are : General cause for

1, A conviction for a felony ;

2, A want of any of the qualifications prescribed by the code of civil procedure, to render a person a competent juror ;

3, Unsoundness of mind, or such defect in the faculties of the mind or organs of the body, as renders him incapable of performing the duties of a juror.

Sec. 356. Particular cause of challenge are of two kinds : Particular causes for

1, For such a bias, as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias ;

2, For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the triers, in the exercise of a sound discretion, that he cannot try the issue impartially without prejudice to the substantial rights of party challenging, and which is known in this code as actual bias.

Sec. 357. A challenge for implied bias may be taken for all or any of the following causes, and for no other: Grounds of challenge for implied bias

1, Consanguinity or affinity within the sixth degree of the civil law, inclusive, to the person alleged to be injured by whose complaint the prosecution was instituted, or to the defendant ;

2, Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages ;

3, Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution ;

4, Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment ;

5, Having served on a trial jury which has tried another person for the indentical offense charged in the indictment ;

6, Having been one of the jury formerly sworn to try the same indictment or information, and whose verdict was set

aside, or which was discharged without a verdict, after the cause was submitted to it;

7, Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

8, If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Grounds of challenge for actual bias

Sec. 358. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section 356, and for no other cause.

Exemption not a ground for challenge

Sec. 359. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Causes, how stated

Sec. 360. In a challenge for implied bias, one or more of the causes stated in section 357 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 356 must be alleged. In either cases, the challenge may be oral, but must be entered upon the minutes of the court.

Exceptions and denial

Sec. 361. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as prescribed in section 343; except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

Challenge, how tried

Sec. 362. If the facts be denied, the challenge must be tried as follows:

1, If it be for implied bias, by the court;

2, If it be for actual bias, by triers.

Triers, how appointed majority may decide

Sec. 363. The triers are three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias must be tried by the triers thus appointed, a majority of whom may decide.

Oath of trier

Sec. 364. The triers must be sworn, generally, to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are true, and to decide the same according to the evidence.

Juror challenged may be examined as a witness

Sec. 365. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge; and is bound to answer every question pertinent to the inquiry therein.

Rules of evidence

Sec. 366. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, govern the admission or exclusion of testimony, on the trial of the challenge.

Challenge for implied bias, how determined

Sec. 367. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Instructions to triers

Sec. 368. On the trial of a challenge for actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if the evidence establishes the existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies them in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging; and that if otherwise, they must find the challenge not true. The court can give them no other instruction.

Verdict of triers

Sec. 369. The triers must thereupon find the challenge either true or not true; and their decision is final. If they find it true the juror must be excluded.

Challenge, first by defendant then by people, each must exhaust challenges

Sec. 370. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people; and each party must exhaust all his challenges before the other begins.

Order of challenges

Sec. 371. The challenges of either party need not all be taken at once; but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1, To the panel;

2, To an individual juror for a general disqualification;

3, To an individual juror for implied bias;

4, To an individual juror for actual bias.

Peremptory challenges may be taken after, what

Sec. 372. If all the challenges on both sides be disallowed, the defendant may still take a peremptory challenge, unless the peremptory challenges be exhausted.

TITLE VII.

OF THE TRIAL.

Chapter I. The trial.

II. Conduct of the jury after the cause is submitted to them.

III. The verdict.

CHAPTER I.

THE TRIAL.

Section 373, 374. In what order trial to proceed.

375. Number of counsel who may argue the cause to the jury.

376. Defendant presumed innocent until contrary proved. In case of reasonable doubt entitled to acquittal.

377. When reasonable doubt of which degree he is guilty, he must be convicted of the lowest.

378. Separate trial of defendants jointly indicted or prosecuted.

379, 380. Discharging one of several defendants before verdict, that he may be a witness. Effect of the discharge.

381. Rules of evidence in civil cases applicable in criminal cases except where otherwise provided in this code.

382. Confession of defendant, when evidence, and its effect.

383, 384. Evidence on trial for treason.

385. Evidence on trial for conspiracy.

386. Evidence on trial for rape, or the crime against nature.

387. Conviction cannot be had on testimony of accomplice, unless corroborated.

Section 388. On trial for false pretences, no evidence of pretences admissable, unless in writing. But this section not applicable to prosecution for falsely representing or personating another, and in such character receiving money or property.

389. Conviction cannot be had for abduction or seduction unless testimony of person injured be corroborated.

390. If testimony show higher offense than that charged, court may discharge jury, and hold defendant to answer a new indictment.

391. If new indictment not found, defendant to be re-tried on the original indictment.

392. Court may discharge jury, where it has no jurisdiction of the offense, or the facts do not constitute an offense.

393. Proceedings, if jury discharged for want of jurisdiction of the offense, when committed out of the territory.

394, 395. Proceedings in such case, when offense committed in the Territory.

396, 397. Proceedings, if jury discharged because the facts do not constitute an offense.

398. When evidence on either side is closed, court may advise acquittal. Effect of the advice.

399. View of permission, when ordered, and how conducted.

400. Knowledge of juror to be declared in court and juror to be sworn as witness.

401. Jurors may be permitted to separate during the trial. If kept together, oath of the officers.

402. Jurors not to converse together on the subject of the trial, nor form an opinion until the cause is submitted.

403. Proceedings where juror becomes unable to perform his duty before conclusion of trial.

404. Court to decide questions of law arising during trial.

405. On indictment for libel, jury to determine law and fact.

406. In all other cases court to decide questions of law, subject to right of defendant to except.

407. In charging jury, court to state all necessary matters of law, and to inform them that they are the exclusive judges of all questions of fact.

Section 408. Jury may decide in court, or retire in the custody of officers. Oath of the officers.
409. When defendant on bail appears for trial, he may be committed.

In what order trial to proceed

Sec. 373. The jury having been impanneled and sworn, the trial must proceed in the following order:

1, If the indictment be for a felony, the clerk or district attorney must read it, and state the plea of the defendant to the jury. In all other cases, this formality may be dispensed with;

2, The district attorney, or other counsel for the people, must open the case and offer the evidence in support of the indictment or information;

3, The defendant or his counsel may then open his defense, and offer his evidence in support thereof;

4, The parties may then, respectively, offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case;

5, When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people shall commence, and the defendant or his counsel shall follow, then the counsel for the people shall conclude the argument to the jury;

6, The court must then charge the jury, which charge must be in writing, to which charge either party may except.

Same

Sec. 374. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order of trial and argument prescribed in the last section may be departed from.

Number of counsel who may argue

Sec. 375. If the indictment be for an offense punishable with death, three counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to two counsel on each side.

Defendant presumed innocent in case of reasonable doubt

Sec. 376. A defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

Reasonable doubt of which degree

Sec. 377. When it appears that a defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

Separate trial of defendants

Sec. 378. When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases defendants jointly prosecuted may be tried separately or jointly in the discretion of the court.

Discharging one of several defendants before verdict

Sec. 379. When two or more persons are included in the same indictment, or information, the court may, at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment or information, that he may be a witness for the people.

Same, effect of discharge

Sec. 380. When two or more persons are included in the same indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his co-defendant. The order is an acquittal of the defendant discharged, and a bar to another prosecution for the same offense.

Rules of evidence, applicable in certain cases

Sec. 381. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this code.

Confessions

Sec. 382. A confession of a defendant, whether in the course of judicial proceedings or to a private person, cannot be given in evidence against him when made under the influence of fear produced by threats, nor is it sufficient to warrant his conviction, without additional proof that the offense charged has been committed.

Evidence on trial for treason

Sec. 383. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or of one witness to one overt act, and another witness to a different overt act of the same treason. But if two or more distinct treasons of different kinds be alleged in the indictment, two witnesses to prove different treasons are not sufficient to warrant a conviction.

Same

Sec. 384. Upon a trial for treason evidence cannot be admitted of an overt act not expressly charged in the indictment; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

For conspiracy

Sec. 385. Upon a trial for conspiracy, in case where an overt act is necessary to constitute the offense, the defendant cannot be convicted, unless one or more acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved, but any other overt act, not alleged in the indictment, may be given in evidence.

For rape

Sec. 386. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

Testimony of accomplice

Sec. 387. A conviction can not be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely show the commission of the offense, or the circumstances thereof.

Trial for false pretences

Sec. 388. Upon a trial for having, with intent to cheat or defraud another designedly by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, no evidence can be admitted of a false pretense expressed orally and unaccompanied by a false token or writing unless the pretense or some note or memorandum thereof, be in writing, either subscribed by, or in the handwriting of the defendant. But this section does not apply to a prosecution for falsely representing or personating another, and in such assumed character receiving money or property.

Conviction, where had

Sec. 389. Upon a trial for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution, or aiding or assisting therein, or for having, under promise of marriage, seduced and had illicit connexion with an unmarried female of previous chaste character, the defendant can not be convicted upon the testimony of the person injured unless she is corroborated by other evidence tending to connect the defendant with the commission of the offense.

If testimony show higher offense

Sec. 390. If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment or information, the court may direct the jury to be discharged, and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail to answer any new indictment or information which may be found against him for the higher offense.

If new indictment not found

Sec. 391. If a new prosecution be not commenced for the higher offense at or before the next term, the court must again proceed to try the defendant on the original indictment.

Court may discharge jury

Sec. 392. The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the fact as charged in the indictment or information do not constitute an offense punishable by law.

Proceedings if jury discharged

Sec. 393. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment or information, and it appears that it was committed out of the jurisdiction of this Territory, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the district attorney to the chief executive officer of the State, Territory, or district, where the offense was committed.

Proceedings in such case

Sec. 394. If the offense were committed within the exclusive jurisdiction of another county of this Territory, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest, or if the offense be a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking.

Same

Sec. 395. In the case provided for in the last section the clerk must forthwith transmit a certified copy of the indictment

or information, and of all the papers in the action, filed with him, to the district attorney of the proper county, the expenses of which transmission is chargeable to that county.

If defendant be not arrested as provided

Sec. 396. If the defendant be not arrested, as provided in section 394, on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be; and the sureties in the undertaking mentioned in that section must be discharged.

If he be arrested same proceedings

Sec. 397. If he be arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

If jury be discharged &c.

Sec. 398. If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new indictment or information can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be re-submitted to the same or another grand jury, or in case of misdemeanor to the district attorney of the proper county.

Court may advise acquittal

Sec. 399. If, at any time after the evidence on either side is closed, the court deem it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice; nor can the court, for any cause, prevent the jury from giving a verdict.

When it is proper that jury should view the place where offense is charged to have been committed

Sec. 400. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a judge of the court, or by a person appointed by the court for that purpose.

No one suffered to speak to jury

Sec. 401. The officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return

them into court without unnecessary delay, or at a specified time.

Knowledge of juror to be declared in court

Sec. 402. If a juror have any personal knowledge respecting a fact in controversy in a cause, he must declare it in open court, during the trial. If, during the retirement of the jury, a juror declare a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

Jurors may be permitted to separate, oath of officers

Sec. 403. The jurors sworn to try an indictment or information may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

Jurors not to converse together on the subject of the trial

Sec. 404. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or to form or express any opinion thereon, until the case is finally submitted to them.

When juror becomes unable to perform duty

Sec. 405. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impanneled. With the consent of defendant the trial may proceed with the remaining jurors.

Court to decide questions of law

Sec. 406. The court must decide all questions of law which arise in the course of the trial.

On trial for libel

Sec. 407. On the trial for libel, the jury have the right to determine the law and the fact.

In all other cases

Sec. 408. On the trial of an indictment or information for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant to except ques-

tions of fact by the jury. And although the jury have the power to find a general verdict, they are bound, nevertheless, to receive as law what is laid down as such by the court.

In charging jury, court to state what

Sec. 409. In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict; and if it present the facts of the case, must in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

Jury may decide —when

Sec. 410. After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn, to keep them together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

When defendant on bail, appears for trial

Sec. 411. When a defendant, who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

CHAPTER II.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

Section 412. Room and accommodations for the jury after retirement, how provided.

413. Accommodations for the jury, when kept together during the trial, or after retirement.

414, 415. What papers the jury may take with them.

416. May return into court for information.

417. If, after retirement a juror becomes sick or unable to act, the jury to be discharged.

Section 418. Not to be discharged in any other case, unless there is no reasonable probability that they can agree.
419. When the jury discharged or prevented from giving a verdict, cause to be again tried.
420. Court may be adjourned during the absence of jury, as to other business, but deemed open till verdict rendered or jury discharged.
421. Final adjournment of court discharges jury.

Room for jury after retirement, how provided

Sec. 412. A room must be provided by the board of commissioners of the county, [or if the trial be in a city court, by the corporate authorities of the city] for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the supervisors or corporate authorities neglect, the court may order the sheriff to do so; and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Accommodations for jury &c.

Sec. 413. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court, at the expense of the county, with suitable and sufficient food.

Jury may take what papers

Sec. 414. Upon retiring for deliberation, the jury may take with them all papers [except depositions,] which have been received as evidence in the cause, or copies of such parts of public records or private documents, given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Same

Sec. 415. The jury may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

May return into court for information

Sec. 416. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the district attorney and the defendant or his counsel.

If after retirement a juror becomes sick

Sec. 417. If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

Not to be discharged, unless

Sec. 418. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless, at the expiration of such time as the court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

When discharged or prevented from giving verdict

Sec. 419. In all cases where a jury are discharged, or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the indictment or information during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term as the court may direct.

Court may adjourn during absence of jury &c.

Sec. 420. While the jury are absent the court may adjourn from time to time as to other business; but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the jury discharged.

Final adjournment discharges jury

Sec. 421. A final adjournment of the court discharges the jury.

CHAPTER III.

THE VERDICT.

Section 422. When the jury have agreed, to be brought into court and their names called. If all do not appear, jury to be discharged and cause again tried.
423. In felony, defendant must be present. In misdemeanor, verdict may be rendered in his absence.
424. Manner of taking the verdict.
425. Verdict may be general or special.
426. General verdict.
427. Special verdict.
428, 429. Special verdict, how rendered.
430. Special verdict, how brought to argument.

Section 431. Judgment thereon.
432. When special verdict defective, new trial to be ordered.
433. Upon indictment or information for offense consisting of different degrees, jury may convict of any degree, or of an attempt to commit the offense.
434. In other cases, jury may convict of any offense necessarily included in that charged.
435. On indictment or information against several, jury may render a verdict as to some, and the cause be again tried as to the others.
436, 437. In what cases court may direct a reconsideration of the verdict.
438. When judgment may be given upon an informal verdict.
439. Polling the jury.
440. Recording the verdict.
441. Defendant, when to be discharged or detained after acquittal.
442. Proceedings upon general verdict of conviction or a special verdict.
443. When defendant acquitted on the ground of insanity, the fact to be stated with the verdict. Commitment of defendant to territorial lunatic asylum.

When jury have agreed to be brought into court &c.

Sec. 422. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

In felony

Sec. 423. If the indictment be for a felony, the defendant must, before the verdict is received, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

Manner of taking verdict

Sec. 424. If the jury appear, they must be asked, by the court or the clerk, whether they have agreed upon their verdict; and if the foreman answers in the affirmative, they must, on being required, declare the same.

May be general or special

Sec. 425. The jury may either render a general verdict, or where they are in doubt as to the legal effect of the facts

proved, they may, except upon an indictment for libel, find a special verdict.

General verdict

Sec. 426. A general verdict upon a plea of not guilty, is either "guilty" or "not guilty:" which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people," or "for the defendant."

Special verdict

Sec. 427. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence to prove them; *find* [and] the conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

Special verdict, how rendered

Sec. 428. The special verdict must be reduced to writing by the jury, or in their presence, entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged.

Same

Sec. 429. The special verdict need not be in any particular form, but is sufficient if it presents intelligibly the facts found by the jury.

How argument to be brought

Sec. 430. The special verdict may be brought to argument by either party, upon two days notice to the other, at the same or another term of the court.

Judgment thereon

Sec. 431. The court must find judgment upon the special verdict as follows:

1, If the plea be not guilty, and the facts prove the defendant guilty of the offense charged in the indictment or information, or of any other offense of which he could be convicted under the indictment or information as provided in sections 433 and 434, judgment must be given accordingly; but if otherwise judgment of acquittal must be given;

2, If the plea be a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal, according as the facts prove or fail to prove the former conviction or acquittal.

When special verdict defective new trial to be ordered

Sec. 432. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, if they find the evidence of facts mere-

ly, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

Upon indictment for offense of different degrees

Sec. 433. Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

In other cases

Sec. 434. In all other cases, the defendant may be found guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment or information.

On indictment against several

Sec. 435. On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

In what cases court may direct a reconsideration

Sec. 436. When there is a verdict of conviction, in which it appears to the court, that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict; and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

Same

Sec. 437. If the jury render a verdict which is neither a general or a special verdict as defined in sections 426 and 427 the court may, with proper instructions as to the law, direct them to reconsider it; and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

Judgment upon informal verdict

Sec. 438. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant, upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment be given against him on a special verdict.

Polling the jury

Sec. 439. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case, they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Recording verdict

Sec. 440. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out, but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

Defendant when to be discharged or detained

Sec. 441. If the judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given; except that when the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention to the end that a new indictment may be preferred, in the same manner and with the like effect, as provided in section 398.

Proceedings upon general or special verdict

Sec. 442. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money be deposited instead of bail, it must be refunded to the defendant.

On ground of insanity

Sec. 443. If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state that fact with their verdict. The court may thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff, until he becomes sane.

TITLE VIII.

OF THE PROCEEDINGS AFTER TRIAL, AND BEFORE JUDGMENT.

Chapter I. Bill of exceptions.
II. New trials.
III. Arrest of judgment.

CHAPTER I.

BILL OF EXCEPTIONS.

Section 444. In what cases.
445. By whom settled, and how filed.
446. To be settled at the trial, or the point noted in writing.
447, 448. When and how settled after the trial.
449. Enlarging the time therefor.
450. Effect of not serving exceptions or amendments within the time prescribed.
451. What to be contained in bill of exceptions.
452. With whom and when filed.

In what cases

Sec. 444. On the trial of an indictment or information, exceptions may be taken by the defendant to a decision of the court upon a matter of law by which his substantial rights are prejudiced, and not otherwise, in any of the following cases:

1, In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias;

2, In admitting or rejecting witnesses or testimony, or in charging the triers on the trial of a challenge to a juror for actual bias;

3, In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law, on the trial of the issue.

By whom settled —how filed

Sec. 445. A bill containing the exceptions must be settled and signed by the presiding judge, and filed with the clerk.

To be settled at trial

Sec. 446. The bill of exceptions must be settled at the trial, unless the court otherwise direct. If no such direction be giv-

en, the point of the exception must be particularly stated in writing, and delivered to the court, and must immediately be corrected or added, until it is made conformable to the truth.

When and how settled

Sec. 447. If the bill of exceptions be not settled at the trial, it must be prepared and served within three days thereafter, on the district attorney, who may, within three days thereafter serve on the defendant or his counsel, amendments thereto. The defendant may then, within three days, serve the district attorney with a notice to appear before the presiding judge of the court, at a specified time, not less than five, nor more than ten days thereafter, to have the bill of exceptions settled.

Same

Sec. 448. At the time appointed the judge must settle and sign the bill of exceptions.

Enlarging the time therefor

Sec. 449. The time for preparing the bill of exceptions or the amendments thereto, or for settling the same, may be enlarged by the consent of the parties, or by the presiding judge.

Effect of not serving exceptions

Sec. 450. If the bill of exceptions be not served within the time prescribed in section 447, or within the enlarged time therefor, as prescribed in the last section, the exceptions are deemed abandoned. If it be served and the parties omit, within the time limited by section 447, the one to prepare amendments, and the other to give notice of appearance before the judge, they are respectively deemed, the one to have agreed to the bill of exceptions, and the other to the amendments.

What to be contained therein

Sec. 451. The bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, or as may show that the decision excepted to has not prejudiced the substantial rights of the defendant; and the judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

With whom filed —when

Sec. 452. The bill of exceptions must be filed with the clerk of the court at the time of, or before, taking the appeal.

CHAPTER II.

NEW TRIALS.

Section 453. New trial defined.
454. By what court granted.
455. Its effect.
456. In what cases it may be granted.
457. Must be applied for before judgment, and only upon leave of the court.
458. Court to prescribe time and manner of making the application.

New trial defined

Sec. 453. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

By what court granted

Sec. 454. A new trial can be granted by the court in which the former trial was had, only in the cases provided in section 456.

Its effect

Sec. 455. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict can not be used or referred to, either in evidence or in argument.

In what cases granted

Sec. 456. The court in which a new trial is had upon an issue or fact, has power to grant a new trial, when a verdict has been rendered against the defendant by which his substantial rights have been prejudiced, upon his application, in the following cases:

1, When the trial has been had in his absence, if the indictment be for a felony;

2, When the jury has received any evidence out of court other than that resulting from a view, as provided in section 400;

3, When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;

4, When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;

5, When the court has mis-directed the jury in a matter of law, or has refused to instruct them;

6, When the verdict is contrary to law or evidence. But no more than two new trials can be granted for this cause alone.

Must be applied —when, and only

Sec. 457. The application for a new trial must be made before judgment, and can be made only upon leave granted by the court.

Court to prescribe time and manner

Sec. 458. If leave be granted, the court must prescribe the time and manner of making the application.

CHAPTER III.

ARREST OF JUDGMENT.

Section 459. Motion in arrest of judgment defined, and upon what defects founded.
460. Court may arrest judgment without motion.
461. Motion, when and how made.
462. Effect of arresting the judgment.
463. Defendant when to be held or discharged.

Motion in arrest of judgment

Sec. 459. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in section 296.

Court may arrest judgment

Sec. 460. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Motion, when and how made

Sec. 461. The motion must be made before or at the time when the defendant is called for judgment. If made before, it must be on notice to the district attorney, or in his presence.

Effect of

Sec. 462. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment or information was found.

Defendant when held or discharged

Sec. 463. If, from the evidence on the trial there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed upon which he may be con-

victed, the court may order him to be re-committed to the officer of the proper county, or admitted to bail anew to answer the new indictment or information. If the evidence show him guilty of another offense, he must be committed or held thereon, and in neither case is the verdict a bar to another prosecution or indictment for the same offense. But if no evidence appear sufficient to charge him with any offense, he must, if in custody, be discharged, or if admitted to bail, his bail is exonerated, or if money have been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the prosecution was founded.

Defendant when held or discharged.

TITLE IX.

OF THE JUDGMENT AND EXECUTION.

Chapter I. The judgment.
II. The execution.

CHAPTER I.

THE JUDGMENT.

Section 464, 465. Time for pronouncing judgment to be appointed by the court.
466. In felony, defendant must be present. In misdemeanor, judgment may be pronounced in his absence.
467. When defendant is in custody, how brought before the court for judgment.
468. How brought before the court when he is on bail.
469. Bench warrant to issue.
470. Form of bench warrant.
471, 472. Service of the bench warrant.
473. Arraignment of defendant for judgment.
474. What cause may be shown against the judgment.
475. If no sufficient cause shown, judgment to be pronounced.
476. Court may summarily inquire into circumstances in aggravation or mitigation of punishment.

Section 477. Testimony, how given.
478. No other testimony or representations to be received.
479. Violation of the last section, how punished.
480. On conviction of two or more offenses, judgment of imprisonment on one to commence at the expiration of the imprisonment on another.
481. Duration of imprisonment on a judgment to pay a fine.
482. The judgment roll.

Time for pronouncing judgment

Sec. 464. After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not attested, or a new trial granted, the court must appoint a time for pronouncing judgment.

Same

Sec. 465. The time appointed must be at least two days after the verdict if the court intend to remain in session so long, or if not, as remote a time as can reasonably be allowed.

In misdemeanor

Sec. 466. For the purpose of judgment, if the conviction be for a misdemeanor, judgment may be pronounced in his absence.

When defendant in custody

Sec. 467. When the defendant is in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer must do so accordingly.

How brought before the court

Sec. 468. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant to issue

Sec. 469. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be setting or not, issue a bench warrant into one or more counties.

Form of

Sec. 470. The bench warrant must be substantially in the following form:

County of ———

In the name of the people of the Territory of Dakota:

To any sheriff, constable, marshal or policeman in this territory.

A. B. having been on the ——— day of ———
[seal] 186—, duly convicted in the district court, of the crime of, [designating it generally,]

You are therefore commanded forthwith to arrest the above named A. B., and bring him before that court for judgment, or if the court have adjourned for the term, you are to deliver him into the custody of the sheriff of the county of ——— [as the case may be.]

City of ———, [or as the case be.]
the —— day of ——, 186—.

By order of the court,

E. F., Clerk.

Service of

Sec. 471. The bench warrant may be served in any county, in the same manner as a warrant of arrest; except that when served in another county, it need not be endorsed by a magistrate of that county.

Same

Sec. 472. Whether the bench warrant be served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

Arraignment of defendant

Sec. 473. When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the indictment or information, and of his plea and the verdict, if any thereon; and must be asked whether he have any legal cause to show why judgment should not be pronounced against him.

Cause may be shown against judgment

Sec. 474. He may show for cause against the judgment:

1, That he is insane; and if in the opinion of the court there is reasonable ground for believing him to be insane, the question of his insanity must be tried as provided by sections 641 to 644 both inclusive. If upon the trial of that question, the jury find that he is sane, judgment must be pronounced; but if they find him insane, must be committed to territorial lunatic asylum until he becomes sane; and when notice is given of that fact, as provided in section 658, he must be brought before the court for judgment;

2, That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case the court may, in its

discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

If no sufficient cause shown

Sec. 475. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it must thereupon be rendered.

Court may summarily inquire &c.

Sec. 476. After a plea or verdict of guilty, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court upon the suggestion of either party, that there are circumstances which may be properly taken into into view, either in aggravation or mitigation of the punishment, may in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

Testimony, how given

Sec. 477. The circumstances must be presented, by the testimony of witnesses examined in open court; except, that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

No other testimony

Sec. 478. No affidavit, or testimony, or representation of any kind, verbal or written, can be offered to, or received by, the court, or member thereof, in aggravation or mitigation of the punishment, except as provided in the last two sections.

Violation of last section, how punished

Sec. 479. A violation of the last section is punishable as a misdemeanor, on the part of the person offering or receiving the affidavit or representation; and the person offering it may, in addition, be punished by the court for a contempt.

On conviction of two or more offenses

Sec. 480. If the defendant have been convicted of two or more offenses, before judgment on either, the judgment may be, that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

Duration of imprisonment

Sec. 481. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment; which cannot exceed one day for every two dollars of the fine.

Judgment roll

Sec. 482. When judgment of a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the

offense for which the conviction has been had; and must im- Judgment roll
mediately annex together and file the following papers, which constitute the judgment roll:

1, A copy of the minutes of a challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon;

2, The indictment or information and a copy of the minutes of the plea or demurrer;

3, A copy of the minutes of a challenge which may have been interposed to the panel of a trial jury, or to an individual juror, and the proceedings and decision thereon;

4, A copy of the minutes of the trial;

5, A copy of the minutes of the judgment;

6, The bill of exceptions, if there be one.

CHAPTER II.

THE EXECUTION.

Section 483. Authority for the execution of a judgment except of death.

484. Commitment of the defendant.

485, 486. Judgment of imprisonment, by whom and how executed.

487. Power of sheriff to require assistance; refusal to assist him, how punished.

488. Warrant of execution upon judgment of death. Time of execution.

489. On judgment of death, presiding judge to transmit to governor a statement of the conviction, judgment and testimony.

490. Governor may require opinion of judges of court of appeals, and supreme court, and the attorney general, or any of them.

491. Judgment of death not to be reprieved or suspended except by sheriff, as provided in next seven sections.

492. If good reason to suppose defendant insane, jury to inquire into it, how and by whom ordered.

493. Duty of district attorney upon the inquisition.

494. Inquisition, how certified and filed.

Section 495, 496. Proceedings upon the finding of the jury.
497. If good reason to suppose female defendant pregnant, jury to inquire into it—how and by whom ordered. Proceedings upon the inquisition.
498, 499. Proceedings upon the finding of the jury.
500, 501. Proceedings when judgment of death, remaining in force, has not been executed.
502. Punishment of death how inflicted.
503. Execution where to take place.
504. Who to be present at the execution.
505. Certificate of the execution.
506. Certificate, how filed and published.

Authority for the execution of judgment except death

Sec. 483. When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the minutes, must be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

Commitment

Sec. 484. If the judgment be imprisonment, or a fine and imprisonment, until such fine be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment be complied with.

Judgment of imprisonment

Sec. 485. When the judgment is imprisonment in a county jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the sheriff of the county. In all other cases when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment.

Same

Sec. 486. If the judgment be imprisonment, except in a county jail, the sheriff must deliver a copy of the entry of the judgment upon the minutes of the court, together with the body of the defendant, to the keeper of the prison in which the defendant is to be imprisoned.

Power of sheriff

Sec. 487. The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this Territory, in securing the defendant, and in retaking him if he escape, as if the sheriff were in his own county; and every person who refuses or neglects to assist the sheriff, when so required, is punishable as if the sheriff were in his own county.

Warrant of execution. Time of

Sec. 488. When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county, a warrant, stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than thirty, nor more than sixty days from the time of the judgment.

On judgment of death

Sec. 489. The judge of the court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail, a statement of the conviction and judgment, and the testimony given at the trial.

Governor may require, what

Sec. 490. The governor may thereupon require the opinion of the judges of the supreme court upon the statement so furnished.

Judgment of death not reprieved except

Sec. 491. No judge, court or officer, other than the governor, can reprieve or suspend the execution of a judgment of death, except the sheriff in the cases provided in next eight sections.

If defendant be sane, if not

Sec. 492. If it be found by the inquisition, that the defendant is sane, the sheriff must execute the judgment; but if it be found that he is insane, the sheriff must suspend the execution of the judgment until he receive a warrant from the governor, or from a majority of the judges of the supreme court, directing the execution of the judgment.

Duty of sheriff in such case

Sec. 493. If the inquisition find that the defendant is insane, the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Female defendant pregnant, jury to inquire into, by whom ordered

Sec. 494. When there is good reason to suppose that a female, against whom judgment of death is rendered, is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians of the Territory to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of the county. The provisions of sections 493 and 494 apply to the proceedings upon the inquisition.

Proceedings upon finding

Sec. 495. If it be found by the inquisition that the female is not pregnant, the sheriff must execute the judgment. If, however, it be found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor.

Same

Sec. 496. When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

When judgment has not been executed

Sec. 497. If, for any reason, a judgment of death have not been executed, and it remain in force, the supreme court, at a general term, on the application of the district attorney of the county where the conviction was had, must order the defendant to be brought before it; or, if he be at large, a warrant for his apprehension may be issued by that court, or by a judge thereof.

Same

Sec. 498. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exist against the execution of the judgment, must make an order that the sheriff of the proper county execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Punishment of death, how inflicted

Sec. 499. The punishment of death must be inflicted by hanging the defendant by the neck until he be dead.

Execution, when to take place

Sec. 500. A judgment of death must be executed within the walls of the jail of the county in which the conviction was had, or within a yard or enclosure adjoining the jail. If there be no such jail or prison in the county in which the conviction was had, or if it become unfit or unsafe for the confinement of prisoners, or be destroyed by fire or otherwise, and the jail of another county have been legally designated for the confinement of the prisoners of the county in which the conviction was had, the judgment must be executed within the walls of the prison so designated, or within a yard or enclosure adjoining the same.

Who to be present

Sec. 501. The sheriff or under-sheriff of the county must be present at the execution, and must invite the presence (by at least three days notice) of the district attorney, together with one physician and twelve reputable citizens, to be selected by

him. He must also, at the request of the defendant, permit any minister of the gospel whom the defendant may name, and any of his relatives, to attend the execution; and also such peace officers as the sheriff or under-sheriff may deem proper. But no persons other than those mentioned in this section can be present at the execution; nor can any person under age be allowed to witness the same.

Certificate of execution

Sec. 502. The sheriff or under-sheriff must prepare and sign, with their names of office, a certificate, setting forth the time and place of the execution, and that the judgment was executed upon the defendant, according to the provisions of the last three sections, and must cause the certificate to be signed by the public officers, and by at least twelve persons, not relatives of the defendant, who witnessed the execution.

How filed

Sec. 503. The sheriff or under-sheriff must cause the certificate to be filed in the office of the clerk of the county, and a copy thereof to be published in the territorial paper, and in one newspaper, if any, printed in the county.

TITLE X.

OF APPEALS.

Chapter I. Appeals, when allowed, and how taken.
II. Dismissing an appeal for irregularity.
III. Argument of the appeal.
IV. Judgment upon appeal.

CHAPTER I.

APPEALS, WHEN ALLOWED, AND HOW TAKEN.

Section 504. Writs of error and certiorari.
505. Appeals substituted as provided in this chapter.
506. Parties, how designated on appeal.
507. In what cases appeals may be taken by defendant.
508. In what cases, by the people.
509. Appeal, a matter of right.
510. Must be taken within one year after judgment.
511, 512. Appeal, how taken.

Section 513. Appeal by the people not to stay or affect the judgment until reversed.
514. Stay of proceedings on appeal to supreme court from judgment of conviction.
515. Certificate of stay not to be granted, but on notice of district attorney.
516. Effect of the stay.
517. Transmitting papers to the supreme court.

Writs of error

Sec. 504. Writs of error in criminal actions, as they have heretofore existed, are allowed; and hereafter, an additional mode of reviewing a judgment or order in a criminal action is that prescribed by this chapter.

Appeals substituted

Sec. 505. The party aggrieved, whether the people or the defendant, may appeal from a judgment in a criminal action in the cases prescribed in this chapter.

Parties, how designated

Sec. 506. The party appealing is known as the appellant, and the adverse party as the respondent. But the title of the action is not changed in consequence of the appeal.

In what cases

Sec. 507. An appeal to the supreme court may be taken by the defendant from a judgment on a conviction, and upon the appeal any actual decision of the court in an intermediate order or proceeding forming a part of the judgment roll, as prescribed by section 482, may be reviewed.

By the people

Sec. 508. An appeal to the supreme court may be taken by the people in the following cases, and no other:

1, Upon a judgment for the defendant on a demurrer to the indictment;

2, Upon an order of the court arresting the judgment;

3, From an order granting a new trial.

Appeal a matter of right

Sec. 509. An appeal may be taken as provided in the last three sections as a matter of right.

Must be taken —when

Sec. 510. An appeal must be taken within one year after the judgment was rendered.

Appeal, how taken

Sec. 511. An appeal must be taken by the service of a notice in writing on the clerk with whom the judgment roll is filed, stating that the appellant appeals from the judgment.

Same

Sec. 512. If the appeal be taken by the defendant, a similar notice must be served on the district attorney of the county in which the original judgment was rendered.

Appeal by the people

Sec. 513. If it be taken by the people, a similar notice must be served on the defendant, if he be a resident of, or is imprisoned in, the city or county; or if not, on the counsel, if any, who appeared for him on the trial, if he resides or transacts his business in the county. If the service cannot after due dilligence be made, the appellate court, upon proof thereof, may make an order for the publication of the notice, in such newspaper and for such time as it deems proper.

Stay of proceedings

Sec. 514. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal becomes perfected.

Certificate of stay, not to be granted, except

Sec. 515. An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until the judgment is reversed.

Effect of the stay

Sec. 516. An appeal to the supreme court, from a judgment of conviction, stays the execution of the judgment, upon filing, with the notice of appeal, a supersedeas bond, approved by the clerk of court, in such sum as the court or clerk may determine, and conditioned for the appearance of the defendant in the supreme court, and that such defendant will prosecute said appeal with effect and abide the judgment of the court thereon; *Provided, however*, If the defendant is under sentence of death, no bail shall in any case be allowed.

Transmitting papers to supreme court

Sec. 517. Upon the appeal being taken, the clerk with whom the notice of appeal is filed, must, within ten days thereafter, without charge, transmit a copy of the notice of appeal and of the judgment roll to the clerk of the supreme court.

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

Section 518. For what irregularity and how dismissed.
519. Dismissal for want or return.

For what irregularity, how dismissed

Sec. 518. If the appeal be irregular in a substantial particular, but not otherwise, the court may, on any day in term, on motion of the respondent, upon two days notice, with copies of the papers on which the motion was founded, order it to be dismissed.

Dismissal for want or return

Sec. 519. The court may also upon like motion dismiss the appeal, if the return be not made as provided in section 517, unless for good cause they enlarge the time for that purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

Section 520. Appeal to supreme court, how and where brought to argument.
521. Notice of argument to counsel for defendant.
522. Papers by whom furnished, and effect of omission.
523. Judgment of affirmance may be without argument, if appellant fail to appear. Reversal, only upon argument, though respondant fail to appear.
524. Number of counsel to be heard, defendant's counsel to close the argument.
525. Defendant need not be present.

Appeal to supreme court, how and when brought

Sec. 520. An appeal to the supreme court may be brought to argument by either party on ten days notice, on any day, at a general term of the supreme court.

Notice of argument

Sec. 521. If a counsel within five days after the appeal, have given notice to the district attorney that he appears for the defendant, notice of argument must be served on him instead of the defendant; otherwise, notice must be served as the court may direct.

Papers, by whom furnished

Sec. 522. When the appeal is called for argument, the appellant must furnish the court with copies of the notice of appeal and judgment roll. If he fail to do so, the appeal must be dismissed, unless the court otherwise direct.

Judgment of affirmance —reversal

Sec. 523. Judgment of affirmance may be given, without argument, if the appellant fail to appear. But judgment of reversal can only be given upon argument, though the respondant fail to appear.

Number of counsel to be heard

Sec. 524. Upon the argument of the appeal, if the offense be punishable with death, two counsel on each side must be heard, if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side.

Sec. 525. The defendant need not personally appear, in the appellate court. Defendant need not be present

CHAPTER IV.

JUDGMENT UPON APPEAL.

Section 526. Court to give judgment, without regard to technical errors, defects or exceptions, not affecting substantial rights.
527. May reverse, affirm or modify the judgment, and order a new trial.
528. Defendant to be discharged on reversal of judgment againt him, where new trial is not ordered.
529. Judgment to be executed, on affirmance against the defendant.
530. Judgment of appellate court, how entered and remitted.
531. Papers returned not to be remitted.
532. Jurisdiction of appellate court cases, after judgment remitted.

Sec. 526. After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties. Court to give judgment without &c.

Sec. 527. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial. May reverse, affirm or modify

Sec. 528. If a judgment against the defendant be reversed, without ordering a new trial, the appellate court must direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant. On reversal, when new trial is ordered

Sec. 529. On a judgment of affirmance against the defendant, the original judgment must be carried into execution as the appellate court may direct. Judgment on affirmance

Sec. 530. When the judgment of the appellate court is given, it must be entered in the judgment book, and a certified copy of the entry forthwith remitted to the clerk with whom the original judgment roll is filed, or if a new trial be ordered Of appellate court

in another county, to the clerk of the county, unless the judgment be rendered in the absence of the adverse party, in which case the court may direct it to be retained not exceeding ten days.

Papers returned not to be remitted

Sec. 531. The papers returned to the appellate court must there remain of record, and are not to be remitted to the court below.

Jurisdiction of appellate court ceases after what

Sec. 532. After the certificate of the judgment has been remitted as provided in section 530, the appellate court has no further jurisdiction of the appeal, or of the proceedings thereon; and all orders which may be necessary to carry the judgment into effect, must be made by the court to which the certificate is remitted.

TITLE XI.

OF MISCELLANEOUS PROCEEDINGS.

Chapter I. Bail.

II. Compelling the attendance of witnesses.

III. Examination of witnesses, conditionally.

IV. Examination of witnesses, on commission.

V. Inquiry into the insanity of the defendant, before trial, or after conviction.

VI. Compromising certain public offenses, by leave of the court.

VII. Dismissal of the action, before or after the indictment, for want of prosecution, or otherwise.

VIII. Remitting the punishment in certain cases.

IX. Proceedings against corporations.

X. Entitling affidavits.

XI. Errors and mistakes in pleadings and other proceedings.

XII. Disposal of property, stolen or embezzled.

XIII. Reprieves, commutations and pardons.

CHAPTER I.

BAIL.

Article I. In what cases the defendant may be admitted to bail.
II. Bail, upon being held to answer, before indictment.
III. Bail, upon an indictment, before conviction.
IV. Bail, upon an appeal.
V. Deposit, instead of bail.
VI. Surrender of the defendant.
VII. Re-commitment of the defendant, after having given bail, or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

Section 533. Admission to bail, defined.
534. Taking bail, defined.
535. Offenses not bailable.
536. In what cases defendant may be admitted to bail, before conviction.
537. In what cases he may be admitted to bail after conviction and upon appeal.
538. Nature of bail before conviction.
539. Nature of bail after conviction, and upon appeal.

Admission on bail, defined

Sec. 533. Admission to bail is the order of a competent court or magistrate, that the defendant be discharged from actual custody, upon bail.

Taking bail, defined

Sec. 534. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

Offenses not bailable

Sec. 535. The defendant cannot be admitted to bail, where he is charged:

1, With an offense punishable with death; or

2, With the infliction of a personal injury upon another, likely to produce death, under such circumstances as that if death ensue the offense would be murder.

In what cases defendant may be admitted to bail before conviction

Sec. 536. If the charge be for any other offense he may be admitted to bail, before conviction, as follows:

1, As a matter of right in cases of misdemeanor;

2, As a matter of discretion in all other cases.

After

Sec. 537. After the conviction of an offense not punishable with death, a defendant who has appealed, and when there is a stay of proceeding, but not otherwise, may be admitted to bail;

1, As a matter of right when the appeal is from a judgment imposing a fine only;

2, As a matter of discretion in all other cases.

Nature of bail before

Sec. 538. Before conviction, a defendant may be admitted to bail;

1, For his appearance before the magistrate, on the examination of the charge, before being held to answer;

2, To appear at the court to which the magistrate is required, by section 182, to return the depositions and statement upon the defendant being held to answer, after examination;

3, After indictment, either upon the bench warrant issued for his arrest, or upon an order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

After, upon appeal

Sec. 539. After conviction and upon an appeal the defendant may be admitted to bail, as follows:

1, If the appeal be from a judgment imposing a fine only, on the undertaking of bail, that he will pay the same or such part of it as the appellate court may direct, if the judgment be affirmed or modified or upon the appeal being dismissed;

2, If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified or upon the appeal being dismissed.

ARTICLE II.

BAIL, UPON BEING HELD TO ANSWER BEFORE INDICTMENT OR INFORMATION.

Section 540, 541. By what courts or magistrates defendant may be admitted to bail.

Section 542. At what time defendant may be admitted to bail by a magistrate.
543. In cities, if offense be felony, application for admission to bail must be on notice.
544. Form of order, if made by the court.
545. Form of order, if made by a magistrate.
546. On denial of application, by a magistrate, defendant may appeal to court.
547. Manner of taking appeal.
548. Decision of court on appeal, final.
549. Bail, by whom taken.
550. How put in, and form of the undertaking.
551. Qualifications of bail.
552, 553. Bail, how to justify.
554. Bail may be examined as to sufficiency.
555. Other testimony may be received as to their sufficiency.
556. Decision as to their sufficiency, and filing affidavits of justification and undertaking.
557. On allowance of bail, and execution of undertaking, defendant to be discharged. Form of discharge.
558. If bail disallowed, defendant to be detained until other bail be put in and justify.
559. Defendant detained if bail disallowed.

By what courts

Sec. 540. When the defendant has been held to answer, as provided in section 170, the admission to bail may be by the magistrate by whom he is so held, as follows:

1, By any of the magistrates mentioned in section 112, when the offense charged is a misdemeanor or a felony, punishable with imprisonment, not exceeding five years.

2, By a judge of the supreme court, the mayor or recorder of a city, a city judge, in all cases where bail may be taken before conviction, as provided in section 537.

Same

Sec. 541. When, by reason of the degree of the offense, the committing magistrate has not authority to admit to bail, the defendant may be admitted to bail by one of the officers having authority to admit to bail in the case, as provided in second subdivision of the last section, or by the court to which the depositions and statement are returned by the committing magistrate, as provided in section 182, if the case be triable therein, or if not, by the court to which, after indictment, it may be sent or removed for trial.

At what time defendant may be admitted

Sec. 542. The defendant may be admitted to bail by a magistrate, as provided in the last two sections, upon being held to answer, or at any time before the return of the depositions and statement to the court. After that time he can be admitted to bail only by the court in which the offense is triable, if it be sitting, or if not, by one of the magistrates mentioned in the second subdivison of section 540.

If offense be felony, must be on notice

Sec. 543. In the several cities of this Territory, if the offense charged be a felony, the application for admission to bail must be upon notice of at least two days, to the district attorney of the county; and the committing magistrate upon the like notice, in writing, requiring him to do so, must transmit the depositions and statement, or a copy thereof, to the court or magistrate to whom the application for bail is to be made.

Form of order, if made by court

Sec. 544. If the application be to the court, an order must be made, granting or denying it, and if it be granted, stating the sum in which bail may be taken.

If made by magistrate

Sec. 545. If the application be to a magistrate, he must certify, in writing, his decision granting or denying the same; and if he grant the application, must state in the certificate the sum in which bail may be taken, which certificate he must cause to be forthwith filed with the clerk of the court to which the depositions and statement are required to be sent.

On denial

Sec. 546. If the application, when made to a magistrate, be denied, the defendant may appeal from his decision to the court to which the depositions and statements are or must be sent, as provided in section 189, if the case be triable therein, or if not, to the court to which, after indictment, it must be sent for trial.

Manner of taking appeal

Sec. 547. The appeal is, by a notice in writing, to the district attorney, that the defendant appeals from the decision, and that he will apply to the court to be admitted to bail, at a time to be specified, not less than two days from the service of the notice.

Decision—final

Sec. 548. The decision of the court, granting or denying bail, either upon an original application, or upon an appeal, may be reversed in the supreme court on error or appeal.

Bail by whom taken

Sec. 549. If the defendant be admitted to bail by a magistrate, the bail must be taken by the magistrate granting the order, or by any other magistrate of the same county, city, or village. If by the court, it may be taken either by the court, or any magistrate whom it may designate, in which the defendant is committed.

How put in

Sec. 550. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate,) and acknowledged before the court or magistrate, in substantially the following form:

"An order having been made on the day ——— of ———, 18—, by A. B., justice of the peace of the town of ——, (or as the case may be) that C. D., be held to answer upon a charge of (stating briefly the nature of the offense,) upon which he has been duly admitted to bail, in the sum of —— dollars;

"We, E. F., and G. H., hereby undertake, that the above named C. D. shall appear and answer the charge above mentioned, in the district court, and shall at all times render himself amenable to the order and process of the court, and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the Territory of Dakota, the sum of —— dollars," (inserting the sum in which the defendant is admitted to bail.)

Qualifications

Sec. 551. The qualifications of bail are as follows:

1, Each of them must be a resident and a householder or freeholder within the Territory;

2, They must be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of two sufficient bail.

How to justify

Sec. 552. Except as prescribed in the next section, the bail may, in the exercise of a just discretion, be taken, and may justify, without notice to the district attorney, or reasonable notice may be required by the court or magistrate to be given to the district attorney of the intention to give bail. When given, the notice shall be as prescribed in the next section.

Offense charged be a felony

Sec. 553. In the several cities of this Territory, if the offense charged be a felony, a previous notice of at least two days of the time and place of giving the bail, must be served upon the district attorney of the county, stating:

1, The names, places of residence and occupations, of the proposed bail;

2, A general description of the real or personal property of the bail, in respect to which they propose to justify as to their sufficiency, with the incumbrances thereon by mortgage, judgment or otherwise, if any.

Bail, how to justify

Sec. 554. The bail must in all cases justify by affidavit taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section 551.

May be examined as to sufficiency

Sec. 555. The district attorney, or the court or magistrate, may thereupon further examine the bail upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper. The questions put to the bail and their answers, must be reduced to writing, and must be subscribed by them.

Other testimony

Sec. 556. The court or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of providing or disproving their sufficiency.

Decision, filing affidavits

Sec. 557. When the examination is closed, the court or magistrate must make an order, either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits of justification, and the undertaking of bail, to be filed with the clerk of the court to which the depositions and statement must be sent, as prescribed in section 189.

On allowance of bail. Form of discharge

Sec. 558. Upon the allowing of the bail and the execution of the undertaking, the court or magistrate must make an order, signed by him, with his name of office, for the discharge of the defendant, to the following effect:

To the sheriff of the county of ————————,

A. B. who is detained by you on a commitment to answer a charge for the offense of, [designating it generally,] having giving sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody.

Sec. 559. If the bail be disallowed, the defendant must be detained in custody until other bail be put in and justify. If bail disallowed

ARTICLE III.

BAIL UPON AN INDICTMENT OR INFORMATION, BEFORE CONVICTION.

Section 560. In misdemeanor, officer to take defendant before a magistrate.
561. In felony, to deliver him into custody.
562. Taking bail, when offense is bailable.
563. Bail, how put in. Form of undertaking.
564. Sections 551 to 555, applicable to qualifications of bail, to putting in and justifying the bail, and to incidental proceedings.

Sec. 560. When the offense charged in the indictment or information is a misdemeanor, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is, or in which he is arrested, for the purpose of giving bail as prescribed in sections 271 and 274. In misdemeanor

Sec. 561. If the offense charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant, as prescribed in section 270. In felony

Sec. 562. When the defendant is so delivered into custody, if the felony charged be bailable, and the amount of bail has been fixed by the court as provided in section 272, bail may be taken by the court in which the indictment was found, or to which it is sent or removed, or by any magistrate in the county having authority to admit a defendant to bail, upon being held to answer before indictment, as provided in sections 540 and 541. Taking bail

Sec. 563. The bail must be put in by a written undertaking, executed by two sufficient sureties, with or without the defendant, in the discretion of the court or magistrate, acknowledged before the court or magistrate, in substantially the following form: How put in.

Form of undertaking.

An indictment or information having been found filed on the ——— day of ———, 186—, in the district court of the county of ——— charging A. B., with the crime of, [designating it generally,] and he having been duly admitted to bail in the sum of ——— dollars;

We, C. D., of [stating his place of residence and occupation,] and E. F., of [stating his place of residence and occupation,] hereby undertake that the above named A. B., shall appear and answer the indictment or information above mentioned, at the next term of the district court of ——— county, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the Territory of Dakota the sum of ——— dollars, [inserting the sum in which the defendant is admitted to bail.]

Sections applicable to qualifications

Sec. 564. The provisions contained in sections 550 to 559, both inclusive, apply to the qualifications of the bail, and to all the proceedings representing the putting in and justifying of bail, and incidental thereto.

ARTICLE IV.

BAIL UPON AN APPEAL.

Section 565. Who may admit to bail.
566. Notice of the application, when required.
567. Qualifications of bail, and how put in.

Who may admit to bail

Sec. 565. In the cases in which the defendant may be admitted to bail upon an appeal, as provided in section 547, the order admitting him to bail may be made either by the court from which the appeal is taken or the presiding judge thereof, or by the appellate court or a judge thereof.

Notice of application when required

Sec. 566. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, may require such notice of the application therefor, as he deems reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

Sec. 567. The bail must possess the qualifications, and must be put in in all respects in the manner prescribed by sections 551 to 559, both inclusive; except that the defendant will, in all respects, abide the orders and judgment of the appellate court upon the appeal. Qualifications of bail, how put in

ARTICLE V.

DEPOSIT INSTEAD OF BAIL

Section 568. Deposit when and how made.
569. May be made after bail given, and before forfeiture; and in such case bail discharged.
570. Bail may be given after deposit; and in such case money deposited to be refunded.
571. Deposit to be applied to payment of judgment of fine, and surplus to be refunded.

Sec. 568. The defendant at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the county in which he is held to answer the sum mentioned in the order; and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody. Deposit

Sec. 569. If the defendant have given bail, he may at any time before the forfeiture of their undertaking, in like manner deposit the sum mentioned in the undertaking, and upon the deposit being made, the bail is exonerated. May be made, when

Sec. 570. If money be deposited, as provided in the last section, bail may be given in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken, must thereupon direct, in the order of allowance, that the money deposited be refunded by the county clerk to the defendant, and it must be refunded accordingly. Bail may be given after

Sec. 571. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the county treasurer must, under direction of the court, apply the money in satisfaction thereof, and after satisfying the fine, must refund the surplus if any to the defendant. Deposit to be applied to what

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

Section 572. Surrender, by whom, when and how made.
573. By whom, when and where, defendant may be arrested for the purpose of a surrender.
574. On surrender before forfeiture, money deposited to be refunded. Order therefor, how obtained.

Surrender, by whom, when, how

Sec. 572. At any time before the forfeiture of the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1, A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate in writing, acknowledge the surrender;

2, Upon the undertaking and the certificate of the officer, the court in which the indictment or information, or the appeal, as the case may be, is pending, may upon a notice of two days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, they are exonerated accordingly.

By whom

Sec. 573. For the purpose of surrendering the defendant, the bail, at any time before they are finally charged, and at any place within the Territory, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

On surrender before forfeiture

Sec. 574. If money have been deposited instead of bail, and the defendant at any time before the forfeiture thereof, surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

Section 575. In what cases and how ordered.
576. When and how forfeiture may be discharged.
577. Forfeiture of bail, to be enforced by action.
578. Deposit of money when forfeited, how disposed of.
579. Remission of forfeiture.
580. Application therefor, how made and on what terms granted.

In what cases

Sec. 575. If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion where his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes; and the undertaking of his bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited.

May be discharged, when and how

Sec. 576. If at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or deposit to be discharged upon such terms as are just.

Forfeiture of bail

Sec. 577. If the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their undertaking.

Deposit of money when forfeited how disposed of

Sec. 578. If, by reason of the neglect of the defendant to appear, as provided in section 575, money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in sections 576 and 577, the county treasurer with whom it is deposited, may at any time after the final adjournment of the court, apply the money deposited to the use of the county.

Remission

Sec. 579. After the forfeiture of the undertaking or deposit, as provided in this chapter, the district court of the county may, upon good cause shown, remit the forfeiture or any part thereof, upon such terms as are just.

Application thereof, how made

Sec. 580. The application must be upon at least five days notice to the district attorney of the county, with copies of the affidavits and papers on which it is founded; and can be granted only upon payment of the costs and expenses incurred in the proceedings for the enforcement of the forfeiture.

ARTICLE VIII.

RE-COMMITMENT OF THE DEFENDANT AFTER HAVING GIVEN BAIL, OR DEPOSITED MONEY INSTEAD OF BAIL.

Section 581. In what cases.
582. Contents of the order.
583. Defendant may be arrested in the county.
584. If for failure to appear for judgment, defendant must be committed.
585. If for other cause, he may be admitted to bail.
586. Bail in such case, by whom taken.
587. Form of the undertaking:
588. Qualifications of bail, and how put in.

In what cases

Sec. 581. The court to which the committing magistrate returns the deposition and statement, or in which an indictment or information, or an appeal is pending, or to which a judgment on an appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant, and his commitment to the officer to whose custody he was committed at the time he was admitted to bail, and his detention, until legally discharged, in the following cases:

1, When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section 575;

2, When it satisfactorily appears to the court that his bondsmen, or either of them, are dead, or insufficient, or have removed from the Territory;

3, Upon an indictment being found in the cases provided in section 264,

Contents of the order

Sec. 582. The order for the re-commitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, con-

stable or marshal in this Territory, and committed to the officer to whose custody he was committed at the time he was admitted to bail, to be detained until legally discharged.

Defendant may be arrested whe

Sec. 583. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except, that when arrested in another county, the order need not be endorsed by a magistrate of that county.

If for failure to appear &c.

Sec. 584. If the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

If for other cause

Sec. 585. If the order be made for any other cause, and the offense be bailable, the court may fix the amount of bail, and may direct in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

Bail in such case, by whom taken

Sec. 586. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority, in a similar case, to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in sections 539 and 540, or by any other magistrate to be designated by the court.

Form of undertaking

Sec. 587. When bail is taken upon the re-commitment of the defendant, the undertaking of bail must be in substantially the following form:

"An order having been made on ——— day of ———, 18—, by the court of (naming the court,) that A. B., be admitted to bail in the sum of ——— dollars, in an action pending in that court against him in behalf of the people of the Territory of Dakota, upon an [information, presentment, indictment, or appeal, as the case may be,]

"We, C. D., of [stating his place of residence and occupation,] and E. F., of [stating his place of residence and occupation,] hereby undertake that the above named A. B., shall appear in the district court of ——— county, upon that [information, presentment, indictment, or appeal, as the case may be,] and shall at all times render himself amenable to its orders and process, and appear for judgment, and surrender himself

in execution thereof; or if he fail to perform either of these conditions, that we will pay to the people of the Territory of Dakota, the sum of ——— dollars," [inserting the sum in which the defendant is admitted to bail.]

Qualifications

Sec. 588. The bail must possess the qualifications, and must be put in in all respects, in the manner prescribed by sections 551 to 559, both inclusive.

CHAPTER II.

COMPELLING THE ATTENDANCE OF WITNESSES.

Section 589. Subpœna defined.
590. Magistrates may issue subpœnas on information or presentment.
591. District attorney may issue subpœnas for witnesses before grand jury.
592. He may also issue subpœnas for the people, on trial of an indictment.
593. Clerk may issue blank subpœnas for witnesses for defendant on trial.
594. Form of subpœna.
595. Requirements in subpœna to produce books, papers and documents.
596. Subpœna, by whom served.
597. How served.
598, 599. Payment of expenses of witness when he is from without the county, or is poor.
600. Witnesses residing or served with subpœna out of the county, when and how compelled to attend.
601. Disobedience to subpœna, or refusal to be sworn or to testify, how punished.
602. Witness for defendant, disobeying a subpœna, to forfeit fifty dollars.

Subpœna defined

Sec. 589. The process by which the attendance of a witness, before a court or magistrate is required, is a subpœna.

Magistrates may issue

Sec. 590. A magistrate before whom an information is laid, or to whom a presentment of a grand jury is sent, may issue subpœnas, subscribed by him, for witnesses within the Territory, either on behalf of the people or the defendant.

District attorney may issue

Sec. 591. The district attorney of the county may issue subpœnas, subscribed by him, for witnesses within the Territory, in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury upon an investigation before them.

Who may issue for people

Sec. 592. The district attorney may in like manner issue subpœnas for witnesses within the Territory, in support of an indictment, to appear before the court at which it is to be tried.

Clerk may issue blank subpœna

Sec. 593. The clerk of the court at which an indictment is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpœnas, under the seal of the court and subscribed by him as clerk, for witnesses within the Territory, as may be required by the defendant.

Form of

Sec. 594. A subpœna authorized by the last four sections must be substantially in the following form:

"In the name of the people of the Territory of Dakota:
To A. B.

"You are commanded to appear before C. D., a justice of the peace at the town of ———, [or "the grand jury of the county of ———," or "the district court ——," or as the case may be,] on [stating the day and hour,] as a witness in a criminal action prosecuted by the people of the Territory of Dakota against E. F.

Dated at the town of ———, [as the case may be,] the — — day of ———, 18—.

"G. H., justice of the peace," or "I. K., district attorney," or "By order of the court, L. M., clerk," [as the case may be.]

Requirements

Sec. 595. If books, papers or documents be required, a direction to the following effect must be contained in the subpœnas: "And you are required also to bring with you the following," [describe intelligibly the books, papers or documents required.]

By whom served

Sec. 596. A peace officer must serve in his county, city, town or village, as the case may be, any subpœna delivered to him for service, either on the part of the people or of the defendant; and must make a written return of the service, subscribed by him, stating the time and place of service without delay. A subpœna may, however, be served by any other person.

How

Sec. 597. A subpœna is served by delivering it, or by showing it, and delivering a copy thereof to the witnesses personally.

Witness expenses

Sec. 598. When a person attends before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpœna, or pursuant to an undertaking, and it appears that he has come from a place out of the county, or that he is poor, the court, if the attendance of a witness be upon a trial, by an order entered upon its minutes, or in any other case, the district judge, by a written order, may direct the county treasurer to pay the witness a reasonable sum, to be specified in the order for his expenses.

Same

Sec. 599. Upon the production of the order, or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

Witness residing out of county

Sec. 600. No person is obliged to attend as a witness, before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the judge of the court in which the offense is triable, upon an affidavit of the prosecutor or district attorney, or of the defendant or his counsel, stating that he believes that the evidence of the witness material, and his attendance at the examination or trial necessary, shall endorse on the subpœna an order for the attendance of the witness.

Disobedience to subpœna

Sec. 601. Disobedience to a subpœna, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt, in the manner provided in the code of civil procedure.

Witness for defendant disobeying &c.

Sec. 602. A witness disobeying a subpœna issued on the part of the defendant, also forfeits to the defendants the sum of fifty dollars, which may be recoved in a civil action.

CHAPTER III.

EXAMINATION OF WITNESSES CONDITIONALLY.

Section 603. Witnesses to be examined conditionally for the defendant, as provided in this chapter.
604. In what cases defendant may apply for order.

Section 605. Application, on what facts to be founded.
606. If during term, to be made to the court.
607. If not during term, to whom to be made.
608. The order, when granted and what to contain.
609. If made by the court, may direct examination before a judge or magistrate. If made by a judge, examination to be before him.
610. On proof of service, if district attorney absent, examation to proceed.
611. If facts on which order was founded, be disproved, examination not to proceed.
612. Testimony, how taken and authenticated.
613. Deposition, how, by whom, and when filed.
614. When it may be read in evidence.
615. When to be excluded.
616. On reading the deposition, on trial, what objections may be taken.
617. Attendance of witness for examination, how compelled.
618. Disobedience of witness, how punished.

Witnesses to be examined conditionally

Sec. 603. When a defendant has been held to answer a charge for a public offense, he may, either before or after indictment or information, have witnesses examined conditionally on his behalf, as prescribed in this chapter and not otherwise.

May apply for order, in what cases

Sec. 604. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Application.

Sec. 605. The application must be made upon affidavit, showing:

1, The nature of the offense charged;

2, The state of the proceedings in the action;

3, The name and residence of the witness, and that his testimony is material to the defense of the action; and

4, That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial.

If during term

Sec. 606. The application if made during the term must be made to the court.

If not during term

Sec. 607. If not made during the term, it may be made as follows:

1, When the indictment is pending in the district court.

Order, when granted

Sec. 608. If the court or officer be satisfied that the examination of the witnesses is necessary to the attainment of justice, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order, and of the affidavit on which it was granted, be served on the district attorney, within a specified time before that fixed for the examination.

If made by court may direct what

Sec. 609. If the order be made by the court, it may direct that the examination be taken before a judge thereof, or before a magistrate in the county, to be named in the order.

Proof of service

Sec. 610. On proof being furnished to the officer before whom the examination is appointed, of the service upon the district attorney of a copy of the order, and of the affidavit on which it was granted, if no counsel appear on the part of the people, the examination must proceed.

If facts on which order was founded be disapproved, examination &c.

Sec. 611. If the district attorney or other counsel appear on the part of the people, and it be shown to the satisfaction of the court or officer, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Territory, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

Testimony, how taken

Sec. 612. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information, as prescribed in section 165.

Deposition, how, by whom, when filed

Sec. 613. The deposition must be retained by the officer taking it, and filed by him in the office of the clerk of the court without unnecessary delay.

May be read in evidence, when

Sec. 614. The deposition or certified copy thereof may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Territory.

When to be excluded

Sec. 615. The deposition cannot, however, be read, if it appear that the copy of the order and of the affidavit on which it was founded, was not served on the district attorney as directed, or that the examination was in any respect unfair or not conducted as prescribed in this chapter.

Reading deposition, on trial, objections

Sec. 616. Upon the reading of the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

Attendance of witnesses, how compelled

Sec. 617. The attendance of the witness may be enforced by a subpœna subscribed by the officer, or issued under the seal of the court.

Disobedience of witness, how punished

Sec 618. Disobedience to the subpœna, or refusal to be sworn or to testify, may be punished by the court or officer as for a criminal contempt in the manner provided in the code of civil procedure; and the witness also forfeits to the defendant the sum of fifty dollars, which may be recovered in a civil action.

CHAPTER IV.

EXAMINATION OF WITNESSES ON COMMISSION.

Section 619. Witness residing out of the territory, to be examined for defendant, as provided in this chapter.
620. In what case defendant may apply for order to examine witnesses on commission.
621. Commission defined.
622. Application for commission, on what facts to be founded.
623. If during term, to be made to the court.
624. If not during term, to whom to be made.
625. Notice of application, when required and how given.
626. Order for commission, when granted.
627. Trial to be stayed until execution and return of commission.
628. Interrogatories and notice of settlement.
629. Cross interrogatories, and notice of settlement.
630, 631. What may be inserted in interrogatories.
632. Directions as to return of commission.

Section 633. Commission, how executed.
634. Copy of last section to be annexed to commission.
635, 636. Commission, how returned, when delivered to agent for that purpose.
637. When and how filed.
638. Commission returned by mail, how disposed of.
639. Commission and return to be open for inspection, and copies to be furnished.
640. Deposition to be read in evidence. What objection may be taken thereto.

Witnesses residing out of territory

Sec. 619. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness residing out of the Territory, examined in his behalf, as prescribed in this chapter, and not otherwise.

In what cases defendant may apply for orders

Sec. 620. When a material witness for the defendant resides out of the Territory, the defendant may apply for an order that the witness be examined on a commission.

Commission defined

Sec. 621. A commission is a process issued under the seal of the court, and the signature of the clerk, directed to one or more persons, designated as commissioners, authorizing them to examine the witness upon oath, on interrogatories annexed thereto, and to take and return the depositions of the witness, according to the directions given, with the commission.

Application for

Sec. 622. The application must be made upon affidavit, showing:

1, The nature of the offense charged;

2, The state of proceedings in the action, and that issue of fact has been joined therein;

3, The name of the witness, and what the party expects to prove by him, which must be material to the defence of the action;

4, That the witness resides out of the Territory;

5, That the application is made in good faith and for the furtherance of justice.

If during term

Sec. 623. The application, if made during the term, must be made to the court.

If not during term

Sec. 624. If not made during the term, the application may be made to the judge of the district court of the proper district.

Notice of application, how given

Sec. 625. If the application be made to the court, it may be without notice to the district attorney, unless the court direct notice to be given, in which case it must prescribe the manner of giving the same.

Order for commission

Sec. 626. If the court or officer to whom the application be made, be satisfied that the witness resides out of the Territory, and that his examination is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and that the people be permitted to join in the commission and examine witnesses in support of the indictment.

Trial to be stayed

Sec. 627. If the application for a commission be granted, the court or judge must insert in the order therefor a direction that the trial of the cause be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Interrogatories

Sec. 628. When the commission is ordered, the defendant must serve upon the district attorney, and the district attorney, if he intend to join in the commission and examine witnesses in support of the indictment, must serve upon the defendant or his counsel a copy of the interrogatories to be annexed thereto, with a notice of two days of their settlement, before an officer who might have granted the order out of term, as provided in section 624.

Cross interrogatories

Sec. 629. The district attorney, and the defendant, may, in the same manner serve cross-interrogatories, to be annexed to the commission with the like notice of the settlement thereof.

What may be inserted therein

Sec. 630. In the interrogatories, either party may insert any question pertinent to the issue.

Same

Sec. 631. Upon the settlement of the interrogatories the judge must expunge every question not pertinent to the issue, and modify the questions so as to conform them to rules of evidence, and when settled, must endorse upon them his allowance and annex them to the commission.

Directions to &c.

Sec. 632. Unless the parties otherwise consent, by an endorsement upon the commission, the officer must endorse thereon a direction, as to the manner in which it must be returned, and may in his discretion, direct that it be returned by mail or

otherwise, addressed to the clerk of the court in which the indictment is pending, designating his name and the place where his office is kept.

Commissions, how executed

Sec. 633. The commissioners or any one of them, unless otherwise specially directed, may execute the commission as follows:

1, They must publicly administer an oath to the witness, that his answers given to the interrogatories, shall be the truth, the whole truth, and nothing but the truth;

2, They must cause the examination of the witness to be reduced to writing;

3, They must write the answers of the witness as nearly as possible in the language in which he gives them and read to him each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth;

4, If the witness declines answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated;

5, If papers or documents are produced before them, and proved by the witness, they must be annexed to his deposition, and be subscribed by the witness, and certified by the commissioners;

6, The commissioners must subscribe their names to each sheet of the deposition, and annex the deposition, with the papers or documents provided by the witness, to the commission, and must close it up under seal, and address it as directed thereon;

7, If there be a direction on the commission, to return it by mail, the commissioners must immediately deposit it in the nearest post office. If any other direction be made, by the written consent of the parties, or by the officer on the commission, as to its return, they must comply with the direction.

Copy to be annexed

Sec. 634. A copy of the last section must be annexed to the commission.

Commission, how returned

Sec. 635. If the commission and return be delivered by the commissioners to an agent, he must deliver it to the clerk to whom it is directed, or to a judge of the court in which the indictment is pending, by whom it may be received and opened, upon the affidavit of the agent that he received it from the

hands of one of the commissioners and that it has not been opened or altered since he received it.

Same

Sec. 636. If the agent be dead, or from sickness or other casualty, unable to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty, unable to deliver it, that it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioners.

When filed, how

Sec. 637. The clerk or judge receiving and opening the commission and return, must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

Commission returned by mail

Sec. 638. If the commission and return be transmitted by mail, the clerk to whom it is addressed, must receive it from the post office, and open and file it in his office, where it must remain, unless the court otherwise direct.

To be open for inspection, copies to be furnished

Sec. 639. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same, or of any part thereof, on payment of his fees at the rate of ten cents for every hundred words.

Deposition to be read in evidence. What objection may be made thereto

Sec. 640. The deposition, taken under the commission, may be read in evidence by either party on the trial, and the same objections may be taken to a question in the interrogatories, or to an answer in the depositions, as if the witness had been examined orally in court.

CHAPTER V.

INQUIRY INTO THE INSANITY OF THE DEFENDANT, BEFORE TRIAL, OR AFTER CONVICTION.

Section 641. An insane person cannot be tried, sentenced or punished, for public offense.

642. When doubt arises as to sanity of defendant, on calling indictment for trial, or defendant for judgment, jury to be ordered and impanneled, to try the question.

Section 643. Trial or judgment to be suspended until question of insanity determined.

644. Order of the trial of the question of insanity.

645. Charge of the court.

646. If defendant found sane, trial to proceed, or judgment to be pronounced.

647. If found insane, trial or judgment suspended, and defendant to be committed to territorial lunatic asylum if his discharge be dangerous to the public peace or safety.

648. If defendant committed, bail exonerated or deposit of money refunded.

649. Detention of defendant in asylum, and proceedings on his becoming sane.

650. Expenses incident to sending defendant to asylum, how paid.

An insane person cannot be tried &c.

Sec. 641. An act done by a person in a state of insanity cannot be punished as a public offense; nor can a person be tried, adjudged to punishment, or punished for a public offense, while he is insane.

When doubt arises

Sec. 642. When an indictment or information is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the court must order a jury to be impanneled, from the jurors summoned and returned for the term, or who may be summoned by direction of the court as provided in sections 340 to 345, both inclusive, to inquire into the fact.

Trial of judgment to be suspended

Sec. 643. The trial of the indictment or information or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

Order of the trial of the question

Sec. 644. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;

2. The counsel for the people may then open their case and offer evidence in support thereof;

3, The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

4, When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides, without argument, the counsel for the people must commence, and the defendant or his counsel may conclude, the argument to the jury;

5, If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury; in which case they must do so alternately. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side;

6, The court must then charge the jury.

Charge of court

Sec. 645. The provisions of sections 406 and 408, in respect to the duty of the court upon questions of law, and of the jury upon questions of fact, and the provisions of section 409, in respect to the charge of the court to the jury, upon the trial of an indictment or information, apply to the question of insanity.

If found sane, trial to proceed

Sec. 646. If the jury find the defendant sane, the trial of the indictment or information must proceed, or judgment may be pronounced, as the case may be.

If found insane

Sec. 647. If the jury find the defendant is insane, the trial or judgment must be suspended until he become sane; and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be, in the mean time, committed to the care of the sheriff until he becomes sane.

If committed, bail

Sec. 648. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorised to receive the property of the defendant, to a return of money he may have deposited instead of bail.

Detention in asylum

Sec. 649. When he becomes sane, the sheriff must thereupon without delay, place him in the proper custody until he be brought to trial or judgment, as the case may be, or be legally discharged.

Expenses

Sec. 650. The expenses of keeping the defendant are in the first instance chargeable to the county; but the county may recover them from the estate of the defendant, if he have any, or from a relative.

CHAPTER VI.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

Section 651. Certain offenses, for which the party injured has a civil action, may be compromised.
652. Compromise to be by the permission of the court. Order thereon.
653. Order a bar to another prosecution.
654. No public offense to be compromised except as provided in this chapter.

Certain offenses

Sec. 651. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense, has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed :

1, By or upon an officer of justice while in the execution of the duties of his office ;

2, Riotously ; or

3, With an intent to commit a felony.

Compromise to be by permission

Sec. 652. If the party injured appear before the court to which the depositions and statement are required by section 180 to be returned, at any time before trial on an indictment for the offense, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case the reasons for the order must be set forth therein and entered upon the minutes.

Order to bar

Sec. 653. The order authorized by the last section is a bar to another prosecution for same offense.

No public offense to be compromised except

Sec. 654. No public offense can be compromised, nor can any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in sections 651 and 652.

CHAPTER VII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT OR INFORMATION FOR WANT OF A PROSECUTION OR OTHERWISE.

Section 655. Dismissal when a person held to answer is not indicted at the next term thereafter.
656. When a person indicted is not brought to trial at the next term thereafter.
657. Court may order action to be continued, and in the meantime discharge the defendant from custody, on his own undertaking or on bail.
658. If action dismissed, defendant to be discharged from custody, or his bail exonerated, or deposit of money refunded.
659. Court may, of its own motion, or on application of district attorney, order indictment to be dismissed. Order to state reasons.
660. *Nolle prosequi* abolished. No indictment to be dismissed or abandoned, except according to this chapter.
661. Dismissal a bar in misdemeanor; but not in felony.

Dismissal

Sec. 655. When a person has been held to answer for a public offense, if an indictment or information be not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

When court must order prosecution to be dismissed

Sec. 656. If a defendant, prosecuted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment or information is triable after it is found, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Court may order action to be continued in the meantime

Sec. 657. If the defendant be not prosecuted or tried, as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is contained.

If action dismissed, bail exonerated money refunded

Sec. 658. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

Court may on its own motion, order Nolle prosequi abolished

Sec. 659. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action after indictment or information to be dismissed; but in that case the reasons of the dismissal must be set forth in the order which must be entered upon the minutes.

Dismissal a bar, in what case

Sec. 660. The entry of a *nolle prosequi* is abolished, and the district attorney can not discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Against a corporation

Sec. 661. An order for the dismissal of the action as provided in this chapter, is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar if the offense charged be a felony.

CHAPTER VIII.

PROCEEDINGS AGAINST CORPORATIONS.

Section 662. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
663. Form of the summons.
664. When and how served.
665. Examination of the charge.
666. Certificate of the magistrate and return thereof with the depositions.
667. If the magistrate certify that there is sufficient cause to believe the corporation guilty, grand jury may proceed as in the case of a natural person.
668. Appearance and plea to indictment, and proceedings thereon.
669. Fine on conviction, how collected.

Sec. 662. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him at a specified time and place, to answer the

charge. The time to be not less than ten days after the issuing of the summons.

Sec. 663. The summons must be in substantially the following form: Form of summons

County of ———

In the name of the people of the Territory of Dakota:
To the [naming the corporation]:

You are hereby summoned to appear before me, at [naming the place,] on [specifying the day and hour,] to answer to the charge made against you, upon the information of A. B., [or, the presentment of the grand jury of the county of Yankton,] [or as the case may be,] for [designating the offense generally.]

Dated at the city, [or town,] of ————, the ———— day of ————, 18—.

G. H.,
Justice of the Peace,
[or as the case may be.]

Sec. 664. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof. When and how served

Sec. 665. At the time appointed in the summons the magistrate must investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable. Examination of charge

Sec. 666. After hearing the proofs the magistrate must certify upon the depositions, either that there is, or is not, sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate in the same manner prescribed in section 181. Certificate of magistrate

Sec. 667. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer. If magistrate certify grand jury may proceed

Sec. 668. If an indictment be found, the corporation may appear by counsel to answer the same. If they do not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. Appearance and plea

Time on conviction, how collected

Sec. 669. When a fine is imposed upon a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution.

CHAPTER IX.

ENTITLING AFFIDAVITS.

Section 670. Affidavits defectively entitled, valid.

Affidavits, defectively entitled valid

Sec. 670. It is not necessary to entitle an affidavit or deposition, in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceedings, indictment or appeal in which it is made.

CHAPTER X.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

Section 671. No departure from the forms prescribed by this code, or error or mistake in a pleading or proceedings, material, unless it prejudice or tend to prejudice a substantial right.

Neither departure from form prescribed nor error renders it invalid

Sec. 671. Neither a departure from the form or mode prescribed by this code in respect to any pleadings or proceedings, nor an error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice, in respect to a substantial right.

CHAPTER XI.

DISPOSALS OF PROPERTY STOLEN OR EMBEZZLED.

Section 672. When property alleged to be stolen or embezzled comes into custody of peace officer, he must hold it subject to order of magistrate.

673. Order for its delivery to owner.

Section 674. When it comes into custody of magistrate he must deliver it to its owner on proof of title and payment of expenses.

675. Court in which trial is had for stealing or embezzling it, may order it to be delivered to owner.

676. If not claimed in six months, to be delivered to county superintendent of the poor.

677. Receipt for money or property taken from a person arrested for public offense.

Property alledged to be stolen, in custody

Sec. 672. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Order for its delivery

Sec. 673. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

When in custody of magistrate, he must deliver, proof

Sec. 674. If property stolen or embezzled came into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Court may deliver, by order

Sec. 675. If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

If not claimed in six months

Sec. 676. If property stolen or embezzled, be not claimed by the owner before the expiration of six months from the conviction of a person of stealing or embezzling it, the magistrate or other officer having it in his custody, must, on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioners to be paid into the county treasury.

Receipt for property taken from person arrested

Sec. 677. When money or other property is taken from a defendant, arrested upon a charge of public offense, the officer taking it, must at the time, give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken. One of which receipts he must deliver to the defendant, and the other of which he must file with the clerk of the court to which the depositions and statement must be sent, as provided in section 181.

CHAPTER XII.

REPRIEVES, COMMUTATIONS AND PARDONS.

Section 678. Power of governor to grant reprieves, commutations and pardons.
679. His power in respect to conviction for treason. Duty of the legislature in such cases.
680. Governor to communicate annually to legislature, reprieves, commutations and pardons.
681. Report of case, how, and from whom required.
682. Notice to district attorney of application for pardon.
683. Publication of notice.
684. Papers relating to application to be filed with secretary of territory.

Power of Governor to grant reprieves &c.

Sec. 678. The governor has power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to the regulations provided in this chapter.

In respect to conviction for treason, duty of legislature

Sec 679. He may also suspend the execution of the sentence upon a conviction for treason, until the case can be reported to the legislature, at the next meeting, when the legislature must either pardon or commute the sentence, direct the execution thereof, or grant a further reprieve.

Same

Sec. 680. He must annually communicate to the legislature, each case of reprieve, commutation or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Report of cases how and from whom required

Sec. 681. When an application is made to the governor for a pardon, he may require the presiding judge of the court before which the conviction was had, or the district attorney by whom the action was prosecuted, to furnish him, without delay, with the statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting the pardon.

Notice to district attorney of application for pardon

Sec. 682. At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof by affidavit of the service, must be presented by the governor; *Provided*, Such application is not signed by such district attorney.

Publication of notice

Sec. 683. Unless dispensed with by the governor, a copy of the notice must also be published for thirty days from the first publication, in the territorial paper, and a paper in the county in which the conviction was had, nearest the place of conviction.

Papers relating to.

Sec. 684. When the governor grants a reprieve, commutation or pardon, he must within ten days thereafter, file all the papers presented to him in relation thereto, in the office of the secretary of the Territory, by whom they must be kept as records, open to public inspection.

PART V.

OF PROCEEDINGS IN THE POLICE COURTS.

Title I. Of the proceedings in justices courts.
II. Of appeals from the justices courts.

TITLE I.

OF THE PROCEEDINGS IN JUSTICES COURTS.

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720. During time allowed for bail, and until judgment, defendant to be continued in custody of officer, or committed to jail.
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722. By whom executed.
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726. Undertaking, when forfeited, and action thereon.
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Charge to be read

Sec. 685. In the cases in which the justice courts have jurisdiction, as provided in section 31, when the defendant is brought before the magistrate, the charge against him must be distinctly read to him, and he must be required to plead thereto.

Plea, how put in

Sec. 686. The defendant may plead the same pleas as upon an indictment, as provided in section 305. His plea must be oral, and entered upon the minutes of the magistrate.

Issue, how tried

Sec. 687. Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the magistrate must proceed to try the issue.

May demand trial by jury

Sec. 688. Before the magistrate hears any testimony upon the trial the defendant may demand a trial by jury.

Jury, how drawn

Sec. 689. If a trial by jury be demanded, the magistrate must, in the presence of the defendant, draw from the justice's jury box twelve ballots containing the names of persons to form the jury.

Magistrate to deliver list, with direction to summons

Sec. 690. The magistrate must thereupon deliver a list of the jurors drawn, to a peace officer of the town or city, with an endorsement thereon signed by him, with his name of office, to the following effect:

"The peace officer of the town [or "city"] of ————, to whom this is delivered, is required to summon the persons named in the within list to appear before me, at [naming the place,] on [naming the day and hour,] to serve as jurors at a a justice court for the trial of a criminal charge against A. B.

"Dated at the town [or "city"] of ————, on the ———— day of ————, 18—.

C. D.,
Justice of the Peace,
Of the town [or "city"] of ————, [as the case may be."]

Summoning jury.

Sec. 691. The officer to whom the list is delivered must forthwith summon each of the jurors named therein, personally, or by leaving a written notice at his place of residence, with some person of suitable age and discretion. He must also, at or before the time named therein, return the list to the magistrate, specifying the persons summoned, and the manner of service in respect to each of them.

Depositing ballots

Sec. 692. The names of the persons returned as jurors must be written on separate ballots folded as nearly alike as possible, and so that the name can not be seen, and must, under the direction of the magistrate, be deposited in a box or other convenient thing.

Drawing jury.

Sec. 693. The magistrate must then draw out six of the ballots successively, and if any of the persons whose names are drawn do not appear, or are challenged and set aside, such further number must be drawn as will make a jury of six after all legal challenges have been allowed.

Challenges.

Sec. 694. The same challenges may be taken by either party to the panel of jurors, or to an individual juror, as on the trial of an indictment for a misdemeanor, so far as applicable, except that the challenge must, in all cases, be tried by the magistrate.

Talesman, when and how ordered and summoned

Sec. 695. If six of the jurors summoned do not attend, or be not obtained, the magistrate may direct the officer to summon any of the bystanders, or others who may be competent, and against whom there is no sufficient cause of challenge to act as jurors.

Punishing officer for not returning his.

Sec. 696. If the officer to whom the order is delivered do not return it, as required by section 691, he may be punished by the magistrate as for a contempt, and the magistrate must issue a new order for the summoning of the same jurors in substantially the same form, upon which the same proceedings must be had, as upon the one first issued.

Jury, how constituted

Sec. 697. When six jurors appear and are accepted, they constitute the jury.

Oath

Sec. 698. The magistrate must thereupon administer to the jury the following oath or affirmation: "You do swear," [or "you do solemnly affirm," as the case may be,] that you will well and truly try this issue between people of the Territory of Dakota, and A. B., the defendant, and a true verdict give according to the evidence."

Trial, how conducted

Sec. 699. After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

Jury may decide —when

Sec. 700. After hearing the proofs and allegations, the jury may either decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some private and convenient place, without food or drink, except bread and water, unless otherwise ordered by the court; that you will not permit any person to speak to or communicate with them, nor do so yourself unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed, or when ordered by the court.

Delivering verdict

Sec. 701. When the jury have agreed on their verdict they must deliver it publicly to the magistrate, who must enter it in his minutes.

Discharge without verdict

Sec. 702. The jury can not be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict, unless for good cause the magistrate sooner discharge them.

In such case

Sec. 703. If the jury be discharged, as provided in the last section, the magistrate may proceed again to the trial in the same manner as upon the first trial, and so on, until a verdict is rendered.

Judgment on conviction

Sec. 704. When the defendant pleads guilty, or is convicted either by the magistrate or by a jury, the magistrate must render judgment thereon of fine or imprisonment, or both, as the case may require; but the fine cannot exceed fifty dollars, nor the imprisonment six months.

Imprisonment until fine paid

Sec. 705. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which can not exceed one day for every two dollars of the fine.

On acquittal, costs

Sec. 706. When the defendant is acquitted, either by the magistrate or by a jury, he must be immediately discharged; and if the magistrate certify upon his minutes, or the jury find that the prosecution was malicious or without probable cause, the magistrate must order the prosecutor to pay the costs of the proceedings, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

Against prosecutor for costs

Sec. 707. If the prosecutor do not pay the costs or give security therefor, the magistrate may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered by a justice's court, held by a justice of the peace.

Certificate of conviction, form

Sec. 708. When a conviction is had upon a plea of guilty or upon a trial, the magistrate must make and sign, with his name of office, a certificate in substantially the following form:

"Justice's court,
"County of Union, Town of Big Sioux,
[or as the case may be.]

"The people of the Territory of Dakota,
against
A. B.

January 1, 18—.

"The above named A. B., having been brought before me, C. D., a justice of the peace of the town [or city,] of [as the case may be,] charged with [briefly designating the offense,] and having requested to be tried by a justice court, [or "having been required by me to give bail for his appearance at the next district court of this county, and having omitted to do so for twenty-four hours after being so required," as the case may be.]

"And the above named A. B., having thereupon pleaded not guilty, [or as the case may be,] and demanded [or "failed to demand," as the case may be,] a jury, and having been thereupon duly tried, and upon such trial duly convicted,

"I have adjudged—That he be imprisoned in the jail of this county, ——— days, [or "pay a fine of ——— dollars, and be imprisoned until it be paid not exceeding ——— days," or both, as the case may be.]

"Dated at the town [or "city"] of ———, ——— day of ———, 18—.

"C. D.,
Justice of the Peace of the town [or "city,]
of ———" [as the case may be.]

Same

Sec. 709. If the defendant have pleaded guilty, instead of the second paragraph, the certificate must state substantially as follows: "And the above named A. B., having been thereupon duly convicted upon a plea of guilty."

Certificate, when filed

Sec. 710. Within twenty days after the conviction, the magistrate must cause the certificate to be filed in the office of the clerk of the district court of the county.

Certificate, conclusive evidence

Sec. 711. The certificate, made and filed as prescribed in the last two sections, or a certified copy thereof, is conclusive evidence of the facts therein.

Judgment, by whom executed

Sec. 712. The judgment must be executed by the sheriff of the county, or by a constable, marshal or policeman of the city, village or town in which the conviction is had, upon receiving a copy of the certificate prescribed in section 708, certified by the magistrate or the county clerk.

Fine, by whom received, how applied

Sec. 713. If a fine imposed be paid before commitment, it must be received by the magistrate, and be applied to the payment of the expenses of the prosecution. The residue, if any, must be paid by the magistrate within thirty days after its receipt into the county treasury.

After commitment

Sec. 714. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must, in like manner, within thirty days after the receipt thereof, pay it into the county treasury, as provided in the last section.

Proceedings against officer on neglect to pay fines into treasury

Sec. 715. If the magistrate or sheriff receiving the fine, fail to pay it, or such part of it as is so payable, into the county treasury, the county treasurer must immediately commence an action against him therefor, in the name of the county.

Subpœna for witnesses, disobedience

Sec. 716. The magistrate may issue subpœnas for witnesses, as provided in section 590, and punish disobedience thereof, as provided in section 601.

Punishing jurors for non attendance

Sec. 717. If a person summoned as a juror fail to appear, he may be punished by a fine not exceeding five dollars imposed by the magistrate, by an order entered in his minutes, but such fine shall not be imposed until the defaulting juror shall have had an opportunity of showing cause why the same should not be imposed. The order is deemed a judgment in his minutes. The order is deemed a judgment, in all respects, in favor of the county, to be paid into the treasury.

No fees to jurors

Sec. 718. Fees of witnesses and jurors shall be recovered in all cases of conviction as in civil cases.

Trial by a justice court

Sec. 719. When the defendant, upon being brought before the magistrate, requests a trial by a justice's court, the preliminary examination of the case is dispensed with; *Provided*, The charge against him is within the jurisdiction of the justice.

During time allowed for bail, what

Sec. 720. During the twenty-four hours allowed to the defendant to give bail, as provided in the second subdivision of section 31, and until judgment is given, he may be continued in the custody of the officer, or committed to the jail of the county to answer the charge, as the magistrate may direct.

Form of commitment

Sec. 721. The commitment must be signed by the magistrate, by his name of office, and must be in substantially the following form;

"The sheriff of the county of ———, is required to receive and detain A. B., who stands charged before me for [designating the offense generally,] to answer the charge before a police court in the town [or city] of ———, [as the case may be,]

"Dated at the town [or city] of ———,
the ——— day of ———, 18—.

"C. D.,
Justice of the peace of the town [or city] of——,"
[as the case may be,]

By whom executed

Sec. 722. When committed, the defendant must be delivered to the custody of the proper officer, by any peace officer in the county to whom the magistrate may deliver the commitment.

Sec. 723. Either before or after his committal, or upon being committed, the defendant must, if he require it, be admitted to bail. May be admitted to bail

Sec. 724. The bail must be taken by a magistrate, by a written undertaking, executed by the defendant, with one or more sufficient sureties approved by the magistrate, in a sum not exceeding two hundred dollars. Bail, how taken, by whom

Sec. 725. The undertaking must be in substantially the following form: Form of undertaking

"A. B., having been duly charged before C. D., a justice of the peace in the town [or city] of ———, [as the case may be,] with the offense of [designating the offense generally,]

"We undertake that he shall appear thereon, from time to time, until judgment, at a police court in the town [or city] of ———, [as the case may be,] held by the justice above named, or that he will pay to the county of ———, [naming the county in which the court is held,] the sum of ——— dollars, [inserting the sum fixed by the magistrate,]

"Dated at the town [or city] of———,"

[as the case may be.]

Sec. 726. If the defendant fail to appear according to the undertaking, the magistrate, unless a sufficient excuse be shown, must declare the undertaking of bail forfeited, and the county treasurer must immediately commence an action for the recovery of the sum mentioned therein, in the name of the county. When forfeited, action thereon

Sec. 727. The district court of the county may remit the forfeiture or any part thereof, in the cases and in the manner provided in the code of civil procedure. How and by whom remitted

TITLE III.

OF APPEALS FROM THE JUSTICES COURTS.

Section 728. Judgment of justice court reviewable only upon appeal to the district court.
729. Appeal, for what causes allowed.
730. Appeal, how taken.
731. Return, when and how made.
732. Compelling return.

Section 733. Ordering and compelling further or amended return.
734. Appeal, by whom and how brought to argument.
735. Service of return on district attorney, and consequence of failure.
736. Proceedings to carry judgment upon appeal into effect, to be had in district court.
737. On judgment of district court, defendant may appeal to supreme court. His admission to bail.
738. Judgment of supreme court upon appeal, final.
739. Proceedings to carry into effect judgment of the supreme court.

Judgment of justice court reviewable, only

Sec. 728. A judgment upon conviction, rendered by a justice court, may be reviewed by the district court of the county, upon an appeal, as prescribed by this title, and not otherwise.

Appeal, for what causes allowed

Sec. 729. An appeal cannot be allowed for any other cause than the erroneous decision of the court in the course of the proceedings before it, or in the determination of the cause; and in no case be allowed upon the ground that the verdict was against evidence, when the action was tried by a jury.

Appeal, how taken

Sec. 730. For the purpose of appealing, the defendant or some one on his behalf, must within ten days after the judgment, make an affidavit, stating generally that the judgment against him is erroneous, and that he is aggrieved thereby. And shall file an undertaking in such sum as the magistrate shall direct, with sureties to be approved by such magistrate, conditioned that he will prosecute his said appeal to final judgment, and that he will personally appear at the next term of the district court of the proper county, and not depart thence without leave, and in all respects abide the judgment thereof.

Return, how made, when

Sec. 731. The magistrate or court rendering the judgment, must make a return of all the original papers in the cause, and cause the same to be filed in the office of the clerk of the district court ten days before the next term thereof.

Compelling return

Sec. 732. If the return be not made within the time prescribed in the last section, the district court or the presiding judge thereof, may order that a return be made within a specified time which may be deemed reasonable, and the court may, by attachment, compel a compliance with the order.

Sec. 733. If the return be defective, a further or amended return may be ordered, and the order may be enforced in the manner provided in the last section. If return be defective

Sec. 734. Appeals shall be docketed and tried in the district court in the same manner as other criminal cases. Shall be docketed

Sec. 735. The defendant must serve upon the district attorney a notice of such appeal at least five days before the first day of the term at which the same stands for trial. Must serve notice, on whom

Sec. 736. If any proceedings be necessary to carry the judgment upon the appeal into effect, they must be had in the district court. Proceedings to carry judgment

Sec. 737. If the judgment upon the appeal be against the defendant, he may appeal therefrom to the supreme court in the same manner as from a judgment in action prosecuted by indictment, and may be admitted to bail upon the appeal, in like manner. On judgment of district court

Sec. 738. The judgment of the supreme court upon the appeal is final. Judgment final

Sec. 739. The same proceedings must be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken upon a judgment in an action prosecuted by indictment. Same proceedings

PART VI.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

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II. Of search warrants.
III. Of the outlawry of persons convicted of treason.
IV. Of proceedings against fugitives from justice.
V. Of proceedings respecting persons held to labor or service in a State or Territory of the United States, and escaping into this Territory.
VI. Of proceedings respecting bastards.
VII. Of proceedings respecting vagrants.
VIII. Of proceedings respecting disorderly persons.
IX. Of proceedings respecting the support of poor persons.

Title X. Of proceedings respecting masters, apprentices and servants.
XI. Of criminal statistics.
XII. Miscellaneous provisions.

TITLE I.

OF CORONERS' INQUESTS, AND THE DUTIES OF CORONERS.

Section 740. In what cases coroner to summon a jury. Number of jurors to be summoned.
741. Jury to be sworn.
742. Witnesses to be subpœnaed.
743. Compelling attendance of witnesses, and punishing their disobedience.
744. Verdict of the jury.
745. Testimony, how taken and filed.
746. If defendant arrested before inquisition filed, depositions to be delivered to magistrate, and by him returned.
747. Warrant for arrest of party charged by verdict.
748. Form of warrant.
749. Warrant, how executed.
750. Proceedings of magistrate on defendant being brought before him.
751. Clerk with whom inquisition is filed, to furnish magistrate with copy of the same and of testimony returned therewith.
752. Coroner to deliver money or property found on deceased, to county treasurer.
753. County treasurer to place money to credit of county, and to sell other property and place proceeds to credit of county.
754. Money, when and how paid to representatives of deceased.
755. Supervisor to require statement under oath from coroner before auditing his accounts.
756. Compensation of coroners.

In what cases coroner to summon jury, number of

Sec. 740. When a coroner is informed that a person has been killed, or has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, or has committed suicide, he must go to the place where the person is, and forthwith summon six persons qualified by law to serve as jurors, to appear before him forthwith, at a specified place, to inquire into the cause of the death or wound.

To be sworn

Sec. 741. When six or more of the jurors appear, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon according to the evidence offered to them, or arising from the inspection of the body.

Witnesses

Sec. 742. The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint. He must summon and examine as witnesses every person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he must summon as a witness a surgeon or physician, who must, in the presence of the jury inspect the body, and give a professional opinion as to the cause of the death or wounding.

Compelling attendance

Sec. 743. A witness served with a subpœna may be compelled to attend and testify, or punished by the coroner for disobedience, as upon a subpœna issued by a magistrate, as provided in sections 590 and 591.

Verdict

Sec. 744. And after inspecting the body and hearing the testimony, the jury must render their verdict and certify it by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means, he came to his death, and if he were killed, or if his death were occasioned by the act of another, by criminal means, who is guilty thereof.

Testimony, how taken

Sec. 745. The testimony of the witnesses examined before the coroner's jury, must be reduced to writing by the coroner, or under his direction, and must be forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county, or of a city court having power to inquire into the offense by the intervention of a grand jury.

Statement taken

Sec. 746. If, however, the defendant be arrested before the inquisition can be filed, the coroner must deliver it with the testimony to the magistrate before whom the defendant is brought, as provided in section 748, who must return it with the depositions and statement taken before him, in the manner prescribed in section 181.

Warrant for arrest

Sec. 747. If the jury find that the person was killed or wounded by another, under circumstances not excusable or justifiable in law, or that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner must issue a warrant signed by him, with his name of office, into one or more counties as may be necessary for the arrest of the person charged.

Form of warrant

Sec. 748. The coroner's warrant must be in substantially the following form:

"County of Yankton, [or as the case may be.]

"In the name of the people of the Territory of Dakota: To any sheriff, constable, marshal, or policeman in this Territory:

"An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the unlawful act of C. D., [or as the case may be, as found by the inquisition:]

"You are therefore commanded forthwith to arrest the above named C. D., and take him before the nearest and most accessible magistrate in this county, to be dealt with according to law."

"Dated at the city of Yankton, [or as the case may be,] the ———— day of ————, 18—.

E. F.,
Coroner of the county of Yankton,"
[or as the case may be.]

How executed

Sec. 749. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon in all respects, as upon a warrant of arrest on an information, except that when served in another county it need not be endorsed by a magistrate of that county.

Proceedings of magistrate

Sec. 750. The magistrate, when the defendant is brought before him, must proceed to examine the charge contained in the inquisition, and hold the defendant to answer, or discharge him therefrom, in the same manner in all respects as upon a preliminary examination.

Clerk to furnish magistrate with copy

Sec. 751. Upon the arrest of the defendant, the clerk with whom the inquisition is filed, must, without delay, furnish to the magistrate a certified copy of it, and of the testimony returned therewith.

Coroner to deliver money or property &c.

Sec. 752. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against him for its recovery, by a civil action in the name of the county.

Duty of county Treasurer

Sec. 753. Upon the delivery of money to the treasurer, he must place it to the credit of the county. If it be other property, he must, within thirty days, sell it at public auction, upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

Money, when and how paid

Sec. 754. If the money in the treasury be demanded within six years, by the legal representatives of the deceased, the treasurer must pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter; or it may be paid at any time thereafter upon the order of the board of county commissioners or supervisors.

Supervisor to require statement

Sec. 755. Before auditing and allowing the account of the coroner, the board of county commissioners or supervisors must require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

Compensation to coroners.

Sec. 756. The coroner is entitled, for his services, in holding inquests and performing any other duty incidental thereto, to such compensation as may be fixed by the board of county

commissioners, and can receive for those services no other compensation or fees whatever.

TITLE II.

OF SEARCH WARRANTS.

Section 757. Search warrant defined.
758. Upon what grounds it may be issued.
759. It cannot be issued but upon probable cause, supported by affidavit.
760. Before issuing warrant magistrate must examine, on oath, the complainant and his witnesses, and take their depositions in writing.
761. Magistrate, when to issue warrant.
762. Form of the warrant.
763. By whom served.
764. Officer may break open door or window to execute warrant.
765. May break open door or window to liberate person acting in his aid, or for his own liberation.
766. When warrant may be served in the night time, and direction therefor.
767. Within what time warrant must be executed and returned.
768. Property, when delivered to magistrate, how disposed of.
769. Return of warrant and delivery to magistrate of inventory of property taken.
770. Magistrate to deliver copy of inventory to the person from whose possession property is taken, and to applicant for warrant.
771. If grounds for warrant controverted, magistrate to take testimony.
772. Testimony, how taken and authenticated.
773. Property, when to be restored to person from whom it was taken.
774. Depositions, search warrant, return and inventory, to be returned to court of district or city court, having jurisdiction of offense.
775. Maliciously, and without probable cause, procuring search warrant, a misdemeanor.

Section 776. Peace officer, exceeding his authority or exercising it with unnecessary severity, guilty of a misdemeanor.

777. If person charged with felony be supposed to have a dangerous weapon, or anything which may be used as evidence of commission of offense, magistrate may direct him to be searched, and the weapon or other thing retained, subject to his order or the order of the court.

Search warrant defined

Sec. 757. A search warrant is an order in writing in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

May be issued, on what grounds

Sec. 758. It may be issued upon either of the following grounds:

1, When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

2, When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be;

3, When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered. In which case it may be taken on the warrant, from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

It can not be issued, but

Sec. 759. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.

Before issuing warrant, duty of magistrate

Sec. 760. The magistrate must, before issuing the warrant, take, on oath, the complaint of the prosecuting witness in writing, which must set forth the facts tending to establish the

grounds of the application, or probable cause for believing that they exist.

When to issue warrant

Sec. 761. If the magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

Form of warrant

Sec. 762. The warrant must be in substantially the following form:

"County of Yankton, [or as the case may be,]

"In the name of the people of the Territory of Dakota: To any sheriff, constable, marshal or policeman in the county of Yankton, [or as the case may be,]

"Proof, by affidavit having been this day made before me, by [naming every person whose affidavit has been taken,] the [stating the particular grounds of the application according to section 758; or if the affidavit be not positive,] "that there is probable cause for believing that," [stating the grounds of the application in the same manner,]

"You are therefore commanded, in the day time, [or "at any time of the day or night," as the case may be, according to section 766,] to make immediate search on the person of C. D., [or "in the house situated"—describing it, or any other place to be searched, with reasonable particularity, as the case may be,] for the following property, [describing it with reasonable particularity,] and if you find the same or any part thereof, to bring it forthwith before me, at [stating the place.]

"Dated at the city of Yankton, [or as the case may be]
the ——— day of ———, 18—,

E. F.,
Justice of the peace of the city,
[or town] of [or as the case may be.]

By whom served

Sec. 763. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other

person except in aid of the officer, on his requiring it, he being present and acting in its execution.

Officer may break open door &c

Sec. 764. The officer may break open an outer or inner door or window of a house, or any part of the house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Same

Sec. 765. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

May be served in night time, when

Sec. 766. The magistrate must insert a direction in the warrant, that it be served in the day time, unless the affidavits be positive that the property is on the person, or in the place to be searched. In which case he may insert a direction that it be served at any time of the day or night.

Executed and returned

Sec. 767. A search warrant must be executed and returned to the magistrate by whom it was issued, within ten days. After the expiration of these times respectively, the warrant, unless executed, is void.

Property, when delivered, how disposed of

Sec. 768. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 675 to 677, both inclusive. If it were taken on a warrant issued on the grounds stated in the second and third subdivisions of section 769, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

Return of warrant

Sec. 769. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect:

"I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Copy of inventory

Sec. 770. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Grounds for warrant controverted, what

Sec. 771. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

Testimony, how taken

Sec. 772. The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in section 166.

Property, when to be restored

Sec. 773. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Depositions &c. to be returned

Sec. 774. The magistrate must annex together the depositions, the search warrant and return, and the inventory, and then return them to the next district court of the county having power to inquire into the offense in respect to which the search warrant was issued, by the intervention of a grand jury, at or before its opening on the first day.

Maliciously, and without cause, procuring warrant, what

Sec. 775. A person who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

Peace officer exceeding, authority

Sec. 776. A peace officer in executing a search warrant, who willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

Searching defendant in presence of magistrate in certain cases

Sec. 777. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

TITLE III.

OF PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

Chapter I. Fugitives from another State or Territory, into this Territory.
II. Fugitives from this Territory, into another State or Territory.

CHAPTER I.

FUGITIVES FROM ANOTHER STATE OR TERRITORY, INTO THIS TERRITORY.

Section 778. To be delivered up by the governor on demand of the executive authority of the State or Territory from which they have fled.
779. Magistrate to issue warrant.
780. Proceedings for arrest and commitment of the person charged.
781. When, and for what time to be committed.
782. His admission to bail.
783. Magistrate to give notice to the district attorney, of the name of the person and the cause of his arrest.
784. District attorney to give notice to executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the city or county therein, having jurisdiction of the offense.
785. Person arrested to be discharged unless surrendered within the time limited.
786. Magistrate to return his proceedings to the next district court. Proceedings thereon.

Delivery on requisition

Sec. 778. A person charged in any State or Territory of the United States, with treason, felony, or other crime, who shall flee from justice and be found in this Territory, must on demand of the executive authority of the State or Territory from which he fled, be delivered up by the governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

Magistrate to issue warrant

Sec. 779. A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this Territory.

Proceedings

Sec. 780. The proceedings for the arrest and commitment of a person charged, are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offense committed in this Territory. Except that an exemplified copy of an indictment found, or other judicial proceeding had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

When and for what time to be committed

Sec. 781. If from the examination, it appear that the person charged has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody for a time, specified in the warrant, which the magistrate deems reasonable to enable the arrest of the fugitive under the warrant of the executive of this Territory, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he give bail, as provided in the next section, or until he be legally discharged.

His admission to bail

Sec. 782. The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of this Territory.

Magistrate to give notice

Sec. 783. Immediately upon the arrest of the person charged, the magistrate must give notice to the district attorney.

Duty of district attorney in such case

Sec. 784. The district attorney must immediately thereafter, give notice to the executive authority of the State or Territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Person arrested to be discharged unless

Sec. 785. The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of this Territory.

Sec. 786. The magistrate must return his proceedings to the next district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged; and if he be in custody, or the time for his arrest have not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or continue his detention for a longer time, or re-admit him to bail, to appear and surrender himself within a time specified in the undertaking. Magistrate to return his proceedings, when

CHAPTER II.

FUGITIVES FROM THIS TERRITORY INTO ANOTHER STATE OR TERRITORY.

Section 787. Accounts of persons employed in procuring the surrender of fugitives from this Territory to be paid out of the territorial treasury.

788. No public officer of this Territory to receive compensation for procuring demand or surrender of fugitive, or conveying him to, or detaining him in this Territory.

789. Violation of the last section, a misdemeanor.

Sec. 787. When the governor shall demand from the executive authority of a State or Territory of the United States, or of a foreign government, the surrender to the authorities of this Territory, of a fugitive from justice, the accounts of the persons employed by him for that purpose must be paid out of the territorial treasury. Accounts of persons

Sec. 788. No compensation, fee, or reward of any kind, can be paid to, or received by a public officer of this Territory, for a service rendered or expense incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this Territory, or detaining him herein, except as provided in section 787. No compensation allowed, when

Sec. 789. A violation of the last section is a misdemeanor. Violation of, what

CHAPTER III.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

Section 790. Rules of construction of this code.
791. No part of this code retroactive, unless expressly so declared.
792. Present tense includes future. Masculine includes feminine and neuter. Singular includes the plural and the plural the singular. Persons includes corporations.
793. Definition of writing.
794. Definition of oath.
795. Definition of signature.
796. Definition of magistrate.
797. Definition of peace officers.
798. To what actions and proceedings this code applies.
799. Former modes of procedure in criminal cases abrogated.
800. Fines paid for use of common school fund.
801. This code to take effect after its passage.

Rules of construction

Sec. 790. The rule of common law that penal statutes are to be strictly construed, has no application to this code. This code establishes the law of this Territory respecting the subjects to which it relates; and its provisions, and all proceedings under it are to be liberally construed, with a view to promote its objects, and in furtherance of justice.

Not retroactive, unless

Sec. 791. No part of this code is retroactive unless expressly so declared.

Words of Code, how construed

Sec. 792. Unless when otherwise provided, words used in this code in the present tense includes the future as well as the present. Words used in the masculine gender comprehend as well the feminine and neuter. The singular number includes the plural and the plural the singular. And the word person includes a corporation, as well as a natural person.

Definition of writing

Sec. 793. The term writing includes printing.

Of oath

Sec. 794. The term oath includes an affirmation.

Sec. 795. The term signature includes a mark when the person cannot write; his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient. Of signature

Sec. 796. Unless when otherwise provided, the term "magistrate" signifies any one of the officers mentioned in section ——. Of magistrate

Sec. 797. Unless when otherwise provided, the term "peace officer" signifies any one of the officers mentioned in section ——. Of peace officers

Sec. 798. This code applies to criminal actions and to all other proceedings in criminal cases which are herein provided for, from the time when it takes effect. And all such actions and proceedings heretofore commenced must be concluded in the same manner as if this code had not been passed. To what actions Code applies

Sec. 799. All modes of procedure in criminal cases heretofore enacted in this Territory, shall, upon the taking effect of this act, be entirely abrogated, and from thence abolished; *Provided, however*, That all proceedings of every kind or character whatsoever, therein commenced, and pending, shall not by reason of any thing in this act contained, be deemed to have abated. Former modes of procedure, abrogated, in criminal cases

Sec. 800. All fines collected by virtue of this act shall be paid into the county treasurer of the county, when collected, for the use of the common school fund of said county. Fines paid

Sec. 801. This act shall take effect on the first day of February next. Code to take effect, when

Approved, Jan. 12, 1869.

AUDITOR AND TREASURER.

CHAPTER 2.

AN ACT FIXING THE TIME FOR THE TERRITORIAL AUDITOR AND TERRITORIAL TREASURER TO QUALIFY AND MAKE THEIR ANNUAL REPORTS.

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

Duty of Auditor and Treasurer to make reports to whom, when

Section 1. That hereafter it shall be the duty of the Territorial Auditor and Territorial Treasurer, to submit their annual reports to the legislative assembly on or before the first Monday of January in each year.

Acts in conflict, repealed

Sec. 2. That all acts and parts of acts in conflict with the provisions of this act, be and the same are hereby repealed.

Act to take effect, when

Sec. 3. This act shall take effect from and after its passage and approval.

Approved, Jan. 15, 1869.

BRIDGES.

CHAPTER 3.

AN ACT AUTHORIZING THE COUNTY COMMISSIONERS OF EACH COUNTY IN THIS TERRITORY, TO LEVY A TAX FOR BRIDGES.

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

Section 1. That the board of county commissioners of each organized county in this territory, are authorized to levy and collect a tax of not to exceed two mills on the dollar, on all real and personal property in their county, to be used and expended in the building and erection of bridges in such county; *Provided however*, That such tax can be levied or not, in the discretion of the board of county commissioners.

Amount authorized to be raised. How used and expended.

Provided

Sec. 2. The tax collected by section one, (1) of this act, shall be expended on such bridge or bridges, and in such manner, as shall be directed by the board of county commissioners of the county in which such taxes are raised.

Same

Sec. 3. The contracts for building and erecting of bridges in any county in this territory, shall be made in such manner, and on such terms, as shall be prescribed by the board of county commissioners of the county in which the bridge or bridges is or are to be built and erected.

Contracts for building &c.

Sec. 4. This act shall be in force and effect from and after its passage and approval.

Act to take effect, when

Approved, Jan. 15, 1869.

COUNTY COMMISSIONERS AND COUNTY CLERKS.

CHAPTER 4.

AN ACT RELATIVE TO COUNTY COMMISSIONERS AND COUNTY CLERKS.

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

DUTIES.

Board to consist of whom—qualifications

Section 1. There shall be a board of county commissioners, consisting of three persons, in each organized county in this Territory. Said commissioners shall have the qualifications of electors, and shall be elected by the qualified voters of the several counties respectively, at the annual general election; *Provided, however*, That in counties which are now, or that may hereafter be, divided into townships, there shall be one commissioner elected in each township.

Division of county. Shall not be changed

Sec. 2. Each county shall be divided into three districts by the board of county commissioners, which districts may be numbered from one to three; and said districts shall not be changed oftener than once in three years by said board. In each newly organized county the board of commissioners, at their first election under this section, shall proceed to divide their respective counties into districts, as provided in the first part of this section; and one commissioner shall be elected from one of said districts at each general election thereafter, by the qualified voters of the whole county; *Provided*, That it shall not be lawful to change said district lines without a full board of commissioners existing at the time said lines are changed.

Provided

Election to choose board

Sec. 3. At the first election held to choose the board of commissioners under this chapter for any county, the person having the highest number of votes shall continue in office for three years; the next highest, two years; and the next highest, one year; but if any two or more persons have the same number of votes, their term of office shall be determined by the board of canvassers, and each commissioner elected at the first general election, in pursuance of this chapter, shall hold his office for three, two, and one years, as the case may be, and until his successor shall be duly elected and qualified, and each commissioner elected thereafter, in pursuance of the second section of this chapter, shall hold his office for three years, and until his successor is elected and qualified; *Provided, however*, That in counties which are now, or may hereafter be divided into townships, the commissioners shall hold their office for the term of two years, and until their successors are elected and qualified.

Oath of

Sec. 4. Each person elected county commissioner, shall, on receiving a certificate of his election, take an oath before some officer qualified to administer oaths, that he will support the constitution of the United States, and the organic act of this Territory, and perform faithfully all the duties enjoined by this chapter, which oath shall be certified to by the officer administering the same, under seal, and filed in the office of the register of deeds for said county for record, in a book to be kept for that purpose, and when so recorded shall be sufficient authority for such commissioner to act.

Shall meet and hold session, when, where

Sec. 5. The county commissioners shall meet and hold sessions for the transaction of county business at the court house in their respective counties, or at the usual place of holding courts, on the first Monday in January, April, July and October, of each year, and may adjourn from time to time, and the county clerk shall have power to call special sessions when the interest of the county demands it, upon giving five days notice of the time and object of calling the commissioners together, by posting up notice in three public places in the county, or by publication in one newspaper in the county.

County clerk shall attend, duty of

Sec. 6. The county clerk shall attend the sessions of said commissioners, and keep a true and full record of all their

proceedings in a book to be provided for that purpose, and the sheriff of the county shall also, by himself or deputy, attend their sessions and execute their orders.

When commissioners are equally divided on any question. What

Sec. 7. When the commissioners of the board are equally divided on any question, they shall defer a decision until the next meeting of the board, and then the matter shall be decided by a majority of the board.

Copies of proceedings

Sec. 8. Copies of their proceedings, duly certified and attested by the county clerk, under seal, shall be received as evidence in all the courts of this Territory.

Power and authority of

Sec. 9. Any of said commissioners, or the county clerk, shall have power and authority to administer oaths or affirmations in all cases, and said commissioners shall have the power to preserve order when sitting as a board, and may punish contempts by fine, not exceeding five dollars, or by imprisonment in the county jail not exceeding twenty-four hours; they may enforce obedience to all orders made by them, by attachment or other compulsory process, and when fines are assessed by them, the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines, within ten days after they are collected.

District account with treasurer

Sec. 10. The said commissioners shall keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or another person is qualified as treasurer, in which account they shall charge the treasurer with all sums paid him, and for all sums for which the said treasurer is accountable to the county, and they shall credit him with all orders returned and canceled, with all moneys paid, and with all vouchers presented by him, and with all matters with which the treasurer is to be credited on account; and the said commissioners shall, in their settlement with the treasurer, keep the general, special and road tax separate, that any citizen of the county may see how the same has been expended.

Shall keep a book, to record what

Sec. 11. They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges, and all orders for the allowance of money

from the county treasury, shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively, as allowed, from the first day of January to the thirty-first day of December in each year.

Book of entry of all proceedings relating to what

Sec. 12. They shall keep a book for the entry of all proceedings and adjudications relating to bridges and the establishment, change or discontinuance of roads.

Same.

Sec. 13. They shall keep a book for the entry of warrants on the county treasurer, showing number, date, amount and name of the drawee of each warrant drawn on the treasury, which may be known as the warrant book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn.

Power to prosecute civil actions

Sec. 14. They shall have the power to institute and prosecute civil actions in the name of the county, for and on behalf of the county.

Power to make all orders respecting what,

Sec. 15. Said commissioners shall have power to make all orders respecting the property of the county, to sell the public grounds of the county, and to purchase other grounds in lieu thereof; and for the purpose of carrying out the provisions of this section, it shall be sufficient to convey all the interest of the county in such grounds, when an order is made for the sale and a deed is executed in the name of the county by the chairman of board of commissioners, reciting the order, and signed and acknowledged by him for, and on behalf of the county, before some officer authorized to take acknowledgment of deeds; *Provided, however*, That the question of the sale of such public grounds or lands shall be first submitted to a vote of the people of the county, as hereinafter provided, and sanctioned by a majority vote thereof.

Provided. Power to levy tax. To audit accounts &c.

Second, They shall have power to levy a tax not exceeding the amount now authorized by law, and to liquidate indebtedness;

Third, To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated for its benefit.

Shall superintend, what

Sec. 16. Said commissioners shall superintend the fiscal concerns of the county, and secure their management in the best manner; they shall keep an account of the receipts and

expenditures of the county, and on the first Monday of July, annually, they shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year, to be made out in detail under separate heads, with an account of all debts payable to and by the county treasurer, and they shall have the same printed in at least one newspaper in their county, and if there be no paper in the county, the same shall be posted up at the usual place of holding their lessons, and at one public place in each precinct of the county.

To procure for their county a copy of field notes, when deposited

Sec. 17. The said commissioners are authorized to procure for their county a copy of the fild notes, as soon as practicable, of the original survey of their county by the United States, and cause a map of the county to be construed therewith, on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, to be kept open in the office of the county clerk, and the field notes to be deposited in the same office.

Submit to the people at election

Sec. 18. The said commissioners shall have power to submit to the people of the county, at any regular or special election whether the county will aid or construct any road or bridge, or to submit to the people of the county any question involving an extraordinary outlay of money by the county; and said commissioners may aid any enterprise designed for the benefit of the county as aforesaid, whenever a majority of the people thereof shall be in favor of the proposition, as provided in this section.

Depreciated value of county warrants

Sec. 19. When county warrants are at a depreciated value, the said commissioners may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied; and in all cases when an additional tax is laid, in pursuance of a vote of the people of the county, for the special purpose of repaying borrowed money, or of constructing or ordaining to construct any road or bridge, or for aiding in any enterprise contemplated by the preceding section, such special tax shall be paid in money and in no other manner.

Mode of submitting questions to people

Sec. 20. The mode of submitting questions to the people, contemplated by the last two sections, shall be the following: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per

annum and the whole regulation, including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published at least four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

When question submitted involves

Sec. 21. When the question submitted involves the borrowing or expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes under section fifteen of this chapter; and no vote adopting the question proposed shall be valid, unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

Rate of tax levied

Sec. 22. The rate of tax levied in pursuance of the last four sections of this chapter shall in no case exceed three mills on the dollar of the county valuation in one year. When the object is to borrow money to aid in the erection of public buildings, the rate shall be such as to pay the debt in ten years; when the object is to construct or aid in constructing any road or bridge, the annual rate shall not exceed one mill on a dollar of the valuation; and any special tax or taxes levied in pursuance of this chapter becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of the revenue law of this Territory.

Propositions thus acted upon can not be rescinded

Sec. 23. The said commissioners, being satisfied that the above requirements have been substantially complied with, and that a majority of the votes cast in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing the record of their proceedings, and they shall then have power to levy and collect the special tax, in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board of county commissioners.

Money raised in pursuance of last six sections

Sec. 24. Money raised by the county commissioners, in pursuance of the last six sections, is specially appropriated and constituted a fund, distinct from all others, in the hands of the county treasurer, until the obligation assumed is discharged.

Commissioners to hold their sessions with open doors

Sec. 25. The said commissioners shall hold their sessions with open doors, and transact all business in the most public manner; and where the county has no court house, or the court house shall be unfit or inconvenient, they may hold their sessions for the transaction of business at any other suitable place at the county seat. All matters pertaining to the interest of the county shall be heard by the board of commissioners in sessions only, but they may continue any business from any regular session to an intermediate day.

Shall constitute a record

Sec 26. The books required to be kept by this chapter shall constitute the record of the board of county commissioners.

Power to provide for erection and repairing county houses &c

Sec. 27. Said commissioners shall have authority and power to provide for the erection and repairing of court houses, jails, and other necessary buildings within and for the county; and to carry out the provisions of this section, they shall have power to make contracts on behalf of the county for the building or repairing of the same. They shall determine the amount of taxes to be levied for county purposes, according to the provisions of this chapter, and the revenue law of this territory.

May sue and be sued

Sec. 28. The counties in this territory may sue and be sued, plead and be impleaded, in any court in this territory; and in all cases where lands have been granted to any county for public purposes, and any part thereof has been sold and the purchase-money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of such lands, or to enforce the payment of the purchase-money, shall be instituted in the name of the proper county.

Power to employ attorney by the year

Sec. 29. Said commissioners shall have power to employ an attorney by the year, who shall be known as county attorney. But said commissioners shall, in no case, pay said attorney more than one hundred dollars per annum.

When any judgment is obtained

Sec. 30. When any judgment is obtained against the county, it shall be a lien upon the property of the county, and the

public property shall be liable therefor; but no execution shall issue thereon until the board of county commissioners shall have had six months time to assess and collect a sufficient amount of revenue, under the provisions of this chapter, to pay off and discharge said judgments, in addition to the ordinary expenses of the county.

Appeals from decisions, how

Sec. 31. From all decisions of the board of commissioners, upon matters properly before them, there shall be allowed an appeal to the district court by any person aggrieved, upon filing a bond with sufficient penalty, and one or more sureties, to be approved by the county clerk, conditioned that the appellant will prosecute his or her appeal without delay, and pay all costs that he or she may be adjudged to pay in the said district court. Said bond shall be executed to the county, and may be sued in the name of the county, upon breach of any condition therein.

Shall be taken, when

Sec. 32. Said appeal shall be taken within twenty days after the decision of said board, by serving a written notice on one of the board of county commissioners, and the county clerk shall upon the filing of the bond, and the payment of his fees, allowed by this chapter, as hereinafter provided, make out a complete transcript of the proceedings of said board, relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court.

When filed

Sec. 33. Said appeal shall be filed by the first day of the district court next after such appeal, and said cause shall stand for trial at such term.

Shall be docked as other causes

Sec. 34. All appeals thus taken to the district court shall be docketed as other causes pending therein, and the same shall be heard and determined *de novo*.

Final judgment

Sec. 35. The district court may make a final judgment and cause the same to be executed, or may send the same back to the board, with an order how to proceed, and require said board of county commissioners to comply therewith by mandamus or attachment, as for contempt.

Treasurers sheriffs &c. chargeable with money shall render their accounts to whom. At what time

Sec. 36. All treasurers, sheriffs, clerks, constables, and other officers, chargeable with money belonging to any county, shall render their accounts to, and settle with the county commissioners at the time required by law, and pay into the county

treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county within five days thereafter.

Persons thus chargeable shall neglect or refuse so to do

Sec. 37. If any person thus chargeable, shall neglect or refuse to render true accounts, or settle as aforesaid, the county commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due the county, and order suit to be brought in the name of the county therefor.

In such case

Sec. 38. In such case, the board of commissioners shall refuse such delinquent any commission, and such delinquent shall forfeit and pay to the county a penalty of twenty per cent. on the amount of funds due the county.

Duty of county clerk

Sec. 39. It shall be the duty of the county clerk to do, perform and transact all county business without any extra or greater compensation than is allowed by law; said clerk shall keep all the books required by this chapter to be kept, shall file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be admitted as evidence in all courts in this territory.

Commissioners shall procure and keep a seal

Sec. 40. The board of county commissioners hereby established, shall procure and keep a seal, with such emblems and devices, as they may think proper, which shall be the seal of the county, and no other seal shall be used by the county clerk.

Impressions of, sufficient

Sec. 41. The impression of the seal hereby required to be kept, by the stamp, shall be a sufficient sealing in all cases where sealing is required.

Power of county clerk

Sec. 42. The county clerk shall have power and authority to take the acknowledgment of deeds and other instruments of writing.

Exofficio register of deeds

Sec. 43. The county clerks shall be *ex officio* registers of deeds in and for their respective counties, and the said county clerk shall keep the books and record all instruments, now or hereafter required to be recorded by any law of this territory, in the same manner that the law requires the register of deeds

to keep the same. And the said clerks shall receive the same compensation for recording deeds and other instruments of writing, as is now allowed county recorders, or such compensation as may by law be prescribed from time to time.

When records to be kept

Sec. 44. It shall be the duty of said county clerks to keep the records of their office in a fire-proof iron safe, to be kept for the purpose, and which shall be purchased by the county commissioners, when in their judgment the same shall be advisable.

All county orders to draw interest, when

Sec. 45. All county orders heretofore drawn or that may hereafter be drawn by the proper authorities of any county, shall, after having been presented to the county treasurer of the respective counties, and by him endorsed "not paid for want of funds in the treasury," from said date shall draw interest at the rate of ten per cent. per annum.

On organization of county, voters to select place of county seat, how

Sec. 46. Whenever any county shall organize in this Territory, the qualified voters thereof are hereby empowered to select the place of their county seat by a vote at the first election held in the county for the choice of county officers; for this purpose, each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having the majority of all the votes polled, shall be the county seat, and public notice of said location shall be given within thirty days, by the tribunal transacting county business, by posting up notices in three several places in each precinct in the county.

Changing place of county seat

Sec. 47. Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the tribunal transacting county business, signed by two-thirds of the qualified voters of the county, it shall be the duty of said tribunal, in the notices for the next general election, to notify said voters to designate upon their ballots at said election, the place of their choice; and if, upon canvassing the votes so given, it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be given as hereinbefore provided in the case of the location of county seats of new counties.

If no place has a majority

Sec. 48. If no one place has a majority of all the votes polled, as provided for in section forty-seven, it shall be the duty of the tribunal transacting county business, within one month after said election, to order a special election, and give ten days notice thereof, by posting up three notices in each precinct in the county, at which election votes shall be taken by the ballot between the three highest places voted for at the first election. And if no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two highest places voted for at the last election, and the place having the highest number of votes shall be the county seat.

When county seat shall be located on public lands, duty of tribunal transacting county business

Sec. 49. Whenever any county seat shall be located upon the public lands, it shall be the duty of the tribunal transacting county business to enter, or purchase, a quarter section of land at the place so designated, at the expense of, and for the use of the county within three months thereafter, if said land be subject to private entry; if not, such tribunal shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

Same

Sec. 50. The aforesaid tribunal shall, within three months after the selection, cause the same to be surveyed into town lots, squares, streets and alleys, and platted and recorded in pursuance of law; and shall select the place for the county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

Remainder of, offered at public sale

Sec. 51. The remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one third cash, and the balance on time, as the county tribunal may deem best, and may dispose of lots at private sale, upon terms as above provided for.

Purchasers of lots sold not paid for shall be forfeited—When

Sec. 52. Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warrantee deed from the county tribunal when payment in full shall be made for the same. Any lots sold as above that

shall not be paid for as provided in this chapter, or within one year thereafter, shall be forfeited to the county, and shall be again sold as hereinafter provided.

Proceeds of sales after deducting expenses

Sec. 53. The proceeds of the sales of the aforesaid lots, after deducting the expenses of the surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county seat, at the county seat, and shall be used for no other purpose whatever.

In any county which may collect a building fund, by provisions of this chapter. Duty of tribunal

Sec. 54. In any county which may collect a building fund by the provisions of this chapter, it shall be the duty of the tribunal transacting county business, within one year from the time such fund becomes available, to advertise, by publishing in a newspaper at least three months, for bids for building a court house, jail and offices for register of deeds and county clerk, if the above specified fund, in their judgment, may be sufficient for that purpose. Said advertisements for bids to contain plans and specifications for such buildings, and also the time allowed to complete the same. The lowest responsible bid shall in all cases be accepted, and the contracts for such buildings shall be so conditioned, that not more than one-half the payment for the same shall be made until the contract shall be completed to the satisfaction of the said tribunal.

Acts in conflict, repealed

Sec. 55. All acts and parts of acts in conflict with this act are hereby repealed.

Act to take effect, when

Sec. 56. This act shall take effect and be in force from and after its passage.

Approved, Jan. 14, 1869.

DISTRICT COURT.

CHAPTER 5.

AN ACT PROVIDING FOR THE HOLDING OF SPECIAL TERMS OF THE DISTRICT COURT, AND FOR OTHER PURPOSES.

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

Courts. When and where held

Section 1. That there shall be held each year special terms of the district court, in the several judicial districts of this Territory, as follows:

In the first district, on the first Mondays of January, April, July and October;

In the second district, on the first Mondays of January, March, May, July, September and November;

In the third district, on the first Mondays of January, April, July and October.

Issues of law or fact not requiring the intervention of juries. Provided

Sec. 2. All issues of law or of fact not requiring the intervention of a jury and all motions may be tried and heard at either a general or special term; *Provided, however*, That nothing in this act contained shall interfere with the existing provisions of law relating to the holding of general terms of the district court, or to the hearing of motions or applications at chambers, nor with the authority of any judge to appoint special terms additional to those herein provided, or whenever in his judgment necessity may require.

Special terms. When held

Sec. 3. Said special terms shall be held at the places in the districts respectively, where the United States district courts shall be held, and shall continue as long as the business shall require.

Act to take effect. When

Sec. 4. This act shall take effect and be in force from and after its passage and approval.

Approved, Jan. 15, 1869.

FEES.

CHAPTER 6.

AN ACT TO REGULATE THE FEES OF CERTAIN OFFICERS.

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

Section 1. The salaries and fees of the several officers hereinafter named [shall be] as follows: Salaries and fees of officers

CLERK OF THE SUPREME COURT.

Sec. 2. Docketing each cause, civil and criminal, to be charged in each case but once, seventy-five cents. Fees of clerk of supreme court

Issuing summons in error, writ of error, *certiorari*, writ of injunction or mandate, one dollar.

Dismissal, discontinuance or continuance, twenty-five cents.

Entering each cause on the bar and court calendar, fifteen cents.

Issuing and docketing execution or order of sale, one dollar.

Taking affidavits, twenty-five cents.

Filing motion, rule, affidavit or other paper, ten cents.

Issuing attachment, and filing motion therefor, seventy-five cents.

Indexing each cause, direct and reverse, each docket, ten cents.

Entering judgment, decree or order on the journal, twenty-five cents.

For each ten words after the first one hundred words, one cent.

Entering minute of judgment, decree or order, on the appearance docket, fifteen cents.

Fees of clerk of supreme court

Making copy of process, pleadings, record or other paper, or any part thereof, for each ten words, one cent.

Entering satisfaction, twenty-five cents.

Certificate and seal, fifty cents.

Every search, where no other services are rendered to which any fee or fees are attached, fifteen cents.

CLERK OF THE DISTRICT COURT.

Fees of clerk of district court

Sec. 3. Docketing each cause, seventy-five cents.

Issuing summons, order of arrest, order of attachment, order of replevin, citation, or any mesne process, and filing return, one dollar.

Entering voluntary appearance of defendant, twenty-five cents.

Taking bail bond, twenty-five cents.

Filing petition, pleading, indictment or any other paper, ten cents.

Issuing attachment and filing motion therefor, one dollar.

Entering return of any writ or order, other than of execution, order of sale or attachment, twenty cents.

Entering each cause on the bar or court calendar of each term of the court, fifteen cents.

Indexing each cause, direct and reverse, each docket, ten cents.

Drawing petit jurors and issuing venire therefor, fifty cents.

Attending to the striking of special jury and issuing venire, one dollar.

Impanneling jury and administering oath, twenty-five cents.

Certifying to the county commissioners at the end of each term, the names of grand and petit jurors, and their terms of service and mileage, to be paid by the county, one dollar.

Issuing subpœna and seal, twenty-five cents, each name therein after the first, five cents.

Swearing and entering appearance of each witness, fifteen cents.

Entering judgment on the journal, twenty-five cents.

For each ten words after the first hundred words, one cent.

Entering verdict on the journal, twenty-five cents.

Transcribing judgment or order on appearance docket, twenty cents. Fees of clerk of district court

Drawing and issuing venire for grand jury, and impanneling the same, to be paid by the county, one dollar and twenty-five cents.

Dismissal, discontinuance or continuance, twenty-five cents.

Taxing costs, each cause, thirty-three cents.

Making complete records, for each ten words, one cent.

Copy of process, pleadings, record or paper filed, or any part thereof for every ten words, one cent.

Certificate and seal, twenty-five cents.

Filing and entering petition for habeas corpus, twenty-five cents.

Issuing writ of habeas corpus, one dollar.

Issuing and docketing execution, order of sale, one dollar.

Entering return of execution, or order of sale or order of attachment, for each ten words, one cent.

Indexing execution or order of sale, direct and reverse, each docket, ten cents.

Taking acknowledgment of deed or other instrument, fifty cents.

Taking affidavit, except those required to pleading, forty-five cents.

Each certificate or seal not herein provided for, twenty-five cents.

Entering satisfaction of judgment, twenty-five cents.

Every search made by the clerk where no other service is rendered to which any fee or fees are attached, fifteen cents.

Entering mandate and proceedings of supreme court, twenty-five cents.

Entering transcript of judgment of justice of the peace, forty cents.

Entering and docketing appeal from judgment of justice of the peace, forty cents.

Suggesting death of party or diminution of record, fifteen cents.

Substituting party on record, fifteen cents.

Commission to examine witness, one dollar.

Entering confirmation of sale, twenty-five cents.

Recording declaration of intention to become a citizen of

Fees of clerk of district court

the United States, and certified copy thereof under seal, seventy-five cents.

Recording final admission of alien to the right of citizenship, and certified copy thereof under seal, one dollar and fifty cents.

Filing and entering motion, rule or default, ten cents.

Taking recognizance or entering forfeiture of recognizance, twenty-five cents.

Arraignment of defendant, twenty-five cents.

Entering retraction of plea or *nolle prosequi*, twenty cents.

Issuing capias, warrants, or other process under seal in criminal cause, fifty cents.

Entering remititur, fifteen cents.

The clerk of the district and supreme court shall keep a docket in which he shall enter the cost chargeable and taxable against each party in any suit pending in said courts; and he is hereby empowered at any time to make out a statement of such fees, specifying each item of the fees so charged and taxed, under the seal of said court, which fee bill, so made under the seal of said court, shall have the same force and effect as an execution; and the sheriff to whom said fee bill shall be issued, shall execute the same as an execution, and shall have same fees therefor; and the clerk shall have the same fees for issuing such bill that he is entitled to for the issuance of an execution; *Provided*, That the clerk shall not enter in such docket any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

REGISTER IN CHANCERY.

Fees of register in chancery

Sec. 4. Docketing each cause, seventy-five cents.

Taking affidavit, except those required to pleading, twenty-five cents.

Issuing subpœna in chancery, order of injunction, citation or any mesne process under seal, fifty cents.

Filing bill, pleading or other paper, ten cents.

Approving bail bond, twenty-five cents.

Entering each cause on the bar and court calendar, each term, ten cents.

Indexing each cause, direct and reverse, each docket, ten cents. Fees of register in chancery

Entering decree, fifty cents, and order on the journal, twenty-five cents.

And for each ten words after the first one hundred words, one cent.

Transcribing decree or order on appearance docket, ten cents.

Dismissal, discontinuance or continuance, twenty-five cents.

Taking costs, each cause, forty cents.

For making complete record, transcript or copy of process, pleadings, record or other paper filed, or any part thereof, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Entering allowance of injunction, fifty cents.

Issuing execution or order of sale, seventy-five cents.

Entering return of execution or order of sale, for each ten words, one cent.

Entering satisfaction of decree, twenty-five cents.

Filing and entering notice of appeal, fifteen cents.

Filing or entering motion or rule, fifteen cents.

Every search, where no other service is rendered to which any fee or fees are attached, fifteen cents.

SHERIFFS.

Sec. 5. Serving capias with commitment or bail bond, and return, one dollar. Fees of sheriffs

For each search on search warrant, one dollar.

Arresting under search warrant, each defendant, one dollar.

Serving summons, subpoena in chancery, order of attachment, order of replevin, writ of injunction, *scire facias*, citation, or other mesne process, and return thereof, sixty cents.

Each defendant besides the first, twenty-five cents.

Copy of summons, subpoena in chancery, order of attachment, twenty-five cents.

Copy of writ of injunction, or *scire facias*, each ten words, one cent.

Serving subpoena for witness, each person, twenty-five cents.

Fees of sheriffs

Taking and filing replevin bond or other indemnification, to be furnished and approved by the sheriff, fifty cents.

Making copy of any process or bond or paper, other than herein provided for, for every ten words, one cent.

Traveling expenses, for each mile actually and necessarily traveled, five cents.

Levying writ of execution and return thereof, one dollar.

Levying writ of possession, with the aid of the county, three dollars and fifty cents.

Levying writ of possession, without the aid of the county, two dollars.

Summoning grand jury, including mileage, to be paid by the county, eight dollars.

Summoning petit jury, including mileage, to be paid by the county, six dollars.

Summoning special jury, for each person impanneled, thirty cents.

Calling jury for trial of cause, twenty-five cents.

Serving notice of motion, or other notice or order of court, fifty cents.

Executing writ of habeas corpus, and return, one dollar and twenty-five cents.

Serving writ of restitution, and return, one dollar and twenty-five cents.

Calling inquest to appraise lands and tenements levied on by execution, sixty cents.

Calling inquest to appraise goods and chattels taken by order of attachment or replevin, sixty cents.

Advertisement of sale in newspaper, in addition to the printing, sixty cents.

Advertising in writing for sale of real or personal property, one dollar.

Executing writ or order of partition, two dollars.

Making deed for lands sold on execution, or order of sale, in addition to the cost of revenue stamp, two dollars.

Committing prisoner to prison, or discharging therefrom, twenty-five cents.

Attending before judge or court, in criminal cases, one dollar.

Opening court and attending thereon, per day, to be paid by the county, two dollars. Fees of sheriff.

Commission on all money received and disbursed by him on execution or order of sale, order of attachment, decree, or on sale of real or personal property, shall be, for each dollar not exceeding four hundred dollars, three cents.

For every dollar above four hundred dollars and not exceeding one thousand dollars, two cents.

For every dollar above one thousand dollars, one cent.

For boarding prisoner, per day, not exceeding seventy-five cents.

For executing death warrant, such fee as the county commissioner shall deem reasonable and just, to be paid by the county.

In all cases where personal property shall be taken by the sheriff in execution, or on an order of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same per centage on the appraised value of the same as in case of sale.

Sec. 6. The sheriffs of the several counties of this Territory, for performing the duties required by law to be performed by them in the probate or justice court, shall receive the same fees as are allowed for similar service in the district court, to be taxed against the proper party or parties by the probate judge or justice.

CORONER.

Sec. 7. For viewing a dead body, five dollars. Coroner, Fees of

Summoning and qualifying an inquest, fifty cents.

Drawing and returning inquisition, for each ten words, one cent.

For physician making post mortem examination of dead body, not to exceed in [any] case, ten dollars.

To be paid out of any goods, chattels, lands and tenements of the slayer (in case of murder or manslaughter,) if he hath any, otherwise by the county, with mileage or distance actually traveled to and from the place of viewing the dead body.

For all other services rendered, the same fees as are allowed the sheriff, and mileage.

JUDGE OF PROBATE

Judge of probate —Fees of

Sec. 8. Docketing each cause, twenty-five cents.

Entering appearance of parties, fifteen cents.

Taking affidavit, twenty-five cents.

Issuing summons or other writ under seal, fifty-cents.

Filing petition, answer or any other pleading or paper necessary in any other cause, except the accounts current and vouchers of executors, administrators or guardians, five cents.

Probate of will and entry thereof, two dollars.

Letters testamentary or of administration or guardianship, under seal, and recording the same, two dollars.

Taking and approving bond, twenty-five cents.

Recording bond, will, sale bill, settlement of executor, administrator or guardian, for every ten words, one cent.

For copy of bond, will, sale bill, inventory, settlement, pleading, decree, record, or other document or paper, for every ten words, one cent.

Filing an account and vouchers of executor, administrator, or guardian, for settlement, and entering the same on minutes of the court, fifty cents.

Examining a partial or final settlement of executor, administrator or guardian, when the vouchers do not exceed fifty, one dollar.

Every additional voucher, over fifty, two cents.

Issuing citation, fifty cents.

Giving notice of time of settlement, twenty-five cents.

Hearing and deciding applications in contested cases on petition to sell land, two dollars.

Entering judgment, fifty cents.

Issuing execution or order of sale, fifty cents.

Making appointment of, and issuing commission to commissioners or appraisers, fifty cents.

Filing and recording report of commissioners, or of the proceedings and judgment of the district court on appeal from the decision of commissioners, fifty cents.

For every additional ten words after the first hundred words, one cent.

Making and recording order or decree, for every ten words, one cent.

Recording report of commissioners to make partition, for the first hundred words, seventy-five cents. Fees of Probate Judge

For every ten words after the first hundred, one cent.

For making copy of same, for every ten words, one cent.

Certificate and seal, twenty-five cents.

Filing and entering motion, fifteen cents.

Issuing subpoena and seal, fifty cents.

Each name therein after the first, five cents.

Every search when made by probate judge where no service is rendered to which any fee or fees are attached, fifteen cents.

The price of printing notices required by law to be printed in some newspaper, shall be allowed in addition to the fees herein allowed.

Sec. 9. For any service performed by the probate judge in any matter within the jurisdiction of justices of the peace, he shall be allowed the same fees as are allowed by law to the justices of the peace for like services, and no more.

MASTER IN CHANCERY.

Sec. 10. For copying any paper or instrument of writing, taking testimony, for every ten words, one cent. Master in chancery. Fees of

Swearing each witness, ten cents.

Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.

And such additional fee as the court shall allow, not exceeding in any one cause, the sum of ten dollars.

Certificate and seal, twenty-five cents.

Taking affidavit, twenty-five cents.

Advertisement of sale of property in newspaper, in addition to the price of printing, sixty cents.

For making sale, one dollar.

Report of sale, one dollar.

Making deed for land sold on decree or order of sale, in addition to price of revenue stamp, two dollars.

Commission on the amount of purchase money received and disbursed by him of all the property contained in each decree or order of sale, shall be, for each dollar not exceeding three hundred dollars, two cents.

Sheriff's Fees

For each dollar above three hundred and not exceeding one thousand dollars, one cent.

For every dollar above one thousand dollars, one half cent.

In all cases in the district or supreme court, when persons in whose favor the execution or order of sale is issued, shall bid in the property sold on execution or decree, the sheriff or master making such sale, shall receive five dollars as his per cent. on such sale, and no more.

JUSTICE OF THE PEACE.

Justice of the peace. Fees of

Sec. 11. Docketing each cause, twenty-five cents.

Taking affidavit, twenty-five cents.

Filing petition, bill of particulars, or other paper necessary in a cause, ten cents.

Issuing summons, capias, subpœna, order of arrest, or venire for jury, fifty cents.

Issuing execution, order of sale, order of attachment, order of replevin, and entering return therein, fifty cents.

Issuing writ of restitution, and entering return therein, one dollar.

Administering oath or affirmation to witness, ten cents.

Entering judgment in any cause, fifty cents.

Taking acknowledgment of deed or other instrument, fifty cents.

Swearing jury, twenty-five cents.

Copy of appeal, *certiorari*, or copy of pleadings or other papers for any purpose, for each ten words, one cent.

Taking depositions, for each ten words, one cent.

Certificate and seal, twenty-five cents.

Issuing warrant or mittimus, fifty cents.

Taking information or complaint, fifty cents.

Discharge to jailor, twenty-five cents.

Dismissal, discontinuance or satisfaction, twenty-five cents.

Written notice to party or parties, ten cents.

Filing notice and opening judgment for re-hearing, thirty cents.

Each adjournment, fifty cents.

Performing marriage ceremony, three dollars.

Each day's attendance upon trial of a cause, after the first day, one dollar. Justices Fees

Taking and approving bail bond, twenty-five cents.

Entering voluntary appearance of defendant, twenty-five cents.

Issuing attachment, fifty cents.

Entering motion or rule, ten cents.

Rule of reference to arbitrators, fifty cents.

Entering award of arbitrators, twenty-five cents.

Commission on money collected on judgment without execution, shall be one per cent. on the amount.

CONSTABLES.

Sec. 12. Constables shall be allowed the same fees as are allowed to sheriffs for like services. Constables —Fees of

REGISTER OF DEEDS.

Sec. 13. For recording deed, mortgage, or other instrument, and indexing for the first four hundred words, seventy-five cents. Register of deeds —Fees of

For each additional folio, ten cents.

Copy of record, for each ten words, ten cents.

Certificate and seal, twenty-five cents.

Making certified abstract of title, for the first deed or transfer, one dollar.

And for each additional deed or transfer, ten cents.

Entering satisfaction of mortgage or lien, twenty-five cents.

Issuing marriage license and administering oath when necessary therein, one dollar and twenty-five cents.

COUNTY CLERK.

Sec. 14. Issuing certificate of election, twenty-five cents.

For performing the duties of clerk of the county commissioners, and attending to the business of the county, such salary per annum, to be paid by the county quarterly, as the commissioners of the county shall allow, not exceeding in any year the sum of four hundred dollars. County clerk —Fees of

For each certificate and seal in other cases, twenty-five cents.

For recording each certificate of marriage, twenty-five cents.

JURORS.

Jurors. Fees of

Sec. 15. For each day's attendance at any district court, as grand, petit or special juror, to be paid by the county, two dollars.

Traveling expenses for each mile actually traveled, the mileage to be circular and paid by the county, five cents.

COUNTY SURVEYORS.

County surveyor —Fees of

Sec. 16. Five dollars per day when actually employed and mileage.

For each lot laid out and platted in any city or town, twenty-five cents.

For each copy of plat and certificate, fifty cents.

Recording each survey, twenty-five cents.

For each mile actually and necessarily traveled in going to work, ten cents.

For establishing each corner, twenty-five cents.

For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars.

For surveying county roads, per day, four dollars.

Expenses of necessary assistance shall, in addition, be paid by the party or parties requiring the work to be done.

PRINTERS.

Printers. Fees of

Sec. 17. For printing and publishing legal advertisement in newspapers, as follows:

Each square of one hundred words for the first insertion, one dollar and fifty cents.

Each subsequent insertion, for each square of one hundred words, seventy-five cents.

Each legal advertisement under one hundred words, shall be deemed a square, and after the first hundred, twenty-five words or more, under one hundred words, shall be deemed a square.

For publishing lands, each description, twenty cents.

For publishing delinquent town lots, each description, fifteen cents.

Sec. 18. Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be taxed and collected as other costs, but the same shall not exceed two dollars per day. Fees of interpreters

NOTARIES PUBLIC.

Sec. 19. For each protest, one dollar and fifty cents. Notaries public —Fees of

For recording the same, fifty cents.

For taking affidavit and seal, twenty-five cents.

For administering oath or affirmation, ten cents.

For taking deposition, each ten words, one and a half cents.

For each certificate and seal, twenty-five cents.

For taking acknowledgment of deed or other instrument, fifty cents.

COUNTY TREASURER.

Sec. 20. Each county treasurer shall receive for his services the following fees: County treasurer —Fees of

On all money collected by him for each fiscal year, under three thousand dollars, four per cent.

For all sums over three thousand dollars and under five thousand dollars, two per cent.

On all sums over five thousand dollars, one per cent.

On all sums collected, per centage shall be allowed but once, and in computing the amount collected for the purpose of charging per centage, all sums, from whatever fund derived, shall be included together, except the school fund.

For going to the seat of government to settle with the territorial treasurer, and returning therefrom, a traveling fee of ten cents per mile, to be paid out of the territorial treasury.

For advertising and selling lands for delinquent tax, an additional fee of five per cent., to be collected only in case such lands are actually sold, and then *in case* of the person buying the same; but for all other cases and services the treasurer shall be paid in the same *pro rata* from the respective funds collected by him, whether the same be in money, territorial or county warrants.

On school moneys by him collected, he shall receive a commission of but one per cent.

County treasurer —Fees of

And in all cases where persons outside of the Territory apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of one dollar for each tax receipt by him sent to such person.

ASSESSOR.

Assessors —Fees of

Sec. 21. Each assessor shall receive for his services the following fees, and no more:

For each and every day actually engaged, the sum of three dollars.

COUNTY COMMISSIONERS.

County commissioners —Fees of

Sec. 22. County commissioners shall each be allowed for the time they shall be necessarily employed in the duties of their office, the sum of three dollars per day, and five cents per mile, to be paid out of the general county fund; and it shall be their duty to furnish the necessary blank books, blanks and stationery for clerks of the district court, county clerks, treasurer and probate judge of their respective counties, to be paid out of the county treasury.

WITNESSES.

Witnesses —Fees of

Sec. 23. For each days attendance before the district court in civil cases, one dollar and fifty cents and mileage.

In criminal cases, or before any other court, board or tribunal, one dollar and fifty cents per day, and mileage;

Provided That in all criminal cases witnesses shall be paid out of the treasury of the proper county.

Jury fees, how paid

Sec. 24. There shall be paid by the party against whom a verdict is rendered, in the district court, a jury fee of five dollars, to be taxed in the bill of costs; and when collected to be paid into the county treasury; and for each trial by the court, a fee of one dollar, to be taxed, collected and paid in a like manner, for the use of the county.

Same

Sec. 25. In each criminal case tried by a jury, upon a conviction of the defendant or defendants, there shall be taxed in the bill of costs, a fee of six dollars as a jury fee, and judgment therefor shall be rendered against such defendant or de-

fendants, which sum, when collected, shall be paid into the county, for the use of the county.

Costs, how taxed

Sec. 26. In all actions, motions and proceedings in the supreme, district, probate or justices courts, the costs of the parties shall be taxed and entered on record separately.

Fees may be required in advance

Sec. 27. The clerk of the supreme court and of each district court, the register in chancery, probate judge, sheriff, justice of the peace, constable, or register of deeds, may in all cases require the party for whom any service is to be rendered, to pay the fees in advance of the rendition of such service, or give security for the same, to be approved by the officer.

When fees in advance may be refused

Sec. 28. It shall be lawful for any person to refuse payment of fees to any officer who will not make out a bill of particulars, signed by him, if required, and also a receipt or discharge signed by him for fees paid.

Not entitled to fees, when

Sec. 29. No sheriff, coroner or constable shall be entitled to receive on mesne or final process, any fees provided for in this chapter, unless he shall return upon the process upon which any charge shall be made, the particular items of such charge.

Officer taking illegal fees

Sec. 30. If any officer whatever, whose fees are hereinbefore expressed and limited, shall take greater fees than are so hereinbefore limited and expressed, for any service to be done by him in his office, or if any such officer shall charge or demand, and take any of the fees hereinbefore ascertained and limited, where the business for which such fees are chargeable shall not be actually done and performed, such officer shall forfeit and pay to the party injured, fifty dollars, to be recovered as debts of the same amount are recoverable by law.

Officers required to keep public fee table

Sec. 31. All officers whose fees are by this chapter determined, are hereby required to make fair tables of their respective fees, and keep the same in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said offices; and if any such officer shall neglect to keep a table of fees of his office as aforesaid, such officer shall, for each day of such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law, before any justice of the peace, for the use of the county in which the offense shall have been committed.

Court to appoint bailiffs

Sec. 32. It shall be the duty of the district court, at each term of court, to appoint a competent number of bailiffs to wait on the grand jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

U. S. revenue stamps charged extra

Sec. 33. All officers whose fees are hereinbefore limited, and expenses are allowed, may charge and demand as hereinbefore allowed, the price of all the United States revenue stamps required to be used in the discharge of their official duties, and the same shall be taxed with costs as in other cases of fees.

Prosecuting attorney—compensation.

Sec. 34. The prosecuting attorney in each county shall receive such compensation for his attendance upon the district court, and for his services, as shall be fixed by the order of the judge allowing the same;

Provisio

Provided, That in no instances shall there be allowed a greater sum than two hundred dollars for each term of the court, whether a regular or special term. And for preparing and examining official bonds, each, one dollar.

Officer to take oath

Sec. 35. Every officer, whose salary is in the nature of a per diem, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in form following:

Form of

I, A. B., do solemnly swear [or affirm,] that I have been ——— days necessarily and diligently engaged in the duties of my office as [insert title of office.]

[Officer's name,]

Attest by ———,

Duty of disbursing officer

Any disbursing officer of this Territory who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is subscribed, shall forfeit to this Territory the sum of fifty dollars, which forfeiture may be sued for by any tax-payer.

Acts repealed

Sec. 36. All acts and parts of acts in conflict with this act, are hereby repealed.

Take effect, when

Sec. 37. This act shall be in full force and effect, from and after its passage.

Approved, Jan. 14, 1869.

FENCES.

CHAPTER 7.

AN ACT SUPPLEMENTARY AND AMENDATORY TO CHAPTER FIFTEEN, LAWS 1865-6, ENTITLED "AN ACT TO ESTABLISH A FENCE LAW."

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

Kind of fence lawful

Section 1. That a fence constructed by placing the end of posts firmly in the ground, not to exceed twelve feet apart, and by firmly securing thereto one board, rail or pole at the top and three strands of common fence wire below, or by placing the end of posts firmly in the ground not to exceed thirty-two feet apart, and by firmly securing thereto four strands of common fence wire, with a swing post every eight feet between the stationary posts. The wires to be not more than twelve inches apart on the posts, and the lower wire to be not more than twenty inches above the average surface of the ground, along each joint or length of fence. The top of said fence shall not be less than four and a half feet above the average surface of the ground.

Same

Sec. 2. That a fence made as described in section 1 (one), shall be deemed a lawful fence when in good repair.

Sec. 11, chapter 15, laws 1865-66 amended

Sec. 3. That section eleven (11), chapter fifteen (15), laws 1865-6, is hereby amended by striking out of said section all after the word "apply," and insert in lieu thereof the words "to all the counties of this Territory."

Act to take effect. When

Sec. 4. This act shall take effect and be in force from and after its passage and approval.

Approved, Jan. 15, 1869.

HIGHWAYS AND BRIDGES.

CHAPTER 8.

AN ACT TO PREVENT THE OBSTRUCTION OR INJURY OF HIGHWAYS AND BRIDGES.

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

Unlawful to obstruct or plow up

Section 1. It shall be unlawful for any person to obstruct or plow up, or cause to be obstructed or plowed up, any public highway, or public street of any town, or injure any bridge.

Persons so offending liable

Sec. 2. Every person so offending shall be liable to a fine in any sum not more than one hundred dollars; and also liable in civil action for all damage to person or property by reason of any such obstruction or injury; *Provided*, That this act shall not apply to plowing done by order of any road supervisor for the purpose of working any highway or street.

Duty of road supervisor

Sec. 3. It shall be the duty of any road supervisor having personal knowledge of, or on being notified in writing of, any obstruction in the highway or public street in his district, to immediately remove or cause to be removed any such obstruction.

Complaint in behalf of people. Conviction

Sec. 4. If any person or persons shall willfully, carelessly or negligently obstruct or injure any public highway, public street or bridge, it shall be the duty of the road supervisor of the district in which such obstruction is placed or injury done to enter complaint in behalf of the people against the person or persons so offending, before a justice of the peace of the county; and on conviction thereof the fine so collected shall be immediately paid over to the treasurer of the county for the benefit of the common schools.

Sec. 5. It shall be the duty of the district attorneys to prosecute all violations of this act in their respective counties. Duty of district attorney

Sec. 6. All acts and parts of acts in conflict with this act are hereby repealed. Acts in conflict repealed

Sec. 7. This act shall be in force from and after its passage and approval. Act to take effect —when

Approved, January 9, 1869.

CHAPTER 9.

AN ACT SUPPLEMENTARY TO "AN ACT TO PROVIDE FOR THE OPENING, VACATING AND CHANGE OF HIGHWAYS."

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

Section 1. The board of county commissioners shall have the power to locate and establish highways on a section or quarter line, when the initial and terminating points can be clearly described, without the appointing of viewers or services of a surveyor, upon the petition of twelve freeholders or bona-fide claimants of the county, six of whom shall reside in the immediate neighborhood of the highway proposed to be located, if they shall be satisfied that notice of such application has been given, by publication three weeks successively in a newspaper published in the county, or by posting up notices in three of the most public places in the neighborhood of such proposed highway, at least twenty days before the meeting of the board at which such petition is presented, shall at their next regular meeting, if no remonstrance has been presented to the location of said proposed highway, locate and establish the same, on the section, or quarter line specified in said petition, and shall order the same to be opened and kept in repair, and shall cause notice thereof to be given to the proper supervisors. County commissioners shall have power to locate and establish highways —when

Shall feel aggrieved-Viewers

Sec. 2. If any person or persons, whose land adjoins said proposed section or quarter line highway, shall feel aggrieved thereby, such person may at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the said board shall thereupon appoint three disinterested freeholders, as viewers, and assign a day and place for them to meet.

Duty of

Sec. 3. Such viewers having five days notice, to be given by the party or parties remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and proceed to view the proposed highway and assess the damages, if any, which such objector or objectors may sustain from such highway being opened, and shall report the same to the ensuing session of such board.

Report of majority of.

Sec. 4. If a majority of the viewers assess and report damages in favor of the objector or objectors, and the board shall consider the proposed highway to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury;

Provided

Provided, That in arriving at such determination and award the benefits to accrue to such owner or occupant, by reason of opening said highway, are to be considered in making said award. But if a majority report against the claim for damages, the objector or objectors shall pay the costs; and when payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair as hereinbefore provided.

Shall give security

Sec. 5. The person or persons remonstrating shall give to the board of county commissioners approved security for the costs in case a majority of the viewers report against the claim for damages.

Act to take effect, when

Sec. 6. This act shall take effect from and after its passage and approval.

Approved, December 25th, 1868.

JUSTICES COURTS.

CHAPTER 10.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ESTABLISH THE COURTS AND DEFINE THE JURISDICTION OF JUSTICES OF THE PEACE," APPROVED, JANUARY 4TH, 1866.

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

Section 1. That sections 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220, of an act to establish the courts and define the jurisdiction of justice of the peace, approved, January 4th, 1866; be and the same are hereby repealed, and that there be enacted in lieu thereof the following: What sections are repealed

Sec. 2. Any justice of the peace within his proper county shall have power to inquire in the manner hereinafter specified of all cases of forcible entry, or detention of real property. Power of justice

Sec. 3. This proceeding is allowable: Proceeding

1, Where the defendant has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of another in regard to real property and detains the same;

2, Where a lessee holds over after the termination of his lease, agreements, or contract;

3, Where the defendant continues in possession after a sale by foreclosure of a mortgage or an execution, unless he claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale.

Sec. 4. The non-payment of rent at the time stipulated shall enable the lessor to resort to this action. Non-payment of rent

Sec. 5. Before suit can be brought in any except the first of the classes designated in section 3 hereof, three days notice to quit must be given to the defendant in writing. Notice to quit

Who may bring action

Sec. 6. The legal representatives of a person who might have been plaintiff if alive, may bring this action after his death.

Complaint in writing

Sec. 7. The complaint must be in writing and verified by the party, his agent or attorney.

Proceedings

Sec. 8. The proceedings may be had before any justice of the peace of the county where the premises are situated and shall be governed by the same rules as other cases before justices of the peace except as herein modified; *Provided, however*, That the question of title can not be investigated under the provisions of this act.

Time for appearance

Sec. 9. The time for appearance and pleading must not be less than two nor more than four days from the time the summons is served on the defendant.

No adjournment —except

Sec. 10. No adjournments or continuances shall be made for more than five days, except for witnesses residing without the Territory.

If found guilty

Sec. 11. If the defendant is found guilty, judgment shall be entered that he be removed from the premises, and that the plaintiff be put in possession thereof and a warrant of removal shall issue accordingly to which shall be a clause commanding the officer to levy the costs as in ordinary actions.

Set off

Sec. 12. An action under the provisions of this act, can not be brought in connection with any other, nor can it be made the subject of set off.

Warrant of removal

Sec. 13. A warrant of removal can be executed only in the day time.

Appeal

Sec. 14. An appeal taken in the usual way, if security be given in the usual manner together with further security for payment of rent or damages, shall suspend all further proceedings until the cause is determined in the district court.

Trial of appeal

Sec. 15. The district court upon the trial of such appeal may make such disposition of the case as justice may require.

Costs

Sec. 16. Costs shall be taxed as in other cases before justices of the peace.

Act to take effect

Sec. 17. This act being deemed of immediate importance shall take effect and be in force from and after its passage and approval.

Approved, Jan. 8, 1869.

LOGS AND LUMBER.

CHAPTER 11.

AN ACT REPEALING CHAPTER 47 OF THE GENERAL LAWS OF DAKOTA.

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

Chapter repealed.

Section 1. That Chapter 47, of the General Laws of 1862—3, entitled "An Act to secure the free passage of Logs and Lumber down the several rivers of this Territory," Approved, January 2nd, 1863, be and the same is hereby repealed.

Act to take effect—When.

Sec. 2. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, Jan. 8, 1869.

LOST GOODS AND ESTRAYS.

CHAPTER 12.

AN ACT CONCERNING LOST GOODS AND ESTRAYS.

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

No person shall take up estrays, except. Provided

Section 1. No person shall take up an estray animal except in the county wherein he or she resides, and is a householder, or holds a claim under the pre-emption or homestead laws, nor unless the same be found in the vicinity of his or her claim or place of residence; *Provided*, That this shall not be so construed as to prevent taking up of any estray found in the uninhabited parts of this Territory, and at a distance of ten miles from any habitation.

During what months. Unless

Sec. 2. No person shall take up any estray animal mentioned in the next section in any county except during the months of October, November, December, January, February and March, unless the same is found trespassing upon the claim, or within the inclosure, of the person taking up the same.

Shall give notice —when—how. Marks and brands not effaced

Sec. 3. Every person who shall take up any estray horse, mare, colt, mule, ass or any head of neat cattle, sheep, hog, or goat, shall within fifteen days thereafter give notice of the finding and taking up of such animal, by posting a written advertisement thereof, with a description of such estray, and the marks and brands thereon, in three public places in the county wherein he resides, or by publishing such advertisement three times in a weekly newspaper, if there is a newspaper published in the county in which the estray is taken up, and if the same be not called for or claimed by any person within twenty-two days after the posting of such notice, or within three weeks after the first insertion of such notice in a newspaper, the person taking up such estray animal shall go before some justice

of the peace of the county wherein he resides, and make oath that such animal was found estray by him, and the place where the same was found; that the marks and brands thereon have not been effaced or altered by him since the taking up, and that he hath duly advertised the same as required by law; every such affidavit shall be made and subscribed in the docket of such justice, and shall be sufficient proof of the advertisement of such estray as herein required.

Justice to issue warrant. To whom. Proceedings of appraisers —shall report

Sec. 4. Such justice of the peace shall thereupon issue his warrant to three disinterested householders of the county, unless their attendance may be otherwise had, commanding them to attend at such place as may be therein mentioned, to appraise such estray; the appraisers so appointed, or any two of them shall thereupon proceed to appraise such estray, and upon the completion of such appraisement shall attend before the justice and report their appraisement; and the justice shall thereupon enter such appraisement upon his docket in the form of an affidavit or certificate of the appraisers, setting forth a description of the estray appraised, the marks and brands thereon, the name and place of residence of the person taking the same up, and that the appraised value of such estray is a fair and true valuation thereof; and such affidavit shall thereupon be subscribed by the appraisers, and sworn to before such justice.

Upon completion of such appraisement justice to post notices.

Sec. 5. Upon the completion of such appraisement as aforesaid, the justice of the peace before whom the appraisement is had shall forthwith post in three of the most public places in his county, or publish three times in a newspaper if there is a newspaper published in the county; a notice of the taking up of such estray, with a description thereof and of the marks and brands thereon, and the name and place of residence of the person taking up the same.

Justice to transmit copy of affidavit. To whom. When

Sec. 6. Such justice shall also transmit a copy of such affidavit or certificate of the appraisers certified by him to be a true copy from his docket to the register of deeds of his county within ten days after the completion of such appraisement.

Recorded in estray register

Sec. 7. Every register of deeds upon receiving any such certified copy of such appraisement shall forthwith cause the same to be recorded in a book to be kept in his office, to be entitled the "Estray Register."

When two or more animals are taken up at the same time

Sec. 8. If two or more animals are taken up at the same time by the same person, both and all thereof shall be numbered in the same advertisement and appraisement, and the same fees are allowed as for the advertisement or appraisement of one estray.

When person shall appear and make claim to estray. Duty of person taking up same. Assessment final

Sec. 9. Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray shall go before the justice of the peace before whom such appraisement was had, or some other justice of the peace of the county, and such claimant shall make affidavit in writing subscribed by him setting forth his name and place of residence and that he is the owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant upon payment of all fees advanced by him in accordance with this chapter, and his reasonable charges for keeping and caring for such estray. If the parties can not agree as to the amount of such charges, the same shall be assessed by such justice of the peace and such assessment shall be final. Every affidavit required by this section shall be made and recorded upon and within the docket of such justice of the peace.

If estray be not claimed within one year, does not exceed fifty dollars

Sec. 10. If any such estray be not claimed and taken away within one year after the appraisement thereof as hereinbefore provided, and if the person taking up such estray shall have caused the same to be advertised and appraised as provided by sections three, four and five, and shall not in other respects have violated the provisions of this chapter, and if the appraised value of such estray does not exceed fifty dollars, the property therein shall immediately vest in the persons taking the same up.

Exceeds fifty dollars

Sec. 11. If the appraised value of any estray exceeds fifty dollars, and the same is not called for within one year after the appraisement thereof the person taking up such estray shall notify some justice of the peace of the county, and such justice shall appoint a day and place for the sale thereof and cause notices of such sale to be posted in three public places in the county at least twenty-two days before such day so appointed, or shall cause such notice of such sale to be published three times in a weekly newspaper, if there is one published in the

county, and on the appointed day the person taking up such estray shall have the same present at the place fixed by the justice, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray and caring for and keeping the same to be fixed by such justice and the fees advanced for the appraisement and advertisement of such estray as herein provided, and after deducting the fees allowed such justice for such sale and the advertisement thereof, the residue of the proceeds of such sale shall be paid to [the] county treasurer who shall receipt to the justice therefor.

Moneys so deposited with the county treasurer retained by him how long

Sec. 12. All moneys so deposited with the county treasurer shall by him be retained in the treasury for six months thereafter, separate and apart from all other moneys; and if the owner of any such estray so sold as aforesaid shall within such period appear before the board of county commissioners and establish his title to such estray, such board of commissioners shall order the amount so paid into the treasury to be refunded to such owner; if no such owner appear within six months after the deposit of any such sum of money as herein provided, the same shall be passed to the school fund of the county, and shall be accounted for and expended as other school moneys are.

Justice to deliver to treasurer certificate setting forth what

Sec. 13. Whenever any sum of money is paid into the county treasury by virtue of the eleventh section, the justice paying the same shall deliver to the treasurer a certificate setting forth a description of the estray from the sale of which the same was obtained and the marks and brands on such estray, and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall by the treasurer be filed and preserved in his office to the end that the right of the owner of such estray to receive such sum of money may be readily established.

Fees allowed for services performed, certain fees a lien

Sec. 14. The following fees shall be allowed for services performed under this chapter;

To justices of the peace for issuing any warrant of appraisement, fifty cents;

Entering the affidavit of appraisement and receiving their oaths thereto, fifty cents;

Taking and entering the affidavit of the taking up of any estray, fifty cents;

For posting advertisements as required by the provisions of this act, and certifying a copy of the affidavits of the appraisers to the register of deeds, fifty cents;

Posting notices and selling such estray, two dollars;

Advertising such estray if published in a newspaper, three dollars;

To each appraiser, twenty-five cents;

To register of deeds for each inspection of the estray register to be kept in his office, ten cents, which shall be in full of all fees for services required to be performed by them under this act;

The fees of justices of the peace, advertising and appraisers shall be paid by the person taking up the estray, but the same shall constitute a first lien upon the estray and shall be paid by the owner before he shall be entitled to take away such estray.

Manner of taking up appraising &c.

Sec. 15. The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highway, or in any other place, shall be the same as herein provided.

Persons not authorized so to do, willfully neglecting to advertise &c, Provided

Sec. 16. If any person not authorized so to do shall take up any estray or lost goods, or if any person taking up any such estray or any lost goods shall willfully neglect to cause the same to be advertised and appraised as herein provided or shall work or use any such estray beast, except in a prudent manner, and so as not to injure the same, or shall when working such beast fail to sufficiently feed and properly care for the same, every such person so offending shall forfeit twenty-five dollars to the owner of such estray, to be recovered by action of debt before any justice of the peace; *Provided, however*, That such action shall not be a bar to an action commenced by the owner of such estray against the person taking up the same, if such animal should receive a permanent injury or be rendered useless because of ill treatment inflicted, or neglect received from the person taking up such estray.

Attempt to conceal estray or goods found effacing brand or marks, such person shall forfeit

Sec. 17. If any person shall attempt to conceal any estray or any lost goods found and taken up by him, or shall efface any brand or marks thereon, or carry the same beyond the lim-

its of this Territory, or knowingly permit the same to be done, or shall willfully fail to cause the same to be sold as required by this act; every such person so offending shall forfeit a sum not less than ten dollars nor more than one hundred dollars, to be recovered by information commenced by the district attorney before any justice of the peace of the county, one-half to be paid to the informer and the other half into the county treasury for the benefit of the school fund of such county. Every person convicted under the provisions of this section shall be imprisoned in jail until such fine is paid.

Justice of peace failing to pay over moneys arising from sale

Sec. 18. Any justice of the peace who shall fail to pay over to the county treasurer any moneys arising from the sale of any estray or lost goods under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than twenty dollars nor more than one hundred dollars for each estray for the benefit of the common school fund of the county.

May work and use in a prudent manner

Sec. 19. Any person taking up any estray beast may work and use the same in a prudent manner and so as not to injure the same, but during the time of working and using such estray shall not be allowed to receive or charge any compensation for the keeping thereof.

If estray die, or be stolen, person taking up same not chargeable —when

Sec. 20. If any estray after being duly advertised and appraised as provided in the third section of this act shall, without the fault of the person taking up the same, die or be stolen or escape and wander away, the person taking the same up shall not be chargeable therefor.

Place of sale

Sec. 21. The place of sale of estrays and lost goods under the provisions of this act shall be at the county seat of the county in which the estray or lost goods is appraised.

Chapter 35 laws 1862 repealed

Sec. 22. Chapter thirty-five of the session laws of 1862 is hereby repealed.

Act in force and effect when

Sec. 23. This act shall be in force and take effect from and after its passage and approval.

Approved, January 8, 1869.

MANDAMUS.

CHAPTER 13.

AN ACT DEFINING THE ACTION OF MANDAMUS AND PRESCRIBING THE PRACTICE THEREIN.

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

Writ of mandamus

Section 1. That the writ of mandamus shall be the order of a court of competent jurisdiction, and issue from the district court, commanding an inferior tribunal, corporation, board or person, to do or not to do an act, the performance or omission of which, the law specially enjoins as a duty resulting from an office, trust or station, and it is granted on the complaint of any private party aggrieved, without the concurrence of the district attorney for the people of the Territory; or on the complaint of the people of the Territory, by the district attorney, when the public interest is concerned, and it is in the name of such private party, or of the people of the Territory, as the case may be brought.

What plaintiff must state

Sec. 2. The plaintiff in such action shall state his claim fully, and shall also state facts sufficient to constitute a cause for such claim; and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and the extent of such interest, and that he may sustain damage by the non-performance of such duty, and that performance thereof has been specially demanded by him, and refused or neglected, and shall pray a writ of mandamus commanding the defendant to fulfill such duty.

Discretion

Sec. 3. Where a discretion is left to an inferior tribunal the writ of mandamus can only compel it to act. It cannot control the discretion of such inferior tribunal.

Sec. 4. The writ may also be issued by the supreme court to any district court if necessary, and also in any other case where it is necessary to enable it to exercise its legitimate powers. May be issued by supreme court

Sec. 5. The pleadings and other proceedings in any action in which a writ of mandamus is prayed, shall be the same in all respects as in other civil actions, except as herein charged. Pleadings and proceedings

Sec. 6. Upon the filing of a complaint in an action of mandamus, the plaintiff must present the same to a judge of the supreme or district court for an allowance of an alternative writ of mandamus. Filing of complaint.

Sec. 7. If such judge upon an examination of such complaint, is of the opinion that cause of action is set out therein, he shall make an order that the defendant forthwith perform the act or acts, the omission of which is complained of in such complaint; or that such defendant show cause if any exists, at the next term of the proper court, why a peremptory mandamus should not issue. Upon examination of

Sec. 8. Upon the filing of such order in the proper clerk's office, the clerk must immediately issue such alternative writ of mandamus; which writ shall be served and returned as a summons and in like manner. Upon filing of such order

Sec. 9. The defendant may state any matter in his answer which constitutes a defence or furnishes a reason why the peremptory writ of mandamus should not issue. Defendant may state,—what

Sec. 10. If, upon the trial of the issue joined in such action, the issue is found in favor of the plaintiff, the court shall order the peremptory writ of mandamus to issue forthwith. Trial of issue joined

Sec. 11. The writ shall merely command the performance of the act and shall be directed to the defendant in person, and returnable forthwith, and no return except that of full compliance shall be allowed; but time for compliance with the command of the writ may be given in the discretion of the court. Writ shall merely command

Sec. 12. The court upon the application of the plaintiff may proceed againt the defendant by attachment, or may direct that the act be performed by the plaintiff or some other person appointed by the court. Proceed by attachment

During the pendancy of action

Sec. 13. During the pendency of the action, the court or any judge thereof, in vacation, may make temporary orders for preventing damage or injury to the plaintiff until the cause is decided.

When people are a party

Sec. 14. When the people of the Territory are a party, the attorney may appeal without security.

Action shall not lie,—where

Sec. 15. The action of mandamus shall not lie in any case, where the plaintiff has a plain, speedy and adequate remedy in the ordinary cause of civil actions.

Act to take effect —When

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

Approved, January 9th, 1869.

MEDICAL PROFESSION.

CHAPTER 14.

AN ACT TO PROTECT THE CITIZENS OF DAKOTA TERRITORY, AND ELEVATE THE STANDING OF THE MEDICAL PROFESSION.

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

Unlawful for what. Provided

Section 1. That it shall be unlawful for any person within the limits of said Territory, who has not attended two full courses of instruction and graduated at some school of medicine, either of the United States or some foreign country, or who cannot produce a certificate of qualification from some State or county medical society, and is not a person of good moral character, to practice medicine in any of its depart-

ments for reward or compensation, or attempt to practice medicine, or prescribe medicine or medicines, for reward or compensation, for any sick person within the said Territory of Dakota; *Provided*, That in all cases when any person has been continuously engaged in the practice of medicine for a period of ten years or more, he shall be considered to have complied with the provisions of this act.

Violation of, punishment prescribed

Sec. 2. Any person living in the Territory of Dakota, or any person coming into said Territory, who shall practice medicine or attempt to practice medicine in any of its departments, or perform or attempt to perform any surgical operation upon any person within the limits of said Territory, in violation of section one of this act, shall upon conviction thereof, be fined not less than fifty nor more than one hundred dollars for such offense, and upon conviction for a second violation of this act, shall in addition to the above fine, be imprisoned in a jail within said Territory for a term not less than thirty days, and in no case wherein this act shall have been violated, shall any person so violating receive a compensation for services rendered; *Provided*, That nothing herein contained shall in any way be construed to apply to any person practising dentistry.

Act to take effect, When

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

Approved, Jan. 15, 1869.

OCCUPYING CLAIMANTS.

CHAPTER 15.

AN ACT DEFINING THE RIGHTS OF OCCUPANCY OF CLAIMANTS, PRESCRIBING THE MANNER OF ENFORCING THE SAME, AND QUIETING THE TITLE TO LANDS SO OCCUPIED.

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

When occupant of land has made valuable improvement under color of title. In action found not to be the proper owner

Section 1. That where any occupant of land has color of title thereto, and in good faith has made any valuable improvements thereon, and is afterwards in the proper action found not to be the rightful owner thereof, he may bring an action against the persons so found to be rightful owner, and therein shall be determined his right as such occupying claimant, in accordance with the provisions of this act; and if such action shall be commenced within twenty days from the rendition of the judgment in the original action, no execution or other process shall issue to put the plaintiff in possession of such property until the provisions of this act have been fully complied with.

What complaint must state

Sec. 2. The complaint in such action must set forth the grounds on which the complainant therein named seeks relief; stating among other things the value of the land so occupied, aside from the improvements thereon, and also as accurately as practicable, the improvements upon the land and the value thereof.

Issue may be joined

Sec. 3. Issue may be joined in such proceedings as in other civil cases, and upon the trial of such issue or issues, the value of the land aside from the value of the improvements thereon, and the separate value of the improvements must be specifically found by the verdict of a jury or by the court upon evidence adduced in court.

Sec. 4. The judgment upon such finding, if in favor of such occupying claimant, shall be that such occupying claimant, pay to the holder of the legal title of such lands, the appraised value thereof within sixty days from the rendition of such judgment, and in default of such payment by such occupying claimant, that the holder of such legal title shall pay to such occupying claimant the full amount of the appraised value of the improvements situated upon such land, and that until such payment or tender, and deposit in the proper clerk's office, no execution or other process shall issue in the original action to dispossess such occupying claimant.

Judgment if in favor of occupying claimant. Default thereof

Sec. 5. The rules of practice now or that may be hereafter in force in this Territory, shall govern in actions brought under the provisions of this act, when the same are not inconsistent therewith.

Rules of practice in such case

Sec. 6 The purchaser in good faith at any judicial or tax sale made by the proper person or officer, has color of title within the meaning of this act, whether such person or officer had sufficient authority to sell or not; and the rights of such purchaser shall pass to his assignees or descend to his heirs; *Provided, however*, That nothing in this section contained shall be construed to limit what shall constitute color of title.

The purchaser in good faith at any judicial tax sale—has color of title. Provided

Sec. 7. In the cases above provided for, if the occupying claimant has committed any injury or waste upon such land, the defendant in the proceedings herein prescribed, may set off the amount of the same against any claim for improvements made by such claimants.

If claimant has committed any injury

Sec. 8. Any occupying claimant in possession may at any time file complaint, setting forth his claims to such estate whether of inheritance for life, for years, or under any act of congress, and averring that he is credibly informed and believes that the defendant makes some claim adverse to the estate of the complainant, and praying that such defendant may be summoned to show cause why he should not bring an action, to try the alleged title if any, and thereupon the court or the judge thereof in vacation, shall order notice to be given to the defendant by summons issued; and upon the return of such summons duly served, if the defendant so notified shall make default, or having appeared shall disobey the lawful order of

May at any time file complaint setting forth his claims. Judge shall order notice to be given Final judgment

the court, to bring an action to try the title to such estate within such time as the court shall direct, the court shall enter a final judgment that such defendant be forever debarred and estopped from having or claiming any right or title to such estate adverse to such plaintiff and those claiming by, through or under him.

If defendant shall appear and disclaim all right

Sec. 9. If the defendant in the proceedings provided for in section eight thereof, shall appear and disclaim all right and title adverse to the plaintiff he shall recover his costs; if he shall claim title, he shall show cause by answer why he should not be required to bring an action and try such title, and the court shall make such judgment or order respecting the bringing and prosecuting of such action as may seem just.

Act to take effect —when

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved, Jan. 4, 1869.

PARTITION OF LANDS.

CHAPTER 16.

AN ACT TO PROVIDE FOR THE PARTITION OF LANDS.

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

When object of action is to effect partition of lands

Section 1. That when the object of an action is to effect the partition of real property among several joint owners the complaint must describe the property, and the respective interests of the several owners thereof, if known.

Sec. 2. If the number of shares or interests is known, but the owners thereof are unknown, or if there are, or are supposed to be any interests which are unknown, contingent or doubtful, these facts must be set forth in the complaint with reasonable certainty. If number of shares are known, but owners are not

Sec. 3. Creditors having a specific or general lien upon all or any portion of the property must be made parties. Creditors having specific lien

Sec. 4. If the lien is upon one or more undivided interest of any of the parties, it shall after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon such interests paramount to all other liens. If lien is upon one or more undivided interests

Sec. 5. The answers of the defendants must state among other things, the amount and nature of their respective interests. They or any of them may deny the interest of the plaintiffs or any of them; and by supplemental pleading, if necessary, may deny the interest of the other defendants. Answer of defendants must state what. May deny interest

Sec. 6. Where there are two or more plaintiffs, they may reply jointly, or either of them may reply to any or all the answers of the defendants. When two or more plaintiffs may reply—how

Sec. 7. Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases. Issues may be joined, how tried

Sec. 8. Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title if he has any such, and must file copies thereof with his pleadings. Parties appearing must exhibit what

Sec. 9. If the statements contained in the complaint and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true. Statement not contradicted shall be taken as true

Sec. 10. After all the shares and interests of the parties have been settled and determined in any of the methods aforesaid judgment shall be rendered confirming those shares and interests and directing partition to be made accordingly. After all shares have been settled judgment shall be rendered

Sec. 11. Upon entering such judgment, the court [must] appoint three commissioners to make partition of the lands into the requisite number of shares, one of which said commissioners shall be a competent surveyor. Court to appoint three commissioners

May be directed to allot. In all other cases

Sec. 12. For good and sufficient reasons appearing to the court, the commissioners may be directed to allot particular portions of the land to particular individual parties. In all other cases the shares must be made as nearly as possible of equal value.

Partition cannot be made without prejudice. Shall report to court

Sec. 13. If it appears to the commissioners that a partition cannot be made without great prejudice to the owners of the land, they shall so report to the court, stating clearly in their report the facts in relation thereto.

If satisfied with report, court shall order

Sec. 14. If satisfied with such report, the court shall cause an order to be entered, directing the commissioners to sell the premises so situated, and shall also in such order fix the terms of sale.

Same notice shall be given

Sec. 15. The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner.

Before proceeding to sell. —Securi'y

Sec. 16. Before proceeding to sell, the commissioners shall each give security, to be fixed and approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter, the court may require farther and better security.

After completing said sale, What

Sec. 17. After completing said sale, the commissioners must report their proceedings to the court, with a description of the several parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk.

If sales are confirmed by court

Sec. 18. If such sales are confirmed by the court, an order shall be entered, directing the commissioners or any two thereof, to execute conveyances pursuant to such sale. But no conveyances can be made until all the money is paid or secured in such manner as the court may direct.

Conveyances valid against whom

Sec. 19. Such conveyances so executed being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time, who were made parties to the proceedings in the manner prescribed by law.

If sale disapproved

Sec. 20. If the sales are disapproved, the money paid and the securities given or either, must be returned to the persons respectively entitled thereto.

Must mark shares by visible monuments

Sec. 21. When a partition of the land is deemed proper, the commissioners must mark the shares by visible monuments and permanently establish the boundaries thereof.

Report must be in writing

Sec. 22. The report of the commissioners must be in writing and signed by at least two of such commissioners. It must particularly describe the respective shares and be accompanied with a correct plat of the premises.

Unless shares are allotted. Proceedings

Sec. 23. Unless the shares are allotted to their respective owners by the commissioners as hereinbefore contemplated, the clerk shall number the shares and then draw the names of the future owners by lot, which allotment shall be made in the presence of the court and under its direction.

When partition can be made of part of premises not of whole

Sec. 24. When partition can conveniently be made of part of the premises, but not of all, one portion may be partitioned and the other sold as hereinbefore provided.

Report of commissioners may be set aside

Sec. 25. For good cause shown, the report of the commissioners may be set aside and the matter again referred to the same or other commissioners.

If confirmed, judgment thereon

Sec. 26. Upon the report of the commissioners being confirmed, judgment thereon shall be rendered that the partition so made be firm and effectual forever.

When parties in interest are notified to appear by service of summons &c.

Sec. 27. When the parties in interest have been duly notified to appear and answer, either by the service of a summons, or by the publication prescribed by law, any of the proceedings in this act authorized, shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings.

Judgment of partition, presumtive evidence. Subject however

Sec. 28. A judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject however to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenant or tenants in common.

Costs in partition. How paid

Sec. 29. The costs in partition cases shall be paid by all the parties in proportion to their respective interest, except those costs which are created by contests herein provided for.

Person claiming to hold incumbrance, on his own proper motion, party thereto

Sec. 30. Any person claiming to hold an incumbrance or lien upon any portion of the property involved in the suit, may upon his own proper motion be made a party thereto and have his interests determined therein.

If incumberance be ascertained to exist

Sec. 31. If any incumbrance be ascertained to exist the proceeds of the sale of that portion so encumbered, or so much thereof as is necessary, shall, if the owner consent, be paid over to the incumbrancer.

If owner object to payment, money retained

Sec. 32. If the owner object to the payment of such incumbrance, the money shall be retained or invested by order of the court, to await final action in relation to its disposition; and the court may direct an issue to be made up between the incumbrancer and the owner which shall be decisive of their respective rights.

Estate for life

Sec. 33. If an estate for life or years be found to exist as an incumbrance upon any part of such property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested, and the proceeds thereof to be paid to the incumbrancer, during the lifetime of such incumbrance.

Contingent or equitable interests

Sec. 34. Persons having contingent or equitable interests in such property may be made parties to the proceedings, and the proceeds of the property so situated or the property itself, in case of partition, shall be subject to the order of the court until such interests shall be full determined and the title of such property vested by due process of law.

Shall not delay distribution

Sec. 35. The proceedings in relation to incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no such difficulties exist.

Court shall make such orders as it may deem necessary respecting. In case of absent owners

Sec. 36. The court shall from time to time as occasion may require, make such orders as it may deem necessary, respecting the distribution of any or all moneys arising out of the sale of any property under the provisions hereof. And in case of absent owners shall retain the share or shares of such absentee in the hands of the court, and if the same be money the court shall cause the same to be invested for the use and benefit of such absentee, but if partition be made and a share be allotted to the absentee, the court shall appoint some discreet person to

manage and take charge of the same, who shall account annually to the court the results and condition thereof.

Absentee may take possession upon application

Sec. 37. Such absentee, his heirs, executors or assigns, may at any time take possession of such property, upon application to and with the permission of the court.

Questions of title. How determined

Sec. 38. Questions of title, incidentally arising in proceedings under the provisions of this act, may be fully determined as in actions brought for the recovery of real property and under like issues and evidence.

Not joined with proceedings for recovery

Sec. 39. The proceedings provided for herein shall not be joined with proceedings for the recovery of real property in one and the same action.

Rules of pleadings and practice prescribed by code of civil procedure shall obtain

Sec. 40. The rules of pleading and practice prescribed by the code of civil procedure shall obtain in all proceedings under the provisions of this act, except as herein changed.

Act to take effect, when

Sec. 41. This act being deemed of immediate importance shall take effect and be in force from and after its passage and approval.

Approved, Jan. 5, 1869.

POOR.

CHAPTER 17.

AN ACT FOR THE RELIEF OF THE POOR.

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

County commissioners, overseers. Duty of

Section 1. That the county commissioners of the several organized counties of this Territory, shall be the overseers of the poor within their respective counties, and shall perform all the duties with reference to the poor within their respective counties, that may be prescribed by law.

How designated

Sec. 2. That every board of county commissioners shall, in discharging the duties imposed by this act, be designated as overseers of the poor.

Suits against, how brought

Sec. 3. In all suits or proceedings in favor of or against any such overseers of the poor, pertaining to or connected with the poor of their respective counties, the same shall be conducted in favor of or against such county in its corporate name.

Every county shall relieve its poor &c.

Sec. 4. Every county shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the same way and manner as in the twenty-ninth section of this act is provided.

Legal settlements may be acquired. Married women.

Sec. 5. Legal settlements may be acquired in any county, so as to oblige such county to relieve and support the persons acquiring such settlement, in case they are poor and stand in need of relief, as follows:

First, A married woman shall always follow and have the settlement of her husband, if he have any within the Territory, otherwise her own at the time of her marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

Legitimate children. Male and female over the age of 21.

Second, Legitimate children shall follow and have the settlement of their father, if he have any within the Territory, until they shall gain a settlement of their own, but, if the father have no settlement, they shall in like manner follow and have the settlement of their mother, if she have any.

Third, Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within this Territory; but neither legitimate or illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

Fourth, Every male person and every unmarried female over the age of twenty-one years, who shall have resided in

any county in this Territory ninety days, shall thereby gain a settlement in such county.

Fifth, Every minor whose parents, and every married woman whose husband, has no settlement in this Territory, who shall have resided ninety days in any county in this Territory, shall thereby gain a settlement in such county. Minors. Settlement when once acquired

Sixth, Every minor who shall be bound as an apprentice to any person, shall immediately upon such binding, if done in good faith, thereby gain a settlement when his or her master or mistress has a settlement.

Seventh, Every settlement when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this Territory, or by willful absence from the county in which such legal settlement had been obtained, for ninety days or more, and upon acquiring a new settlement, or upon the happening of such willful absence, all former settlement shall be defeated and lost; and the provisions of this section shall apply to cases of settlements begun to be acquired, or lost, or defeated, as well before as after the provisions of this act shall go into effect.

Sec. 6. The overseers of the poor in each county shall have the oversight and care of all poor persons in their county, so long as they remain a county charge, and shall see that they are properly relieved and taken care of in the manner provided by law. Overseers to have oversight and care &c.

Sec. 7. It shall be the duty of the overseers of the poor, in counties wherein no common poor house is established, two weeks next preceding the first Monday of May in each year, to give public notice, by having published in the newspaper or newspapers in their respective counties, or in case no such newspaper is published in the county, by posting upon three public places in the county, advertisement certifying the poor that are to be provided for, and asking for sealed proposals for their maintenance during the coming year, which sealed proposals shall be opened and acted on by said overseers of the poor, on the said first Monday in May; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions, at any time, for the keeping of Duty of overseer of the poor

such poor persons as may in the interim become a county charge, or of rejecting the propositions of such persons as they know to be unable to fulfill their obligations to the said poor.

Commissioners may allow and pay in their discretion

Sec. 8. The board of county commissioners, may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years and sound mind, and who, from their general character will probably be benefitted thereby, and also the parents of idiots, and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board taking the usual amount of charges in like cases as the rule for making such allowance.

Duty of, on complaint

Sec. 9. It shall be the duty of said overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint; and if in their judgment, the said poor have not been sufficiently provided with the common necessaries of life, or have in any respect been ill-treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed to such person or persons keeping them, as such overseers may deem reasonable and proper, and remove said poor and place them in the care of some other person.

Poor book

Sec. 10. The overseers of the poor shall enter in the poor book of their respective counties, all poor persons in their counties, who are unable to care for themselves, and who shall, in their judgment, be entitled to the benefit of the provisions of this act, together with the date of such entry.

When any poor person shall suppose he or she is entitled &c.

Sec. 11. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the county in which he or she resides, shall refuse to give such person the benefit thereof, upon application of such person, the judge of probate of the county may, if he shall think proper, direct the said overseers of the poor to receive him or her on the poor list, on his or her application therefor.

When county commissioners unable to determine last residence of poor person. How to proceed

Sec. 12. If any one within the description of poor persons specified in this act, shall be found in any county, and the overseers of the poor of such county shall be unable to ascertain and establish the last place of legal settlement of such person, they shall proceed, in their discretion, to provide for such poor person in the same manner as other persons are hereby directed to be provided for.

Whenever entitled to temporary relief

Sec. 13. Whenever any person entitled to temporary relief as a pauper, shall be in any county in which he or she has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief, by placing him or her temporarily in the poor house of such county, if there be one, but if there be no poor house, then they shall provide the same relief as is customary in cases where a legal settlement has been obtained.

Upon complaint of overseer, Justice of peace may issue warrant

Sec. 14. Upon complaint of any overseer of the poor, any justice of the peace may issue his warrant, directed to and to be executed by any constable, or by any other person therein designated, to cause any poor person found in the county of such overseer, likely to become a public charge, and having no legal settlement therein, to be sent and charged at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she can not be removed, such person shall be relieved by said overseers whenever such relief is needed.

Whenever poor person shall feel themselves aggrieved by order of removal. Proceedings

Sec. 15. If the overseers of the poor of any county in this Territory, to which any pauper shall have been removed as above provided, shall feel themselves aggrieved by such order of removal, they may, at any time within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering such removal, to the probate court of the county from whence the removal was ordered to be made, such appeal to be taken, tried and determined, and costs adjudged, as in other cases of appeal from a judgment of a justice of the peace, and the order of removal may be vacated or affirmed according to the law and right of the case.

Appeal. How heard

Sec. 16. Such appeal shall be heard at the term of the court next after the same is filed therein, if, in the opinion of the court, reasonable notice of the appeal has been given to the

opposite party; but, if not thus given, the cause shall stand continued until the next term of the court, and notice of the appeal be then given, if not before done.

When order of removal is defective

Sec. 17. If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made the appeal shall be heard and determined as if such order had not been defective.

When removed by the provisions of this act

Sec. 18. If any person be removed by virtue of the provisions of this act, from any county, to any other place within this Territory, by warrant or order under the hand and seal of any justice of the peace, as hereinbefore provided, the overseers of the poor of the county to which such person shall be removed, are required to receive such person if he have a legal settlement in their county.

Overseers shall make a return —To whom

Sec. 19. The overseers of the poor shall make a return to the clerk of the board of county commissioners of the sums of money required for the poor of their respective counties, within fifteen days after every such contract hereinbefore provided for, shall have been made, which sums shall be paid quarterly out of the county treasury, upon the order of the board of county commissioners, in the same manner as other claims of the county are paid.

Pay of

Sec. 20. The overseers of the poor in each county in the Territory shall be entitled to receive each two dollars per day for each and every day during which they shall be necessarily employed in the discharge of their several duties as such, to be allowed by the board of county commissioners.

When overseer shall remove out of his proper county

Sec. 21. If any overseer of the poor shall remove out of his proper county, he shall previous to his removal, deliver over to his associates in office, all books, papers, and other things pertaining to his official position; and upon the death of any overseer, his executors or administrators shall, within forty days after his decease, deliver over all things belonging to his office to his associates, who may thereupon proceed to select from the qualified voters of the county, a suitable person to fill the place vacated by said removal or decease.

Shall submit their accounts —When

Sec. 22. The overseers of the poor of the several counties, shall annually, at the first session of the board of county commissioners in the year, submit their accounts and make report

of their proceedings for the past year, which report shall be presented to the clerk of the board of county commissioners at least one day prior to the meeting of said board, and said board may then credit and allow said accounts so presented, and may draw on the county treasurer therefor, whose duty it shall be to pay the same out of any money in the county treasury not otherwise appropriated.

Duty of overseer when a non-resident of the county is lying sick. If person shall die, leaving no means

Sec. 23. It shall be the duty of the overseers of the poor, on complaint made to them that any person, not an inhabitant of their county, is lying sick therein, or in distress, without friends or money, so that he or she is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any county, who shall not leave money or other means necessary to defray his or her funeral expenses, it shall be the duty of the overseers of the poor of such county, to employ some person to provide for and superintend the burial of such deceased person, and the necessary and reasonable expenses thereof shall be paid by the county treasurer upon the order of such overseers.

Lawful to call an election for what.

Sec. 24. It shall be lawful for the board of county commissioners in the several counties of this Territory, after having submitted the question to the legal voters of their counties, by calling a special election for the purpose whenever the said commissioners may deem it advisable, and if at said election a majority of the legal voters shall vote in favor of the proposition to purchase a tract of land in the name of their respective counties, and thereon to build, establish and organize an asylum for the poor, and to employ some humane and responsible person or persons, resident in their respective counties, to take charge of the same upon such terms and under such restrictions as the board shall consider most advantageous for the interests of the county, who shall be called "superintendent of the county asylum," and when two or more counties shall have jointly purchased any tract of land and erected an asylum for the poor of their respective counties, they shall have the power to continue such joint ownership during their pleasure; and it shall be lawful for the county commissioners of two or more counties, after having been so authorized by a majority of the

legal voters of their respective counties, in the manner prescribed in this section, to jointly purchase lands, and erect asylums, and to do other things necessary and proper for the relief of the poor within the counties forming such joint ownership as is by this act provided for their respective counties.

Duty of superintendent or superintendants

Sec. 25 It shall be the duty of such superintendent or superintendents, to receive into his or their care and custody all persons who may become a county charge, as paupers, and to take such measures for the employment and support of such paupers, and to perform such other duties as the board of county commissioners shall, from time to time, order, establish and direct, consistent with the laws of this Territory.

Shall appoint annually a physician. Compensation

Sec. 26. It shall be the duty of the county commissioners to appoint, annually, a well qualified physician to attend the county asylum, and allow him a reasonable compensation for his services.

To bind out poor children

Sec. 27. It shall be the duty of the overseers of the poor of the different counties, and also of the superintendents of the county asylums, to bind out such poor children as fall under their care and charge, from time to time; and it shall also be the duty of said overseers to see that children so bound be properly treated, by the persons to whom they are bound, and to take legal means of redress in case of maltreatment.

Power of county commissioners to raise money for certain purposes

Sec. 28. To raise the sum necessary for the purchase of land, and the erection and furnishing of buildings for such asylums, the board of county commissioners in the several counties shall have power to assess a tax on property liable to taxation for raising a county revenue, not exceeding five hundred dollars, unless the amount of taxes to be assessed shall be submitted to a vote of the people at the special election held pursuant to section twenty-four of this act, and a majority of all the votes cast at said poll be in favor of such assessment.

Shall order all persons who are public charges to be removed to such asylum

Sec. 29. So soon as the necessary provisions may be made by the erection of suitable buildings, the said board shall direct and order that all persons who have become permanent charges as paupers in the county be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable, and thereafter the overseers of the poor shall, from time to time, as persons

may become permanent charges, as paupers, to their respective counties, have such persons removed to the said asylum.

Superintendant and superintendants to give bond with freehold security—sum

Sec. 30. Such superintendent or superintendents shall give bond, with freehold security, to said board, in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty, and he, or they, shall make to such board, at the first and third sessions of each year, a detailed report in writing, of the time and manner of the admission of each pauper, their health and fitness to labor, the results of their industry, and the expenses incurred; and it shall be the duty of the members of such board, in person, to annually inspect said asylum, with regard to its fitness, in all respects, for the objects of its establishment.

When poor children cannot be bound out

Sec. 31. Whenever it shall be necessary and practicable, poor children of the asylums, who cannot be bound out, or whom it may not be expedient to bind out as apprentices, shall be educated thereat.

Shall superintend the education &c., of such children

Sec. 32. I shall be the duty of the superintendent or superintendents of any asylum, erected or established by law, to superintend and direct the education of such poor children, according to the preceding provisions of this act, and for the purpose of carrying the same into effect with the least possible expense, it shall be the duty of the said superintendent to send them to any common school within the county in which the asylum is situated, during the countenance of its session.

Asylum may be discontinued, property may be leased or sold

Sec. 33. Any asylum or farm, provided by the board of county commissioners for the purpose may be discontinued by said board, and the property real and personal, relating thereto, which belongs to the county, may be sold, leased, or otherwise disposed of, or applied in such manner as may be best for the interests of the county.

May levy a tax for the support of the poor in their several counties

Sec. 34. The board of county commissioners may, in the several counties in this Territory, if they deem it expedient, annually, at their session at which the county tax is ordered to be levied and assessed, levy and assess a tax for the support of the poor of their respective counties, on objects from which the county revenue is or may be directed to be raised. The tax hereby authorized to be raised shall be collected by the same officers whose duty it may be to collect the Territorial and

county revenue, who shall pay the same into the county treasury.

Decisions of justice of peace may be appeals from.—How

Sec. 35. All decisions of any justice of the peace, in any matter, proceeding or suit authorized by this law, may be appealed from in like manner, and under like regulations and restrictions of law, as in other cases.

Commissioners may appoint a board of visitors To consist of

Sec. 36. The board of county commissioners in any county in this Territory may, in their discretion, appoint a board of visitors annually, to consist of three persons residents of the county, to visit at least once in each year the asylum of such county, and to report to the commissioners its condition, and the treatment, management and condition of the inmates thereof.

Compensation of

Sec. 37. Such visitors shall receive such compensation as the said board shall adjudge reasonable.

Unlawful to send pauper out of county where such pauper belongs

Sec. 38. It shall be unlawful for any person, either directly or indirectly, to send, or be instrumental in sending, or causing to be sent, out of the county where such person properly belongs, any pauper, or person who is, or is likely to become, an object of public charity, into any other county of this Territory, except in the manner provided for in this act.

Violation of section 38.—What

Sec. 39. Any person who shall violate the provisions of section thirty-eight of this act, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

All acts and parts of, conflicting with this repealed

Sec. 40. All acts and parts of acts in any way conflicting with the provisions of this act are hereby repealed.

Act to take effect —When

Sec. 41. This act shall take effect and be in force from and after its passage and approval.

Approved, Jan. 12, 1869.

PRAIRIE FIRES.

CHAPTER 18.

AN ACT TO PREVENT THE FIRING OF WOODS, MARSHES AND PRAIRIES.

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

Persons willfully setting on fire or cause to be, any woods, marshes, prairies—punishment prescribed

Section 1. If any person or persons shall willfully set on fire or cause to be set on fire, any woods, marshes or prairies, with intention to damage or injure the property of another person, such person or persons, so offending, shall upon conviction thereof be fined in a sum not more than five hundred nor less than fifty dollars, and imprisoned in the county jail not more than six months nor less than thirty days or both, at the discretion of the court, and shall be liable for all damages done by such fire.

Shall negligently or carelessly set on fire—Liable to injured parties

Sec. 2. If any person or persons shall negligently or carelessly set on fire or cause to be set on fire, any woods, marshes or prairies, the person or persons so offending, shall upon conviction, be fined in a sum not more than one hundred nor less than ten dollars upon conviction thereof, and shall be liable to injured parties for all damage occasioned by any fire set or caused as aforesaid, to be recovered by civil action.

Setting fire on his or her land for the purpose of securing themselves. Provided

Sec. 3. That any person or persons setting on fire or causing to be set on fire, any woods, marshes or prairies, or lands owned or occupied by him, her or themselves, for the purpose of securing his, her or their own property, from damage or destruction by prairie fire, shall be held liable for all damage occasioned thereby: *Provided,* That nothing in this act shall be so construed as to prevent any person or persons from firing against fire when his, her, or their own property is in imminent danger of damage by the near approach of prairie fire.

Lawful, during what months

Sec. 4. It shall be lawful for any person or persons to set on fire or cause to be set on fire any marshes or prairies, owned or occupied by him, her or themselves, during the months of March, April and May: *Provided*, That the person or persons desiring to set such fire, shall give at least twenty-four hours notice to all persons occupying lands within one mile of the place where such fire is to be set.

No property except from seizure to satisfy judgment under the provisions of this act

Sec. 5. No property, real or personal, shall be exempt from seizure and sale, on execution issued to satisfy any judgment obtained under the provisions of this act.

Acts in conflict repealed

Sec. 6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

To take effect from and after its passage

Sec. 7. This act shall be in force from and after its passage and approval.

Approved, January 5th, 1869.

ROADS.

CHAPTER 19.

AN ACT CONCERNING TERRITORIAL ROADS.

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

Commissioners have power to vacate &c.

Section 1. The board of county commissioners of each organized county of this Territory shall have power to vacate or change in any manner, the roads in their counties heretofore located by the Legislative Assembly of this Territory.

Sec. 2. In vacating or changing any Territorial road, the board of county commissioners of the county in which such road is laid, shall be governed in vacating or changing such road by the provisions of chapter thirteen (13) of the session laws of the year 1867-68. How governed

Sec. 3. This act shall be in force and effect from and after its passage and approval. Act to take effect—when

Approved, December 29th, 1868,

SCHOOLS.

CHAPTER 20.

AN ACT TO PROVIDE COMMON SCHOOLS FOR THE TERRITORY OF DAKOTA.

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

Section 1. There shall be elected at each regular delegate election in this Territory, a superintendent of public instruction, who shall hold his office for two years and until his successor is elected and qualified. And if a vacancy shall occur in said office of superintendent by death, resignation, or otherwise, it shall be the duty of the governor to appoint some suitable person to fill such vacancy. Election of territorial superintendent of public instruction. Vacancy, how filled

Sec. 2. The superintendent of public instruction, shall, before entering upon the discharge of the duties of his office, take and subscribe an oath to support the constitution of the United States, and the organic act of this Territory, and to faithfully discharge the duties of his office, which oath shall be filed with the clerk of the supreme court of the Territory of Dakota, Superintendent to take oath

To keep a record of his acts

Sec. 3. It shall be the duty of the superintendent of public instruction to keep a record of his official acts, and to exert himself constantly and faithfully to promote the interests of education in the Territory, and to this end he shall confer with county superintendents and visit schools in company with them and furnish to them blank forms for collecting statistics of the various schools in the Territory. He shall prepare and present

Report of

to the legislature during the first week of the session, in each year, a report of his official doings for the preceding year with a full statement of the condition of common schools in the Territory, and the expenditure of the public school moneys and shall make such suggestions for the improvement and support of common schools together with such other information in regard to the modes of instruction and systems of the organization of schools in other States and countries as he shall deem proper.

To grant certificate to teachers

Sec. 4. The superintendent of public instruction, shall also have power to grant certificates of qualification to teachers of proper learning and ability to teach in any public school in the Territory, and to regulate the grade of county certificates.

Compensation of superintendent

Sec. 5. The compensation of superintendent of public instruction for his services shall be the sum of four dollars per day for time spent in the discharge of his official duties, and the expense of procuring blank forms, postage, stationery and such books as are necessary for the use of his office, and the publication of his annual report, all of which allowances shall be paid by the Territorial treasurer on the certificate of the Territorial auditor.

Duties

Sec. 6. It shall be the duty of the Territorial superintendent of public instruction to recommend the introduction of the most approved text books, and as far as practicable to secure uniformity in the use of text books in common schools throughout the Territory. To discourage the use of sectarian books, and sectarian instruction in the schools; to advise in the selection of books for school district libraries, and to open such correspondence abroad as may enable him to obtain, so far as practicable, information relative to the system of common schools and their improvements in other States and countries, which he shall embody in his annual report to the legislature,

or so much thereof as shall be deemed of sufficient importance; he shall prescribe rules and regulations for the management of school district libraries, and the penalties which shall be imposed by the district boards for any violation of such rules and regulations. He shall prepare for the use of the common school officers suitable forms for making reports and contracting all necessary proceedings, and he shall cause the laws relating to common schools with the rules, regulations and forms aforesaid and such instructions as he shall deem necessary to be printed, together with a suitable index, in pamphlet form at the expense of the Territory; and he shall cause the same to be distributed among the several school districts and other officers having the care of common schools throughout the Territory. He shall examine and determine all appeals duly made to him from the decision of any county superintendent, in forming or altering any school district or concerning any other matter under the common school law of this Territory, and his decision shall be final. Duties

The superintendent of public instruction shall annually prepare a sufficient number of his annual report to be distributed as follows: Report how distributed

One copy to each member of the legislature;

One copy to each county superintendent of schools;

One copy to each school district officer; and

One copy to each teacher in the Territory whose certificate of qualification has not expired, and such other of the county and Territorial officers as may be by him deemed proper, not to exceed five hundred copies in one year.

Sec. 7. The Territorial superintendent of public instruction with the several county superintendents shall hold annually at some convenient place, a Territorial teachers' institute for the instruction and advancement of teachers; said institute not to continue less than four days and not to exceed ten days, which institute shall be free to all teachers and those preparing to teach in this Territory. Territorial teachers institute

Sec. 8. The several counties of this Territory, shall at the same time and in the same manner as other county officers are elected, elect a suitable person to be superintendent of public schools within such county, who shall hold his office for two Election of county superintendent

years from the first of January next succeeding his election, unless he shall be elected to fill a vacancy, in which case he may immediately qualify into office, and shall hold his office until his successor is elected and qualified, and who shall receive three dollars for each day spent in the discharge of his official duties, and a reasonable compensation for his annual report to the superintendent of public instruction, and every superintendent of schools shall make out in detail his account for official service, stating the date and time spent as well as the kind of service rendered, and make oath or affirmation to the correctness of the same before some justice of the peace in the county in which he resides, which oath or affirmation shall be certified by said justice before such superintendent's account shall be presented to the county commissioners for allowance, who shall audit and allow the same, or so much thereof as is just and reasonable, and the same shall be paid out of the county treasury upon the order of the county commissioners who are empowered to draw orders for the same; but no order shall be drawn to any superintendent until he shall have filed with the auditor the receipt of the superintendent of public instruction for the statistical returns of the preceding school year, in pursuance of the requirements of section twenty of this act.

County superintendent to take oath and give bond

Sec. 9. The county superintendent of public schools shall have charge of the common school interests of the county. He shall, before he enters upon the discharge of the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States and the act organizing this Territory, and faithfully to discharge the duties of his office, which oath or affirmation shall be filed in the county clerk's office. He shall also execute a bond with approved security, payable to the board of county commissioners, for the use of common schools in said county, in the penal sum of five hundred dollars. Said bond must be approved by the county commissioners, and filed in the register of deeds office.

His duties

Sec. 10. That it shall be the duty of the county superintendent of schools, in addition to the other duties required of him, to divide his county into school districts when necessary, and subdivide the same when petitioned by a respectable num-

ber of the citizens thereof, and to furnish the county commissioners of such county with a written description of the boundaries of each district, which description must be filed in the register of deeds office, before such district shall be entitled to proceed with its organization by the election of school district officers, and it shall be his duty to keep on file in his office all petitions and remonstrances, which shall show the date of reception, and the action had thereon, and it shall be his further duty on the division of, or change of district boundaries, to notify the clerk of the districts interested of the change made. Whenever it shall be deemed necessary to form a school district from parts of two or more counties, it shall be the duty of the county superintendent of each county in which any part of the proposed joint district shall be situated, to unite in laying out such joint district; and each county superintendent so assisting shall file a description of said joint district in the register of deeds office of his county.

Judge of probate to pay out school money upon, of superintendent

Sec. 11. It shall be the duty of the judge of probate, on the first Monday of March, in each year, to furnish the county superintendent of public schools with a statement of the amount of money in the county treasury, belonging to the school fund, and he shall pay the same upon the order of said superintendent, to the proper district officers.

Superintendent to make apportionment of school money

Sec. 12. It shall be the duty of the county superintendent of public schools, on the second Monday of March in each year, or as soon thereafter as he shall receive the statement of the judge of probate, certifying the amount of money in the county treasury for the use of common schools for the current year, to appropriate such amount to the several districts or parts of districts within the county in proportion to the number of children residing in each, over the age of five, and under the age of twenty-one years, as the same shall appear from the last annual reports of the clerks of the respective districts, and he shall immediately notify by mail or otherwise the district clerks of each district of the amount of money due to his district, and he shall draw his order on the county treasurer in favor of the several district treasurers for the amount apportioned to each district; *Provided*, No district shall be entitled to receive any portion of the common school fund in which

a common school has not been taught at least three months during the year.

Further duties

Sec. 13. It shall be the duty of the superintendent to visit all such common schools within their respective counties as shall be organized according to law, at least once in each year, or oftener if they shall deem it necessary. At such visitation the superintendent shall examine into the state and condition of such schools as respects the progress in learning and the order and government of the schools; and they may give advice to the teacher of such schools as to the government thereof, and the course of study to be pursued therein, and shall adopt all requisite measures for the inspection, examination and regulation of the schools, and for the improvement of the schools in learning. Every superintendent of common schools shall also make out his account for official services in the manner hereinbefore required, and deliver a copy of the same to the county commissioners of the county in which such superintendent was elected or appointed, on or before the day previous to the annual county election next after the election or appointment of such superintendent, and the same shall be filed and kept in the office of the register of deeds.

Same

Sec. 14. He shall see that the annual reports of the clerks of the several school districts in his county are made correctly and in due time, and shall hear and determine all appeals from the decision of district boards.

To hold public examination and grant certificates

Sec. 15. He shall hold public examination for all persons offering themselves as teachers of common schools, at the county seat of his county, on the last Saturdays of April and October of each year, notice of which shall be given as publicly as possible, at which time he shall grant certificates for not less than three months or more than one year, to such persons as he may find qualified as to moral character, learning and ability; and any person receiving such certificate shall be deemed a qualified teacher within the meaning of this act. Persons applying to the county superintendent for a certificate at any other time than at the public examination shall pay to the said superintendent the sum of one dollar for his services.

To post notices of formation of districts

Sec. 16. Whenever a school district shall be formed in any county, the county superintendent of schools of such county

shall, within fifteen days thereafter, prepare a notice of the formation of such district, describing its boundaries and stating the number thereof, and appointing a time and place for the district meeting. He shall cause the notice thus prepared to be posted in at least five public places in the district, at least ten days before the time appointed for such meeting; and when a joint district is derived from portions of two or more counties, the county superintendents of each county, from which any portion of the new district is taken, shall unite in giving the customary notices, and the new district shall be numbered by the superintendent of the county having the highest number of districts.

A majority of the voters in any school district being dissatisfied with the formation of any school district, shall have the right to appeal from the superintendent to the board of county commissioners, and from the board of county commissioners to the superintendent of public instruction.

When to deliver up books &c., to successor

Sec. 17. The county superintendent of public schools shall perform all other duties of said office that now are or hereafter may be prescribed by law; and he shall deliver to his successor, within ten days after the expiration of his term of office, all the books appertaining to his office.

County commissioners to fill vacancies

Sec. 18. If a vacancy occur in the office of county superintendent of public schools, by death, resignation or otherwise, notice thereof shall be given by the register of deeds to the county commissioners who shall, as soon as practicable, appoint some suitable person to fill the vacancy, and the person receiving such appointment shall, before entering upon the discharge of the duties of his office, file his oath or affirmation in the county clerk's office, as hereinbefore provided, and shall discharge all the duties of the office of county superintendent of public schools until a successor is elected and qualified. He shall also give a like bond to that required by this act to be given by the county superintendent of schools.

Superintendent to make report annually to territorial superintendent

Sec. 19. The county superintendent shall make full and complete annual returns to the superintendent of public instruction, between the first and tenth day of November of each year, of the number of children between the ages of five and twenty, in the school district within their respective counties;

also, the number of qualified teachers employed, the length of time each district school has been taught during the year. The kind of text books used, and the amounts expended in each district out of any money raised for educational purposes, and for what purpose such amount was expended; the amounts raised in each county and district by taxation or otherwise for educational interests, and any other items that may be of service to the superintendent of public instruction in preparing his annual report.

SCHOOL DISTRICT MEETINGS.

Powers of electors at school district meetings

Sec. 20. The inhabitants qualified to vote at a school district meeting, lawfully assembled, shall have power:

1, To appoint a chairman to preside at said meeting in the absence of the director;

2, To adjourn from time to time;

3, To choose a director, clerk, and treasurer, who shall possess the qualifications of voters as prescribed in the next section of this act, at the first and each annual meeting thereafter;

4, To designate by vote a site for a district school house;

5, To vote a tax annually, not exceeding one per cent. on taxable property in the district, as the meeting shall deem sufficient to purchase or lease a site, and to build, hire or purchase a school house, and to keep in repair and furnish the same with necessary fuel, stoves and benches;

6, To vote a district tax annually, not exceeding one-half of one per cent. on taxable property in the district for pay of teacher's wages in the district;

7, To authorize and direct the sale of any school house, site, or other property belonging to the district, when the same shall no longer be needful for the district;

8, To vote such a tax as may be necessary to furnish the school house with blackboards, outline maps, and apparatus necessary for illustrating the principles of science, or to discharge any debts or liabilities of the district, lawfully incurred; *Provided*, That said tax shall not exceed one per cent. per annum, and may be applied to any other purpose by a vote of the district at any regularly called meeting;

9, To give such direction and make such provision as may be deemed necessary in relation to the prosecution or defense of any suit or proceeding in which the district may be a party; Powers of electors

10, To alter or repeal their proceedings from time to time as occasion may require, and to do any other business contemplated in this act;

11, To vote a tax not exceeding $25 in any one year, to procure a district library consisting of such books as they may direct any person to procure.

Sec. 21. The following persons shall be entitled to vote at any district meeting. All persons possessing the qualifications of electors, as defined by the laws of the Territory, and who shall be actual residents of the district at the time of offering to vote at such election. Who entitled to vote at such meeting

Sec. 22. If any person offering to vote at a school district meeting shall be challenged as unqualified by any legal voter, the chairman presiding shall declare to the person challenged the qualifications of a voter, and if such challenge be not withdrawn, the chairman, who is hereby authorized, shall tender to the person offering to vote, the following oath or affirmation: Challenging voters

"You do solemnly swear, [or affirm] that you are an actual resident of this district, and that you are qualified by law to vote at this meeting." Any person taking such oath or affirmation, shall be entitled to vote on all questions voted upon at such meeting. Oath

ORGANIZATION OF DISTRICTS.

Sec. 23. Every school district shall be deemed duly organized when the officers constituting the district board shall be elected and qualified. Every school district officer shall signify his acceptance of his office to the county superintendent, in writing, within twenty days after he shall be notified of his election by any person voting at such meeting, which acceptance shall be filed with such superintendent, and upon filing such acceptance, said party shall be deemed to have duly qualified. The officers of joint districts shall signify their acceptance to the superintendents of the several counties which form a part of the joint districts. Every person duly elected When district considered as organized

to the office of director, clerk, or treasurer of any school district, who shall refuse or neglect, without sufficient cause, to accept of such office and serve therein, or who, having entered upon the duties of his office shall neglect or refuse to perform any duty required of him by the provisions of this act, shall forfeit the sum of ten dollars to the school district fund.

Officers of district

Sec. 24. The officers of each school district shall be a director, clerk, and treasurer, who shall constitute the district board, and who shall hold their respective offices until the annual meeting next following their election or appointment, and until their successors are elected and qualified.

School districts bodies corporate

Sec. 25. Every school district, organized in pursuance of this act, shall be a body corporate, and shall possess the usual powers of a corporation for public purposes, by the name and style of school district No.——, (such number as may be designated by the county superintendent,) ———— county (the name of the county in which the district is situated,) Territory of Dakota, and in that name may sue and be sued, and be capable of contracting and being contracted with, and hold such real and personal estate as it may come in possession of by will or otherwise, or is authorized to be purchased by the provisions of this act.

Annual school meeting. When held

Sec. 26. An annual meeting of each school district shall be held on the last Saturday of March of each year at such hour as the district board shall name, after having first requested the district clerk to call such meeting, and in case the clerk shall refuse or neglect to call such meeting, special meetings may be called by any member of the district board, or by any five legal voters, but notice of any special meeting, stating the purpose for which it is called, shall be posted in at least three public places within the district, ten days previous to the time of meeting.

District clerk to post notices of special meetings

Sec. 27. Whenever the time for holding an annual meeting in any district shall pass without such meeting being held, the clerk, or in his absence, any other member of the district board, within sixty days after the time for holding said annual meeting shall have passed, may give notice of a special meeting by putting up written notices thereof in three public places within the district, at least five days previous to the time of meeting.

But if such meeting shall not be notified within sixty days aforesaid, the county superintendent may give notice of such meeting in the manner provided for forming new districts, and the officers chosen at such special meeting shall hold their respective offices until the next annual meeting, and until their successors are elected and qualified.

Who to determine length of school terms

Sec. 28. The qualified voters at each annual meeting or at any special meeting, duly called, may determine the length of time a school shall be taught in their district for the then ensuing year; and whether such school shall be taught by a male or female teacher, or both, and whether the school money to which the district may be entitled, shall be applied to the support of the summer or winter term of the school, or a certain portion to each; but if such matters shall not be determined at the annual or special meeting, it shall be the duty of the district board to determine the same.

Duties of director

Sec. 29. The director of each district shall preside at all district meetings, and shall sign orders drawn by the clerk authorized by a district meeting, or by the district board, upon the treasurer of the district for moneys collected or received by him to be disbursed therein. He shall appear for and in behalf of the district in all suits brought by or against the district, unless other direction shall be given by the voters of such district at a district meeting.

DISTRICT CLERK.

Clerk to record acts of district board

Sec. 30. The clerk of each district shall record the proceedings of his district in a book provided by the district for that purpose; and enter therein copies of all the reports made by him to the county superintendent, and he shall keep and preserve all records, books and papers belonging to his office, and deliver the same to his successor in office.

To be clerk of district meeting

Sec. 31. The said clerk shall be clerk of all district meetings; but if such clerk shall not be present at such district meeting, the voters present may appoint a clerk for such meeting, who shall certify the proceedings thereof, and the same shall be recorded by the clerk of the district.

To give notice of meetings by posting bills

Sec. 32. It shall be the duty of the clerk to give at least ten days notice previous to any annual or special district meet-

ing, by posting up notices thereof at three or more public places in the district, one of which notices shall be affixed to the outer door of the school house, if there be one in the district, and said clerk shall give the like notice of every adjourned meeting, when such meeting shall have been adjourned for a longer period than one month. Every notice for a special district meeting shall specify the objects for which such meeting is called, and no business shall be acted upon at any special meeting, not specified in said notice.

To draw orders on treasurers

Sec. 33. The clerk of the district shall draw orders on the treasurer of the district for moneys in the hands of such treasurer, which have been apportioned to or raised by the district to be applied to the payment of teacher's wages, and apply such money to the payment of teacher's wages, as shall have been employed by the board, or by the citizens of the district, and the said clerk shall draw orders on the said treasurer for moneys in the hands of such treasurer to be disbursed for any other purpose ordered by a district meeting, or by a district board, agreeable to the provisions of this act.

Clerk to deliver list of property to register of deeds and make out tax list

Sec. 34. It shall be the duty of the district clerk to deliver (by mail or otherwise) to the register of deeds, between the 1st and 15th of January in each year, a list of all persons owning or holding property in their respective districts, on the 1st of January preceding, and to make out the tax list of all taxes legally authorized by the district, and annex to such tax lists a warrant under the hand of said clerk, directed to the district treasurer, to collect the sums therein named.

To make report to county superintendent

Sec. 35. The clerk of each district shall, between the first and fifteenth days of September in each year, make out and transmit a report in writing to the county superintendent of public schools for each county in which any part of his district may lie; showing,

What report to contain

1, The number of children, male and female, designated separately, residing in the district or parts of districts, on the last day of August previous to the date of such report, over the age of five and under the age of twenty-one years;

2, The number of children attending school during the year, their sex, and branches studied;

3, The length of time a school has been taught in the district by a qualified teacher, the name of the teacher, the length of time taught, and the wages paid;

4, The amount of money received from the county treasurer within the year, and the manner in which the same has been applied;

5, The amount of money raised by the district, in such year, and the purposes for which it was raised;

6, The kind of books used in the school, and such other facts and statistics in regard to the district schools as the county superintendent may require.

In case of district that shall lie partly in two or more counties

Sec. 36. Whenever a school district shall lie partly in two or more counties, the clerk of such district in making his annual report, shall carefully designate the number of children resident in the parts of the counties composing the district and shall report to the county superintendent of common schools of each of the counties in which such district may be situated.

Treasurer to give bonds

Sec. 37. The treasurer shall execute to the district a bond in double the amount of money, as near as can be ascertained, to come into his hands as treasurer of the district, with sufficient securities to be approved by the director and clerk, conditioned to the faithful discharge of the duties of said office. Such bond shall be filed with the district clerk, and in case of the breach of any condition thereof, the director shall cause a suit to be commenced thereon, in the name of the district, and the money collected shall be applied by such director to the use of the district as the same should have been applied by the treasurer, and if such director shall neglect or refuse to prosecute, then any householder of the district may cause such prosecution to be instituted.

In case of failure to give bonds

Sec. 38. If the treasurer shall fail to give bonds as required in this act, or from sickness or any other cause shall be unable to attend to the duties of said office, the district board shall appoint a treasurer, who shall possess all the powers of the district treasurer, and shall before entering upon the duties of said office, give bonds as the district treasurer is required to give.

His duties

Sec. 39. The treasurer of each district shall apply for and receive from the county treasurers all school moneys appropriated to his district, and shall collect all district taxes assessed in pursuance of the provisions of this act and pay over on the order of the clerk, signed by the director of such district, all money so received or collected by the said treasurer.

Forfeiture of bond

Sec. 40. If any district treasurer shall refuse or neglect to pay over any money in the hands of such treasurer belonging to the district, it shall be the duty of his successor in office to prosecute, without delay, the official bond of such treasurer, for the recovery of such money.

Money lost to be refunded

Sec. 41. If by neglect of any treasurer any school moneys shall be lost to any school district, which might have been received from the county treasurer, or collected from the district tax assessed, said treasurer shall forfeit to such district the full amount of money so lost.

Treasurer to make annual report

Sec. 42. The treasurer shall present to the district at each annual meeting, a report in writing, containing a statement of all moneys collected by him from the county treasurer during the year from assessments in the district, and the disbursements made, and exhibit the vouchers therefor, which report shall be recorded by the clerk, and if it shall appear that any balance of money is in his hands at the time of making such report, he shall immediately pay such balance to his successor.

DISTRICT BOARD.

Duties of district board

Sec. 43. The district board shall purchase or lease such site for a school house as shall have been designated by voters at a district meeting, in the corporate name thereof, and shall build, hire, or purchase such school house as the voters of the district in a district meeting shall have agreed upon, out of the funds provided for that purpose, and make sale of any school house, site or other property of the district, and if necessary, execute a conveyance of the same in the name of their office, when lawfully directed by the voters of such district at any regular or special meeting, and shall carry into effect all lawful orders of the district.

Their powers

Sec. 44. The district board shall have the care and keeping of the school house and other property belonging to the dis-

trict. They shall have power to make such rules and regulations relating to the district library, as they may deem proper, and to appoint some suitable person to act as librarian, and to take charge of the school apparatus belonging to the district.

Same

Sec. 45. The district board shall have poower to admit scholars from adjoining districts, and remove scholars for disorderly conduct, and when scholars are admitted from other districts, the district board may in their discretion require a tuition fee from such scholars.

To hire teachers

Sec. 46. The district board in each district shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing, and shall specify the wages per week or month, as agreed upon by the parties, and such contract shall be filed in the district clerk's office.

To provide the necessary appendages &c

Sec. 47. The district board shall provide the necessary appendages for the school house, during the time school is taught therein, and present the same for allowance at any regular district meeting.

District school under this act to whom free

Sec. 48. The district schools established under the provisions of this act, shall at all times be equally free and accessible to all children resident therein, over five and under the age of twenty-one years, subject to such regulations as the district board in each may prescribe.

Branches to be taught

Sec. 49. In every school district there shall be taught orthography, reading, writing, English grammar, geography and arithmetic, if desired, during the time the school shall be kept, and such other branches of education as may be determined by the district board.

Vacancy in district board, how filled

Sec. 50. If a vacancy should occur in the district board, in any district, the county superintendent shall appoint some suitable person to fill such vacancy, upon the recommendation of the remaining members of the district board.

REVENUE.

Amount of tax to be raised

Sec. 51. It shall be the duty of the county or town assessor of each county or town, at the time of making the annual assessment, to levy a tax of one dollar on each elector in the county or town, for the support of district schools; and a further tax of two mills on the dollar, upon the taxable property

Manner of raising tax &c.

of the county or town, to be applied to the same purpose, to be collected at the time and in the manner prescribed by law for the collection of taxes; which tax, when collected, shall be distributed to the several school districts, in proportion to the number of children over five and under twenty-one years of age therein; and shall be drawn from the county treasury upon the order of the superintendent of schools.

On what kind of property tax to be raised

Sec. 52. All taxes raised and collected in any school district for any of the purposes authorized in this act, shall be assessed on the same kind of property as taxes for county purposes are assessed.

What tax list to contain

Sec. 53. The clerk of the school district, in making out any tax list, shall enter therein the names of all persons liable to pay a school tax, the amount of personal property to be taxed to each person, and a description of all taxable real estate in the district, distinguishing that owned by non-residents of the district, and he shall set opposite to each description of taxable property, the valuation of the same, and the amount of tax charged upon such property, and to each person respectively, or tract of land owned by non-residents, and such description and valuation of taxable property shall be ascertained as far as possible from the last assessment roll of the county or town;

Proviso

Provided, That in any case any person or persons are residing in and holding property in any district, at the time when a tax shall have been voted at any meeting in said district, and their names do not appear on the last assessment roll, the district board shall have power to assess such persons.

When district board to apportion taxes

Sec. 54. Whenever any real estate in any school district shall not have been separately valued in the assessment roll of the county, and the value of such real estate cannot be definitely ascertained from such assessment roll, the district board of such district shall estimate the value of the same, and apportion the taxes thereon.

Collection of taxes

Sec. 55. The warrant annexed to any tax list shall be under the hand of the clerk of the district, and shall command the treasurer of such district to collect from each of the persons and corporations named in said tax list, and of the owner of the real estate described therein, the several sums set opposite the persons and corporations so named, and to the several

tracts of land owned by non-residents, within forty days from the date thereof; and within twenty days from the date of such warrants to personally demand such tax of the persons charged therewith; and that if any tax shall not be paid within thirty days thereafter, to collect the same by distress and sale of property in the same manner as county taxes, and the said treasurer shall execute the said warrant and return the same to the clerk at the expiration of the time limited therein for the collection of such tax list.

Force of warrants for collection of taxes

Sec. 56. The warrant issued by the clerk of any school district, for the collection of any district tax authorized by any of the provisions of this act may be executed any where within the limits of the county, and such warrants shall have the like force and effect as a warrant issued for the collection of county taxes; and the treasurer of the district, to whom any such warrant may be delivered for collection of a tax list, shall possess the like powers in the execution of the same as are provided by law for the collection of county taxes. If any tax in any tax list delivered to the treasurer of any district, shall remain unpaid at the time he is required by law to return his warrant to the clerk of the district, such treasurer shall within ten days, make out and deliver to the county treasurer a statement in writing, containing the amount of the personal property, and a description of the lots and pieces of land upon which such taxes remain unpaid, together with the amount of tax assessed on each, and he shall attach thereto an affidavit, that the taxes mentioned in such statement remain unpaid, and after diligent efforts he has been unable to collect the same, and whenever any school district shall embrace parts of more than one county, such treasurer shall make his return as aforesaid to the county treasurer of both counties in which the parts of such district shall be situated. The county treasurer upon delivery to him of such statement shall give a certificate to the treasurer of the district of the amount of taxes so remaining unpaid as the same shall appear from such statement, which certificate shall be deposited by the district treasurer with the district clerk, and shall be filed by such clerk, and such county treasurer shall immediately add such delinquent taxes to the delinquent tax list received by him from the county collector

and collect the same as other delinquent taxes are collected, and when so collected shall pay over the same (less his fees for the collection thereof) to the district in which said taxes were levied, upon the order of the district board.

Correction of tax list

Sec. 57. Whenever any error may be discovered in any district tax list, the district board may order any money which may have been improperly collected on such tax list, to be refunded, and may authorize the clerk of the district to amend and correct such error in said tax list.

Payment of tax by tenant

Sec. 58. Whenever any district tax, lawfully assessed, shall be paid by any person on account of any real estate whereof he is only a tenant, such tenant may charge and collect of the owner of such estate the amount of tax so paid by him, unless some agreement to the contrary shall have been made by the tenant.

Register of deeds to give discription of taxable property to each district

Sec. 59. It shall be the duty of the register of deeds of each county, as soon as the annual assessment roll shall be collected in each year, to make out for each district in such county, a description of all taxable property therein, with the valuations affixed thereto, as the same shall appear in the last assessment roll, which shall be certified by him and delivered by mail or otherwise, to the clerk of each school district in the county.

GRADED SCHOOLS.

Establishment of graded schools

Sec. 60. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a graded school in which instruction shall be given in the higher branches of education, the clerks of the several districts shall upon written application of five voters of their respective districts, call a meeting of the voters of such district at some convenient place, by posting up notices thereof in like manner as provided for calling district meetings, and if a majority of the voters of each of the two or more districts shall vote to unite for the purpose herein stated, they shall at a meeting or at an adjourned meeting, elect a board of directors consisting of a director, clerk and treasurer.

Powers of board of directors

Sec. 61. The board of directors provided in the preceding section, shall, in all matters relating to the graded schools,

possess all the powers and discharge all the like duties of the district board as prescribed in this act.

Funds of union district

Sec. 62. The union district thus formed shall be entitled to an equitable share of the school funds, to be drawn from the treasurer of each district so uniting, in proportion to the number of children attending the said graded school for each district.

Union district may levy tax for the purpose of paying expenses

Sec. 63. The said union district may levy taxes for the purpose of purchasing a building, or furnishing proper building for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers, but shall be governed, in all respects, by the law herein provided for levying and collecting district taxes.

Clerks of union district to make report to the treasurers of the uniting districts

Sec. 64. The clerk of the union district shall report in writing to the treasurer of each school district uniting in the union district, the number of scholars attending the graded schools from his district, their sex, and the branches studied, and the said district treasurer shall apportion the amount of school money due the union district, and pay the same over to the treasurer of the union district on order of the clerk thereof.

To make report to county superintendent

Sec. 65. The clerk of the union district shall make a report to the county superintendent of schools and discharge all the duties of the clerk, in like manner as the clerk of the district.

Treasurer of union district his duty

Sec. 66. The treasurer of the union district shall perform all duties of treasurer, and give the bonds as prescribed in this act, in like manner as the district treasurer.

What schools to receive public funds

Sec. 67. The public schools of any city, town or village, which may be regulated by special law set forth in the charter of such city, town or village, shall be entitled to receive their proportion of the public fund; *Provided*, That the clerk of the board of education in such city town or village, shall make due report within the time and manner prescribed in this act, to the superintendent of schools.

Proviso

Single district may establish graded schools

Sec. 68. Any single district shall possess power to establish graded schools, subject to the provisions of this act in like manner as two or more districts united.

What moneys to be collected by the county treasurer for school purposes

Sec. 69. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall pay the same to the said district treasurer, as prescribed in this act. He shall also collect the delinquent taxes on real estate in any district, in the same manner as county taxes are collected, whenever such delinquent tax list shall have been lawfully reported and returned to him, and he shall pay the same over to the treasurer of said district to which delinquent taxes are due, and if any county treasurer shall refuse to deliver over to the order of the county superintendent any money in his possession, or shall use, or permit to be used for any other purposes than is specified in this act, any school money in his possession, he shall on conviction thereof, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year.

MISCELLANEOUS.

When teacher to make report to district board

Sec. 70. It shall be the duty of the teacher of every district school or graded school, to make out and file with the district clerk, at the expiration of each term of the school, a full report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the text books used, the branches taught and the number of pupils engaged in the study of each of said branches. Any teacher who shall neglect or refuse to comply with the requirements of this section, shall forfeit his or her wages for teaching such school, at the discretion of the district board.

Penalty for clerk signing false report

Sec. 71. Every clerk of a district board who shall willfully sign a false report to the county superintendent of his county, shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months.

Penalty for district officer neglecting to deliver up books &c to successor

Sec. 72. Every school district clerk or treasurer who shall neglect or refuse to deliver to their successors in office all records and books belonging severally to their offices, shall be subject to a fine not exceeding fifty dollars.

In case of judgment against school district

Sec. 73. Whenever any final judgment shall be obtained against any school district, the district board shall levy a tax on the taxable property in the district, for the payment thereof; such tax shall be collected as other school district taxes; but no execution shall issue on judgment against a school district.

In what cases justices of peace shall have jurisdiction

Sec. 74. Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars, and the parties shall have the right of appeal as in other cases.

Compensation of school officers

Sec. 75. No school district officer mentioned in this act shall receive any compensation for his services out of the Territorial or county school fund. But a regularly convened district meeting, may by vote, allow the district board such compensation as they shall deem proper; *Provided*, The amount so allowed does not exceed two per cent. of the money collected by said board for school purposes.

Peralty for district officers refusing to qualify

Sec. 76. Any person duly elected at the annual district school meeting, to either of the district offices mentioned in this act, who shall omit or refuse to serve as such officer, without substantial cause, shall forfeit the sum of ten dollars for such omission or refusal, which amount may be recovered by the district in civil action before any justice of the peace in the county where such district is located; and shall be appropriated to the support of schools in the district by whom such action was prosecuted.

Fines and Penalties how collected

Sec. 77. All fines and penalties not otherwise provided for in this act, shall be collected by action in any court of competent jurisdiction.

In case of school money being donated for school purposes

Sec. 78. Whenever any sum of money shall be paid into the county treasury, by any educational aid society, or benevolent person or persons, for the cause of education, the county treasurer shall issue to such society or person a certificate of deposit, stating the amount of money received, from what source, and for what purpose the same is to be applied, whether to the payment of teacher's wages, the building or leasing of a school house, or the purchase of a site of land, and the particular school district or districts to which the said money is do-

nated. And the said educational fund may thereafter be drawn from the county treasury, by order of the county superintendent of schools, and applied by the district board of the proper district, to the objects specified in the certificate of donation. And the county superintendent of public schools shall make a statement of the expenditures of said fund in his annual report.

FORMS.

First school district meeting

Sec. 79. The form of notice of the first school district meeting may be substantially as follows:

To a householder, in school district number

The county commissioners have formed school district number , in the county of , of which the following is a description , and you are hereby directed to post this notice in at least five public places in the said district, notifying the voters of said district to attend to the first meeting thereof, which is appointed to be held at the house of , in said district, on the day of 18 ; at o'clock,

This day of 186 .

_____,

County Sup't Pub. Instruction.

Notice of annual district meeting

Sec. 80. The form of notice for annual district meeting may be as follows:

Notice is hereby given to the voters of school district number , of county, that the annual meeting of said district will be held at , on the day of , 186 , o'clock.

This day of , 186 .

_____

District Clerk.

Form of order on district treasurer

Sec. 81. The form of order on district treasurer may be as follows:

To , treasurer of school district number , county of ,

Pay to the order of , the sum of dollars out of any money in your hands, not otherwise appropriated, belonging to said district.

This day of , 186 .

_____,

District Clerk.

_____,

Director.

Sec. 82. The form of bond of district treasurer may read as follows: Form of bond on district treasurer

Know all men by these presents, that we, treasurer of school district number , county , and his surety, are held and firmly bound unto school district, in the sum of dollars, for the payment of which we bind ourselves severally and jointly, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this day of A. D. 186 .

The conditions of the above obligations is such, if said , treasurer as aforesaid, shall faithfully discharge the duties of his office as treasurer of school district number , county , as prescribed by law, then this obligation to be void, otherwise to remain in full force.

————————[seal.]
————————[seal.]

Signed, sealed and delivered in presence of }

————————
————————

Sec. 83. The form of warrant for the collection of district tax may be as follows: Form of warrant for collection of district tax

To , treasurer of school district number , county of

This is to authorize and require you to demand, within twenty days from the date of this warrant, of every person or corporation named in the annexed duplicate of school tax of said district, the sum where with such person or corporation stands charged, and if any such tax be not paid within thirty days from the date of this warrant, you are required to proceed to collect the same as authorized by law, by distress and sale of property, and make due return according to law.

Given under my hand, this day of A. D. 186 .

————————,
District Clerk.

Sec. 84. Vouchers may be in the following form: Vouchers

Received , 186 , of , treasurer of school district number , county of , dollars for services rendered as teacher in the said district, for the term of months.

————————
Teacher.

Form of contract between district and teacher

Sec. 85. The form of contract between district and teacher may read as follows:

It is hereby agreed between school district number , county of , and , teacher, that the said is to teach the common school of said district for the term of months, for the sum of dollars, per , commencing on the day of 186 ; and for such services properly rendered, the said school district is to pay the amount that may be due, according to this contract, on or before the day of , 186 .

District Clerk.

This day of , 186 .

Teacher.

Form of annual report of district treasurer

Sec. 86. The form of annual report of district treasurer may be substantially as follows:

I, , treasurer of school district number , county of , submit the following report of all moneys received and disbursed by me since the last annual meeting:

Amount received from my predecessor,	$——
Amount received from county treasurer,	$——
Amount raised by tax in the district and collected,	$——
Total amount received,	$——
Paid out on order of district clerk (date of order,)	$——
On order of district clerk————,	$——
Balance on hand,	$——

This day of , A. D. 186 .

Treasurer.

Form of report of district clerk to county superintendent

Sec. 87. The form of report of district clerk to the county superintendent of public instruction may read as follows:

School district number , county of

Number of children residing in the district over five and under the age of twenty-one years,	——
Males,	——
Females,	——
Total number,	——
Number of months a school has been taught,	——
—— months by Mr. ———,	——
—— months by Miss ———,	——
Wages paid Mr. ———,	$——
Amount of school money received ———,	$——

——— county treasurer, $——
Amount raised by district tax for teacher's wages, $——
Amount raised by district tax for public school house, $——
Amount raised by district tax for furnishing school house, $——
Amount paid for teacher's wages, $——
Amount expended for building school house, $——
Amount expended for furnishing school house, $——
This day of , 186 .

Form of report of district clerk to county superintendent

———,
District Clerk.

To which may be added a copy of teachers' report, giving the names, age, and total number of male and female pupils, number of days taught, the kind of text books used, the number of scholars in each branch of study, and the greatest number of miles to be traveled by scholars living on the borders of the district.

Sec. 88. A school teachers' certificate may be in the following form:

Teachers certificate

Dakota Territory, }
county. }

———, A. D. 186—.

This is to certify that———has been examined and found competent to give instruction in orthography, writing, arithmetic, English grammar, geography, and———, and having exhibited satisfactory testimonials of good moral character, is authorized to teach these branches in any common school within this county.

———

Superintendent of Public Schools of —— county.

Sec. 89. Form of deed of school property may be as follows:

Deed of school property

This indenture, made the day of , one thousand eight hundred and sixty between , and , his wife, of the county of , Dakota Territory, parties of the first part, and , of district board of district number , county and territory aforesaid, parties of the second part, witnesseth, that the said parties of the first part, in consideration of dollars to them duly paid before the delivery hereof, have bargained and sold and by these presents do grant and convey to the said parties of the second part, their successors in office, and assigns forever, (here describe the property,) with the appurtenances and all the estate, title, and interest of the said parties of the first part therein, and the said parties of the first part do hereby covenant and agree with the said parties of the second part, that at the time of the delivery hereof, the said parties of the first part were the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and they will warrant and defend

the above granted premises, in the peaceful possession of the said parties of the second part, and their successors and assigns forever.

————————[seal.]

————————[seal.]

Sealed and delivered in presence of

————————

————————

The Territory of Dakota, }
county, }

Personally appeared before me a , within and for the county above named, and his wife, to me known to be the persons whose names are affixed to the above deeds as grantors, and acknowledged the same to be their voluntary act and deed; and the said being at the same time, by me made acquainted with the contents of the above deed, apart from her husband, acknowledged that she executed the same voluntarily, and that she is still satisfied therewith.

Witness my hand and seal this day of , A. D., 186 .

Certain acts repealed

Sec. 90. Chapter 32, of the session laws of 1867–8, and all acts and parts of acts heretofore passed in relation to common schools are hereby repealed; *Provided, however*, That such repeal shall not effect any rights or liabilities that have accrued under and by virtue of said act or acts; and *Provided, further*, That all officers, that have been duly elected and qualified in accordance with the provisions of said act, shall continue to hold and discharge the duties of their respective offices until their successors are duly elected and qualified.

When to take effect

Sec. 91. This act shall take effect from and after its passage and approval.

Approved, January 5th, 1869.

SECOND JUDICIAL DISTRICT.

CHAPTER 21.

AN ACT TO ATTACH CERTAIN PARTS OF THE TERRITORY OF DAKOTA TO THE SECOND JUDICIAL DISTRICT, FOR JUDICIAL PURPOSES.

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

Section 1. That all that portion of Dakota not included in any judicial district, be, and is hereby attached to the second judicial district for judicial purposes. Portion of Territory attached

Sec. 2. This act shall take effect and be in force from and after its passage. Act to take effect —When

Approved, Jan. 15, 1869.

SERVICE OF PROCESS.

CHAPTER 22.

AN ACT TO PROVIDE FOR THE SERVICE OF PROCESS IN COUNTIES WHERE NO DISTRICT COURTS ARE HELD, AND FOR OTHER PURPOSES.

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

When service of process shall be necessary outside of the counties where courts are held

Section 1. That whenever cases shall arise in any of the courts of this Territory in which service of process shall be necessary outside of the counties where the courts are held, the officers of any court, including clerks, sheriffs, coroners and all other officers shall have and exercise the same powers, and perform the same duties in the counties which are attached to such counties for judicial purposes, as they have or exercise in the county where the court is held including the service of summons, subpœna, levy of execution, sales thereunder, and all orders or other process, necessary to carry into effect any judgment or order of the court, or any provision or order of the practice act.

Provisions of this act shall apply to what

Sec. 2. The provisions of this act shall apply as well to cases that have heretofore been adjudicated or commenced, and judgment heretofore rendered as to cases that may hereafter arise.

This act to take effect—When

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

Approved, Jan. 15, 1869.

SUPREME COURT.

CHAPTER 23.

AN ACT FIXING THE TIME OF HOLDING THE TERMS OF THE SUPREME COURT.

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

Shall be held—When

Section 1. That there shall be held one term of the supreme court each year, at Yankton, on the third Tuesday of January, and shall continue as long as the business may require.

Either party have right to continuance

Sec. 2. Either party to any action that is now or may hereafter be pending in said court shall have the right to one continuance as of course upon application to said court.

Chapter 34, laws 1867-68 repealed

Sec. 3. That chapter 34 of the laws of 1867-68, be, and the same is, hereby repealed.

Act to take effect—When

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved, Dec. 18, 1868.

TAXES.

CHAPTER 24.

AN ACT IN RELATION TO TAXING REAL AND PERSONAL PROPERTY.

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

Becoming taxable for first time when listed

Section 1. That all property in this Territory, whether real or personal, subject to taxation under existing laws, including real estate becoming taxable for the first time, shall be listed to the owner thereof for the year one thousand eight hundred and sixty-eight and yearly thereafter with reference to the amount owned on the first day of January, including all property purchased on that day.

Board of county commissioners in equalizing

Sec. 2. The board of county commissioners of each county in this Territory in equalizing the value of real and personal property, shall tax all such property at its value on the first day of January of the year for which such taxes are raised.

Act to take effect —When

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

Approved, December 29th, 1868.

CHAPTER 25.

AN ACT CONCERNING REVENUE.

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

Section 1. That the following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given: Property exempt

First, The property of the United States and of this Territory, including school lands;

Second, The property of a county, incorporated city or town, or school district, when devoted to the public use and not held for pecuniary profit;

Third, Public grounds, by whomsoever devoted to the public use, and including all places for the burial of the dead;

Fourth, The engines and implements used for extinguishing fires, with the grounds used exclusively for their buildings and for the meetings of fire companies;

Fifth, The grounds and buildings of library, scientific, benevolent and religious institutions, or societies devoted solely to the appropriate objects of these institutions, not exceeding three acres in extent, and not leased or otherwise used with a view to pecuniary profit;

Sixth, The books, papers, furniture, scientific or other apparatus pertaining to the above institutions and used solely for the purpose above contemplated, and the like property of students in any such institutions, used for the purposes of their education;

Seventh, Money and credits belonging exclusively to such institutions, and devoted solely to sustaining them, but not to exceed in amount the sum prescribed in their charter or act of incorporation;

Eighth, Animals not specified in the next section:

The wool shorn from twenty-five sheep of the person giving the list;

Private libraries not exceeding one hundred dollars in value, and family pictures;

The kitchen furniture of each family, the beds and bedding thereof for each single person not a member of another family;

The apparel of every person and family actually used for wearing, with all food provided for each family;

But no person for whom a compensation for board or lodging is received or expected, is to be considered a member of a family within the intent and meaning of this act;

Ninth, The polls or estates, or both, of persons who by reason of age or infirmity may, in the judgment of the assessor, be unable to contribute to the public charge, such opinion being subject to revision by the county board of equalization.

All other property subject to taxation

Sec. 2. All other property, real and personal, including improvements on government lands within this Territory, is subject to taxation in the manner herein directed. And this section is intended to embrace lands and lots in towns, including lands bought from or donated by the United States and from the Territory, and whether bought on credit or otherwise;

Ferry franchises and toll bridges, which for the purposes of this act, are to be considered as real property;

Horses and neat cattle, mules and asses, sheep and swine;

Money, whether in possession or on deposit, and including bank bills, money, property or labor due from solvent debtors on contract or in judgment, and whether within this Territory or not;

Mortgages and other securities, and accounts bearing interest;

Stock or shares in any bank or company incorporated by this Territory, or any other State or Territory, and situated in or transacting business in this Territory;

Public stocks, loans, household furniture not exempted, and including gold and silver plate, musical instruments, watches and jewelry;

Private libraries for their value over one hundred dollars;

Pleasure carriages, stage hacks, omnibuses and other vehicles for transporting passengers;

Wagons, carts, drays, sleighs, and every other description of vehicles or carriages;

Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this Territory solely or not, if owned wholly or in part by persons who are inhabitants of this Territory;

Annuities, but not including pensions from the United States or any other State of the Union;

Money invested in manufactories, including buildings, machinery, and materials;

All moneys used in merchandising.

Personal property of every description belonging to persons or companies doing freighting or transporting business across the plains shall be valued at the usual prices of similar property at the time and place of listing, and shall be assessed at the respective places of residence of such person or persons; or the place where such property at the time is kept, together with all other property not above exempted, though not herein specified.

Credits

Sec. 3. The term "credits," as used in this act, includes every claim and demand for money, labor, or other valuable thing. And every annuity or sum of money receivable at stated periods, and all moneys in property of any kind, and secured by deed, mortgage, or otherwise; but pensions from the United States, or any State, are not included in the above terms.

Shall be listed and valued each year

Sec. 4. All taxable property, personal and real, shall be listed and valued each year, at its actual value at the place of listing, the same beginning with the first day of January, A. D. 1869. The cultivation of fruit, forest and ornamental trees or grape vines upon any land in this Territory shall in no wise increase the value of said land for revenue purposes.

Fruit and ornamental trees

Commissioners shall furnish assessors what

Sec. 5. On or before the first Monday of February in each year, the county commissioners of each county are required to furnish the assessors with suitable notices and blank forms for the assessments, and such instructions as may be needful to secure full and uniform assessment and returns, and at the same time furnish each assessor a list of all the entered lands in his district subject to taxation.

List shall contain, what Amount of capital

Sec. 6. The list of each person shall contain, first, his lands by townships, range and section, and any division or part of a section lying in the county in which the list is required. And when such parcel of land is not a congressional division, or subdivision, it shall be listed and described in some other mode, sufficient to identify it. And his own town lots, naming the town in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering in the town. His personal property by the following particulars: Amount of capital employed in merchandise, amount of capital employed in manufacturing, number of horses, number of mules and asses, number of neat cattle, number of sheep, number of swine, number of carriages and vehicles of every description, amount of moneys and credits, amount of taxable household furniture, amount of stock or share in any incorporated company or company not incorporated, amount of all personal property not exempt by law and not enumerated, the number of polls.

Above list of items may be extended

Sec. 7. The above list of items may be extended at the discretion of the county commissioners, so as to obtain such facts as they may deem desirable.

List shall be signed &c.

Sec. 8. The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor or by any other officer authorized to administer oaths, and shall be certified to by him, and the oath may be printed upon the blank form, and shall be in substance as follows:

I, (A. B.) do solemnly swear that I have listed above (or within) all the lands, town lots, personal property, money and credits, subject by law to taxation, and owned by me, or required by law to be listed by me for any other person or persons, (insert as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor, as the case be) according to the best of my knowledge.

When required to render above statement and fails to do so

Sec. 9. When any person who is required to render the above statement fails to do so, from absence or sickness, and when any person refuses to do so, or to take or subscribe to the oath required, the assessor shall ascertain, according to the best information he can obtain, the number and value of the several species of property required. And to that end he is hereby

authorized to examine on oath any person whom he supposes to have knowledge in relation thereto; and if any person refuses to testify he shall forfeit the sum of five dollars, to be recovered by civil action in the name and to the use of the county; and the assessor shall make a minute of the names of persons refusing to swear to this list, or to testify as to the value of property, and shall note the same on the list and return the same to the board of county commissioners; and the county board of equalization shall add fifty per cent. to the amount of property returned by the assessor as the list of the person refusing to swear.

Shall be indorsed with name Duty of assessor

Sec. 10. The said statements of persons refusing to swear shall be endorsed with the name of the person whose property is therein listed, and the assessors shall file them in alphabetical order and return them to the office of the county clerk by the second Monday of April next ensuing, at which time, or before, he shall also prepare and deliver his assessment roll.

All property to be valued by assessor, except

Sec. 11. All property is to be valued by the assessor except such as is herein required to be valued by the owner.

Oath of assessor

Sec. 12. The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows:

I, (A. B.) county or township assessor, in and for the county, Dakota, do solemnly swear that the value of all property, moneys and credits, of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned, as set forth in such statement, that in every case where I have been required to ascertain the amount of value of the property of any person or body corporate, I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value therefor is set forth in the above returns. And that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessments of property for taxation.

Every inhabitant of this territory of full age and sound mind, unless excepted

Sec. 13. Every inhabitant of this Territory, of full age and sound mind, unless excepted by the provisions of this act, shall list all property subject to taxation in this Territory of which he is the owner, or has the control or management in the manner herein directed;

But the property of a ward is to be listed by his guardian;

Of a minor, having no other guardian, by his father, if living;

If not, then by his mother, if living;

If not, then by the person having the property in charge;

Of a married woman, by her husband;

But if he be unable or refuse, then by herself;

Of a beneficiary for whom property is held in trust, by the trustee;

And the personal property of a decedant, by the executor, administrator, or heirs;

Of a body corporate, company, society, or partnership, by the principal accounting officer, agent, or partner;

Property under mortgage or lease to be listed by and taxed to the mortgagor or leasor, unless it be listed by the mortgagee or lessee.

Commission merchants &c.

Sec. 14. Commission merchants, and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this Territory, are, for the purpose of taxation, required to list all the property in their possession.

Property listed assessed and taxed, when, where

Sec. 15. All personal property is to be listed, assessed, and taxed in the county where the owner resides, on the first of January of the then current year, or where the property is kept. But if the owner resides out of the Territory, it is to be listed and taxed where it may be at the time of listing. And if the agent or person having charge of such property neglects to list it, he will be subject to the penalty hereinafter provided.

In behalf of another

Sec. 16. A person required to list property in behalf of another, shall list in the same county or township in which he would be required to list if it were his own (except as herein otherwise directed.) But he must list it separate from his own, naming the person to whom it belongs. But the undivided

property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs, without enumerating them.

Companies, moneys, return when.

Sec. 17. The president, secretary, superintendent, or other principal accounting officer within the Territory at the time of the assessment, of every canal or slackwater navigation company, railroad company, turnpike company, plank road company, bridge or ferry company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for in this chapter, for whatever purpose they may have been created, whether incorporated by any law of this Territory or not, where any portion of said property, at the time of the assessment, is situated in more than one county, shall list for taxation, verified by the oath or affirmation by the person so listing, all the personal property, which shall be held to include road bed, depots, wood and water stations, poles and wire, bridge and boats, books, papers, office furniture and fixtures, and such other realty as is necessary for the daily business operations of said road, bridge, insurance or other incorporation. Moneys and credits of such company or corporations within the Territory, at the actual value in money, in manner following, to wit: In all cases, except as hereinafter provided, a full return of all property shall be made to the auditor of the Territory, on or before the first Monday of March, annually, together with a statement of the amount of such property, which is situated in each organized county, precinct or township, incorporated village or city therein. The value of all movable property shall be added to the stationary and fixed property;

Provided, That, whenever the whole of the property of any company, aforesaid, shall be in one county only, the return shall be made to the assessor or assessors, in the same manner as returns of other property are made.

Duty of auditor, shall certify.

If the return, aforesaid, shall not be received by said auditor, within three days after the first Monday in March aforesaid, it shall be the duty of the auditor to procure the information aforesaid, in any manner that may appear to be most likely to secure the same correctly, and for that purpose shall address a written request to the officer who has omitted or neglected to make the return aforesaid; and it shall be

the duty of the auditor, on or before the first Monday of April, or so soon thereafter as he shall have procured the necessary information, to certify to the county clerks of the several counties in which said property, or any part thereof, shall be situated, the amounts thereof, specifying the several amounts included in each organized county or township, incorporated city or village in said county, which amounts, when so received by the several county clerks, shall be placed on the list of taxable property returned to them by the several assessors for such county or townships, incorporated cities or villages. The auditor shall certify whether the return was made by the proper officer, or whether the valuation was procured by himself; and it shall be the duty of the county commissioners to equalize the valuation of such property in the same manner as of other property, and if the return has not been made by the proper officer at the proper time as required by this act, it shall be the duty of said county commissioners to add, not exceeding fifty per cent., to the valuation thus before them:

Duty of county commissioners.

Provided

Provided, That shares of stock, in all national banks, held by any person or persons in the Territory, shall be assessed at their par value, and the owner or owners thereof shall be required to pay tax thereon the same as though they were shares in banks chartered and incorporated by the laws of Territory, or by the laws of any other State or Territory of the United States; and

Provided, further, That for the purposes of taxation no discrimination shall be made between any national bank and any other bank doing business in this Territory under the laws thereof.

Persons doing business in more than one county

Sec. 18. When a person is doing business in more than one county, the property and credits existing in any one of the counties are to be listed and taxed in that county; and credits not existing in, nor pertaining especially to the business in any one county, are to be listed and taxed in that county where his principal place of business may be; each individual of a partnership is liable for the taxes due from the firm.

Insurance companies

Sec. 19. Insurance companies, of every description, transacting business in this Territory, shall be taxed in the same amount and at the same rate that all other property is taxed,

upon the amount of premiums taken by them during the year previous to the listing in the county where the agent conducts the business. And the agent shall render the list, and shall be personally liable for the tax, and if he refuses to render the list, or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor, and the county board of equalization may, at their discretion, add fifty per cent. to the amount returned by the assessor.

Depreciated bank notes

Sec. 20. Depreciated bank notes and depreciated stocks or shares in corporations or companies, may be listed at their current value and rate; credits shall be listed at such sums as the person listing them believes will be received, or can be collected, and annuities at the value which the person listing believes them to be worth in money.

Entitled to deduct.

No acknowledgement, other sureties

Sec. 21. In making up the amounts of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of bona fide debts owing by him; but no acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor. And if there are other sureties able to contribute, then so much only shall be deducted as he in whose behalf the list is made will be bound to pay or contribute; but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance; nor on account of an unpaid subscription to any society; nor on account of a subscription to, or installments payable on the capital stock of any company or corporation, nor upon any account whatever, unless such deduction be made from the amount of moneys or credits, or both, by such person listed.

When held as merchant for purposes of this act

Sec. 22. Any person owning or having in his possession or control in this Territory, with authority to sell the same, any personal property, purchased either within or out of the Territory, with a view of selling the same at an advanced price or

profit, or which has been consigned to him for the purpose of being sold within the Territory, shall be held to be a merchant for the purposes of this act; such property shall be listed for taxation, and in estimating the value thereof the merchant shall take the value of such property in his possession or control, on the first day of January.

Held as manufacturer, when

Sec. 23. Any person who purchases, receives, or holds personal property of any description, for the purpose of adding value thereof, by any process of manufacturing, refining, purifying, or by the combination of different materials with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer, for the purposes of this act, and he shall list for the taxation the value of such property in his hands estimated as directed in the previous section in case of merchants; but the value shall be estimated upon the materials only entering into the combination or manufacture.

Assessors shall make out assessment roll, when, constituting

Sec. 24. On or before the first Monday of April, annually, the several county assessors shall make out and deliver to the county clerk an assessment roll, consisting of the following items, to wit:

First, A list of all the taxable lands in such county in numerical order, beginning with the lowest numbered section, in the lowest numbered township, in the lowest numbered range in the county, and ending in the highest numbered section, township and range, with the number of acres in each tract set opposite the same in a column, provided for that purpose, and the assessed value thereof in another column, and the name of the owner or person listing the same in another column, with the columns of acres and values footed up. Such list shall be as nearly as practicable in the following form:

Return of taxable lands in ———— *county, Dakota, as assessed for the year* 18—.

Part of Sec.	Sec.	Township.	Range.	Acres.	Val.	Owners' Names.

Second, A list of all the town lots in each town or city in each county, in like numerical order, with the valuation of each lot or part of lot, and the name of the person listing the same, opposite with the column of values footed up substantially in the following form: Form of assessors roll, continued

Return of lots in the city (or town) of ——, *in* —— *county, Dakota, assessed for the year* 18—.

Block.	Lot.	Value.	Owner.

Third, A list in alphabetical order of all the persons and bodies corporate in whose names any property or anything taxable other than the real estate, has been listed, with a sufficient number of columns opposite each name in which to enter the numbers or values, or both, of the several species of property or other interests required by law to be listed, with the columns of numbers and values footed up. Such list shall be as nearly as practicable in the following form, to wit

Return of personal property in ——, county, Dakota, assessed for the year 18—.

NAMES.	Horses.	Value.	Mules	Value.	Cattle.	Value.	Sheep.	Value.	Swine.	Value.	Carriages.	Value.	Money and credits.	Household furniture.	Stock or shares.	Other personalty.	Total.	Poll tax.	REMARKS.

Person required to list, for himself or in behalf of another, refuses

Sec. 25 In every case where a person is required to list property for himself or in behalf of another, shall neglect or refuse to list the same, the assessor shall proceed as directed in section nine of this act, and in the return of personal property, opposite the name of such person, he shall write the words "by the assessor," when the list was made by himself, together with the words "absent" or "sick," or the words "refused to list" or "refused to swear," or such other words as will express the cause why the person required to make the list, did not make it, and a neglect to make it shall be taken as a refusal.

Sec. 26. * * * * * *

Commissioners, constitute what

Sec. 27. The county commissioners of each county shall constitute a board of equalization for the county, and said board, or a majority of them, shall hold a session of not less than two days at the county seat, commencing on the first Monday of April of each year, for the purpose of correcting the assessment roll in their county, and during the sitting of said board, any person feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any supposed error in the listing or valuation of his property, whether real or personal, and if any returned as refusing to render a list, or to be sworn thereto, or to the list of property of another can show good cause for such failure or refusal, the penalty herein provided may be remitted.

Clerk make abstract, when

Sec. 28. As soon as practicable after the assessment rolls are equalized and corrected as provided in the last section, and before the first Monday of May next ensuing, the county clerk shall make out an abstract thereof, containing the whole number of acres of land listed in the county, and the total value thereof;

The total valuation of town lots;
The amount of property invested in merchandise;
The amount of property invested in manufactures;
The number of horses and their total value;
The number of mules and asses, and their total value;
The number of cattle and their total value;
The number of sheep and their total value;
The number of swine and their total value;

The number of carriages and vehicles of every kind, and their total value;

The total value of money and credits;

The total value of household furniture;

The total value of stock or shares;

The total value of all other personalty not enumerated under the foregoing heads, and the number of polls;

Which abstract the clerk is directed to transmit without delay to the auditor of the Territory, and the county commissioners are authorized to direct the clerk to add to the above list of items such other items as they may deem advisable; and it shall be the duty of the auditor of the Territory to furnish such forms for the use of the county commissioners, assessors, clerks, and other officers of the revenue, as shall secure uniformity of proceedings and returns throughout the Territory.

Territorial board—whom

Sec. 29. The governor, territorial auditor and treasurer, shall constitute the territorial "board of equalization," (or the majority of them) and said board of equalization shall hold a session at the capital of the Territory, commencing on the fourth Monday of May of each year, and it shall be the duty of said board to examine the various county assessments, and to decide upon the rate of the territorial tax, to be levied for the current year, together with any other general or special territorial taxes required by law to be levied, and to equalize the levy of such taxes throughout the Territory; but such equalization shall be made by varying the rate of taxation on the different counties in case the said board of equalization are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

Rate of general territorial tax

Sec. 30. The rate of the general territorial tax shall not be less than one-half mill, nor more than two mills on the dollar valuation;

For ordinary county revenue, including the support of the poor, not more than four mills on the dollar;

For roads and bridges, a poll tax of one dollar and a half or one day's work and a road tax not exceeding two mills on the dollar on all taxable property, to be paid in money, or in labor at the rate of one dollar and fifty cents per day, at the option of the person so taxed, and the certificate that the person

named therein has actually performed eight hours labor for each day's work so certified shall be received by the county treasurer for their several accounts in discharge of said tax.

For county sinking fund, such rate as in the estimation of the commissioners will pay one year's interest on all the outstanding debt of the county, with fifteen per cent. on the principal.

Auditor to transmit statement, when—to whom

Sec. 31. On or before the second Monday in June, the territorial auditor is required to transmit to the county clerk of each county, a statement of the rate of taxation required in said county for the general territorial tax, as directed to be levied and collected by the territorial board of equalization. Should the territorial board of equalization fail to fix the rate of taxation, in any or all of the counties, then the auditor is required to notify the county clerk of the rate to be levied and collected in such county or counties.

Commissioners shall meet when —where

Sec. 32. On the first Monday in July of each year, the county commissioners shall meet at the county seat, to levy the necessary taxes for the current year, and they may levy the taxes at any time after the first Monday of July, if the statement from the territorial board of equalization has not been received, such levy shall not be postponed for more than ten days, and they shall levy taxes as herein directed.

General Territorial shall be directed by whom

Sec. 33. The rate of the general territorial tax, shall be as directed by the territorial board of equalization, but in case the statement of the levy of such taxes as hereinbefore directed, has not been received by the county clerk within ten days after the first Monday in July, then the said county commissioners shall levy the average rate of such taxes provided for in section thirty of this act.

Clerk shall make out tax list, containing

Sec. 34. As soon as practicable after the taxes are levied, the county clerk shall make out a tax list containing;

First, A list in alphabetical order of all the persons and bodies corporate in whose name any property other than real estate has been listed with the amount or valuation thereof in a separate column opposite the name, and total amount of all the taxes carried out in another column.

Second, A list of all the taxable lands in the county (not including town lots) in numerical order, commencing with the

lowest numbered section in the lowest numbered township in the lowest numbered range in the county, and ending with the highest numbered section, township and range, with the names of the persons or parties in whose name each subdivision was listed opposite each subdivision on the margin or in a column provided for that purpose, with valuation of each tract, and several species of taxes and the total of all the taxes carried out in separate columns opposite each tract in the same manner as provided in the alphabetical list of names.

Third, A list of the city or town lots in each city or town in the county, commencing with the lowest number and ending with the highest number in each city or town, with the name of the person or party listing each lot or part of lot opposite the same, and the valuation and several species of taxes and total taxes carried out in separate columns in the same manner as hereinbefore provided in respect to personal property and lands.

List, by whom kept

Sec. 35. The tax list, when completed, shall be kept by the county clerk as the property of the county. The clerk shall also prepare a duplicate of the tax list of his county, and deliver the same to the county treasurer on or before the first day of October following, the date of the levy for the current year.

Form of list and duplicate

Sec. 36. The tax list and duplicate shall be as nearly as practicable in the following form, to wit:

Tax List for 18—, ——— county, Dakota.

NAMES.	Part of section.	Section.	Township.	Range.	Acres.	Value.	Name of town.	Lot.	Block.	Value.	Personalty.	Territorial tax.	County tax.	County sink'g fund tax.	Land road tax.	Poll tax.	District school tax.	Total.	REMARKS.

Entry required to be made

Sec. 37. An entry is required to be made upon the tax list and its duplicate, showing what it is, and for what county and year it is, and the county commissioners shall attach to the lists, their warrants under their hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied according to law; and no informality in the foregoing requirements shall render any proceedings for the collection of taxes illegal; the county clerk shall take the receipt of the county treasurer on delivering to him the duplicate tax list with the warrant of the county commissioners attached, and such list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained.

County treasurer to be collector of taxes

Sec. 38. The county treasurer of each county shall be the collector of the taxes, and it shall be the duty of the treasurer to attend at the county seat at all times, to receive the taxes not yet paid, and he is also authorized and required to collect so far as practicable the taxes remaining unpaid on the list of the former year or years; in all cases where taxes are paid, he shall give a receipt to the person paying the same.

Warrants are receivable

Sec. 39. Territorial warrants are receivable for the amount payable into the territorial treasury, on account of the general territorial tax, and county warrants are receivable at the treasury of the proper county for the amount payable into the county treasury, and city warrants shall be received for city taxes, but United States treasury notes, or their equivalent only are receivable for school taxes, and such other taxes as are, or may be required by law to be paid in cash, and road and poll taxes may be discharged as provided in section thirty.

Treasurer to make out duplicate receipts, shall correspond in number, date &c

Sec. 40. Whenever any taxes are paid to the county treasurer, the treasurer shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date, amount and in every respect shall be precise copies of each other, one of which shall be delivered to the person paying such taxes, and the other shall within one month be filed by the treasurer with the county clerk, and such duplicate receipts shall specify the land or other property on which such tax was assessed according to its description on the tax duplicate, or in some sufficient manner, and shall also specify the amount of

each separate and distinct fund in separate or distinct lines or columns, and whether the said separate and distinct funds were paid in cash or in territorial warrants, county or road order, or supervisors' receipts, as the case may be.

Sec. 41. The tax receipt and duplicate shall be substantially in the following form, to wit: Form of

No. ——

$ ——

Treasurer's Office, ——— *County, Dakota,* ———— 18—

Received of ———, ——— *Dollars, in full of the following Taxes for the Year* 18— *on annexed Property or Real Estate.*

Part of Section or Name of Town.	Section or Lot.	Town or Block	Range or Lot.	Acres or Block	KIND OF TAX	AMOUNT OF TAXES. Paid in Cash.	Paid in Warrants	Interest.	Total.
					Territorial.				
					County.				
					Road.				
					Poll.				
					School.				
					Advertising.				

Duty of county clerk in such case

Sec. 42. It shall be the duty of the county clerk, on receiving any duplicate tax receipt from the treasurer, forthwith to examine the same and compare it with the tax list in his possession, and see if the total amount of taxes and the several amounts of the different funds are correctly entered and set forth in such receipt, and in case it shall appear that the treasurer has not collected the full amount of taxes and interest which, according to the tax list and the terms of the receipt, he should have collected, then the county clerk shall forthwith charge the treasurer with the amount such receipt falls short of the true amount, and the treasurer shall be liable on his official bond to account for and pay over the same.

Receipts to be numbered consecutively

Sec. 43. All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same have been levied and assessed in this Territory.

What treasurer shall write on duplicate

Sec. 44. Whenever any taxes are paid, the treasurer shall write on the tax duplicate opposite the description of the real estate or property whereon the same were levied, the word "paid," together with the date of such payment and the name of the person paying the same; and the county clerk, on receiving the duplicate receipt, shall forthwith make the same entries on the tax list in his possession.

Treasurer to keep a cash book

Sec. 45. The county treasurer is required to keep a cash book, in which he shall enter an account of all money by him received, specifying in proper columns provided for that purpose, the date of the payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether territorial, county, school, road, sinking fund, or otherwise, and the amount paid in warrants, orders or receipts, each in a separate column, and the total amount for which the receipt was given, in another column; and the treasurer shall keep his account of money received for and on account of taxes, separate and distinct from moneys received on any other account; and shall also keep his account

of money received for and on account of taxes levied and assessed for any one year, separate and distinct from those levied and assessed for any other year; and all entries in said cash book, of money received for taxes, shall be in the numerical order of the receipts issued therefor.

Duplicate receipts, delivered to whom

Sec. 46. Whenever the treasurer receives money, warrants or orders, on account of licenses, fines or any other account except taxes, he shall make out duplicate receipts for the same, and deliver one to the person making such payment, and the other to the county clerk, as provided in the case of tax receipts, and shall forthwith enter the same in his cash book as in case of money received for taxes, but in a separate place and with a separate and distinct series of numbers of receipts issued therefor.

Form of cash book

Sec. 47. The cash book above provided for shall be as nearly as practicable in the following form, to wit:

Treasurer's Cash Book. ——— *County, Dakota.*

Date.	Number of Receipt.	By whom paid.	Territorial Fund.		County Fund.		Co. Sinking Fund.		Land Road Fund.			Poll Fund.			District School Fund.	Advertising Fees.	Total.	Remarks.
			Paid in cash.	Paid in warrants.	Paid in cash.	Paid in warrants.	Paid in cash.	Paid in warrants.	Paid in cash.	Paid in warrants.	Paid in receipts.	Paid in cash.	Paid in warrants	Paid in receipts.				

Clerk required to keep duplicate of treasurer's cash book

Sec. 48. The county clerk is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same.

Errors

Sec. 49. If on the assessment roll or tax list there be any error in the name of the person assessed or taxed, the name may be changed, and the tax collected from the person intended, if he be taxable and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county clerk, who upon being satisfied thereof, shall enter the same upon his assessment roll, and assess the value, and the treasurer shall enter it upon the tax list, and collect the tax as in other cases.

Demand for taxes not necessary

Sec. 50. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law to attend at the treasurer's office at the county seat and pay his taxes; and if any person neglect so to attend and pay his taxes, until after the first day of January next succeeding the levying of the taxes, the treasurer is directed and required to collect the same by distress and sale; *Provided*, That in case any person having only personal property assessed and upon which the taxes are unpaid, shall, in the opinion of the treasurer, be about to move out of the county, it shall be the duty of the treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands.

Taxes shall become delinquent—when

Sec. 51. On the first day of May of the year after which taxes shall have been assessed, all unpaid taxes shall become delinquent, and shall draw interest at the rate of ten per cent. per annum from the date of such delinquency.

Penalty

Sec. 52. To all taxes which remain unpaid at the time the same become delinquent, there shall be added, as a penalty, ten per cent. on the amount so remaining unpaid, which shall be added to the amount assessed, and collected, by the county treasurer.

Taxes upon real property, are made what

Sec. 53. Taxes upon real property are hereby made a perpetual lien thereupon, against all persons and bodies corporate, except the United States and this Territory.

Distrained goods kept at the expense of the owner

Sec. 54. When the treasurer distrains goods, he may keep them at the expense of the owner, and he shall give notice of the time of their sale within five days after the day of the taking, in the manner that constables are required to give notice of the time of the sale of personal property on execution; and the time of the sale shall not be more than ten days from the day of the taking, but he may adjourn the sale from time to time for a period not to exceed three days, and shall adjourn once at least when there are no bidders; and incase of an adjournment, he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

In case treasurer be resisted or impeded in the execution of his office

Sec. 55. If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if any such person refuse to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action, in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process.

Shall continue to receive payment after—when

Sec. 56. The treasurer shall continue to receive payment of all taxes after the first day of January upon the above terms until collected by distress and sale.

Duty of collector

Sec. 57. Whenever, in the collection of any district, town, city or local tax, which may have been levied according to law, the collector is not able to make the tax by distress and sale of personal property, and real estate is to be sold for the same, it shall be the duty of the collector of the tax to send such delinquent list to the county treasurer on or before the fifteenth day of July of each year, and the county treasurer shall receive the delinquent list and advertise the same at the same time he advertises the sale of real estate for delinquent taxes, as hereinafter provided, by adding the amount of such delinquent district, town, city or local tax to the amount of delinquent territorial, county and other taxes, and shall sell such lands for the purpose of paying all such delinquent taxes as hereinafter directed, and shall credit the proper district, town,

city or locality for the amount of taxes so collected, which shall be subject to the order of the proper collecting officer.

Treasurer shall give notice of sale. How

Sec. 58. The treasurer shall give notice of the sale of real property by publication thereof once a week for three consecutive weeks, commencing the first week in August preceding the sale, in a newspaper in his county, if there be one, and if there be no paper published in his county, shall give notice by a written or printed notice posted on the door of the court house or building in which the courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale; such notice shall contain a notification that all lands, on which the taxes of the preceding year (naming it) remain unpaid, will be sold, and the time and place of the sale, and said notice must contain a list of the lands to be sold, and the amount of taxes due. The treasurer shall add to each description of land so advertised the sum of ten cents for each description, other than town lot, and for each town lot the sum of five cents, to defray the expenses of advertising, which amount shall be paid by the county treasurer at the expiration of the sale, upon the affidavit of the publisher.

Shall offer for sale when. Provided

Sec. 59. That on the first Monday of September in each year, between the hours of nine o'clock, A. M., and four o'clock, P. M., the treasurer is directed to offer at public sale, at the court house, or place of holding courts in his county, or at the treasurer's office where by law the taxes are made payable, all lands on which the taxes levied for the previous year still remain unpaid, and he may adjourn the sale from day to day until all the lands and lots or blocks have been offered: *Provided, however*, No real estate belonging to any person shall be sold for taxes, while personal property belonging to such person can be found by the treasurer or collector, and no taxable property shall be exempt from levy and sale for taxes.

Highest bidder. Qualifications

Sec. 60. The person who offers to pay the amount due on any parcel of land for the smallest portion of the same, is to be considered the highest bidder, and when such a portion constitutes a half or more, of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided, in such case, lengthwise by a parallel with the proper lines of the lots. If

the portion taken be less than one-half of the parcel, it is to be taken from the south east corner, in a square form as nearly as the form of the land will conveniently permit.

The preceding provisions of this section are subject to the following qualifications:

The homestead is liable to be sold for no tax save that which is due upon itself exclusively, and the above directions concerning the division of a tract of land, shall be modified so as to meet this requirement; and to that end, the quantity of land bid may be obtained by drawing the division line in any direction or form, so as to avoid the homestead, and when the homestead constitutes a part of the tract or parcel sold, and is not yet ascertained, the court may in the action hereafter authorized, at the suggestion of either party, cause proceedings to be had similar to that required in relation to mechanics' liens, for the ascertainment of the homestead. And in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and to set apart from the homestead.

Persons bidding failing to pay

Sec. 61. Should any person so bidding fail to pay the amount due, the treasurer may again offer land for sale if the sale has not closed, and if it has closed, he may again advertise it specially and by description, by one written or printed notice, posted for two weeks on the door of the court house or place where courts are usually held, after which it may be sold at public sale; or the treasurer may recover the amount by civil action, brought in the name of the county in which the sale was held.

Filing returns of sale

Sec. 62. On or before the first Monday of October following the sale of real property, the treasurer is required to file in the office of the county clerk of his county, a return of his sale of land (retaining a copy in his office) showing the lands sold, the names of the purchasers and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the advertisement, verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings.

Descriptions entered numerically

Sec. 63. The description of real estate in such returns shall be entered in the same numerical order as required in the tax list and such return shall be as nearly as may be in the following form, to wit:

Treasurer's Sale Book. *Delinquent Taxes of* 18 , *County, Dakota.*

Date of sale.	Part of section, or name of Town.	Section or lot.	Town or block.	Range or lot.	Acres or block.	Names of purchaser.	Amount sold for.	Subsequent taxes paid.	Total.	By whom redeemed.	Amount paid for redemption.	Redemption money.	Remarks.

Sec. 64. The purchaser of any tract of land sold by the county treasurer for taxes, will be entitled to a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and said assignment must be acknowledged before some officer having power to take acknowledgment of deeds; such certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land, and if he subsequently pay any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale, he shall have same lien for them, and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "sold for tax at public sale." Purchaser entitled to certificate

Such certificate shall be substantially in the following form, to wit:

County Treasurer's Certificate of Tax Sale.

The Territory of Dakota, } ss. Form of
——— county, }

I, treasurer of the county of , in the Territory of Dakota, do hereby certify, that the following described real estate in said county and Territory, to wit: (describing the same) was, on the day of , 18 , duly sold by me in the manner provided by law, for the delinquent taxes of the year 18 thereon, amounting to dollars, including interest and penalty thereon, and the costs allowed by law, to , for the sum of dollars, he being the highest and best bidder for the same.

And I further certify, that unless redemption is made of real estate, in the manner provided by law, the said , heirs or assigns, will be entitled to a deed therefor on and after the of , A. D. 18 , on surrender of this certificate.

In witness whereof, I have hereunto set my hand this day of , A. D. 18 .

———————,

Treasurer.

Demand of fifty cents for same

Sec. 65. The treasurer is authorized to demand fifty cents for each deed or certificate made by him on such sale together with the necessary amount of United States revenue stamps, and the fee of the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person, may be included in one deed or certificate, as may be desired by the purchaser; and whenever the treasurer makes a deed to any land sold for taxes, he shall enter an account thereof in the sale book opposite the description of the land conveyed.

Private sale Provided

Sec. 66. After the tax sale shall have closed, and after the treasurer has made his return thereof to the county clerk, as provided in section sixty-three of this chapter, if any real estate remain unsold for want of bidders thereof, the county treasurer is authorized and required to sell the same at private sale, at his office, to any person who will pay the amount of the taxes, penalty and costs thereon for the same. And to deliver to said purchasers a certificate, as provided in section sixty-five of this chapter; and to make out duplicate receipts for the taxes on such real estate, and deliver one to the purchaser and the other to the county clerk, as hereinbefore provided, (with the additional statement inserted in the certificate, that such lands have been offered at public sale for taxes, but not sold for want of bidders,) on which he is required to write, "sold for taxes at private sale;" and the treasurer is further authorized and required to sell as aforesaid all real estate in his county on which taxes remain unpaid and delinquent for any previous year or years.

May redeem, how, Provided

Sec. 67. The owner or occupant of any land sold for taxes, or any other person, may redeem the same at any time within two years after the day of such sale by paying the county treasurer, for the use of the purchaser, his heirs or assigns, the snm mentioned in this certificate, and interest thereon at the rate of forty per cent. per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment; and the treasurer shall enter a memorandum of the redemption in the list of sales, and give a receipt therefor to the person redeem-

ing the same, and file a duplicate of the same with the county clerk as in other cases, and hold the money paid to the order of the purchaser, his agent or attorney; *Provided*, That infants, idiots and insane persons may redeem any lands belonging to them, sold for taxes, within two years after the expiration of such disability.

Undivided land sold

Sec. 68. Any person claiming an undivided part of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, principal and subsequent taxes as he shall claim of the land sold.

Partial redemption

Sec. 69. In every case of partial redemption, pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.

If it shall not be redeemed within two years

Sec. 70. If no person shall redeem such lands within two years, at any time after the expiration thereof and on production of the certificate of purchase, the treasurer of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the Territory, a conveyance of the real estate so sold, subject, however, to all the claims which the Territory may have thereon for taxes or other liens or incumbrances.

Conveyance how made.

Sec. 71. Such conveyance shall be executed by the county treasurer under his hand, and the execution thereof shall be attested by the county clerk, with the county seal, and such deed shall be *prima facie* evidence of the truth of all the facts therein recited, and no more, and such deed shall be, as far as practicable, in the following form, to wit:

Form of deed

Whereas, A. B. did, on the day of , A. D. 18 , produce to the undersigned, C. D., treasurer of the county of , in the Territory of Dakota, a certificate of purchase in writing, bearing date the day of , 18 , signed by E. F., who at the last mentioned date was treasurer of said county, from which it appears that did on the day of , 18 , purchase at public auction at the door of the court house in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to for the sum of , being the amount due on the following tract or lot of land returned delinquent for the

non-payment of taxes, costs and charges for the year 18 , to wit: (here insert the land offered for sale:) And it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year 18 , and that said lands had been legally advertised for sale for taxes, and were sold on the day of , 18

Now, therefore, this indenture, made this day of , 18 , between the Territory of Dakota, by C. D., the treasurer of said county, of the first part, and the said A. B. of the second part, witnesseth, that the said party of the first part, for and in consideration of the premises and the sum of one dollar in hand paid, hath granted, bargained and sold, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, heirs and assigns forever, the tract or parcel of land mentioned in said certificate and described as follows, to wit: (describe the land,) to have and to hold said mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part, heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., treasurer of said county of , has hereunto set his hand and seal on the day and year aforesaid.

Attest: _____,

[seal.]

Which deed shall be acknowledged by said treasurer before some one authorized by law to take acknowledgments of deeds.

Shall not be valid, on account of

Sec. 72. The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner.

Certificate cancelled and filed

Sec. 73. When conveyances are delivered for lands sold for taxes, the certificate therefor shall be canceled and filed away by the county clerk; and in case of the loss of any certificate,

on being fully satisfied thereof by due proof, and bond given to the Territory of Dakota in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the county clerk.

Land sold by mistake or wrongfully

Sec. 74. When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to save the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties shall be liable for the amount to the county on his bond, or the purchaser may recover the same directly from the treasurer.

Tax for territorial purposes

Sec. 75. A tax of thirty dollars, for territorial purposes, shall be levied upon each pedler of watches, clocks, jewelry, or patent medicines, and all other wares and merchandise not manufactured within the limits of this Territory, for a license to peddle throughout the Territory for one year.

License how obtained

Sec. 76. Such license may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof, and taking his receipt therefor.

Peddling without license

Sec. 77. Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable whether he be the owner or not, and upon conviction thereof, shall forfeit and pay the sum of fifty dollars to the county treasurer where such conviction shall be had to be recovered by civil action in the name of the county prosecuting for the same. All fines and penalties recovered under this section shall be applied to the common school fund of the county prosecuting for the same, and if any peddler refuses to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produce a license upon trial, such peddler shall pay all cost of prosecution.

Treasurer shall pay over funds —when

Sec. 78. The treasurers of the several counties shall pay into the territorial treasury all funds in their hands belonging thereto, on or before the first Monday of November in each year, and at such other times as the territorial treasurer shall require; and the funds so paid in shall be the identical territoria

warrants, if any, received by the treasurer for payment of the taxes, or in coin, or in treasury notes of the United States, and the county treasurer shall be entitled to receive ten cents a mile for travel each way by the nearest routes, in making his returns to the territorial treasurer, which he may receive either by a credit on his account, or on an order of the auditor upon the territorial treasury; *Provided, however*, That when the distance from the county to the territorial treasury is over one hundred miles, then the county treasurer is required to send the territorial tax by United States draft, or a post office order, for which he shall be allowed the actual expenses for procuring the same and no more.

If they shall wilfully fail to settle

Sec. 79. If any county treasurer shall willfully and negligently fail to settle with the territorial treasurer at the time and in the manner above prescribed by law, he shall forfeit to the use of the Territory the sum of five hundred dollars, which sum may be recovered of him, or his sureties, on suit brought by the territorial treasurer in any court of this Territory having jurisdiction; or in case of failure of the territorial treasurer to bring such suit, then any citizen of the Territory may bring the same.

Shall settle with county commissioners, when

Sec. 80. The county treasurer shall settle with the county commissioners on or before the first Monday of May, and on the first Monday of October; *Provided, however*, That the county commissioners may require the county treasurer to settle with them at any time. The treasurer is to be charged with the amount of all tax lists placed in his hands for collection, and credited with the amounts collected thereon and the delinquent lists, and he shall leave his vouchers with the commissioners, to be retained by them for evidence of his settlement. If the treasurer's accounts are correct, the commissioners shall certify the same; if not, he shall be liable on his bond.

Lands becoming taxable for first time

Sec. 81. A list of lands becoming taxable for the first time in each county of the Territory, shall be procured by the territorial auditor from the proper land officers, at the best prices for the Territory, and a list of the lands becoming so taxable in each of the several counties, shall be forwarded by the auditor to the county clerk of each county on or before the fifteenth day of February of each year.

Warrant books

Sec. 82. Each county treasurer is required to keep a book called the "warrant book," in which he shall enter every territorial, county, road or other warrant or order by him paid, or received in payment of taxes, specifying the date at which the same was received and canceled, from whom received, the payee, or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total amount of indorsements or payments made thereon, the principal sum for which it was received, the interest allowed, and total amount for which it was received, and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash, and in another and separate place he shall enter an account of all indorsements made on warrants or orders in part payment thereof. Such warrant book shall be in the following form, to wit:

Treasurer's Warrant Book, *County, Dakota.*

Date	From what received.	Payee of Warrant.	No. of Warrant.	Date of Warrant.	Amount.	Indorsements.	Principal.	Interest.	Total.

Shall wilfully make issue and substitute warrants or orders for cash

Sec. 83. If any county treasurer in this Territory, or his deputy, or any other person, shall knowingly or willfully make, issue and deliver, any tax receipt, or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in warrants or orders when the same was or were paid in cash, such treasurer, or deputy treasurer, or other person, shall be deemed guilty of a high crime and misdemeanor, for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction in this Territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one, nor more than five years, in the discretion of the court.

Intent to defraud the territory

Sec. 84. If any county treasurer in this Territory, or his deputy, or any other person, shall knowingly or willfully make, issue and deliver, any tax receipt, or duplicate tax receipt, required by section forty-one of this act to be issued, by fraudulently making the tax receipt and its duplicate, or the paper purporting to be its duplicate, different from each other, with intent to defraud the Territory of Dakota, or any county in said Territory, or any person or persons whomsoever, such treasurer or deputy treasurer or other person, shall be deemed guilty of a high crime and misdemeanor for which he may be indicted by a grand jury, and on conviction thereof before any court of competent jurisdiction of this Territory, he shall be sentenced to imprisonment in the penitentiary for a term of not less than one year, nor more than five years, in the discretion of the court.

Dereliction

Sec. 85. In the case of dereliction of duty on the part of any officer or person required by law to perform any duty under the provisions of this act in any county in this Territory, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in any such county, on receiving satisfactory evidence of such dereliction or failure to perform as required by law any duty enjoined by this act, shall refuse to pay such person or persons any sum whatever for such services.

Persons keeping dogs, shall be required to list &c.

Sec. 86. Every person owning or keeping a dog or dogs within the city of Yankton in the Territory of Dakota, shall be required to list to the precinct assessor at the time of listing

other property, in the same manner and under the same penalties as is or are provided for listing other property, all dogs he or she may own or keep, and on which the following tax shall be levied and collected, for the use and benefit of the common schools of the city of Yankton, in which such dogs are kept or owned; for each dog, one dollar, and for each slut or bitch, two dollars.

Said taxes a perp·tual lien, on what

Sec. 87. Said tax shall be a perpetual lien on all property, real or personal, which the owner of such dog or dogs may have at the time of assessment or at any subsequent time, and if not paid shall be collected by distress and sale at the same time and in the same manner that other delinquent taxes are collected, together with the same penalty.

Not liable to prosecution for killing dogs when running at large

Sec. 88. No person shall be liable to prosecution for damage for killing any dog found running at large which has not been listed, or upon which said tax has not been paid after the same has become delinquent; *Provided, however*, That nothing in the three sections [86, 87, 89,] shall apply to any other part of the Territory except Yankton city.

COUNTY TREASURERS.

County treasurer shall keep his office, where

Sec. 89. The county treasurer shall be the collector of taxes; he shall keep his office at the seat of justice for his county, and shall keep a fair and accurate current account of the moneys by him received, showing the amount thereof, the time when, from whom and on what account received, in cash, warrants, county or road orders; and if in warrants or orders, their kind, number, or other designation; amounts for which they were drawn, interest due thereon, and the amounts of the receipts thereon endorsed, if any; also of all disbursements by him made, showing the time when, to whom, on what account and the amount paid; and he shall so arrange his books that the amounts received and paid on account of each separate and distinct fund or appropriation, shall be exhibited in separate and distinct columns, or accounts, and so as to show whether the same was received or paid in cash, or warrants or orders, and if either of the latter, their designation and other particulars as above required; and the county treasurer shall at all times exhibit such accounts, when desired, to the territorial,

county or school officers, entitled to receive the same, and shall at any time pay over the balance in his hands to them, upon receiving proper vouchers.

When money is paid, treasurer to make what

Sec. 90. When any money shall be paid to the county treasurer, he shall make the proper duplicate receipts for the same, as in the case of the payment of taxes, and shall give one of said receipts to the person paying said money and the other to the county clerk within one month thereafter.

Books, accounts, &c. subject to the inspection of whom

Sec. 91. The books, accounts and vouchers of the county treasurer, and all moneys, warrants or orders remaining in the treasury, shall at all times be subject to the inspection and examination of the county commissioners.

Warrants on which interest is due

Sec. 92. When the county treasurer shall receive any county or territorial warrants, or orders, on which any interest is due, he shall note on such warrants or orders the amount of interest by him paid thereon, and shall enter in his account the amount of such interest, distinct from the principal.

Shall write on the face of order "redeemed."

Sec. 93. When the county treasurer of any county shall pay any county order drawn on him by the county commissioners, or when he shall take or receive any such order in payment for any tax, he shall write on the face of such order "Redeemed," and the date of redemption, and shall sign his name thereto.

When warrant exceeds amount due

Sec. 94. When any person desiring to pay any taxes due and unpaid, shall present a county order to the treasurer of any county in payment for such tax, which shall exceed the amount that such treasurer is authorized to receive in county orders in payment for such tax, he shall endorse on the back of such order in part payment, the amount he is authorized by law to receive, and date the same. Said treasurer shall take two receipts from the holder of such order, for the amount so endorsed and paid, showing the date of the endorsement, a full description of such county order, including the date thereof, to whom given, the amount for which it was given, and all the endorsements thereon; one of which receipts he shall forthwith file with the county clerk, the other he shall retain as his voucher.

Sec. 95. Each county treasurer may appoint one or more deputies to assist him in the collection of taxes, and may take

May appoint deputies

such bond and security, from the person so appointed, as he shall deem necessary for his indemnity, and shall in all cases, be liable and accountable for the proceedings and misconduct of his deputies.

Persons desiring to pay a portion of tax

Sec. 96. When any person shall desire to pay only a portion of the tax charged on any real estate, such person shall pay a like proportion of the several taxes charged thereon, and no person shall be permitted to pay one of said taxes without paying the others, except the tax for the erection, completion or repair of school houses, the collection of which shall have been enjoined by law.

Shall make sale of delinquent lands. How

Sec. 97. The county treasurer shall make sale of delinquent lands and town lots in the manner and at the times required by law.

On going out of office, shall deliver what

Sec. 98. Each county treasurer on going out of office shall deliver to his successor in office all public moneys, books, accounts, papers and documents, in his possession; and in case of the death of any county treasurer, his legal representatives shall, in like manner, deliver up all such moneys, books, accounts, papers and documents, as shall come into their possession.

If he fail

Sec. 99. If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county clerk, on receiving instructions for that purpose from the territorial auditor or from the county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties or any of them, in the district court of his county.

Suit. Duty of commissioners

Sec. 100. Whenever suit shall have been commenced against any delinquent county treasurer, as aforesaid, the county commissioners of such county may, at their discretion, remove such treasurer from office, and appoint some suitable person to fill the vacancy thereby created, as hereinbefore provided.

County commissioners, may require what

Sec. 101. The county commissioners of any one of the counties of this territory may require the county treasurer to give additional freehold sureties, whenever in the opinion of a majority of said commissioners, the existing security shall have

become insufficient; and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners or a majority of them, may direct, whenever, in their opinion, more money shall have passed, or is about to pass into the hands of said treasurer than is or would be recovered by the penalty in the previous bond.

If treasurer fail to give such additional security

Sec. 102. If any county treasurer shall fail or refuse to give such additional security or bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed, agreeably to the provisions of law.

Treasurer shall not purchase warrants at a discount

Sec. 103. No county treasurer shall either directly or indirectly, contract for or purchase any order or orders, issued by the county of which he is the treasurer, at any discount whatever upon the sum due on such order or orders; and if any county treasurer shall so contract for or purchase any such order or orders, he shall not be allowed, in settlement, the amount of said order or orders or any part thereof, and shall also forfeit the whole amount due on such order or orders, to be recovered by civil action, at the suit of the Territory of Dakota, for the use of the county.

On settlement, shall not be credited with any sum paid for interest on any order, unless

Sec. 104. The county treasurer, on his settlement with the county commissioners, shall not be credited with any sum for interest paid on any order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon.

If he shall loan any money

Sec. 105. If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own individual purpose, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars, nor less than one hundred dollars, to be recovered in action at law at the suit of the Territory of Dakota, for the use of the county.

Each county treasurer shall immediately after settlement do what

Sec. 106. Each county treasurer shall, immediately after the annual settlement with the county commissioners of his county, on demand and presentation of the order of the clerk, issued by

direction of the county commissioners therefor pay over to the district or precinct treasurer, city treasurer, or other proper officer, all moneys in the county treasury belonging to any district, precinct, city, town or school district; *Provided*, That the moneys mentioned in this section may, by the direction of the proper local officers, remain in the county treasury, on the order of the county clerk as aforesaid.

Detailed exhibit, what to contain

Sec. 107. The county clerk and county treasurer, conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, and also the assets and liabilities at the time of making out the same; said exhibit shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed, and on what account, and also the liabilities of the county stated in detail, and the assets of every kind as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit, on what account paid in, and the kind of funds; said exhibit shall be made out annually, and posted up in the office of the treasurer, on the first Monday in October.

Treasurer or other officer charged with the safe keeping of public money &c., shall use or loan, embezzlement. Fine.

Sec. 108. If any county treasurer, other officer or person, charged with the collection, receipt, safe keeping, transfer or disbursements of the public money, or any part thereof, belonging to the Territory or any county, precinct, district, city, town or school district in this Territory, shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever; or shall use by way of investment in any kind of security, stocks, loan, property, land or merchandise, or in any other manner or form whatever; or shall loan, with or without interest, to any company, or corporation, association or individual; or shall deposit with any company, or corporation, or individual, any portion of the public money, or other funds, property, bonds, securities, assets or effects of any kind, received, collected or held by him for safe keeping, transfer or disbursements, or in any other way or manner, for any other purpose; or if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said moneys, or other property as aforesaid, as shall be thus conver-

ted, used, invested, loaned, deposited, or paid out as aforesaid, which is hereby declared to be a high crime and misdemeanor, and upon presentation, trial by indictment and conviction thereof before any court of competent jurisdiction in this Territory, such county treasurer or other officer or person shall be sentenced to imprisonment in the penitentiary, and kept at hard labor, for [a] term of not less than one year nor more than twenty-one years, according to the magnitude of the embezzlement, and also to pay a fine equal to double the amount of money or other property so embezzled, as aforesaid; which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process, for the use only of the party or parties whose money, or other funds, property, bonds or securities, assets or effects, of any kind as aforesaid, have been so embezzled; and in all cases, such fine so operating as a judgment, shall only be released or entered as satisfied by the party or parties in interest, as aforesaid.

If county commissioners deem any expenditure necessary greater in amount than can be provided by annual tax shall require a vote, where

Sec. 109. If the county commissioners deem any expenditure necessary, greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election, or one called especially for the purpose. In either case, four weeks notice of said election shall be given in each newspaper published in the county, and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended; and if a majority of the votes cast authorize the tax, the county commissioners shall cause the same to be levied and collected in the same manner as the annual tax, and if possible at the same time; *Provided, however*, That no new assessment shall be made for any especial tax.

Provided

Duty of territorial auditor

Sec. 110. It is hereby made the duty of the territorial auditor, to send certified copies of this act, to the county clerks of the respective counties in this Territory, on or before the 25th day of January, 1869, so as to enable the county commissioners to act under its provisions; also that this act shall be published in the *Union & Dakotaian*, and the *Dakota Republican*, on or before the 25th day of January, 1869.

Chapter 24, laws 1865 and 66 repealed

Sec. 111. That chapter twenty-four of the laws of 1865 and 1866, entitled, "an act in relation to territorial and county revenue," and all parts of acts conflicting with the provisions of this act are hereby repealed; *Provided, however*, That this act shall in no wise abrogate, annul or repeal the provisions of an act of this session entitled, "an act in relation to taxing real and personal property," and, *Provided, further*, That nothing in this act shall be so construed as to repeal any of the provisions of the common school laws now in force, and *Provided, further*, That nothing in this act shall be construed as to effect any proceedings had under the provisions of any former act of the legislature.

Act to take effect —When

Sec. 112. This act shall take effect and be in force from and after its passage.

Approved, Jan. 12, 1869.

TIMBER.

CHAPTER 26.

AN ACT TO ENCOURAGE THE PLANTING AND GROWING OF TIMBER.

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

Number of acres to be planted. Lands exempt— Not exceeding

Section 1. That any person or persons, owning or claiming any prairie lands, in this Territory, who shall sow seed thereon, set out, plant or cultivate, protect and keep in good growing condition, five acres timber, the trees to be not more than eight feet apart; every such person or persons owning or

claiming such lands, shall be allowed to hold exempt from taxation, the one-fourth of the one-fourth section whereon the same may be situated, with all improvements thereon, not exceeding one thousand dollars in value.

Exemptions shall continue in force how long

Sec. 2. The exemptions provided for in this act shall continue and be in force for the term of ten years from and after the planting of the timber aforesaid.

Change of ownership

Sec. 3. The change of ownership of the lands referred to in this act, shall in no way change the operation of this act; *Provided*, The owner or claimant of said lands shall protect and keep the timber as aforesaid, in a good growing condition.

Acts conflicting repealed

Sec. 4. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

To take effect when approved

Sec. 5. This act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, Jan. 5, 1869.

TOWNSITES.

CHAPTER 27.

AN ACT SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT IN RELATION TO TOWNSITES ENTERED AS SUCH UNDER THE ACT OF CONGRESS, APPROVED MARCH 2d, 1867," APPROVED DECEMBER 18th, 1867.

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

Section 1. That whenever any tract of land shall have been settled upon and entered as a townsite under the provisions of

When land shall have been settled and entered as a townsite under the provisions of the act of Congress, not included within the limits of any incorporated town or city. Petitions shall be recorded where. Provided

the act of congress of March two, eighteen hundred and sixty-seven, entitled an act for the relief of the inhabitants of cities and towns upon the public lands, and the act of congress of June eight, eighteen hundred and sixty-eight, entitled an act to amend an act entitled an act for the relief of the inhabitants of cities and towns upon the public lands, approved March two, eighteen hundred and sixty-seven; in case that the said townsite so entered is not included within the limits of an incorporated town or city, it shall be the duty of the person or officer so entering the said townsite or his successor in office to dispose of and convey by deed or deeds, the land by him so entered as may be directed by a petition signed by not less than two-thirds of the citizens or occupants of said townsite; and he is hereby authorized and empowered to convey and dispose of said land as specified in said petition, which petition shall be recorded in the office of the register of deeds of the county in which said townsite was situated; *Provided, however*, That he shall deed to such *bona fide* occupant the lot or lots or parcels of lands by said occupant so occupied on said townsite, on the

Provided further

date of the entry of said townsite; *Provided, further*, That if the said townsite shall have been surveyed into lots, blocks, streets, and alleys prior to the entry of said townsite, the person entering the same, may convey the same as hereinbefore prescribed without first making a resurvey of said town.

Act to take effect —When

Sec. 2. This act shall take effect from after and its passage and approval.

Approved, January 12th, 1869.

SPECIAL AND PRIVATE

LAWS,

PASSED AT THE

EIGHTH ANNUAL SESSION

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF DAKOTA.

SPECIAL AND PRIVATE LAWS

ALBANY COUNTY.

CHAPTER 28.

AN ACT TO ORGANIZE THE COUNTY OF ALBANY.

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

Portion of territory described. Officers appointed. County commissioners, Sheriff, Probate judge, Register of deeds, Justices of peace, Constables, Coroner, County Superintendent, Surveyor, District attorney

Section 1. That all that portion of Dakota Territory embraced within the following described boundaries, shall be known as the County of Albany, to-wit:

Commencing at Buford Station, on the Union Pacific Railroad, thence due north to the forty-fifth parallel of north latitude, thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude, thence south to the forty-first parallel of north latitude, thence east along said parallel to a point due south of Buford Station, and thence north to the point of beginning; and the following officers are hereby appointed for said County, to act until the next ensuing general election, and until their successors are duly elected and qualified:

County Commissioners—J. W. Collins, Fred. Laycock and T. J. Ruth.

Sheriff—Thomas D. Sears.

Probate Judge—M. C. Page.

Register of Deeds—A. W. McClearn.

Justices of the Peace—N. T. Webber, J. C. Walters, B. F. Green and H. C. Hall.

Constables—S. Osborn, Samuel Douglas, A. Trabing and E. Carter.

Coroner—J. H. Finfrock.

County Superintendent of Public Instruction—George W. Lancaster.

Surveyor—H. H. Richards.

District Attorney—E. L. Kerr.

County commissioners may fill vacancies. Persons appointed to hold their offices until when

Sec. 2. The County Commissioners may fill all vacancies in county offices, and the persons so appointed shall hold their office until the next general ensuing election, and until their successors are duly elected and qualified.

Governor may appoint Notaries public

Sec. 3. The Governor may appoint as many notaries public for said county as he may deem necessary.

County seat. —where

Sec. 4. The county seat of said county is hereby located at Laramie City.

Power of county commissioners

Sec. 5. The County Commissioners of said county shall have the power, at any regular meeting of the Board, to make an order increasing the fees of county officers; *Provided, however*, That the fees of said officers shall not be increased more than three times what is now allowed by law.

Act to take effect —When

Sec. 6. This act shall take effect and be in force from and after its passage and approval.

Approved, Dec. 16, 1868.

ALBANY AND CARBON COUNTIES.

CHAPTER 29.

AN ACT CONSTITUTING THE COUNTIES OF ALBANY AND CARBON A PART OF THE SECOND JUDICIAL DISTRICT: PROVIDING FOR TERMS OF THE DISTRICT COURT THEREIN, AND FOR OTHER PURPOSES.

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

Portion of territory designated

Section 1. That all that portion of the Territory of Dakota known and designated as the counties of Albany and Carbon, be, and the same is hereby attached to, and made a part of the Second Judicial District of Dakota Territory.

One regular term of said court

Sec. 2. That in addition to the terms of the district court in said district now provided by law, there shall be annually held at the county seat of said county of Albany, at least one regular term of said court. Said term shall commence on the fourth Monday of March, in each year.

In addition to said term

Sec. 3. That in addition to said term as above provided, the judge of said court may in his discretion, if he shall deem the public interests require it, hold another regular term of said court in said county of Albany, annually, at the county seat thereof, at such time as he may appoint.

If the judge shall appoint an additional term

Sec. 4. The judge of said court, if he shall appoint an additional term of said court as provided for in this act, shall give notice thereof, by publication for at least three weeks in a newspaper published in said county of Albany, if there be one published in said county, if not, by publication in a news-

paper published in this Territory nearest to the county seat of said county, the first of which publications shall be at least sixty days before the first day of said term.

Authorized to appoint a clerk

Sec. 5. The judge of said court is hereby authorized to appoint a clerk of said court.

Commissioners authorized to levy tax. For what

Sec. 6. The county commissioners of said county, are hereby authorized and required, to levy and cause to be collected a tax upon the taxable property of said county, sufficient to pay the expenses of the courts herein provided for, which expenses including the per diem of the judge, attorney, marshal, jurymen and all other expenses, shall be certified by the judge of said court, and shall be paid by the treasurer of said county, upon such certificate.

Per diem of judge

Sec. 7. There shall be allowed and paid by the treasurer of said county, out of the money collected as above provided, to the judge holding said additional term, the sum of ten dollars per day for each and every day necessarily occupied in holding said court.

Cases now pending. Provided

Sec. 8. All cases that are now pending, or that shall before the first day of the term herein appointed for Albany county, be pending in the said district court within and for the county of Laramie, the defendants of which are charged with the commission of crimes within the limits of what is at present the counties of Albany and Carbon, and all civil cases, if the plaintiff therein shall request the same, shall be transferred to the district court within and for the county of Albany, and shall there be disposed of; and the clerk of said court in Laramie county shall certify to the clerk of said court in Albany county, all the proceedings that may have been had, in each of said cases, in said court, and transmit the same with all the papers in the case to the said clerk of Albany county without delay: *Provided, however,* That no civil case shall be transferred unless the plaintiff therein shall serve a written notice, signed by himself, his agent or attorney, on the clerk of the court of Laramie county, and also on the defendant in the action, or his attorney, at least ten days previous to the first day of the next regular term of the district court within and for said county of Laramie, stating that he desires the same to

be so transferred; and unless said plaintiff shall pay to the said clerk five dollars for certifying the proceedings and transmitting the same together with papers in the case as herein required.

Not to conflict with the courts now holden in Laramie county

Sec. 9. Nothing in this act contained shall be construed to interfere in any manner with the courts now provided by law to be holden within and for the county of Laramie.

The county of Carbon attached to Albany for judicial purposes

Sec. 10. The county of Carbon is hereby attached to Albany county for judicial purposes.

Attached to Laramie for representative purposes

Sec. 11. The counties of Albany and Carbon are hereby attached to the county of Laramie for Representative purposes.

To take effect

Sec. 12. This act shall take effect and be in force from and after its passage and approval.

Approved, Dec. 29, 1868.

ALLEYS AND STREETS IN YANKTON.

CHAPTER 30.

AN ACT TO VACATE CERTAIN STREETS AND ALLEYS IN "WITHERSPOON'S YANKTON," DAKOTA TERRITORY.

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

Description of streets, alleys &c., vacated

Section 1. That the alley running through block No. 40, and the alleys running through blocks No's. 18 and 19, and the streets or public highways running along the south and west side of said block No. 18, in "Witherspoon's Yankton," Dakota Territory, be, and the same are hereby declared vacated.

Act to take effect —when.

Sec. 2. That this act shall take effect and be in force from and after its passage.

Approved, Jan. 8, 1869.

CHAPTER 31.

AN ACT TO VACATE A PORTION OF THE ALLEY IN BLOCK NO. SIXTEEN, OF "WITHERSPOON'S ADDITION," TO YANKTON, DAKOTA TERRITORY.

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

Portion of alley

Section 1. That that portion of the alley running between lots eight, nine, ten and lot eleven, in the east half of block No. sixteen, in "Witherspoon's Yankton," be, and the same is hereby declared vacated.

When owners desire to close up. Section to apply to what

Sec. 2. That when all the owners of any entire block desire to close up any alley of such block, such owners shall have the right to close up the alley of their said blocks, and such alley shall remain closed and vacated until such time as the owner of some one lot or more in the block of which the alley so closed up and vacated shall be, shall desire that the same may be opened, when such alley shall be opened. This section shall apply to all blocks in the town of Yankton, Dakota Territory, as incorporated, and to all additions made thereto.

Acts conflicting repealed

Sec. 3. All acts and parts of acts conflicting with this act are hereby repealed.

Act to take effect —when

Sec. 4. This act shall take effect and be in force from and after its passage.

Approved, Jan. 15, 1869.

BRIDGE—UNION COUNTY.

CHAPTER 32.

AN ACT AUTHORIZING THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY, DAKOTA TERRITORY, TO KEEP IN REPAIR THE MILITARY BRIDGE ACROSS THE BIG SIOUX RIVER.

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

Who are authorized.. Provided

Section 1. The board of county commissioners of Union county, Dakota Territory, are authorized to keep in repair and in good condition the west-half of the military bridge across the Big Sioux river; *Provided, however*, That the amount expended in repairing said bridge do not exceed one hundred dollars per annum.

Act to take effect: —when

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

Approved, Jan. 15th, 1869.

CHEYENNE CITY—DEBT.

CHAPTER 33.

AN ACT TO AUTHORIZE THE CITY OF CHEYENNE TO FUND ITS FLOATING DEBT, AND FOR OTHER PURPOSES.

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

Power of city council to provide &c.

Section 1. The city council of the city of Cheyenne, shall have power to provide for funding the floating debt of said city, together with that of the provisional government of said city contracted prior to the taking effect of the present city charter altogether not to exceed twenty thousand dollars, subject to the conditions contained in this act.

Same

Sec. 2. For the purposes of carrying into effect the provisions of section one of this act, the city council shall have power to provide for the issuing of city bonds which shall not be in less sums than one hundred dollars each, and which shall be payable in not more than ten years after the date of their issue.

Bonds, interest on. Provided

Sec. 3. The bonds authorized by the preceding section shall not draw a greater rate of interest than ten per centum per annum, and the city council shall have power to provide for their sale; *Provided, however,* That they shall not be negotiated at a greater [amount] than twenty per cent. discount on their original par value.

An ad valorum tax

Sec. 4. The city council shall have power to levy an *ad-valorem* tax upon all the property in said city, not exempt by law from taxation to pay the interest annually accruing on said bonds, and to provide a sinking fund to retire the same on or before their maturity.

Sec. 5. In addition to the offices created and provided for in section eleven (11,) of the act to incorporate the city of Cheyenne, approved December 24, 1867, there shall be annually elected by the qualified voters of said city at the general election for city officers, a city attorney whose salary shall be fixed by the city council; *Provided, however,* That said salary shall not exceed six hundred dollars per annum, and *Provided, further,* That the city council shall appoint some suitable person learned in the law, and of high moral character, to fill said office of city attorney until the next general election in said city, and until his successor shall have been duly elected and qualified.

Salary of city Attorney, fixed by city council

Provided

[Sec. 6. This act shall take effect and be in force from and after its passage.]

Approved, Jan. 15, 1869.

CHEYENNE CITY—INCORPORATION.

CHAPTER 34.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF CHEYENNE.

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

Section 1. That chapter 11, of the Session Laws of 1867–68, entitled "An act to incorporate the city of Cheyenne," be, and the same is hereby amended by striking therefrom sections fourteen (14), fifteen (15), sixteen (16), and seventeen (17), and inserting in lieu thereof the next following section:

Chapter 11, laws 1867-68, amended

Power of city council by ordinance

Sec. 2. The city council shall have power by ordinance—

1, To organize fire companies, and hook and ladder companies, and to take other measures to secure the city against fire;

2, To declare what shall constitute a nuisance, and to prevent, abate, and remove the same;

3, To restrain, prohibit and suppress the keeping of houses of ill-fame, riots, gambling, drunkenness, indecent behavior in public places, and other disorderly conduct;

4, To license, regulate or restrain public exhibitions, shows, theatrical performances, auction establishments, traveling peddlers, billiard table halls, ten pin alleys, shooting galleries or other saloons.

5, To license and regulate the retailing of intoxicating liquors;

6, To divide the city into wards and change such division at pleasure;

7, To lay out, open, grade, and otherwise improve the streets, alleys, side-walks, and crossings, to keep them in repair, and vacate the same;

8, To purchase, lay out and regulate parks, cemeteries and other public grounds;

9, To regulate the keeping and sale of gunpowder, direct the location of slaughter houses, and establish and regulate markets and market houses;

10, To levy and collect annual taxes on all property subject by law to taxation;

11, To make all necessary provisions for the safety, good order and prosperity of the city, the health, morals and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense.

Act to take effect —when

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

Approved, Jan. 9, 1869.

CARBON COUNTY.

CHAPTER 35.

AN ACT TO ORGANIZE THE COUNTY OF CARBON.

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

Section 1. That all that portion of Dakota Territory embraced within the following described boundaries, shall be known as the County of Carbon, to-wit: Portion of territory embraced

Commencing at Como Station, on the Union Pacific Railroad, thence due north to the forty-fifth parallel of north latitude, thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude, thence south along the eastern boundary of Carter County to the forty-second parallel of north latitude, thence east along said parallel to a point due south of Como Station, and thence due north to the place of beginning; and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified:

County Commissioners—John C. Dyer, G. Frazee and S. M. Burr. Officers appointed

Sheriff—John Gurrell.

Probate Judge—Francis B. Edwards.

Constables—George Ward and M. E. Metcalf.

District Attorney—L. P. Corey.

Sec. 2. The County Commissioners may appoint officers to fill the various county offices existing under the general laws of the Territory, which are not herein provided for, and fill all County commissioners may appoint officers to fill county offices

vacancies in county offices, and the persons so appointed shall hold their respective offices until the next general ensuing election, and until their successors are duly elected and qualified.

Governor may appoint Notaries public

Sec. 3. The Governor may appoint as many notaries public as he may deem necessary for said county.

Location of county seat

Sec. 4. The county seat of said county is hereby located at Rawling's Springs.

Power of county commissioners

Sec. 5. The County Commissioners of said county shall have the power, at any regular meeting of the Board, to make an order increasing the fees of county officers; *Provided, however*, That the fees of said officers shall not exceed three times what is now allowed by law.

Act to take effect —when

Sec. 6. This act shall take effect and be in force from and after its passage and approval.

Approved, Dec. 16, 1868.

FERRIES ON RED RIVER.

CHAPTER 36.

AN ACT AUTHORIZING THE GRANTING OF PERMITS TO ESTABLISH FERRIES ON THE RED RIVER OF THE NORTH AT POINTS WITHOUT THE LIMITS OF ORGANIZED COUNTIES.

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

Must file written application for such franchise

Section 1. That any person wishing to establish a ferry on the Red River of the North, at a point without the limits of

an organized county of this Territory, may file a written application for such franchise with the register of deeds of the nearest organized county of this Territory, setting forth the name and residence of such applicant, and the point at which such ferry is intended to be established.

Duty of register o deeds

Sec. 2. It shall be the duty of such register of deeds to place such application before the board of county commissioners of his county, at the next succeeding regular or special session thereof.

Duty of commissioners

Sec. 3. It shall be the duty of said commissioners to consider and pass upon such application, and if they believe that such ferry is necessary to the public good, they shall grant the application and assess the sum of money that said applicant shall annually pay into the hands of the treasurer of the said county, for the use of the common schools of this Territory, and shall order the register of deeds to execute, under the seal of his office, a grant or permit to said applicant, authorizing him to establish such ferry, giving him, for the period of five years, the exclusive right and permission to run a ferry, for compensation, for a distance of two miles up, and two miles down said river, from the point indicated in the permit.

What such applicant shall pay over

Sec. 4. Before the register of deeds shall deliver such permit to such applicant, the said applicant shall pay over to the treasurer of said county, the amount assessed for one year, as provided in section three, and shall file his bond, with personal security to be approved by the register of deeds, to the county commissioners of said county for the use of the public, in the penal sum of five hundred dollars, conditioned that said applicant shall, within three months from and after the date of said bond, construct and run one or more safe and sufficient boats at said ferry, and shall without unnecessary delay, and with reasonable care, cross persons and property whenever required, at all hours of the day, between sunrise and sunset, except when the crossing of said river [is rendered] dangerous or impracticable by wind, high water, ice or other cause.

Persons suffering dama

Sec. 5. Any person suffering damage to person or property by the neglect, default, or misconduct of said ferry owner, or the person or persons in charge of said ferry, may have address by civil action for damages and costs of suit upon the

bond required by section 4, in any court of this Territory, having competent jurisdiction.

Rates

Sec. 6. The rates for crossing of such ferry shall not exceed the following, to wit:

For two horses, mules or oxen and wagon, with or without load, thirty cents;

For each additional pair of horses, mules or oxen, fifteen cents;

For each two horses, or mules and buggy or light wagon, twenty-five cents;

For each single horse or mule, and buggy or light wagon, twenty cents;

For each single horse, mule or ox and cart, twenty cents;

For each horse or mule and rider, ten cents;

For each foot passenger, five cents;

For each head of loose horses, mules, cattle, sheep or swine, five cents;

For freight not on wagons, ten cents per hundred pounds;

For lumber, not on wagons, fifty cents per one thousand feet.

Duty of ferryman

Sec. 7. It shall be the duty of said ferryman to keep posted up near his ferry, in view of the passing public, a bill of his lawful rates.

Duty of county treasurer

Sec. 8. It shall be the duty of county treasurers receiving money under the provisions of sections three and four, to forward the same without unnecessary delay, to the proper officer of the Territory, having charge of funds for common schools.

Case of failure

Sec. 9. In case of the failure or neglect of such ferry owner, annually, during the term of his permit, to pay into the hands of the county treasurer of the proper county, the amount assessed, as provided in section three, his permit shall be null and void as to the unexpired time.

Act to take effect —When

Sec. 10. This act shall take effect from after and its passage and approval.

Approved, Dec. 25, 1868.

JAIL-YANKTON COUNTY.

CHAPTER 37.

AN ACT TO AUTHORIZE THE COUNTY COMMISSIONERS OF YANKTON COUNTY TO RAISE MONEY FOR THE ERECTION OF A JAIL.

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

Sum authorised to be raised by tax

Section 1. That the County Commissioners of Yankton County are hereby authorized to raise by special tax on all taxable property in the county, for the year 1869, the sum of two thousand dollars; to be levied and collected in like manner as the general tax.

Authorised to raise by loan

Sec. 2. That the said County Commissioners are hereby further authorized to raise by loan the sum of four thousand dollars.

Authorised to issue bonds

Sec. 3. That for the purpose of effecting such loan, the County Commissioners are authorized to issue the bonds of said county under the seal thereof, signed by the chairman of the board of County Commissioners, and countersigned by the clerk to the amount of four thousand dollars and no more, bearing interest at the rate not exceeding ten per cent. per annum, payable annually on the first day of May, with coupons attached, redeemable in not less than three years nor more than six years, at the pleasure of the County Commissioners.

Shall not be authorised to dispose of at a greater discount than ten per cent

Sec. 4. The County Commissioners shall not be authorized to dispose of, or convert any of said bonds at a greater discount than ten per cent. If said commissioners or any person acting for said county, by and through their appointment or

election, shall sell any of said bonds at a greater discount than ten per cent. the said County Commissioners shall jointly and severally be liable to said county in damages to be collected by civil action for the amount for which such bond or bonds sold, less than ten per cent. discount, and in addition thereto, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any amount not exceeding one hundred dollars.

Duty of county clerk

Sec. 5. It shall be the duty of the County Clerk of said county, to enter into a suitable book provided for that purpose, all such bonds sold, to whom, the number, and to whom made payable, and for what sum sold, which book shall be kept as a public record in his office open to the inspection of any person whomsoever.

Money, how applied

Sec. 6. That the money so raised as provided by the preceding sections shall be applied by the said County Commissioners for the erection and fitting up of a jail in said Yankton county and procuring sites therefor.

Levy a tax to pay interest

Sec. 7. That for the purpose of paying the interest annually upon the bonds so sold, it shall be the duty of the County Commissioners to levy a tax upon all taxable property in said county, sufficient to pay ten per cent. interest, upon all bonds sold, in addition to the amount necessary to pay the current expenses of said county.

For redemption of bonds. Provided

Sec. 8. That the County Commissioners of Yankton county are authorized to levy a special tax in the year or years 1871, 1872, 1873, sufficient for the redemption of said bonds: *Provided, however,* That there are no unappropriated funds in the county treasury sufficient to redeem the bonds issued under the provisions of this act.

What shall govern the actions of commissioners

Sec. 9. The provisions of sections three, four, five, ten, eleven and twelve of chapter sixteen of the session laws of 1867–68, so far as they relate to the preparation of plans and specifications, advertising and receiving of bids and the renting of the jail, and board of prisoners, shall apply and govern the actions of the County Commissioners in building a jail under the provisions of this act.

Acts repealed

Sec. 10. All acts and parts of acts inconsistent with this act are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its passage. To take effect —when

Approved, Dec. 25, 1868.

LARAMIE CITY—INCORPORATION.

CHAPTER 38.

AN ACT TO INCORPORATE LARAMIE CITY.

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

Section 1. That all that portion of Territory surveyed, laid out and platted as a townsite, known as Laramie City, situated on the Union Pacific railroad, near the point where it crosses Laramie River, is hereby made a corporation which shall be known as Laramie City. Corporation as Laramie city

Sec. 2. The government of said city, shall be vested in a mayor and four aldermen, one of whom shall be elected from each ward, to be known and called "the Council of Laramie City," and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, complain and defend, in all courts of law or equity, may have a common seal and alter the same at pleasure, may take, purchase, hold, lease, convey and dispose of any real, personal or mixed estate, and have and enjoy all the powers, privileges and responsibilities usually incident to municipal corporations. Government of said city, in whom vested

Sec. 3. The council of Laramie City shall have power by ordinance: Powers of council by ordinance

1, To organize a police force and make all needful rules and regulations concerning the same;

2, To organize fire companies, and hook and ladder companies, and to take any other measures to secure the inhabitants against fire;

3, To declare what shall constitute a nuisance, and to prevent, abate, and remove the same;

4, To restrain, prohibit and suppress the keeping of houses of ill fame, riots, gambling, drunkenness, indecent behavior in public places, and other disorderly conduct;

5, To license regulate or restrain public exhibitions, shows, theatrical performances, auction establishments, traveling peddlers, billiard table halls, ten-pin alleys, shooting-galleries or other saloons;

6, To license and regulate the retailing of intoxicating liquors;

7, To divide the city into wards, and change such division at pleasure;

8, To lay out, open, grade and otherwise improve the streets, alleys, side-walks and crossings, to keep them in repair and vacate the same;

9, To purchase, lay out and regulate parks, cemeteries and other public grounds;

10, To regulate the keeping and sale of gunpowder, direct the location of slaughter-houses, and establish and regulate markets and market houses;

11, To levy and collect annual taxes on all property subject by law to taxation;

12, To make all necessary provisions for the safety, good order and prosperity of the city, the health, morals, and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense.

Council to hold meetings, when, quorum

Sec. 4. The council shall hold regular meetings once in each month, and whenever special meetings may be called by the mayor, a majority shall constitute a quorum for the transaction of business. It shall be judge of the qualification and election of its members; it may determine the rules of its proceedings, and compel the attendance of its members, and may fill all vacancies in the city offices until the ensuing annual election.

No member of council eligible to any office during term for which he is elected, nor interested in profits of any work contract &c.

Sec. 5. No member of the council shall be eligible to any office in the gift of the same, during the term of office for which he is elected, or be interested directly or indirectly in the profits of any contract, job, work or services to be performed for the city.

Mayor to preside at all meetings. Other duties of.

Sec. 6. It shall be the duty of the mayor to preside at all meetings of the council, to keep a record of its proceedings and all ordinances, rules and regulations adopted by the council, in a book to be kept for that purpose, which shall be open at all times to public inspection, and to perform the duties commonly appertaining to the office of city clerk, to receive, file, and preserve all public papers of which he is the proper custodian, to sign and issue all permits, licenses, and commissions granted by the council or authorized by its ordinances, to make a monthly statement of his receipts for fines, &c., on behalf of the city, and of the amounts due him from the city, and pay over the balance to the treasurer, to see that the laws and ordinances of the city are executed and their violation punished, and to hold a court for the trial of all offenses against the same, and to perform such other duties as usually appertain to the office of mayor, or may be lawfully imposed by the ordinances of the council.

A conservator of the peace, ex officio justice of the peace, not disqualified, when. In case of death, temporary absence.

Sec. 7. The mayor shall be a conservator of the peace, and *ex officio* a justice of the peace, and have original jurisdiction for the trial of all offenses against the city laws and ordinances. He shall not be disqualified from acting in such judicial capacity by any proceedings in the name or on behalf of the city. In case of his death, resignation, or inability to serve, a majority of the aldermen shall designate a mayor *pro tem.* In case of his temporary absence or sickness, he may designate some justice of the peace, who shall have all the jurisdiction of the mayor over offenses against the city laws and ordinances.

Additional officers.

Sec. 8. In addition to a mayor and aldermen, there shall also be elected a treasurer and marshal.

Treasurer ex officio assessor. His duty.

Sec. 9. The treasurer shall be *ex officio* assessor. It shall be his duty to assess all property in the city liable to taxation under such rules and regulations as the council may prescribe, and to make return of his assessment roll to the council on or before the last day of April in each year. Upon the levy of

the tax by the council, he shall within two weeks thereafter, compute and set opposite the name of each person taxed, the amount of tax assessed against him, make duplicate copies of such tax list, and deliver one to the marshal, and file the other in the office of the mayor. He shall receive and receipt for all moneys that may be paid him by the marshal, the mayor, or any other person, for taxes, licenses, fines, &c., and make a monthly statement of his cash on hand, and of all his receipts and disbursements on behalf of the city, and file the same with the mayor, on or before the regular monthly meeting of the council. He shall make payment of any sum in his hands when required by the ordinance of the council and the warrant of the mayor.

Marshal shall act as chief of police

Sec. 10. The marshal shall act as chief of police under such regulations as the council may prescribe; he shall also be a conservator of the peace, and shall serve all process directed to him by the mayor or any justice of the peace exercising jurisdiction under the ordinances of the city, and shall have all the common law and statutory power of constables in making arrests, suppressing riots and breaches of the peace, and executing process.

Marshal ex officio collector. His duty

Sec. 11. The marshal shall be *ex officio* collector. It shall be his duty to collect the taxes on the duplicate given him by the treasurer, and pay over the same to the treasurer under such rules and regulations as the council may prescribe, and make a monthly statement to the council of all moneys received by him, and from whom received, and shall be governed in other respects by the same rules and regulations as county collectors, and shall have authority in like manner to collect by distress and sale, and to make conveyances of real estate sold by virtue of such sale, which shall be at the door of the usual place of meeting of the council.

All deeds and conveyances for lands so sold for taxes, prima facie evidence f validity

Sec. 12. All deeds and conveyances for lands so sold for taxes, shall be *prima facie* evidence of the validity of such purchase; *Provided*, That any real estate sold by virtue of this act, shall be redeemable under the same regulations and restrictions as real estate sold for county and territorial taxes is made redeemable; all moneys for the redemption of such real estate shall be paid to the treasurer.

Sec. 13. The treasurer and marshal shall each give bonds to the council, with good security, in such sum as the council may direct, conditioned for the faithful performance of his duty. Treasurer and marshal to give bond

Sec. 14. The mayor, aldermen, treasurer and marshal, shall respectively take an oath to support the Constitution of the United States and the laws of the Territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability. Other officers shall qualify in such manner as shall be prescribed by the council. The oath of office may be administered by the mayor when he is qualified. Mayor, Aldermen &c Oath of

Sec. 15. The mayor, treasurer and marshal shall each receive a salary of six hundred dollars, and the aldermen shall receive five dollars each for every prompt attendance at the meetings of the council. The mayor shall also receive the fees usually allowed to justices of the peace; *Provided*, That where the costs are taxed against the city, his fees shall not amount to more than three dollars in each case. The marshal may receive such further compensation as the council may deem proper. Salary of

Sec. 16. The election for city officers shall be held annually on the last Monday of December of each and every year, beginning with the year 1869, and the officers elect shall qualify and enter upon the discharge of their duties, on the first Monday in January thereafter; *Provided, however*, That if the last Monday in December should be the twenty-fifth of said month, the election shall take place on the Tuesday following. The mayor shall appoint the judges of election, and give public notice of the election at least ten days before the time it is to be held. In case the mayor fails to give notice and appoint judges of election, the by-standers may appoint them as in county elections. Election for city officers when held. Provided

Sec. 17. Every legal voter of the Territory, who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city, entitled to vote at all the elections thereof, and eligible to any elective office. Qualification of voters

Sec. 18. M. C. Page as mayor, Edward Ivinson, C. A. Wright, M. L. Ohr, and W. S. Walker, as aldermen; J. W. Donnellson as treasurer, and John LaFaver as marshal, are Are appointed officers of said city. Whom

hereby constituted and appointed as the officers of said city, who shall hold their respective offices until their successors are elected at the regular election in 1869, and qualified.

Act declared a public act

Sec. 19. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity without proof, and all ordinances of the council may be proved by the book referred to in this act.

Act to take effect and be in force —when

Sec. 20. This act shall take effect and be in force from and after its passage and approval.

Approved, Dec. 16, 1868.

LARAMIE COUNTY—FEES.

CHAPTER 39.

AN ACT TO INCREASE THE FEES OF COUNTY OFFICERS IN LARAMIE COUNTY.

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

Commissioners shall have power to increase fees of officers.

Section 1. The County Commissioners of Laramie county, shall have power at any regular meeting of the Board, to increase the fees of county officers: *Provided, however*, That the fees of said officers shall not be increased more than four times what it is now allowed by law.

Act to take effect —when

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

Approved, Dec. 25, 1868.

LINCOLN COUNTY—ANIMALS.

CHAPTER 40.

AN ACT TO PROHIBIT CERTAIN ANIMALS FROM RUNNING AT LARGE IN CERTAIN SEASONS OF THE YEAR, IN LINCOLN COUNTY, DAKOTA TERRITORY.

Be it enacted by the Legislature of the Territory of Dakota:

Persons owning liable to injured party, when

Section 1. That any person or persons owning or having in his, her, or their charge or possession, any horses, mules, cattle, sheep, or swine, or any of such animals which shall trespass upon any cultivated field belonging to any person or persons other than the owners of such animal or animals, within the county of Lincoln, between the first day of May, and the first day of November each year, such person or persons owning or having in charge or possession such trespassing animal or animals, shall be liable to the party or parties sustaining such injury, for all damages he, she, or they may have sustained by reason of such trespassing aforesaid, to be recovered in a civil action before any court having jurisdiction thereof, in the county where such damage may have occurred, and the proceedings shall be the same in all respects as in other civil actions; *Provided*, That no exemption laws shall apply to executions issued on judgments obtained under the provisions of this act.

Who considered owner

Sec. 2. Any person occupying or cultivating lands shall be considered the owner thereof, in any action under the provisions of the last section.

Parties sustaining damage. Provided

Sec. 3. The parties sustaining damage done by animals as mentioned in section one, before commencing an action thereon, shall notify the owner or person having in charge such offending animal or animals, of such damage, the probable amount thereof; *Provided,* He knows to whom such animal or animals belong; and that such owner or keeper resides and is then within the county where such damage was committed.

May restrain and keep in custody

Sec. 4. The person suffering damage done by animals as mentioned in section number one, may restrain and keep in custody such offending animals until the finding of the court be ascertained, unless before such suits, the amount of his claims and expense of keeping such animals, be tendered to him.

Shall prove amount of damage

Sec. 5. Upon trial of an action under the provisions of section one, the plaintiff shall prove the amount of damage sustained and (if he has retained in custody the animals committing such damage) the amount of expense incurred for keeping the offending animals, and any judgment rendered for damages, costs and expense against the defendant shall be a lien upon the animals committing the damage, but if it shall appear upon the trial that no damage was sustained, judgment shall be rendered against the plaintiff for cost of suit.

When defendent is not the owner. Proceedings

Sec. 6. If upon the trial it appears that the defendant is not the owner or the person in charge of such offending animals he shall be discharged and the action and the suit may proceed as against a 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 suit against a defendant unknown in which case service shall be made by posting copies of the summons in three of the most public places within the county not less than ten days previous to the day of trial which posting may be done by the proper officer or any voter of the county.

Shall govern what actions

Sec. 7. This act shall govern in all actions and proceedings instituted and transacted under the provisions thereof, any law to the reverse notwithstanding.

To take effect —when

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

Approved, Jan. 12, 1869.

ROAD—YANKTON COUNTY.

CHAPTER 41.

AN ACT TO RE-LOCATE A TERITORIAL ROAD FROM YANKTON TO THE "JAMES RIVER BRIDGE."

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

Description of road

Section 1. That there be and hereby is located and established a public highway, on the line of the old Territorial road leading from Yankton to James River Ferry, as surveyed by M. K. Armstrong in June, 1863, in accordance with an act of the legislature approved January 9th of that year, and described as follows: Beginning at a rock standing in the center and at the intersection of Main and Burleigh Streets in Lower Yankton, thence north along the center of said Burleigh street to a point 106 feet north of the center of Main street, thence N 50½° East, on a direct line to a point fifteen feet south of the lawful center of the southwest quarter of section 8 and town 93, range 55; thence on same course in a direct line to a point one hundred and thirteen feet south of the lawful center of the north line of the northwest quarter of section No. 9; thence in a direct line to a point three chains and seventy-five links east of the quarter section corner standing on west side of section 3; thence N 45 3-4° East in a direct line to a point in the center of the west pier of the new government bridge now in course of construction over James River, and there terminate.

Enrolling clerk to deposit copy—when

Sec. 2. And be it further enacted that the enrolling clerk of the council shall deposit a duly authenticated copy of this act with the register of deeds of Yankton county, within ten

days of the approval of this act, and the said register of deeds, is hereby authorized and directed to file the said act as the legal survey and establishment of said Public Highway.

Act to take effect—when

Sec. 3. This act shall be in force from and after its approval.

Approved, Jan. 8, 1869.

TERRITORIAL WARRANTS.

CHAPTER 42.

AN ACT TO PROVIDE FOR THE PAYMENT OF CERTAIN INDEBTEDNESS OF THE TERRITORY OF DAKOTA.

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

Treasurer authorized to pay what warrants. Provided

Section 1. That the Territorial Treasurer be, and is hereby authorized to pay any and all outstanding warrants against the Territory given prior to 1865, except warrants given for military services, out of any fnnds he may have in the treasury after paying the current expenses of the Territory for each year; *Provided*, No interest shall be paid on said warrants.

Nothing in this act so construed as to make warrants receivable for taxes

Sec. 2. That nothing in this act shall be so construed as to make the warrants mentioned in the first section of this act receivable for taxes.

Act to take effect—when

Sec. 3. This act shall take effect from and after its passage and approval.

Approved, Jan. 15, 1869.

TOWNSHIPS—UNION COUNTY.

CHAPTER 43.

AN ACT TO DIVIDE THE TOWNSHIP OF JEFFERSON, IN THE COUNTY OF UNION.

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

Portion of county described known as what. Officers elected when. Officers appointed

Section 1. That all that portion of Jefferson township in the county of Union bounded as follows, to wit: Commencing in the north boundary of township ninety (90,) north of range forty-nine (49,) west of 5th principal meridian at the corner between section two (2), and three (3,) thence south, to the Missouri river, thence up the main channel of said river to the point where the township line between townships ninety (90,) and ninety-one (91,) intersects said Missouri river, thence east on said township line to the place of beginning, is hereby made a separate township and shall be known as Civil Bend township, and at the next general election there shall be elected in said township, one county commissioner, two justices of the peace, two constables, and one assessor, who shall hold their respective offices for the term of two years; and there shall also be elected one road supervisor who shall hold his office for the term of one year and until the next ensuing general election. The following named persons be appointed officers of said township, to wit: James Brookings, county commissioner; S. L. Parker, justice of the peace; Howard Mosier, road supervisor; Silas Roahr, constable; and that said officers do qualify on or before the first Monday in February, A. D. 1869, and in the manner as those elected at the last general election, and they are hereby empowered to discharge all the duties pertaining to their several offices.

Shall not be construed as to impair &c.

Sec. 2. Nothing in this act shall be so construed as to impair the right and authority of R. R. Briggs, to assess the township of Jefferson, for the year 1869, as enacted by the act approved January 4, 1868.

Act to take effect —when

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

Approved, Jan. 13, 1869.

YANKTON—INCORPORATION.

CHAPTER 44.

AN ACT TO INCORPORATE THE CITY OF YANKTON, DAKOTA TERRITORY.

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

Portion declared to be a corporation. Name of

Section 1. That all that portion of Territory surveyed, laid out and platted as a townsite, by James E. Witherspoon, J. B. S. Todd, and Chas. F. Pecotte, and Walter A. Burleigh, situated on the Missouri river, on section number eighteen, township ninety-three, range fifty-five, and lots three and four, in section thirteen, township ninety-three, range fifty-six, all in Dakota Territory, with all the additions that may hereafter be made thereto, according to law, is hereby declared to be a corporation by the name of the "City of Yankton."

Vested with what

Sec. 2. The said city is hereby made a body corporate and politic and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record, and any other place whatsoever; may have a common seal, and may alter the same at pleasure, and may take, hold, purchase, lease, convey and dispose of any real, personal, or mixed estate, for the use of said corporation.

Legislative authority

Sec. 3. The legislative authority of said city is hereby vested in a city council, composed of a mayor and board of aldermen, consisting of six members.

Who shall vote

Sec. 4. Every legal voter of the Territory who shall have been a resident of the city thirty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

Manner of election

Sec. 5. The election of city officers shall be in a manner similar to county elections, as near as the nature of the case admits.

Challenging

Sec. 6. A person offering to vote may be challenged as in other elections in the county, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

Eligibility.

Sec. 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city.

Elections when held

Sec. 8. The annual election for city officers shall be held on the first Monday in April in each and every year, and the officers elect shall qualify and enter upon the discharge of their duties on the second Monday in April thereafter.

Commissioners, appointed, when

Sec. 9. That Geo. W. Kingsbury, Wm. Miner, James S. Foster, are hereby appointed commissioners to conduct the first election under this act, to canvass the votes and to issue certificates of election to the officers elect.

Mayor shall issue, a proclamation

Sec. 10. In all elections for city officers, after the first, the mayor shall issue a proclamation to the voters of the city, naming the time and place of such election, and officers to be chosen, and cause a copy to be posted at least ten days previous to the day of election. The polls shall be opened between the hours of eight and ten o'clock, in the forenoon, and con-

tinue open until four o'clock in the afternoon. Within two days after the election, the judges of election shall make out their returns to the president of the city council, who shall examine them at the next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

In addition to Mayor &c.

Sec. 11. In addition to a mayor and board of aldermen, there shall be elected at the general election in each year a marshal, treasurer, and city clerk, who shall hold their respective offices for one year, and until their successors are elected and qualified.

Duty of Mayor.

Sec. 12. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished; to superintend and direct the official conduct of subordinate officers; to sign and seal all commissions, licenses, permits, granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of the city, and such as may be granted or imposed, by the ordinances of the city, consistent with law.

Mayor shall be what

Sec. 13. The mayor shall be a conservator of the peace within the city, and *ex officio* a justice of the peace, and is invested with original jurisdiction for the violation of the city ordinances; he shall not be disqualified from acting in such judicial capacity by any proceedings being in the name, or in behalf of, the city.

Power of city council

Sec. 14. The city council is invested with the power to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, drunkenness and indecent behavior in public places; and in general to provide for the safety, prosperity and good order of the city, and the health, morals and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace, and the laws of the Territory relative to the carrying into effect a judgment of a justice of the peace, imposing a fine, shall be applied to judgments in the above cases.

Sec. 15. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus. Authorized to establish what

Sec. 16. The council may regulate the keeping and sale of gunpowder within the city. May regulate what

Sec. 17. The city council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows, theatrical performances, and billiard table halls, ten pin alleys, and other saloons, but the above authority extends to no exhibition of a purely scientific character. The city council shall also have the power to license and regulate the retailing of intoxicating liquors, and also the sale of all goods, wares and merchandise, and all other property sold at auction within the limits of the city. Exclusive authority

Sec. 18. The council shall be the judge of the qualifications and elections of its own members; it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen, and may compel the attendance of its members in such manner and by such penalties as it may adopt. Judge of qualifications &c

Sec. 19. The mayor shall preside at all meetings of the city council, and in case of his death, resignation or inability to serve from any cause, a majority of the aldermen shall elect a mayor *pro tem* to preside at said meetings, and shall designate a justice of the peace to [take] cognizance of offenses arising under the ordinances of said city. Mayor shall preside at meetings &c. In case of death resignation &c,

Sec. 20. No member of the city council shall be eligible to any office within the gift of the city council during the term of office for which he is elected, nor shall he be interested directly or indirectly in the profits of any contract, job, or work, or services to be performed for the city. Member of council not elligible

Sec. 21. Ordinances passed by the council shall be recorded in a book to be kept for that purpose, and shall be signed therein by the mayor and be attested by the clerk. Ordinances passed, recorded

Sec. 22. It is the duty of the clerk to keep a true record of all the proceedings of the city council and such record shall be open in all business hours for the inspection of any citizen. Duty of clerk

Oath

Sec. 23. The mayor, aldermen, marshal, treasurer, clerk, assessor and collector shall respectively take an oath to support the constitution of the United States and the laws of the Territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability. Other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor or clerk of the council when he is qualified, and in the transaction of the business of the corporation, and those officers and the president for the time being may administer oaths which shall have the same effect as if administered by the officers authorized therefor.

Salary of mayor

Sec. 24. The mayor shall receive for his services an annual salary not exceeding five dollars; each of the aldermen shall receive a salary not exceeding three dollars, said salaries to be fixed by the council within the limits aforesaid. And it shall be the duty of the council to allow such fees for the services of city officers not provided for in this act as it shall deem right.

Bond

Sec. 25. The treasurer, clerk of the council, assessor, collector and marshal, shall give such bond, perform such duties, and exercise such powers as may be required of them by ordinance not inconsistent with law, which bond shall be proved by the council and filed with the mayor.

Treasurer ex officio collector
Marshal ex officio assessor

Sec. 26. The treasurer shall be *ex officio* collector, and the marshal *ex officio* assessor of said city.

Marshal conservitor of the peace

Sec. 27. The marshal shall be a conservator of the peace within said city, shall serve all process directed to him by the mayor or any justice of the peace exercising jurisdiction under the ordinances of the city, and shall possess powers usually exercised by sheriffs and constables in making arrests, suppressing riots, and breaches of the peace, in executing process.

Duty of council to make statement, when

Sec. 28. On the third Monday in December in each year, it shall be the duty of the council to cause a full, complete and detailed statement of the financial condition of the city, to be published in some newspaper in the city, which statement shall be signed by the mayor, clerk and a majority of the members of the council.

Sec. 29. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this Territory without proof; and all ordinances of the city council may be proved by the book referred to in this act; and when printed and published in book form, and purporting to have been printed by authority of the city council, said ordinances shall be received in all courts and places without further proof. Declared to be a public act

Sec. 30. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same; and shall cause all claims against the city to be audited, and all city officers are accountable to said council in such manner as it may direct. Shall provide for the keeping of public money

Sec. 31. The mayor and council shall have full power to remove the present cemetery without the corporate limits of the city, and sell the ground that the same is located on, to pay for the purchase of ground for a new cemetery, and to defray the expenses of removal. Shall have power to remove cemetery &c.

Sec. 32. That this act shall take effect and be in force from and after its passage. Act shall take effect—when

Approved, Jan. 8, 1869.

JOINT RESOLUTIONS AND MEMORIALS

PASSED BY THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF DAKOTA,

AT ITS

EIGHTH ANNUAL SESSION.

APPROPRIATIONS.

NUMBER 1.

A JOINT RESOLUTION MAKING AN APPROPRIATION TO PAY FOR PUBLISHING AN ACT ENTITLED "AN ACT CONCERNING REVENUE."

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

Section 1. That there be allowed the Publishers of the *Union & Dakotaian* and *Dakota Republican* the sum of thirty dollars each, in payment for publishing an act of this session, entitled "An Act Concerning Revenue." Appropriation for publishing Revenue Law

Sec. 2. The Territorial Auditor is hereby instructed to issue to the Publishers of the *Union & Dakotaian* and *Dakota Republican*, Territorial warrants for the amounts above specified in this resolution, as soon as the aforesaid law is published in said newspapers. Auditor's duty

Approved, Jan. 15, 1869.

NUMBER 2.

JOINT RESOLUTION FOR AN APPROPRIATION FOR THE ENROLLING CLERKS.

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

Appropriation for pay of enrolling clerk

Section 1. That there be allowed Edwin Gillham and Adolph Mauksch, one hundred and twenty dollars ($120) each, for their services as enrolling clerks for the Council and House of Representatives.

Duty of auditor

Sec. 2. That the Territorial Auditor is hereby instructed to issue Territorial warrants to said Edwin Gillham and Adolph Mauksch, for the amount of one hundred and twenty dollars to each of them.

Approved, Jan. 14, 1869.

CAPITOL BUILDING.

NUMBER 3.

A MEMORIAL TO CONGRESS PRAYING FOR AN APPROPRIATION TO ERECT A CAPITOL BUILDING IN DAKOTA TERRITORY.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

Appropriation for capitol building

Your memorialists, the Legislative Assembly of the Territory of Dakota, again respectfully ask that an appropriation be made by your honorable bodies for the erection of a Capitol Building at the seat of government of said Territory, and urge in support of this memorial,

That the building now used and occupied by the Legislative Assembly is wholly unsuitable and unfit for such a purpose.

That said building, and those used by the several federal officers of this Territory, are rented of private individuals, and are wooden tenements, in all respects unsafe, and liable at any time to be destroyed by fire together with their valuable contents.

That the legislative, executive, and judicial records, files, libraries, furniture, and other valuables, are, at all times, in consequence, liable to injury and total destruction, and we regard their preservation of vital importance to our Territory.

That the rent now paid, (which must increase as the value of property increases) for the several offices: the Executive's, the Secretary's, the Surveyor General's, the Marshal's, the U. S. Attorney's, and the U. S. Court Room and Legislative Halls, would, in a very few years, pay the expense of erecting a suitable building for the accommodation of the various federal offi-

Appropriation for capitol building

cers and the Legislative Assembly, and therefore the expenditure of a sum sufficient for that purpose would be absolute economy.

Your memorialists regard this matter of great importance to Dakota; and would therefore most earnestly pray that an appropriation of not less than forty thousand dollars be made for the purpose above stated.

And your memorialists will, as in duty bound, ever pray.

CODIFICATION OF LAWS.

NUMBER 4.

A MEMORIAL TO CONGRESS PRAYING FOR AN APPROPRIATION TO CODIFY THE LAWS OF DAKOTA TERRITORY.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

Memorial to codify the laws

Your memorialists, the Legislative Assembly of the Territory of Dakota, would respectfully represent that the laws of Dakota, enacted since the first Legislature, are in a state of confusion, so much so that it is almost impossible to tell what laws are in force and effect, and what laws are repealed or rendered void by subsequent legislation. The laws now on our statute books are the enactments of seven legislatures. Until the laws are codified, this uncertainty will continue and increase.

Your memorialists would further recommend and pray that an appropriation be made by Congress of eight thousand dollars to compensate a commission of competent persons to codify and revise the laws of this Territory, or that such an amount may be appropriated for such codification and revision as to your honorable bodies shall seem proper. Memorial to codify the laws.

And your memorialists would further recommend and ask that the Secretary of this Territory be authorized to employ such persons as in his judgment are qualified to perform the duties of such commission of revision and to pay a reasonable compensation to the persons so employed, and also to pay the expenses of printing, &c., &c.

Resolved, That our Delegate in Congress be respectfully requested to bring the subject of this memorial to the immediate attention of Congress, and use all honorable means to bring about the asked for appropriation.

Approved, Jan. 15, 1869.

FORT RANDALL RESERVATION.

NUMBER 5.

A MEMORIAL TO CONGRESS ASKING FOR THE SURVEY OF THE VACATED PORTION OF THE FORT RANDALL MILITARY RESERVATION.

To the Honorable Congress of the United States:

Your memorialists, the Legislative Assembly of the Territory of Dakota, most respectfully represent, that by an order of General Grant, dated 1868, all that portion of the Fort Survey of the Fort Randall military reserve.

Survey of the Fort Randall military reserve

Randall Military Reserve lying west of the Yankton Sioux Reservation and north of the Missouri river was vacated and thrown open to settlement, and that the said tract of land now contains one of the most thriving farming settlements in this Territory, many of the residents of which had located upon the said lands, built their homes and opened their fields prior to the establishment of said military reserve in 1860.

Your memorialists would further represent that all the public lands lying to the north and west of said vacated tract for a distance of thirty miles have been surveyed and subdivided into sections, and that the Surveyor General of this district cannot direct the survey of this settled portion of the vacated reserve until authorized by Congress to expend a portion of the moneys appropriated for public surveys in surveying and subdiving this particular tract of land.

Your memorialists would therefore most respectfully petition your honorable bodies to authorize the Commissioner of the General Land Office by special act to direct the immediate survey of said lands in order that the worthy and industrious settlers located thereon may be permitted to perfect the titles to their farms under the Pre-emption and Homestead acts of Congress, the same as is allowed to other citizens of the Territory.

And your memorialists, as in duty bound, will ever pray.

Approved, Jan 12, 1869.

GOVERNOR OF DAKOTA.

NUMBER 6.

A MEMORIAL TO HIS EXCELLENCY U. S. GRANT, PRESIDENT OF THE UNITED STATES, REQUESTING THE APPOINTMENT OF HON. W. W. BROOKINGS TO THE OFFICE OF GOVERNOR OF DAKOTA TERRITORY.

To the President of the United States:

Memorial for the appointment of W. W. Brookings Governor of Dakota

Your memorialists the Legislative Assembly of the Territory of Dakota, would most respectfully request your Excellency to appoint Hon. W. W. Brookings of Yankton, Dakota Territory, to the office of Governor of said Territory.

His appointment would meet with the cordial approval of the people of Dakota.

Mr. Brookings is one of our earliest settlers, a man of honesty and integrity, and in every way qualified for the position to which your memorialists ask his appointment.

And your memorialists as in duty bound will ever pray.

INDIANS.

NUMBER 7.

A MEMORIAL AND JOINT RESOLUTION TO THE HON. SECRETARY OF THE INTERIOR, ASKING RELIEF FOR CERTAIN BANDS OF DESTITUTE INDIANS.

To the Hon. Secretary of the Interior:

Memorial for the relief of destitute Indians.

Your memorialists, the Legislative Assembly of the Territory of Dakota, respectfully represent that the condition of the Yankton and Lower Brule bands of Sioux Indians is such that some immediate steps for their relief ought to be taken, they being in an almost starving condition, and that if some assistance is not provided for them, they will, before the present winter closes be driven for want of food, to acts of lawlessness, or be reduced to a state of starvation upon their treaty reservations.

Your memorialists represent that these bands of Indians are among the most deserving of all the Sioux nation, having since located upon their present reservations been peaceable and quiet, and having made commendable progress in agriculture; and further, that these two bands have received but slight aid from the means placed by Congress at the disposal of Gen. Sherman, and that almost all kinds of wild game upon which they have heretofore mainly relied for subsistence through winter seasons having disappeared from their region of country, they must rely upon your department of the government for provisions to help them through the winter.

And, as in duty bound, your memorialists will ever pray.

Resolved, That a copy of this memorial, properly authenticated, be forwarded immediately after its passage to the Hon. Secretary of the Interior, by the Speaker of the House of Representatives.

Approved, Jan. 15, 1869.

NUMBER 8.

A MEMORIAL TO THE PRESIDENT OF THE UNITED STATES, RELATIVE TO THE PEMBINA INDIANS.

To His Excellency, the President of the United States:

Relative to the Pembina Indians

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent, that the lands in this Territory on the west side of the Red River of the North, ceded to the United States in 1863, by the Red Lake and Pembina bands of Chippewa Indians, are still occupied by said Pembina band; and that the occupation of said land by said Indians is a great nuisance to the settlements on the Pembina River, and also retards the establishment and growth of new settlements on the ceded land.

Your memorialists therefore pray that said Pembina band be removed from the ceded land, and without the limits of Pembina county, agreeable to the stipulations of said treaty.

And your memorialists, as in duty bound, will ever pray.

Approved, Dec. 29, 1868.

LAND DISTRICT.

NUMBER 9.

A MEMORIAL TO CONGRESS ASKING FOR THE ERECTION OF AN ADDITIONAL LAND DISTRICT ON THE MISSOURI RIVER IN DAKOTA TERRITORY.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

For a Land District on the Missouri river

Your memorialists the Legislative Assembly of the Territory of Dakota would most respectfully represent that there is at present but one land district in said Territory, which is defined by the Organic Act of Dakota as including all land "west of its eastern boundary and east and north of the Niobrara or Running Water river."

That the United States surveys of the public lands in Dakota have already been made nearly one hundred miles west of what is generally acknowledged to be the western boundary of the Yankton land district; that much of said lands along the Missouri river is already occupied by industrious settlers, who have here made their homes and who are already anxious to secure from the government the title to the lands upon which they reside, while the remaining of the beautiful lands on the Missouri river, and not properly included within the limits of any land district are being rapidly settled upon and claimed by emigrants, who are constantly flocking to our western frontier.

Your memorialists would therefore humbly yet earnestly pray, that an additional land district on the Missouri river be created and established to include the following:

All that portion of Dakota Territory lying west of the line between range 61 and 62 west of the fifth principal meridian and south of the line between townships 130 and 131, north of the base line. For a Land District on the Missouri river

And your memorialists further pray, that there may be a land office located and established at the county seat of Charles Mix county in said District.

And as in duty bound your memorialists will ever pray.

Approved, Jan. 12, 1869.

LAND OFFICE.

NUMBER 10.

A MEMORIAL TO CONGRESS RELATIVE TO A UNITED STATES LAND OFFICE IN THE VALLEY OF THE RED RIVER OF THE NORTH.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

Your memorialists, the Legislative Assembly of the Terrritory of Dakota, would most respectfully represent. For a Land Office on the Red River of the North

1, That that portion of Dakota Territory, known as the "Red River Valley," bounded on the north by the Hudson Bay Company's possessions, in British America, and on the east by the Red River of the North,—has a population of over two thousand.

For a Land Office on the Red River of the North

2, That said Red River country (in Dakota), is traversed by the Pembina, Park, Salt, Turtle, Goose, Elm, Sheyenne, and Wild Rice rivers, and their numerous tributaries, which streams are well timbered with white oak, ash, maple, lynn, elm, &c., and water a country over two hundred miles long, by from forty to sixty miles wide.

3, That new settlements are being established, which, by the tide of immigration, must within a few years spread over that entire country, from Fort Abercrombie to the British line.

4, That many of the citizens of Pembina county are entitled each to one hundred and sixty acres of land, under the treaty of 1863 and 1864, between the United States and the Red Lake and Pembina bands of Chippewa Indians.

5, The Pembina settlements are by a direct line over four hundred miles from the only U. S. Land Office within this Territory, and as there is no direct line of travel between said settlements and Vermillion, on the Missouri River, (the location of the present Land Office), in order to secure title to their grants, pre-emptions, or homesteads, the people of said settlements are required to travel through a great portion of Minnesota, Iowa, as well as this Territory, a distance of over one thousand miles, at an expense equal, or greater than the value of their claims at one dollar and twenty-five cents per acre.

For the reasons briefly above stated, your memorialists most respectfully pray that a land district be established as follows:

Commencing at the intersection of parallel of latitude 49° north, with the Red River of the North; thence up the center of the main channel of said river to its intersection with the line between townships 130 and 131 north of the base line; thence west on said line to its intersection with parallel of longitude 27° west from Washington; thence north on said parallel of longitude 27° to its intersection with the parallel of latitude 49° north; thence east on said parallel of latitude 49° to the place of beginning.

And your memorialists further pray that there may be a Land Office, with a register and receiver, located at some suitable point in the said Pembina settlements.

And your memorialists, as in duty bound, will ever pray.

Approved, Dec. 29, 1868.

MAIL SERVICE.

NUMBER 11.

MEMORIAL TO HON. ALEXANDER W. RANDALL, POST MASTER GENERAL OF THE UNITED STATES, PRAYING TO HAVE A WEEKLY MAIL ROUTE ESTABLISHED BETWEEN VERMILLION AND BLOOMINGDALE, CLAY COUNTY, DAKOTA TERRITORY.

For a mail route from Vermillion to Bloomingdale

Your memorialists, the Legislative Assembly of the Territory of Dakota, would most respectfully represent that at present there are but three post offices in Clay county in this Territory, one at Green Point, one at Vermillion, and the other at Lincoln; that all of the offices are on the United States military road.

That during the past year the greater number of new settlers that have come into the county, have settled on the Vermillion river and that every quarter section of land has been taken between Vermillion and Bloomingdale, and actual settlers have occupied and improved the same.

That all these settlers are without any mail facilities and in order to obtain their letters and papers they have to go to Vermillion, a distance of ten miles, which occupies much valuable time and is a course of much trouble and great inconvenience.

That the road between Vermillion and Bloomingdale, ten miles, is in good condition nearly the whole year and a mail route between these places could be established very cheap; that Vermillion is the county seat of Clay county and that there has been erected at Bloomingdale during the past summer a grist mill, a hotel, and in spring there will be a number of other business houses erected there.

For a mail route from Vermillion to Bloomingdale

Therefore your memorialists the Legislative Assembly of the Territory of Dakota would most urgently ask for the immediate establishment of a weekly mail between the above mentioned places.

And your memorialists will ever pray.

Approved, Dec. 18, 1868.

RAILROADS.

NUMBER 12.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES PRAYING FOR THE EXTENSION OF THE SIOUX CITY AND PACIFIC RAILROAD TO YANKTON, DAKOTA TERRITORY.

For the extension of the Sioux City and Pacific rail road

Your memorialists the Legislative Assembly of the Territory of Dakota respectfully but earnestly pray your honorable bodies to pass an act, giving and granting, to the Sioux City and Pacific railroad company, for the purpose of constructing and extending the Sioux City and Pacific railroads from Sioux City, Iowa, to Yankton, Dakota Territory, via Elk Point and Vermillion, a distance of sixty miles, all and equal grants of land bonds, donations, rights, privileges and franchises, as were given and granted to said Sioux City and Pacific railroad company, to build and construct a railroad from Sioux City, to Fremont, Nebraska.

Provided, Said Sioux City and Pacific railroad company shall be obligated to build ten miles of said road, in one year from the reception of the grant and complete the whole road to Yankton, in two years from the reception of said grant. For the extension of the Sioux City and Pacific rail road.

Resolved, That our Delegate in Congress be requested to call the attention of Congress to the prayer of this memorial, and use all honorable means for its success.

NUMBER 13.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES, PRAYING FOR A GRANT OF LAND TO AID IN THE CONSTRUCTION OF A RAILROAD FROM YANKTON, DAKOTA TERRITORY, TO COLUMBUS, IN THE STATE OF NEBRASKA.

Your memorialists the Legislative Assembly of the Territory of Dakota would most respectfully pray your honorable bodies to grant alternate sections of land to the amount of not less than five miles on each side of the Yankton and Columbus railroad, to the Yankton and Columbus railroad company, or to the State of Nebraska for the purpose of building and constructing a railroad from Yankton, Dakota Terrritory, to Columbus, on the Union and Pacific railroad. The distance is about one hundred miles over an excellent agricultural co[u]ntry, and the building of a railroad would add much to the development and wealth of northern Nebraska, and give Dakota a start outlet to the Union Pacific railroad. For a grant of land for the Yankton and Columbus rail road

Resolved, That our Delegate to the 40th and 41st Congress be requested to use all honorable means through the proper committees to bring the object of this memorial before both branches of Congress.

NUMBER 14.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES PRAYING FOR A GRANT OF LAND TO THE MINNESOTA AND MISSOURI RIVER RAILROAD COMPANY, TO AID IN THE CONSTRUCTION OF A RAILROAD FROM THE STATE OF MINNESOTA; TO THE MISSOURI RIVER, AT YANKTON.

For a grant of land to the Minnesota and Missouri river rail road company

Your memorialists, the Legislative Assembly of the Territory of Dakota would most respectfully represent that by an act of the Legislative Assembly of the Territory of Dakota, approved, January 11th, 1867, a charter was granted to the Minnesota and Missouri river railroad company, to construct a railroad, from the western boundary of the State of Minnesota, in latitude 44 north to the town of Yankton on the Missouri river, believing as we do that a grant of land to aid in the construction of such a road would be a great benefit to the Territory and to the general Government in an early development of a rich agricultural country, that without it, it will ever remain undeveloped.

Your memorialists respectfully but earnestly pray your honorable bodies to grant every alternate section of land to the amount of not less than six miles on each side of the line of such road to aid in the construction thereof, and that such grant be made to said Minnesota and Missouri river railroad company, with the pproper restrictions, limitations and forfeitures.

Your memorialists would further represent, that the distance from the western boundary line of Minnesota, to Yankton, over the proposed railroad route is about one hundred miles over a very fertile prairie, almost entirely destitute of timber and without any natural highway, for transportation, consequently uninhabitable until the capitalist shall correct this oversight of nature by the construction of artificial highways.

For a grant of land to the Minnesota and Missouri river rail road company

The population of Illinois now makes one fifteenth of that of the whole country. It now defrays one-fifteenth of the whole burdens of the general government. Its proportion of the federal taxes equal $24,000,000, annually. Its ability to pay this vast sum is almost entirely due to the railroads that have been constructed within it during the past fifteen years. Towards their construction the federal government never contributed a penny. It did however. in 1850 make a valuable grant to the State in favor of the Illinois Central railroad, which secured the speedy construction, of this great work, and gave a wonderful impulse to the construction of other important lines. The additional price charged for reserved lands yielded to the national treasury the same sum, that would have been realized if the grant had not been made. If by the use of similar means, you can create another Illinois, as far as concerns its population, wealth and value to the Union, you will in an equal degree lighten the burdens resting upon the Nation.

A vigorous movement in this direction, consequently is the dictate of sound statesmanship, as well as of enlightened self-interest.

Therefore your memorialists most earnestly urge upon your honorable bodies to repeat the example of Illinois, in Dakota, since it by no means impairs the federal government, but earnestly enhances the wealth of the Union as well as Dakota, by enabling us to construct artificial highways, since nature has failed to furnish us any great water lines, over which we can transport the products of a rich and fruitful country.

And as in duty bound your memorialists will ever pray.

Resolved, That our Delegate to the 40th and 41st Congress be requested to call the attention of the proper committees of Congress to the objects of this memorial.

REMOVAL OF FORT DAKOTA.

NUMBER 15.

A MEMORIAL TO THE SECRETARY OF WAR PRAYING THAT FORT DAKOTA MAY BE REMOVED SIXTY-FIVE MILES FURTHER UP THE BIG SIOUX RIVER.

For the removal of Fort Dakota

The Legislative Assembly of the Territory of Dakota, would most respectfully represent, that Fort Dakota, no longer serves as a protection to our frontier settlements on the Big Sioux river.

Therefore your memorialists ask that said Fort Dakota may be removed sixty-five miles north of its present location at a point known as Medary.

Resolved, That our Delegate in Congress is hereby requested, to present a copy of this Memorial to the Secretary of War, and urge upon him the necessity of the removal of said Fort Dakota to Medary on the Big Sioux river.

TRANSFER OF INDIAN BUREAU.

NUMBER 16.

A MEMORIAL TO CONGRESS PROTESTING AGAINST THE TRANSFER OF THE INDIAN BUREAU TO THE WAR DEPARTMENT.

To the Congress of the United States:

Memorial protesting against the transfer of the Indian Bureau

Your memorialists, the Legislative Assembly of the Territory of Dakota, desire most respectfully to present their objection to the transfer of the Indian Bureau from the civil to the Military Department of the Government.

1st. Your memorialists fully believe that it is susceptible of proof by documentary evidence on file in the proper departments of the Government at Washington, that it costs vastly less to feed, manage and care for the Indians (when not in a state of war,) by the civil than by the military arm of the Government.

In proof of this statement your memorialists beg leave to call your attention to the relative cost of maintaining the Indians on the Upper Missouri, and other quarters of the west and south-west, under the management of the military and civil service.

2d. Your memorialists would further represent; that according to their experience and observation the transferring of the management of Indians to the War Department, is not a step toward the advancement of that peculiar people in civilization; but, on the contrary, your memorialists believe it to be a wide stride in the very opposite direction. Such transfer, your memorialists are convinced, will greatly embarrass many of the tribes who have, since the treaties of 1865–6, settled upon reservations, opened farms, and made considerable advancement in civilized pursuits.

Memorial protesting against the transfer of the Indian Bureau

3rd. Your memorialists are happy to represent that since the treaties of 1865–6, peace and security have prevailed throughout our frontier settlements, and that, with a few exceptions by Upper Missouri bands, no treaty obligations have been violated by our numerous Indian tribes.

4th. Your memorialists deem it their duty to call your attention to the fact that the introduction among our treaty Indians of hostile bands, and the remarkable liberality with which said hostile bands have been provided for by the government, is a subject of surprise, and very grave complaint on the part of the treaty Indians. They cannot understand why those bands, who but recently were hostile to the government, and engaged in the indiscriminate slaughter of the white people, should be treated with far more liberality than those tribes who have been loyal to the government, and friendly to the white people for many years.

5th. And lastly, your memorialists beg leave to state that, in their opinion, a rigid enforcement of the laws of Congress, on the subject of intercourse with Indians, and a strict compliance with existing treaty stipulations on the part of the government, through honest, capable and efficient agents, is all that is needed to secure perfect peace and quiet throughout the length and breadth of the Indian country.

And in duty bound, your memorialits will ever pray.

WAGON ROADS.

Number 17.

A MEMORIAL TO CONGRESS FOR AN APPROPRIATION TO CONSTRUCT A WAGON ROAD FROM FORT ABERCROMBIE DOWN THE RED RIVER OF THE NORTH.

To the Honorable the Senate and House of Representatives of the United States in Congress Assembled:

For a wagon road down the Red River of the North.

Your memorialists, the Legislative Assembly of the Territory of Dakotá, would most respectfully call your attention to the present great and increasing need of a wagon road from Fort Abercrombie, in this Territory, down the Red River of the North, to the Dakota Settlements on the Pembina river, and thence to parallel of latitude 49° north, in the direction of the "Selkirk," or Hudson's Bay Company's Red River Settlements.

Your memorialists would respectfully represent;

1st. That, according to the official reports of the Collector of Customs at the port of Pembina, merchandise passing annually over this route, is inspected at said port, amounting to hundreds of thousands of dollars, from which the United States Government derives a large revenue; besides supplies for the American Settlements, (with a population of over two thousand) all the supplies the British Settlements, containing a population of from twelve to fifteen thousand, as well as supplies for the Hudson's Bay Company, and the numerous "Free Traders," are received at, or by way of the city of St. Paul, Minnesota, and pass over the route above mentioned. And all the vast amounts of furs, &c., imported from said British Settlements for consumption, or in bond for transhipment, are freighted over said route.

For a wagon road down the Red River of the North

2d. That this great thoroughfare between Fort Abercrombie and the Pembina Settlements, (about 200 miles) crosses eight streams, varying in width, from fifty to two hundred feet, over which the freighters annually have to throw temporary bridges, which are carried off by the first freshet, and hence the same stream is so bridged several times during one season, and

3rd. That the entire route passes over a level valley, and as nature has provided an excellent road, no appropriation will be required for any other purpose than to survey the road and bridge the streams.

Your memorialists therefore, do most respectfully pray that an appropriation be made in such sum as you, in your wisdom, may deem sufficient to survey and locate a Government Wagon Road from Fort Abercrombie in this Territory, down the Red River of the North, by the nearest and best route, to the Settlements on the Pembina river, and the 49th parallel of north latitude, and to bridge Cheyenne, Wild Rice, Elm, Goose, Turtle, Salt, Park, and Pembina rivers.

And your memorialists, as in duty bound, will ever pray.

Approved, Jan. 6, 1868.

Number 18.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES ASKING FOR THE ESTABLISHMENT OF A WAGON ROAD FROM YANKTON VIA CANTON, D. T., TO SPIRIT LAKE, IOWA.

For a wagon road from Yankton to Spirit Lake

Your memorialists the Legislative Assembly of the Terrritory of Dakota, respectfully ask your honorable bodies to authorize the survey and location of a wagon road from Yankton, D. T. to Spirit Lake, Iowa, via Canton, Dakota Territory, and for an appropriation to construct a bridge across the Big Sioux river, at or near the last named place. The location of such a road and the construction of a bridge thereon, across said river

would open up to settlement a large extent of fertile country and would greatly accommodate and assist a large emigration that is now, and will continue to flow from the north-western states to this Territory. For a wagon road from Yankton to Spirit Lake.

Your memorialists are of the opinion that an appropriation of eight thousand dollars would accomplish this desirable object, and would be returned to the government four fold by the increased amount of taxable property, and by the sale to actual settlers of large portion of the public lands, that will, unless some facilities by railroad or wagon roads are offered, remain for a long time unoccupied.

And your memorialists as in duty bound will ever pray.

Approved, Jan. 15, 1869.

Number 19.

JOINT RESOLUTION VACATING THE TERRITORIAL ROAD FROM YANKTON TO THE LOWER FERRY ON JAMER RIVER.

Whereas, All that portion of the government road which leads from Yankton to James river, together with the government bridge located on said James river, have both been relocated by order of the Secretary of the Interior, and moved some four miles north to the Upper Ferry on said James river, at which point the government bridge is now under course of construction. Vacating road from Yankton to James river

And, *Whereas*, by an act of the Legislature approved, Jan. 12, 1866, there was located upon the surveyed route of said government road, a territorial road in accordance with the field notes of said government road from James river to Yankton.

And, *Whereas*, The Missouri river has already washed away a considerable portion of said road, and the whole of the said road being located upon the Missouri bottom, and at times made

Vacating road from Yankton to James river

impassable by the spring overflows, which necessitates the expenditure of a large amount of county road work to keep the same in repair.

And, *Whereas*, There is now an established county road on the section line one-fourth mile north of, and running parallel to, said road proposed to be vacated, which meets all the demands of travel in that direction, therefore

Be it Resolved, By the Legislative Asssembly of the Territory of Dakota, that all that portion of the said territorial road lying between Yankton, and the intersede of the aforementioned county road, on sec. 13, be, and the same is hereby declared vacated, and shall be no longer considered a public highway in this county; and the said county road shall be, and hereby is declared to be a territorial road to all proper intents and purposes.

Approvd, Jan. 15, 1869.

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